



New South Wales Government
Independent Planning Commission

Pitt Street South Over Station Development SSD 8876 Mod 2 and SSD 10376

Statement of Reasons for Decision

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14 April 2021

April 2021 Final Report ©
State of New South Wales through the Independent Planning Commission 2021

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EXECUTIVE SUMMARY

Pitt Street Developer South Pty Ltd has sought development consent for an over station development above the Pitt Street Metro station, which is one of seven new stations approved as critical State significant infrastructure for the new Sydney Metro City and Southwest Metro lines.

The Minister for Planning issued a Concept Approval for an over station development at the Site in June 2019, which established conceptual land uses and a maximum building envelope including a height limit.

The proposed over station development includes the construction of a 39-level residential tower for 234 build-to-rent dwellings above the southern entrance of the Pitt Street Metro Station. The proposal also comprises bicycle parking, end of trip facilities, a food and drink premises as a permitted use in the Metro station podium and a stratum subdivision.

The proposal includes some minor encroachments on the approved concept building envelope, and therefore this Application is accompanied by an Application to modify the Concept Approval.

The Capital Investment Value of the development is \$149,880,000 and would create 350 construction jobs and 30 operational jobs.

The Department of Planning, Industry and Environment finalised its whole of government assessment of this State significant development application and modification to the Concept Approval in February of this year – concluding that the Application is approvable subject to the imposition of its recommended conditions of consent. The Independent Planning Commission is the consent authority for this SSD application.

The Commission has taken into consideration the issues raised by speakers at its Electronic Public Meeting in March, the written submissions it received on the Application and the submissions received by the Department during its assessment.

The issues raised in public submissions assisted the Commission in examining the Department's assessment critically and have contributed to the Commission's consideration of the merits and impacts of the Application.

After weighing all the evidence and considering the community's views, the Commission has determined to **approve** the Pitt Street South Over Station Development and Concept Approval Modification subject to conditions, for the reasons outlined in this Statement of Reasons.

In making its determination the Commission has relied on material including the whole-of-government assessment conducted on its behalf by the Department. The Commission is satisfied that this assessment was undertaken in line with relevant legislation and guidelines; was informed by appropriate expertise; and addressed the mandatory relevant considerations under s 4.15 of the EP&A Act in a manner sufficient to inform the Commission's determination.

In summary, the Commission finds the Application:

- to be a lawful and appropriate use of the land;
- to be consistent with the parameters afforded the development through the Concept Approval; and
- will promote housing diversity in a highly accessible location close to transport, jobs and amenity.

In making its determination, the Commission has assessed the application of relevant planning instruments and policies. The Commission has imposed DPIE's recommended conditions, with amendments.

Key issues covered in this Statement of Reasons are consistency of the Application with the Concept Approval, the built form, building separation, solar access, visual privacy, internal amenity, noise impacts, view loss and heritage impacts.

In its consideration of the key issues, the Commission acknowledges that the Application will result in

overshadowing and amenity impacts for the occupants of the Princeton Apartment building to the immediate south of the Site. However, the Commission finds that the extent of the impacts are reasonable and acceptable given the Application is consistent with the building envelope approved under the Concept Approval, exhibits design excellence, complies with the height and density controls that apply to the Site and is consistent with State, regional and local planning objectives.

On balance, subject to the imposed conditions, the Commission concludes the Application is a reasonable development expectation for the Site, will result in likely benefits from a housing diversity perspective and is in the public interest. The Commission therefore determines to conditionally approve the Application.

