

Appendix B – Statutory Compliance Table

Statutory Reference	Relevant Considerations	Relevance	Section in EIS
<i>Environmental Planning and Assessment Act 1979</i>			
Section 1.3	<i>To promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State’s natural and other resources</i>	The proposal promotes the social and economic welfare of the community by delivering a mix of market and affordable housing in a highly accessible location, supporting housing choice, affordability and proximity to employment, services and public transport. It contributes to the local economy through construction and ongoing jobs, and activates the public domain with retail uses. The design responds to the site’s built form and environmental context, incorporates sustainability measures, retains and enhances landscaping, and manages potential impacts through targeted mitigation, thereby ensuring the proper management and development of the site’s resources while contributing to a better urban environment.	Throughout EIS
	<i>To facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,</i>	The proposal addresses the principles of ESD including the precautionary principle, intergenerational equity, and the conservation of biological and ecological integrity. In addition, ESD and BASIX Reports have been prepared to accompany the EIS which identifies how ESD principles are incorporated into the design and ongoing operation of the	

proposed development, how the development will meet or exceed the relevant industry recognised building sustainability and environmental performance standards, and how the development minimises greenhouse gas emissions and consumption of resources.

To promote the orderly and economic use and development of land

The proposal represents the orderly and economic use of land by replacing an ageing, under-utilised building with a high-quality shop top housing development that aligns with Mu1 mixed use zoning and strategic policy directions. It optimises a well-located site in close proximity to the Sydney CBD, public transport, services and infrastructure, delivering a balanced mix of market and affordable housing, public and communal open space, and active ground-floor uses. The design has been refined through a competitive process and expert review to ensure efficient use of the site, integration with the surrounding urban fabric, and the delivery of long-term social, economic and environmental benefits.

To promote the delivery and maintenance of affordable housing,

The proposal directly promotes the delivery and maintenance of affordable housing by providing 23 purpose-built studio apartments to be managed by a registered community housing provider for a minimum of 15 years under the Housing SEPP's infill affordable housing provisions. These dwellings are designed to achieve high amenity ensuring they remain attractive and functional over time. Locating affordable housing in Potts Point, within walking distance of the Sydney CBD, public transport, and social infrastructure, supports

low- to moderate-income households and will address a documented shortage of affordable rental options in the area.

To protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats

This proposal will have a negligible to non-existent impact on threatened species or other native flora and fauna, and ecological habits. The proposal is limited to a previously developed portion of land and has limited potential to create any negative impacts on flora and fauna.

A BDAR waiver was received on 18 August 2025.

Significant landscaping, including the use of native species, is proposed on the site.

To promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),

The site is not listed as a heritage item, however it is located within the Potts Point Heritage Conservation Area (HCA). Despite this, the existing building on the site is nominated as a 'detracting item' to the HCA in the Sydney DCP and it relates poorly to the surrounding public domain. Consent for the demolition of the existing building has been granted in accordance with the concept approval.

A Heritage Impact Statement (**HIS**) has been prepared to assess the impacts of the proposal on built heritage. The HIS determined that the proposed development will form an improved outcome for the Potts Point HCA and surrounding heritage items as its built form and materiality has been designed to respond to the heritage character of the area. The proposal will also incorporate appropriate setbacks and

massing to create an appropriate transition to surrounding heritage items.

An Aboriginal Cultural Heritage Assessment Report (**ACHAR**) was prepared for the site and concluded that the site has low Aboriginal cultural heritage significance, the archaeological potential of the site is nil to very low and the proposed works are unlikely to cause either direct or indirect harm to Aboriginal objects.

To promote good design and amenity of the built environment,

The proposed development has gone through a design excellence process, including an architectural design competition undertaken in 2024, as well as the reconvening of the competition Jury as a Design Integrity Panel to review the SSDA proposal and confirm that the proposal maintains design excellence. The DIP has reviewed the proposal twice before SSDA lodgement and have agreed that the proposal is capable of demonstrating design excellence.

To promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,

The proposal will be constructed and maintained in accordance with any relevant Australian Standards and Building Code of Australia (BCA) provisions.

To promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,

The proposal promotes the sharing of responsibility for environmental planning and assessment between state and local government through assessment at the State level with input from Council received on the concept proposal which has formed the detailed SSDA. Council will also have an

opportunity to comment on the proposal as part of the exhibition process.

To provide increased opportunity for community participation in environmental planning and assessment.

Community and stakeholder engagement has been undertaken during the preparation of the SSDA, as detailed in Section 5 of the EIS. Through the assessment period, there will be another opportunity for community and stakeholders to respond to the proposed development. The Applicant will respond to any concerns raised during the notification of the SSDA.