CONTENTS

EXECUTIVE SUMMARY	i
DEFINED TERMS	1
1 INTRODUCTION	3
2 THE APPLICATION	4
2.1 Site and Locality	4
2.2 Background to the Application.....	5
2.3 The Project.....	5
3 COMMUNITY PARTICIPATION & PUBLIC SUBMISSIONS	7
3.1 Community Group Attendance at the Site Inspection	7
3.2 Public Meeting	7
3.3 Public Submissions.....	7
4 THE COMMISSION'S CONSIDERATION	10
4.1 The Department's Assessment Report	10
4.2 The Commission's Meetings	10
4.3 Public Engagement.....	10
4.4 Material Considered by the Commission.....	10
5 STRATEGIC CONTEXT	12
6 STATUTORY CONTEXT	14
6.1 Environmental Planning and Assessment Act 1979	14
6.2 Permissibility	14
6.3 Consistency with the Concept Approval.....	14
6.4 Mandatory Considerations.....	15
6.5 Additional Considerations.....	17
7 KEY ISSUES	18
7.1 Built Form.....	18
7.2 Building Separation.....	18
7.3 Solar Access.....	19
7.4 Visual Privacy	23
7.5 Internal Amenity.....	24
7.6 Noise Impacts	25
7.7 View Loss.....	26
7.8 Heritage	27
7.9 Other Issues.....	28
7.10 Objects of the EP&A Act and Public Interest.....	30
8 THE COMMISSION'S FINDINGS AND DETERMINATION	31

DEFINED TERMS

ABBREVIATION	DEFINITION
ADG	Apartment Design Guide
AHD	Australian Height Datum
Applicant	Pitt Street Developer South Pty Ltd
Applicant's Response 1	Applicant's response to the Commission to questions taken on notice at the Commission's meeting with the Applicant, dated 18 March 2021
Applicant's Response 2	Applicant's second response to the Commission to questions taken on notice at the Public Meeting, dated 26 March 2021
Application	Comprising modification 2 to the Concept Approval (SSD 8876 MOD 2) and a State significant development (SSD) application (SSD 10376)
Approved Building Envelope	The concept building envelope approved in the Concept Approval SSD-8876
ARH SEPP	<i>State Local Environmental Planning Policy (Affordable Rental Housing) 2009</i>
ARP	Department's Assessment Report Paragraph
BTR	Build-to-rent
CBD	Central Business District
Commission	Independent Planning Commission of NSW
Concept Approval	SSD-8876, approved on 25 June 2019
Council	City of Sydney Council
CSSI	Critical State Significant Infrastructure
DCP	Development Control Plan
Department	Department of Planning, Industry and Environment
Department's AR	Department's Assessment Report dated 16 February 2021
Department's Response 1	Department's response to questions on notice taken at its meeting with the Commission, dated 16 March 2021
Department's Response 2	Department's response to the Commission's proposed conditions, dated 12 April 2021
DRP	Sydney Metro Design Review Panel
EESG	Environment, Energy and Science Group within the Department
EIS	Environmental Impact Statement
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EPI	Environmental Planning Instrument
ESD	Ecologically Sustainable Development
FRNSW	Fire and Rescue NSW
GA NSW	The office of the Government Architect NSW
GFA	Gross Floor Area
GRC	Glass Reinforced Concrete façade elements
GSRP	<i>Greater Sydney Region Plan: A Metropolis of Three Cities</i>

LEP	Local Environmental Plan
LGA	Local Government Area
Mandatory Considerations	Relevant mandatory considerations, as provided in s 4.15(1) of the EP&A Act
Material	The material set out in section 4.4
Metro Box	The approved CSSI aboveground station podium and related uses up to a height of RL 58.75 (approximately 6 storeys above street level)
Minister	Minister for Planning and Public Spaces
Modification	The Concept Approval modification request SSD-8876 MOD 2
OSD	Over Station Development
OSD SSD	SSD Application for the OSD (SSD-10376)
Regulations	<i>Environmental Planning and Assessment Regulations 2000</i>
Recommended Conditions	The Department's Recommended Conditions in the draft consent for SSD-10376, dated February 2021
RTS	Response to Submissions
SEARs	Planning Secretary's Environmental Assessment Requirements, dated 28 October 2019
SEPP	State Environmental Planning Policy
SEPP 65	<i>State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development</i>
Site	165 Bathurst Street, Sydney, identified as Lot 10 in DP 1255507 and described in paragraph 6 of this Statement of Reasons
SLEP	<i>Sydney Local Environmental Plan 2012</i>
SRD SEPP	<i>State Environmental Planning Policy (State and Regional Development) 2011</i>
SSD	State Significant Development
SSI	State Significant Infrastructure
TfNSW	Transport for NSW