Section 4.15

Relevant environmental planning instruments:

- *State Environmental Planning Policy (Planning Systems) 2021*
- *State Environmental Planning Policy (Resilience and Hazards) 2021*
- *State Environmental Planning Policy (Transport and Infrastructure) 2021*
- *State Environmental Planning Policy (Biodiversity and Conservation) 2021*
- *State Environmental Planning Policy (Housing) 2021*
- *State Environmental Planning Policy (Precincts - (Eastern Harbour City) 2021*
- *State Environmental Planning Policy (Sustainable Buildings) 2022*
- *Sydney Local Environmental Plan 2012*

See detail below under State Environmental Planning Policies (SEPPs).

See below.

Draft environmental planning instruments	Consideration of the relevant Draft Sydney Local Environmental Plan amendments under PP-2024-709 is provided further below in this table.	
Relevant planning agreement or draft planning agreement	Not applicable.	Not applicable.
Environmental Planning and Assessment Regulation 2021 – Schedule 2	This EIS has been prepared in accordance with Schedule 2 of the Regulations.	Not applicable.
Development control plans: <i>Sydney Development Control Plan 2012 (SDCP 2012)</i>	Clause 2.10 of the Planning Systems SEPP states that development control plans (whether made before or after the commencement of the Policy) do not apply to state significant development.	Not applicable.
The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality.	The likely impacts of the development including the environmental impacts on the natural and built environments, and social an economic impact on the locality are assessed in detail within the EIS.	Section 6
The suitability of the site for the development	The suitability of the site for the proposed development is demonstrated in the EIS.	Section 7
Any submission made	Submissions will be considered following exhibition of the application.	Not applicable.
The public interest	The proposed development satisfactorily responds to the relevant planning instruments and controls applying to the site. The proposal will not create any adverse social, economic	Section 7

or environmental impacts that cannot be mitigated by the proposed mitigation measures provided at Appendix D.

On balance, the benefits of the development outweigh any adverse impacts and the development is deemed to be in the public interest.

Section 4.22
concept
development
applications

(1) For the purposes of this Act, a concept development application is a development application that sets out concept proposals for the development of a site, and for which detailed proposals for the site or for separate parts of the site are to be the subject of a subsequent development application or applications.

(4) If consent is granted on the determination of a concept development application, the consent does not authorise the carrying out of development on any part of the site concerned unless—

(a) consent is subsequently granted to carry out development on that part of the site following a further development application in respect of that part of the site, or

(b) the concept development application also provided the requisite details of the development on that part of the site and consent is granted for that first stage of development without the need for further consent.

The proposal follows Concept SSDA (SSD-79316759) which granted consent for stage one works comprising demolition of existing structures on the site and a concept envelope for a 13-storey shop top housing development.

This Detailed SSDA seeks consent for the construction of a shop top housing development on the site which is generally in accordance with the Concept SSDA, subject to amendments as detailed in the EIS. An assessment of the compliance of this Detailed SSDA with the conditions of consent of the Concept SSDA has been provided in Appendix C.

Section 4
Appendix C

The terms of a consent granted on the determination of a concept development application are to reflect the operation of this subsection.

Section 4.24	In accordance with Section 4.24(4) of the EP&A Act, a future development application may be inconsistent with the concept consent if the consent authority grants conditions of consent which modify the concept approval.	Concept SSD (SSD-79316759) applies to the site. An assessment of the proposal's consistency with the concept approval is included at Error! Reference source not found.. Amendments are proposed to the concept proposal as detailed in Section Error! Reference source not found..	Section 3.2 Appendix C
Environmental Planning and Assessment Regulation 2021			
Section 26	Section 26 of the Regulations outlines the information required about affordable housing development. It states that an Applicant must specify the name of the registered Community Housing Provider (CHP) who will manage the affordable housing component of the development.	Evolve Housing, a Tier 1 Community Housing Provider, has been specified as the Community Housing Provider who will manage the affordable housing component of the development.	Appendix L
Schedule 2	Schedule 2 of the Regulations provides that environmental assessment requirements will be issued by the Secretary with respect to the proposed EIS.	This EIS has been prepared to address the requirements of Schedule 2 of the Regulations and SEARs.	Appendix A
Biodiversity Conservation Act 2016			
Section 7.14	The likely impact of the proposed development on biodiversity values as assessed in the Biodiversity Development Assessment Report (BDAR). The Minister for Planning may (but is not required to) further	In accordance with Section 7.9(2) of the BC Act, a BDAR waiver was received for the application on 18 August 2025.	Section 6.11 and Appendix T

consider under that BC Act the likely impact of the proposed development on biodiversity values.

State Environmental Planning Policies

<p><i>State Environmental Planning Policy (Planning Systems) 2021 (Planning Systems SEPP)</i></p>	<p>Clause 26A of Schedule 1 of the Planning Systems SEPP provides that development for the purpose of infill affordable housing is classified as SSD if:</p> <ul style="list-style-type: none"> ▪ It relates to development to which Chapter 2, Part 2, Division 1 of the Housing SEPP applies ▪ The development relates to residential development with an EDC of more than \$75m; and ▪ The development does not pertain to development that is prohibited under an EPI. 	<p>The residential component of the proposal has an estimated EDC of greater than \$75,000,000 (refer Appendix E).</p> <p>The proposed use ‘shop top housing’ is permitted with development consent in the MUI Mixed Use zone.</p> <p>The proposal also provides 15% affordable housing and meets the locational criteria of the Housing SEPP. Therefore, the proposal qualifies as SSD.</p>	<p>Section 4.1 and Appendix E</p>
<p><i>State Environmental Planning Policy (Resilience and Hazards) 2021 (R&H SEPP)</i></p>	<p>Clause 4.6(1) states that land must not be rezoned or developed unless contamination has been considered and, where relevant, land has been appropriately remediated.</p>	<p>A Preliminary Site Investigation (PSI) and a Detailed Site Investigation (DSI) have been prepared for the proposed development by JK Environments and are attached at Appendix Z and Appendix AA. The DSI concluded that the site can be made suitable for the proposed development, subject to remediation works and the implementation of a Remedial Action Plan.</p> <p>As per the DSI recommendations, a Remediation Action Plan (RAP) has been prepared by JK Environments (Appendix BB). The RAP provides a methodology to remediate and validate the site and concludes the site can be made suitable for the proposed development via remediation.</p>	<p>Section 6.11 Appendix Z Appendix AA Appendix BB</p>

<p>State Environmental Planning Policy (Transport and Infrastructure) 2021 (T&I SEPP)</p>	<p>Traffic generating development specified at Section 2.122 requiring referral to Transport for NSW (TfNSW) includes:</p> <ul style="list-style-type: none"> Development with access to any road resulting in 300 or more dwellings, or 200 or more parking spaces. 	<p>The project is not considered to be 'traffic generating development' as it will provide for fewer than 300 dwellings and fewer than 200 parking spaces. The proposal is not expected to impact the operation of the local road network.</p>	<p>Section 6.7 Appendix S</p>
<p>State Environmental Planning Policy (Biodiversity and Conservation) 2021 (B&C SEPP)</p>	<p>Chapter 2 Vegetation in non-rural areas aims to protect the biodiversity values of trees and other vegetation in non-rural areas of the State, and to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation</p>	<p>The accompanying Arboricultural Impact Assessment demonstrates how the proposal will retain all existing trees on the site. A BDAR Waiver has been granted for the proposed development which confirms that the proposed development is unlikely to have any significant impact on biodiversity values of the site and surroundings.</p>	<p>Section 6.6 and Section 6.11 Appendix P Appendix T</p>
<p>State Environmental Planning Policy (Housing) 2021</p>	<p>Chapter 2 Division 1 Infill Affordable Housing <u>Section 15C</u> The in-fill affordable housing provisions of the Housing SEPP apply to development that includes residential development if –</p> <ul style="list-style-type: none"> The development is permitted with consent under an EPI. The affordable housing component is at least 10%. The development is carried out in an accessible area. 	<p>The proposed use 'shop top housing' is permitted with development consent in the MUI Mixed Use zone under the Sydney LEP.</p> <p>15% of the total GFA is proposed to be affordable housing.</p> <p>Additionally, the development will be carried out in an accessible area as defined by the Housing SEPP. The site is located approximately 750 metres walking distance of the public entrance to the Kings Cross Train. The site is also located within 200m walking distance of a bus stop used by a regular bus service. The nearest bus stops on Macleay Street are serviced by the 311 bus service, which provides multiple services throughout the hour (including but not limited to</p>	<p>Section 4.1</p>

between 6 am and 9pm Monday to Friday and 8am to 6pm on Saturday and Sunday).

Section 16 Affordable housing requirements for additional floor space ratio

The minimum affordable housing component is 10%. 30% additional FSR is permitted for proposals delivering up to 15% affordable housing, based on the maximum permissible FSR for the land, in accordance with Section 16 (1) and (2).

In accordance with Section 16 (3), the maximum building height for a building used for residential flat buildings or shop top housing is the maximum permissible building height for the land plus an additional building height that is the same percentage as the additional floor space ratio permitted under subsection (1).

15% of the total GFA proposed is provided as affordable housing. The proposal seeks to utilise the 30% FSR bonus available.

As the full 30% bonus FSR is permitted under Section 16 (1) and the development comprises shop top housing, a 30% height bonus is also applicable to the proposed development.

Section 6.2

Non-discretionary development standards

19(2)(a) Minimum site area of 450m²

Not applicable. The site has an area of approximately 1,289sqm.

Not applicable

19(2)(b) minimum landscaped area that is the lesser of:

- 35m²
- 30% of the site area

A total landscaped area of 484sqm is proposed on the site, representing 37.5% of the site area.

Section 6.6

19(2)(c) 15% deep soil zone, with:

- Minimum dimensions of 3m

As stated in clause 19(3), Subsection (2)(c) and (d) do not apply to development to which Chapter 4 applies. As such this control is not relevant.