1 INTRODUCTION

1. On 17 February 2021, the NSW Department of Planning, Industry and Environment (**Department**) referred concurrent applications to the NSW Independent Planning Commission (**Commission**) for determination, being Modification 2 to an existing Concept Approval SSD-8876, and a State significant development (**SSD**) application (**SSD**) for the over station development (**OSD**) above the Pitt Street Metro Station, Sydney. The Application was made by Pitt Street Developer South Pty Ltd (**Applicant**). The Pitt Street South OSD is located in the City of Sydney Local Government Area (**LGA**) and seeks approval for:
 - Modifications to the Concept Approval SSD-8876 to permit architectural embellishments, awnings and balustrades to encroach beyond the approved building envelope, and the inclusion of retail premises as a permitted use within the Metro Station podium; and
 - SSD-10376 for the design, construction and operation of a 39-level residential tower, comprising 234 build-to-rent (**BTR**) dwellings, bicycle parking, end of trip facilities, communal open space areas, signage zones, stratum subdivision and a food and drink premises within the Metro Station podium.
2. SSD-10376 is captured under clause 8 and Schedule 1(19)(2) of *State Environmental Planning Policy (State and Regional Development) 2011 (SEPP SRD)* given it comprises residential development associated with rail infrastructure that has a Capital Investment Value (**CIV**) of more than \$30 million (\$149.8 million). Therefore, it constitutes SSD under section 4.36 of the *Environmental Planning and Assessment Act 1979 (EP&A Act)*. The Commission is the consent authority under section 4.5(a) of the EP&A Act and clause 8A of SEPP SRD because the Department received more than 50 submissions from the public objecting to the application.
3. SSD-8876 MOD 2 (**Modification**) is made under clause 4.55(2) of the EP&A Act. The Commission has also determined the section 4.55(2) modification request concurrently with the SSD-10376 (**OSD SSD**) application in accordance with the Minister for Planning's delegation dated 14 September 2011. For the purpose of this Statement of Reasons, both projects, the OSD SSD and the Modification, are together referred to as the **Application**.
4. Professor Mary O'Kane AM, Chair of the Commission, nominated Mr Chris Wilson (Chair), and Professor Helen Lochhead to constitute the Commission Panel determining the Application.
5. The Commission notes the Department recommended approval of the Application and provided a draft development consent (**Recommended Conditions**).

2 THE APPLICATION

2.1 Site and Locality

6. The Department's Assessment Report (**Department's AR**), dated 16 February 2021, describes the site at section 1.2. The '**Site**' for the purpose of this Statement of Reasons is defined as 125 Bathurst Street, Sydney, and is an 'L' shaped allotment with frontage to Bathurst and Pitt Streets in the Sydney Central Business District (**CBD**) (see Figure 1).

Figure 1: The Site (source: Department's AR)



7. As described in the Department's Assessment Report Paragraph (**ARP**) 1.2.4, the immediate context of the Site is characterised by high-rise buildings comprising commercial and residential developments combined with lower scale heritage items and retail developments.
8. The Site wraps around the heritage listed, three-storey Edinburgh Castle Hotel, which is located on the corner of Pitt and Bathurst Streets.
9. To the immediate east of the Site are high density residential apartment buildings and the heritage-listed Sydney Fire Station fronting Castlereagh Street.
10. To the immediate south of the Site is a high-density residential apartment tower, the Princeton Apartments.
11. Opposite the site is the Greenland Centre, which is currently under construction and will deliver a 67 storey retail and residential building, including the heritage conservation and adaptive reuse of the former Sydney Water building (ARP 1.2.9).
12. Another high-rise building is also under construction to the north east of the Site at 116 Bathurst Street (Castle Residences), which will comprise a 36 storey mixed use retail, hotel and residential development (ARP 1.2.10).

2.2 Background to the Application

Sydney Metro City and Southwest Metro (CSSI 7400)

13. The Pitt Street Station is one of seven new stations currently under construction and approved as part of the Critical State Significant Infrastructure (**CSSI**) determination (CSSI 7400) for the Sydney and Southwest Metro between Chatswood and Sydenham (ARP 1.1.4).
14. The Department's AR outlines the CSSI approval as it relates to the Pitt Street Station at ARP 1.3.3, including the excavation of the rail tunnel, concourse and platforms and the concept for the aboveground station and related uses up to a height of RL 58.75 (the **Metro box**), which is approximately 6 storeys above street level.
15. The CSSI approval also includes the provision of structural supports and services for the future OSD.

Pitt Street South Over Station Development – Concept Application (SSD-8876)

16. On 25 June 2019 the Minister for Planning approved an SSD (SSD-8876) for the Concept Development Application for the Pitt Street South OSD (**Concept Approval**), which provided concept approval for:
 - A maximum building envelope (**Approved Building Envelope**), including setbacks;
 - A maximum building height of RL 171.6 metres;
 - Podium level car parking for a maximum of 34 parking spaces; and
 - Conceptual land use for either a residential or a commercial scheme (not both)
 (ARP 1.3.6).
17. Although the Approved Building Envelope relates to development above the approved CSSI Metro box (i.e. above RL 58.75), it also allows for the internal construction, fit out and use of parts within the approved Metro box for OSD related purposes, subject to the approval of a future development application (ARP 1.3.8).
18. The Concept Approval has been modified once (SSD-8876 MOD 1) to correct an administrative error and to amend the environmental performance targets (ARP 1.3.10). The current Modification before the Commission is described in Table 1 below.

2.3 The Project

Table 1 – Key Components of the Application (Source: Department's AR)

Project Component	Proposed
Proposed Concept Approval Modification (SSD-8876 MOD 2)	
Built form	- To permit architectural embellishments, including awnings and balustrades to project beyond the Approved Building Envelope (by a maximum of 450mm)
Land uses	- To permit retail premises as a permitted use within the Metro box
Proposed SSD Over Station Development (SSD-10376)	
Built form	- Construction of a 39-level residential tower (maximum building height of RL 165.15 or 141m) above the approved CSSI Metro box - Integration with the approved CSSI Metro box including fit out and use of some spaces within the Metro box

Project Component	Proposed
Gross Floor Area (GFA)	- 21,995 m ² (excluding floor space constructed under CSSI approval)
Land uses	<ul style="list-style-type: none"> - Residential flat building accessed from Pitt Street, including 234 BTR dwellings and associated communal spaces - A food and drink premises on Level 2, accessed from Bathurst Street).
Vehicular access and parking	<ul style="list-style-type: none"> - Bike parking and end of trip facilities - Shared loading dock and associated facilities
Employment	<ul style="list-style-type: none"> - 350 construction jobs - 30 operational jobs
CIV	- \$149,880,000
Subdivision	- Stratum subdivision to create three lots: the station lot, the commercial and residential OSD lot and an airspace lot
Signage zones	<ul style="list-style-type: none"> - Below awning signage zones on Pitt Street - Above awning signage zone on Bathurst Street.

3 COMMUNITY PARTICIPATION & PUBLIC SUBMISSIONS

3.1 Community Group Attendance at the Site Inspection

19. On 4 March 2021, the Commission conducted an inspection of the Project Site. The Commission also invited representatives from the community to attend and observe during the Site Inspection. Representatives from the Princeton Apartment building were in attendance. A record of the site inspection was published on the Commission's website on 8 March 2021.

3.2 Public Meeting

20. The Commission conducted a Public Meeting on 22 March 2021. The Public Meeting was held electronically with registered speakers presenting to the Commission Panel via telephone or video conference. The Public Meeting was streamed live on the Commission's website.
21. The Commission heard from the Department, the Applicant, a Planning Consultant representing the Princeton Apartments owner's corporation and individual community members, the majority of which reside in the Princeton Apartments building. In total, eight speakers presented to the Commission during the Public Meeting.
22. Presentations made at the Public Hearing have been considered by the Commission as submissions and are referenced below in section 3.3.

3.3 Public Submissions

23. As part of the Commission's consideration of the Project, all persons were offered the opportunity to make written submissions to the Commission until 5pm on Monday, 29 March 2021, 7 days after the Public Meeting.
24. The Commission extended the deadline for public submissions on the Application by an additional five days to allow time for the public to review additional information provided by the Applicant with respect to the building envelope chamfer, solar access and internal amenity.
25. The Commission received written submissions from a total of 45 members of the public during the initial submission period, two of which supported the Application while the remainder objected. Following receipt of the Applicant's Response 2 to questions on notice on 26 March 2021 (paragraph 49 below) the Commission invited submissions on the additional material. During the extended submission period, the Commission received written submissions from a further 24 individuals. One submission received during the extended submission period was from the Applicant, the remaining 23 individuals objected to the Application.
26. The key issues raised in the oral and written submissions are summarised in section 3.3.1 below.