- 65% located at the rear of the site

19(2)(d) living rooms and POS in at least 70% of dwelling receive at least 3 hours of direct solar access between 9am and 3pm at mid-winter.

As stated in clause 19(3), Subsection (2)(c) and (d) do not apply to development to which Chapter 4 applies. As such this control is not relevant.

19(2)(e) car parking for affordable housing dwellings:

- 1 bedroom: 0.4 parking spaces
- 2 bedroom: 0.5 parking spaces
- 3 bedroom: 1 parking space

The proposal is required to provide 9 affordable housing parking spaces in accordance with the Housing SEPP. The proposed development will provide 9 affordable housing parking spaces and is subsequently compliant with the control.

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Appendix S

19(2)(f) car parking for non-affordable housing dwellings:

- 1 bedroom: 0.5 parking spaces
- 2 bedroom: 1 parking spaces
- 3 bedroom: 1.5 parking space

The proposal is required to provide 32 non-affordable housing parking spaces in accordance with the Housing SEPP. The proposed development will provide 43 non-affordable housing parking spaces.

Section 6.7
Appendix S

Section 20 Design Requirements

Development consent must not be granted to development under this division unless the consent authority has considered whether the design of the residential development is compatible with the desirable elements of the character of the local area, or for precincts undergoing transition—the desired future character of the precinct.

The proposal is compatible with the desirable elements of Potts Point’s local character and aligns with the desired future character for the precinct. The three-storey podium matches the established street wall height of adjoining heritage buildings and uses materials that reference the predominant brick and masonry tones of the area, while the slender, setback tower reduces visual bulk, maintains view corridors and draws inspiration from the Art Deco and Interwar architecture characteristic of the locality. The design supports the precinct’s future character by sensitively renewing an

Section 6.2
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ageing building, increasing housing diversity through a mix of market and affordable dwellings, and activating the public domain with ground-floor retail and the landscaped 'Chimes Garden'. Refinement through a competitive design process and Design Integrity Panel review ensures the development integrates with the existing urban fabric, respects heritage context and contributes positively to the evolving built form.

Section 21 Must be used for affordable housing for at least 15 years

The consent authority is to be satisfied that for a period of at least 15 years commencing on the day an occupation certificate is issued for the development, the development will include the affordable housing component specified above, and the affordable housing component will be managed by a registered community housing provider.

The proposal is supported by a letter from Evolve Housing (**Error! Reference source not found.**) which confirms that Evolve Housing is willing to assume management or ownership of the affordable housing dwellings once completed for a 15 year period.

Section 6.4
Appendix L

Chapter 4 Design of Residential Apartment Development

Under Chapter 4 of the Housing SEPP, the consent authority must consider:

- (a) the quality of the design of the development, evaluated in accordance with the design principles for residential apartment development set out in Schedule 9,
- (b) the Apartment Design Guide

A detailed assessment of the proposal against the design principles for residential apartment development and the Apartment Design Guide (ADG) is provided in the accompanying Design Report. The assessment demonstrates that the proposal generally achieves compliance with the key numerical requirements of the ADG including:

- Solar and daylight access.
- Natural ventilation.
- Apartment size and layout.

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Appendix H

- Ceiling heights.
- Private open space and balconies.
- Communal Open Space.
- Visual Privacy.
- Deep soil area.
- Storage.

<p><i>State Environmental Planning Policy (Sustainable Buildings) 2021 (Sustainable Buildings SEPP)</i></p>	<p>Chapter 2 of the Sustainable Buildings SEPP requires BASIX development to comply with the standards set out in Schedule 1. The standards relate to energy and water use and thermal performance.</p>	<p>An ESD Report and BASIX Certificate have been prepared for the proposed development, which demonstrates compliance with these standards.</p>	<p>Section 6.11 Appendix R</p>
<p>Draft Environmental Planning Instruments</p>			
<p>DRAFT Sydney Local Environmental Plan – City of Sydney Policy and Housekeeping Planning Proposal (PP-2024-709)</p>	<p><u>Amendment 1 – Deep soil</u> A new provision in Sydney LEP 2012 and Green Square Town Centre LEPs will require the consent authority to consider if development provides a deep soil zone sufficient for tree planting.</p>	<p>The proposal provides 174 sqm (14% of the site area) as deep soil which will provide ample space for soft landscaping and tree planting and is compliant with the deep soil and tree canopy coverage requirements outlined in the current Sydney DCP.</p>	<p>Section 6.6 and Appendix H</p>
	<p><u>Amendment 3 – Parking in new developments</u> This amendment proposes changes to on-site car parking controls, including changes to maximum parking rates reflecting the delivery of new public</p>	<p>The proposed car parking complies with the non-discretionary standards pursuant to Part 2 Division 1 of the Housing SEPP. As such, any existing or future parking provision under the Sydney LEP cannot be used as a standard for refusal.</p>	<p>Section 6.7 Appendix S</p>

transport infrastructure and other changes to the City's planning framework. The changes only affect new development.