3.3.1 Key Issues Raised

Solar Access

27. The predominant issue raised in the public presentations at the Public Meeting and in the written submissions relates to the project's impact on solar access to the Princeton Apartment building located immediately to the south of the OSD.
28. Many submissions identified significant concerns about the number of units in the Princeton Apartment building that will experience less than 2 hours of solar access between 9 am and 3 pm in mid-winter as a result of the OSD and the impact this will have on amenity, building sustainability and health for those occupants.

29. The submissions objected to the Application on the basis that only 5.2% of units in the Princeton Apartment building will receive the recommended access to direct sun as identified in the ADG. The submissions note this represents a 41.4% reduction in the number of apartments with sun exposure mid-winter, which is a greater proportion than the 20% recommended in the ADG.
30. The submissions encouraged the Commission to require the Applicant to set the OSD building back a further 12 metres to meet the 24 metres identified in the ADG, or chamfer the southeast corner of the building to improve solar access outcomes for the occupants of the Princeton Apartment building.
31. Numerous submissions stated to the Commission that the Application has failed to meet the following conditions of the Concept Approval with respect to solar access considerations:
 - Condition A24(b)(i) to maximize sunlight access and views for adjoining properties;
 - Condition A24(c)(i)(c) to articulate build forms to maximize solar access to living areas of Princeton Apartments; and
 - Condition B3(h) to comply with requirements of SEPP 65 and ADG.
32. A number of submissions also identified concerns that the proposed OSD will overshadow Hyde Park.
33. During the extended submission period, the Commission received a number of objections to the additional material provided by the Applicant. The objectors made the case that the options modelled by the Applicant, to test any improvements in solar access for the Princeton Apartment residents, are minimal. The submissions note that, without consideration of meaningful and significant alternative options, the Application does not satisfy the requirements of the Concept Approval – particularly Conditions A24 and B3(h).
34. In terms of the information provided by the Applicant regarding the southeast chamfer, many submissions stated the Applicant misunderstood the intention of the chamfer enquiry and should have investigated a chamfer of the actual building. The hypothetical chamfer in the Applicant's documents is located where there is no built form proposed.
35. The submissions also disagreed with the proposition that any further reduction in the floor plate would make the development unviable and note there hasn't been any economic information provided by the Applicant to support this statement.

Building separation/Visual privacy

36. Submissions made to the Commission raised considerable privacy concerns with respect to the proposed OSD, with living rooms oriented to the south side of the development in clear view of apartments in the Princeton Apartment building. The submissions identified that the proposed louvres do not extend to the living room areas, which further compromises visual amenity.
37. The Commission also received objections to the proposed modification to the Approved Building Envelope on the basis that the encroachments will reduce the 12m building separation even further.
38. The majority of submissions to the Commission stated that the Application has failed to meet the following conditions of the Concept Approval with respect to privacy and amenity considerations:
 - Condition B3 (multiple parts) to minimise impacts to outlook and amenity of Princeton Apartments; and
 - Condition B3(h) to address compliance with requirements of SEPP 65 and ADG.

Loss of views

39. A number of submissions objected to the Application on the basis of view loss. The submissions note the Planning Principle for view loss (*Tenacity Consulting v Warringah Council* [2004] NSWLEC 140 at [25]-[29]) refers to view sharing principles and places importance on water or historic views. The submissions objected to the impact the proposed OSD will have on views from the Princeton Apartments to Sydney Harbour to the north (visible from living rooms and bedrooms) and the views of St Mary's Cathedral from the Century Towers building.
40. Numerous submissions stated that the Application has failed to meet the following conditions of the Concept Approval with respect to loss of view considerations:
 - Condition A24(b)(i) to maximize sunlight access and views for adjoining properties.

Noise impacts

41. Noise impacts were raised as a concern in the submissions made to the Commission by the Princeton Apartment residents, with particular reference to the plant room located on Level 6 and noise as a consequence of the southern building setback.

Design excellence

42. The submissions received by the Commission questioned the design excellence of the building, comparing it to a prison like building that would turn into a "high-rise slum".

Heritage

43. Several submissions also objected to the Application based on heritage considerations, stating the heritage significance of the locality has not been sufficiently addressed. A number of submissions considered that the Application would adversely impact the important heritage and cultural significance of the Edinburgh Castle, the Sydney Water Board building and the Castlereagh Fire Station.

4 THE COMMISSION'S CONSIDERATION

4.1 The Department's Assessment Report

44. The Department's assessment of the proposed development is set out in the Department's AR dated 16 February 2021.
45. The Commission notes the Department, at ARP 7.1.1 states it is satisfied the impacts have been satisfactorily addressed by the Applicant and through the Department's Recommended Conditions of Consent. The Department therefore concludes the Application can be approved, subject to conditions (ARP 8.1.1 and 8.1.2).

4.2 The Commission's Meetings

46. As part of its determination of the Applications, the Commission, as identified in Table 2 met with representatives of relevant organisations and conducted a site inspection and public meeting. All meeting and site inspection notes were made available on the Commission's website.

Table 2 – Commission's Meetings

Meeting	Date of Meeting	Transcript/Notes Available on
Department	9 March 2021	11 March 2021
Applicant	9 March 2021	12 March 2021
Council	9 March 2021	11 March 2021
Public Meeting	22 March 2021	23 March 2021
Site Inspection	4 March 2021	8 March 2021

4.3 Public Engagement

47. Section 3 of this report sets out the matters raised in the submissions made to, and considered by, the Commission. Consideration has been given to the issues raised in the submissions in the Key Issues section of this Statement of Reasons (see section 7 below).
48. For the reasons set out in this Statement of Reasons, the Commission considers that the matters raised in submissions do not preclude the grant of development consent and that the matters can be satisfactorily addressed by the conditions of consent imposed by the Commission.

4.4 Material Considered by the Commission

49. In making its determination, the Commission has carefully considered the following material (**Material**):
 - the SEARs, dated 28 October 2019;
 - the Applicant's EIS, dated 17 May 2020, and accompanying documents;
 - submissions to the Department following the exhibition of the EIS;
 - the Applicant's Response to Submissions (**RTS**), dated 23 September 2019, and accompanying documents;
 - the Applicant's Supplementary RTS (**SRTS**), dated 12 November 2020, and accompanying documents;
 - the Applicant's Additional Information, dated 18 December 2020, and accompanying documents;
 - the Department's AR, dated 16 February 2021;
 - the Department's Recommended Conditions, dated February 2021;
 - the material covered in the Commission's meetings with the Department, Applicant

and City of Sydney Council and the site inspection;

- all speaker comments and presentation material made to the Commission at the public meeting held on 22 March 2021;
- all written comments received by the Commission up until 29 March 2021 during the first submission period and those received up to 2 April 2021 during the extended submission period;
- the Department's response to questions on notice taken at its meeting with the Commission (**Department's Response 1**), dated 16 March 2021;
- the Applicant's response to the Commission to questions taken on notice at the Commission's meeting with the Applicant (**Applicant's Response 1**), dated 18 March 2021;
- the Applicant's second response to the Commission to questions taken on notice at the Public Meeting (**Applicant's Response 2**), dated 26 March 2021; and
- the Department's response to the Commission's proposed conditions (**Department's Response 2**), dated 12 April 2021.

5 STRATEGIC CONTEXT

Greater Sydney Region Plan: A Metropolis of Three Cities

50. The Department sets out its consideration of the *Greater Sydney Region Plan: A Metropolis of Three Cities (GSRP)* at ARP 3.1.1 to 3.1.3.
51. The GSRP sets out the vision for Sydney to be a metropolis of three cities, including the Western Parkland City, the Central River City and the Eastern Harbour City.
52. The Commission is satisfied the Application is consistent with the directions and actions set out in the GSRP because it provides additional residential accommodation in a highly accessible location, provides an alternative residential option through BTR and supports the 30-minute city by providing residential options above the Pitt Street Metro Station.