Clause 7.5 – amended maximum parking rates for residential flat buildings and co-living housing.

Clause 7.5 – new provision for visitor parking spaces in proportion with residential parking spaces.

Amendment 8 – Design excellence processes and site-specific development control plans

6.21 – The City are also proposing to add 'internal layout and amenity' and 'deep soil and tree plantings' as considerations for demonstrating design excellence.

6.21 – permit an additional 10 per cent height **and** FSR to a building demonstrating design excellence

The purpose of this amendment is to strengthen incentives for achieving design excellence and providing greater flexibility for developments to optimise built form while still meeting amenity, heritage and environmental performance standards.

This EIS assumes that PP-2024-709 will be gazetted before determination and seeks a 10% FSR and height bonus in accordance with the proposed provision.

Section 6.4

Sydney Local Environmental Plan 2012

1.2 Aims of the Plan

The particular aims of this Plan are as follows—
 (aa) to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts,
 (a) to reinforce the role of the City of Sydney as the primary centre for Metropolitan Sydney,

The proposal aligns with the aims of the Plan by supporting the development of a centrally located, high-quality apartment building which supports housing diversity and affordability and has been designed through a design excellence process. Furthermore, the proposal will remove a detracting building from the Potts Point HCA, improving the amenity and heritage outcomes for Macleay Street. The

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(b) to support the City of Sydney as an important location for business, educational and cultural activities and tourism,

(c) to promote ecologically sustainable development,

(d) to encourage the economic growth of the City of Sydney by—

(i) providing for development at densities that permit employment to increase, and

(ii) retaining and enhancing land used for employment purposes that are significant for the Sydney region,

(e) to encourage the growth and diversity of the residential population of the City of Sydney by providing for a range of appropriately located housing, including affordable housing,

(f) to enable a range of services and infrastructure that meets the needs of residents, workers and visitors,

(g) to ensure that the pattern of land use and density in the City of Sydney reflects the existing and future capacity of the transport network and facilitates walking, cycling and the use of public transport,

(h) to enhance the amenity and quality of life of local communities,

(i) to provide for a range of existing and future mixed-use centres and to promote the economic strength of those centres,

proposed development incorporates the principles of ecologically sustainable development.

j) to achieve a high quality urban form by ensuring that new development exhibits design excellence and reflects the existing or desired future character of particular localities,

(k) to conserve the environmental heritage of the City of Sydney,

(l) to protect, and to enhance the enjoyment of, the natural environment of the City of Sydney, its harbour setting and its recreation areas.

Zoning and Land Use	The site is zoned MUI Mixed Use under the Sydney Local Environmental Plan.	The site is zoned MUI Mixed Use, in which the proposed shop top housing is permissible with consent.	Section 4
	<p>The MUI zone has the following objectives:</p> <ul style="list-style-type: none"> ▪ To encourage a diversity of business, retail, office and light industrial land uses that generate employment opportunities. ▪ To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces. ▪ To minimise conflict between land uses within this zone and land uses within adjoining zones. ▪ To encourage business, retail, community and other non-residential land uses on the ground floor of buildings. 	<p>The proposed development is consistent with the objectives of the MUI zone in that:</p> <ul style="list-style-type: none"> ▪ It will support the delivery of ground floor retail, supporting an activated streetscape and contributing to a diverse business offering. ▪ The proposal is highly compatible with the neighbouring R1 General Residential zone. ▪ The proposal will support the function of Macleay Street as a vibrant mixed-use centre. 	

- To ensure land uses support the viability of nearby centres.
- To integrate suitable business, office, residential, retail and other land uses in accessible locations that maximise public transport patronage and encourage walking and cycling.

4.3 Height of Buildings

The site has a maximum building height control of 35m under the Sydney LEP.

The proposed development is eligible for an additional 30% above the maximum building height under the Sydney LEP as a result of the infill affordable housing provisions in the Housing SEPP. The maximum permissible height under the Sydney LEP is 35m, making the maximum permissible height under the Housing SEPP 45m.

The development has also undergone a design excellence process, meaning it is eligible for a 10% design excellence bonus in accordance with Clause 6.21D of the Sydney LEP. As such, the maximum permissible building height with the 10% design excellence bonus and 30% affordable housing bonus is 50.05m.

The highest point of the development is RL83.6 with a maximum building height of 56.01m.

The proposed exceedance of 5.96 metres (11.9%) is limited to the upper levels and essential building elements and does not result in any additional floor space or development intensity.

The variation facilitates a slimmer tower form through the redistribution of approved floor space, concentrating bulk where it causes less impact. This approach delivers improved

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solar access, better view sharing and reduced visual bulk when compared to a fully compliant scheme. Independent solar and view analysis confirm that all view impacts are attributable to compliant built form and that the additional height does not generate new adverse impacts. From the public domain, the exceedance is visually immaterial.

The proposal has been selected through a competitive design process and has received endorsement from the Design Competition Jury and Design Integrity Panel as demonstrating design excellence. The refined height strategy is integral to achieving the endorsed design outcome and could not be realised under strict compliance without undermining amenity and affordable housing delivery.

Accordingly, strict compliance with the height standard is unreasonable and unnecessary in this instance. The proposed variation is supported by sound environmental planning grounds and is consistent with the objectives of the Housing SEPP and the applicable height controls.

4.4 Floor Space Ratio	The site has a maximum floor space ratio control of 3:1 under the Sydney LEP.	<p>The applicable FSR under the Sydney LEP is 3:1. Applying the 30% FSR bonus under the Housing SEPP, the maximum FSR is 3.9:1 (5,027.1m²).</p> <p>Furthermore, the proposed development seeks a 10% design excellence bonus in accordance with clause 6.21D of the Sydney LEP 2012. The maximum permissible FSR with the 10% design excellence bonus and 30% affordable housing bonus is 4.29:1, allowing for a total permissible GFA of 5,529.8m².</p>	Section 6.2 and Appendix H
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The proposed development has a maximum FSR of 4.29:1 (5,529m²) and therefore complies with the maximum FSR control.

The GFA has been calculated in accordance with the definition in the Sydney LEP 2012. In accordance with the Sydney LEP 2012, the following areas have been excluded from the GFA calculation:

- Level 2 communal areas, which are open to the elements. Refer to the Design Report for imagery demonstrating the open-air configuration of these spaces.
- The Level 3 communal terrace, which is open to the elements.
- Internal common corridors designed as breezeways, being horizontal circulation spaces that are open to the elements and not enclosed on all sides by external or common walls, as depicted by the architectural plans.

5.10 Heritage Conservation	<p>Development consent is required to</p> <p><i>(a) demolish or move any of the following or altering the exterior of any of the following (including, in the case of a building, making changes to its detail, fabric, finish or appearance)</i></p> <p><i>(i) a heritage item,</i></p> <p><i>(ii) an Aboriginal object,</i></p> <p><i>(iii) a building, work, relic or tree within a heritage conservation area,</i></p>	<p>The proposal is situated within the C51 Potts Point Heritage Conservation Area (Local Heritage Item). The site also adjoins several heritage items, listed below:</p> <ul style="list-style-type: none"> ▪ Item 1139 – Terrace house “Santa Fe” including interior. ▪ Item 1140 – Former artists’ studio “The Yellow House” including interior. ▪ Item 1141 – Flat building “Wirrawa” including interior. ▪ Item 591 – Flat building “Macleay Regis” including interior. 	Section 5.10 Appendix EE
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- (e) erecting a building on land—*
- (i) on which a heritage item is located or that is within a heritage conservation area, or*
- (ii) on which an Aboriginal object is located or that is within an Aboriginal place of heritage significance,*

- Item 1198 – Flat building including interior.

A Heritage Impact Statement (HIS) has been prepared by John Oultram Heritage and Design and provides a thorough assessment of the proposal against the relevant guidelines.

The report makes the following conclusions:

- The property at 45-53 Macleay Street does not meet any of the Heritage Manual criteria for identification as places of local significance.
- The historic significance of the place largely relates to the earlier buildings on the site that were demolished for the apartments.
- The building is an undistinguished example of its type.
- The building is associated with an architect of note (Hugo Stossel) but is a modest example of his work and is not a seminal or influential design.
- The building could not be considered a contributory element in the Potts Point Heritage Conservation Area.

Additionally, the HIS concludes that the design of the proposed development will have a limited and acceptable impact on the setting and significance of the heritage items in the vicinity and the Potts Point Heritage Conservation Area for the following reasons:

- Bulk, massing and street wall height is appropriate for the surrounding heritage context. The podium design utilises vertical piers to break up bulk of the development and

reflect the smaller-scale rhythm of the heritage streetscape.

- The tower form is setback and articulated with vertical and horizontal indents, reducing visual bulk and creating a sympathetic scale to the Heritage Conservation Area (HCA).
- The gently curved tower form responds to the Art Deco architectural and heritage context of Macleay Street, complementing rather than detracting from the Potts Point HCA.
- Significant setbacks to the south and east maintain the setting of heritage items, with landscaped gardens and a lower two-storey brick 'portal' softening transitions to adjoining heritage buildings.
- Dark brown brick and bronze detailing in the podium reference local heritage buildings, while light-coloured glazed brick in the tower relates to surrounding taller buildings.

5.21 Flood Planning	Development consent must not be granted to development on land the consent authority considers to be within the flood planning area unless the consent authority is satisfied the development is compatible with the flood function and behaviour on the land, and will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties.	A Flood Impact and Risk Assessment (FIRA) has been prepared by Arcadis in support of this application. The FIRA confirms that whilst the site is impacted by flooding in the 1% AEP and PMF flood events, most of the proposed development lies outside the extents of flooding. The 1% AEP flood level varies from 26.605m AHD at the north-west corner	Section 6.11 and Appendix Y
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of the site adjoining McDonald Street to 28.505m AHD at the south-east corner of the site adjoining Macleay Street.