Eastern City District Plan

53. The Eastern City District Plan, prepared by the Greater Sydney Commission, identifies a vision for the Eastern City District to become more innovative and globally competitive and to improve the District's lifestyle and environmental assets. The Eastern City District Plan aims to achieve this vision through 21 planning priorities. Of relevance to this Application are the following planning priorities:
 - Planning Priority E1: Planning for a city supported by infrastructure;
 - Planning Priority E5: Providing housing supply, choice and affordability with access to jobs, services and public transport; and
 - Planning Priority E10 – Delivering integrated land use and transport planning and a 30-minute city.
54. The Commission is satisfied the Application is consistent with the planning priorities in the Eastern City District Plan as set out above and at ARP 3.2.2 and 3.2.3. The Application will facilitate greater residential choice in the CBD in a highly accessible location with strong public transport connections and employment opportunities, contributing to the vision for a 30-minute-city.

Future Transport Strategy 2056

55. The Future Transport Strategy 2056 aims to achieve greater capacity, improved accessibility to housing, jobs and services and continued innovation through a framework to guide transport investment and policy.
56. The Commission agrees the Application is consistent with the objectives of the Strategy, as outlined in ARP 3.3.2, because the Application:
 - Encourages active transport options through the provision of bicycle parking spaces and end of trip facilities;
 - Enhances connectivity between dwellings, transport options and businesses by providing residential accommodation above the future Pitt Street Metro Station; and
 - Provides an opportunity to improve productivity through faster and more reliable access between residents and jobs.

Sydney Metro City and Southwest Project

57. The Sydney Metro City and Southwest Project extend the metro rail from the northwest of Sydney through new underground city stations and beyond to the southwest, including 31 new metro railway stations. This provides opportunities for transit-oriented development to provide accessible jobs, homes and public domain by connecting these uses to the infrastructure around the new stations.
58. This Application provides residential accommodation immediately above the new Pitt Street Metro Station, thereby maximising connectivity between the new metro line, dwellings and jobs (ARP 3.4.2).

6 STATUTORY CONTEXT

6.1 Environmental Planning and Assessment Act 1979

59. This Application is made under sections 4.38 (SSD-10376) and 4.55(2) (SSD-8876 MOD 2) of the EP&A Act.
60. The Department's AR outlines its consideration of clause 4.55(2) as it relates to SSD-8876 MOD 2 at Appendix C, and concludes it is satisfied the request is a modification for the purposes of s 4.55(2) of the EP&A Act.
61. The Commission agrees with the Department's conclusion and finds that the development as modified by SSD-8876 MOD 2 is substantially the same development for which the Concept Approval was originally granted.

6.2 Permissibility

62. The Site is zoned B8 Metropolitan Centre under the *Sydney Local Environmental Plan 2012 (SLEP)*. The Department sets out its assessment of the permissibility of the Application and the way in which it achieves the zone objectives at ARP 4.2.1 and in Appendix C of the Department's AR. The Commission agrees that the proposed residential tower and food and drink premises are permissible with consent under the SLEP.

6.3 Consistency with the Concept Approval

63. Pursuant to section 4.24(2) of the EP&A Act, while a concept approval remains in force, the determination of any further development application in respect of the site cannot be inconsistent with the concept approval.
64. The Department has considered the consistency of the Application with the Concept Approval at Appendix D to the Department's AR.
65. The Commission is generally satisfied with the assessment undertaken on its behalf by the Department with respect to the consistency of the Application with the Concept Approval. The Commission notes many submissions made to the Commission during the public submission periods raised concerns that the proposed OSD tower is inconsistent with the requirements of conditions 3B(e) and 3B(h) of the Concept Approval, as detailed in section 3 of this Statement of Reasons. The Commission has addressed the objections made in the public submissions as they relate to the key issues in section 7 of this Statement of Reasons.