The FIRA concludes that in the post-development conditions, the 1% AEP flood levels surrounding the site have slightly decreased due to the new pedestrian path in along McDonald Street but have also slightly increased (by approximately 14mm) near the southeastern corner of the building due to minor ground level adjustments. This 14mm increase is considered a neutral impact, remains localised to the road gutter area and does not impact surrounding buildings.

Division 4 Design Excellence

6.21 B Application of Division	This Division applies to development involving the erection of a new building or external alterations to an existing building on land to which this Plan applies.	Noted.	Noted.
6.21 C Design Excellence	<p>(1) Development consent must not be granted to development to which this Division applies unless, in the opinion of the consent authority, the proposed development exhibits design excellence.</p> <p>(2) In considering whether development to which this Division applies exhibits design excellence, the consent authority must have regard to the following matters—</p>	<p>The proposal has been the subject of a competitive design process, undertaken between January and March 2025, with five invited architectural schemes. The Competition Jury unanimously resolved that the scheme prepared by Kerry Hills Architects (KHA) best demonstrated the ability to achieve design excellence. The Competition Jury's determination was based on the success of the clear urban strategy, thoughtful planning, quality public realm and high amenity affordable housing.</p> <p>The proposal satisfies Clause 6.21C as:</p>	Section 6 Appendix H

- (a) whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved,
- (b) whether the form and external appearance of the proposed development will improve the quality and amenity of the public domain,
- (c) whether the proposed development detrimentally impacts on view corridors,
- (d) how the proposed development addresses the following matters—
 - (i) the suitability of the land for development,
 - (ii) the existing and proposed uses and use mix,
 - (iii) any heritage issues and streetscape constraints,
 - (iv) the location of any tower proposed, having regard to the need to achieve an acceptable relationship with other towers, existing or proposed, on the same site or on neighbouring sites in terms of separation, setbacks, amenity and urban form,
 - (v) the bulk, massing and modulation of buildings,
 - (vi) street frontage heights,
 - (vii) environmental impacts, such as sustainable design, overshadowing and solar access, visual and acoustic privacy, noise, wind and reflectivity,
- The design, materials and detailing are tailored to the building’s residential use and Potts Point location, with a podium that respects and integrates with the heritage streetscape while the contemporary tower form complements the area’s evolving character and references the Art Deco character in the broader area
- The proposal enhances the public domain by replacing an at-grade car park with active retail frontages, the landscaped ‘Chimes Garden’ pedestrian link and verge planting, improving streetscape activation, pedestrian amenity and visual quality along Macleay Street.
- The built form is carefully modulated through increased setbacks, façade articulation and a reduced tower footprint, which together minimise bulk, protect view corridors, improve solar access for neighbouring dwellings and maintain appropriate separation from adjoining buildings.
- The proposal responds sensitively to heritage and streetscape constraints by aligning the podium with the prevailing street wall height, using materials that reference the Potts Point Heritage Conservation Area, and replacing a detracting building with a more sympathetic design.
- The proposal incorporates sustainable design measures that exceed BASIX and NatHERS targets, including full electrification, renewable energy generation, water and energy efficiency systems, sustainable materials, and

- (viii) the achievement of the principles of ecologically sustainable development,
- (ix) pedestrian, cycle, vehicular and service access and circulation requirements, including the permeability of any pedestrian network,
- (x) the impact on, and any proposed improvements to, the public domain,
- (xi) the impact on any special character area,
- (xii) achieving appropriate interfaces at ground level between the building and the public domain,
- (xiii) excellence and integration of landscape design.

integrated landscaping, ensuring alignment with all principles of ecologically sustainable development.

- Vehicle, bicycle and service access is provided via a single McDonald Street driveway, supported by a dedicated loading bay and adequate parking and cycling facilities.

Therefore, the proposal exhibits design excellence in accordance with Clause 6.21C.

6.21D Competitive design process

- (1) Development consent must not be granted to the following development to which this Division applies unless a competitive design process has been held in relation to the proposed development—
- (a) development in respect of a building that has, or will have, a height above ground level (existing) greater than—
 - (i) 55 metres on land in Central Sydney, or
 - (ii) 25 metres on any other land,
 - (b) development having an estimated development cost of more than \$100,000,000,

In accordance with Clause 6.21D(1)(d), the Applicant chose to undertake an Architectural Design Competition for the proposal. The Architectural Design Competition was undertaken between 29 January 2025 and 24 March 2025 in consultation with GANSW, DPHI and the City of Sydney Council.

The Applicant invited five competitors to prepare submissions in response to the Competition Brief as part of the Architectural Design Competition for the proposal.

Of the five schemes presented, the Kerry Hill Architects' (KHA) scheme was determined to be highly successful with its clear urban strategy, thoughtful planning, quality public realm and high amenity for affordable housing. In the opinion of the Jury, the KHA scheme was the most capable of achieving design

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- (c) development in respect of which a development control plan is required to be prepared under clause 7.20,
 - (d) development for which the applicant has chosen such a process.
- (3) A building demonstrating design excellence—
- (a) may have a building height that exceeds the maximum height shown for the land on the [Height of Buildings Map](#) by an amount, to be determined by the consent authority, of up to 10% of the amount shown on the map, or
 - (b) is eligible for an amount of additional floor space, to be determined by the consent authority, of up to 10% of—
 - (i) the amount permitted as a result of the floor space ratio shown for the land on—
 - (A) for a building for which development consent is granted under clause 6.60B— the [Alternative Floor Space Ratio Map— Employment Sites](#) or the [Alternative Floor Space Ratio Map—Affordable Housing Sites](#), or
 - (B) otherwise—the [Floor Space Ratio Map](#), and
 - (ii) any accommodation floor space or community infrastructure floor space for which the building is eligible under Division 1 or 2.

excellence. The Jury selected the KHA scheme as the preferred scheme to progress to the detailed SSDA phase.

Therefore, the proposal is subject to the design excellence bonuses as set out in Clause 6.21D(3). Planning Proposal PP-2024-709, which is in its finalisation stage, seeks to amend Clause 6.21D(3) to allow the design excellence bonus to apply to both height and FSR. The proposal applies the 10% design excellence bonus for both height and FSR and has been prepared on the basis that PP-2024-709 is gazetted before determination.

Part 7 Local Provisions

<p>7.5 Residential flat buildings, dual occupancies and multi dwelling housing</p>	<p>Maximum car parking rates apply to the proposal, including residential rates, business premises rates and retail premises rates.</p> <p>(b) on land in category B—</p> <p>(i) for each studio dwelling—0.2 spaces, and</p> <p>(ii) for each 1 bedroom dwelling—0.4 spaces, and</p> <p>(iii) for each 2 bedroom dwelling—0.8 spaces, and</p> <p>(iv) for each 3 or more bedroom dwelling—1.1 spaces, and</p> <p>(v) for each dwelling up to 30 dwellings—0.167 spaces, and</p> <p>(vi) for each dwelling more than 30 and up to 70 dwellings—0.1 spaces, and</p> <p>(vii) for each dwelling more than 70 dwellings—0.05 spaces,</p>	<p>The proposed development will provide 45 residential car parking spaces.</p> <p>The proposed car parking complies with the non-discretionary standards pursuant to Part 2 Division 1 of the Housing SEPP. As such, any existing or future parking provision under the Sydney LEP cannot be used as a standard for refusal.</p>	<p>Section 6.7 Appendix S</p>
<p>7.7 Retail spaces</p>	<p>(2) The maximum number of car parking spaces for a building used for the purposes of retail premises is as follows—</p> <p>(b) if the building is on land in category F—1 space for each 50 square metres of gross floor area of the building used for those purposes,</p>	<p>The proposed development is required to provide a maximum of 3 retail parking spaces based on the Sydney LEP. The proposal will deliver 2 retail parking spaces, which is compliant with the maximum parking rate.</p>	<p>Section 6.7 Appendix S</p>

7.13 Contribution for purpose of affordable housing	The consent authority may, when granting development consent to development to which this clause applies, impose a condition requiring a contribution not exceeding the applicable affordable housing levy contribution for the development provided for in subclause (2A) or (2C).	Noted.	Section 4
7.27 Active Street Frontages	Properties identified on the Active Street Frontages Map must be designed in accordance with the provisions of clause 7.27.	The subject site is not identified on the Active Street Frontages Map. However, the proposal will establish an active frontage as a result of having retail uses on the ground floor.	Not applicable.
7.36 Dwelling Retention	<p>(2) Development consent must not be granted for the following development in relation to a residential flat building or a building containing 3 or more dwellings if the development would reduce the number of dwellings on the site of the building by more than the greater of 15%, rounded to the nearest whole number of dwellings, or 1 dwelling—</p> <ul style="list-style-type: none"> (a) making alterations to the building, (b) enlarging or extending the building, (c) demolishing the building and erecting a new building. 	<p>Clause 1.8A (9) outlines savings provisions relating to the introduction of Clause 7.36.</p> <p>Under Clause 1.8A(9)(c), Clause 7.36 does not apply to a development application lodged after the plan commenced if it relies on consent granted for a concept development application determined before commencement. The current proposal follows concept application SSD-79316759, which was lodged prior to Clause 7.36 being introduced.</p> <p>Clause 1.8A(9)(e) also excludes applications where SEARs were issued before the plan commenced. SEARs for this proposal were issued on 16 May 2025 and the plan came into effect on 30 May 2025.</p> <p>Accordingly, Clause 7.36 does not apply to this proposal.</p>	Not applicable.