Design Excellence

66. In accordance with Conditions B4 and B5 of the Concept Approval, the Application included a Design Integrity Report demonstrating how design excellence is achieved. The Application is also required to adopt and implement the Design Excellence Strategy endorsed by the Concept Approval, including an independent review of the development by the State Design Review Panel or an alternative endorsed by the NSW Office of the Government Architect (**GA NSW**) in lieu of a competitive design process that would ordinarily be required under the SLEP.
67. Following the Concept Approval, GA NSW endorsed the Sydney Metro Design Review Panel (**DRP**) as an alternative to the State Design Review Panel. The **DRP** included representatives from the GA NSW and City of Sydney Council.
68. The **DRP** considered the proposed development on nine occasions, as outlined at ARP 6.6.4. Following the Applicant's final presentation to the **DRP** on 4 November 2020, the **DRP** confirmed all outstanding matters had been resolved and advised that the Application achieves design excellence (ARP 6.6.5).
69. The Commission agrees with the **DRP** and Department that the Application satisfies the design excellence requirements of the Concept Approval and SLEP and has imposed the

Department's Recommended Condition that a design integrity review process is implemented where any future design changes are pursued.

6.4 Mandatory Considerations

70. In determining this Application (both the SSD and Modification request), under sections 4.40 and 4.55(3) of the EP&A Act, the Commission is required to take into consideration the matters described under section 4.15 of the EP&A Act (**Mandatory Considerations**), including:
- the provisions of any environmental planning instrument (including draft instruments), development control plans, planning agreements, the *Environmental Planning and Assessment Regulations 2000* (**Regulations**) that apply to the land to which the Application relates;
 - the likely environmental, social and economic impacts of the development;
 - the suitability of the site for the development;
 - any submissions;
 - the public interest, including the objects of the EP&A Act and the principles of Ecologically Sustainable Development (**ESD**); and
 - the reasons given by the consent authority for the grant of consent that is sought to be modified.
71. The Department considered the Mandatory Considerations at Appendix C of the Department's AR. The Commission is satisfied with this assessment conducted on its behalf by the Department. In relation to the Modification, the Commission is satisfied that the proposed modification would not result in any significant changes to the previous assessment of the Concept Plan.
72. The Commission has considered the relevant Mandatory Considerations below, noting the Mandatory Considerations are not an exhaustive statement of the matters the Commission is permitted to consider in determining the Application. To the extent that any of the material does not fall within the Mandatory Considerations, the Commission has considered that material where it is permitted to do so, having regard to the subject matter, scope and purpose of the EP&A Act.

6.4.1 Relevant Environmental Planning Instruments

73. As outlined in Appendix C of the Department's AR, the relevant EPI's include:
- *State Environmental Planning Policy (State and Regional Development) 2011* (**SRD SEPP**);
 - *State Environmental Planning Policy 65 – Residential Apartment Buildings* (**SEPP 65**);
 - *State Environmental Planning Policy (Affordable Rental Housing) 2009* (**ARH SEPP**);
 - *State Environmental Planning Policy (Infrastructure) 2007*;
 - *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*;
 - *State Environmental Planning Policy No. 55 – Remediation of Land*;
 - *State Environmental Planning Policy 64 – Advertising and Signage*;
 - *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*
 - *Sydney Local Environmental Plan 2012* (**SLEP**).
74. The Commission agrees with the Department's assessment of the Application against the EPIs set out in Appendix C of the Department's AR. The Commission therefore adopts the Department's assessment but has also further addressed some of the EPIs in the following sections of this Statement of Reasons.

State Environmental Planning Policy No. 65 and the Apartment Design Guide

75. The Department's AR outlines its assessment of the Application under SEPP 65 and the relevant criteria of the Apartment Design Guide (**ADG**) at Appendix C. The Department notes

the Application achieves the design quality principles set out in SEPP 65 and mostly achieves the design criteria of the ADG, except for strict compliance with the criteria for solar access and building separation.

76. The Department concludes that the “*variations from the ADG design criteria are considered acceptable as the objectives of the ADG are achieved*” (Department’s AR, Appendix C). The ADG design criteria relating to solar access and building separation are discussed further at section 7 of this Statement of Reasons. The Commission is satisfied the Application adequately addresses the design principles outlined in SEPP 65 and the objectives of the ADG. The Commission finds the Application is a reasonable development expectation in the context of the applicable planning controls for the Site, the Approved Building Envelope, the constraints posed by the design of the Princeton Apartment building and the density constraints of its CBD location.

State Environmental Planning Policy (Affordable Rental Housing) 2009

77. Part 2, Division 6A of the ARH SEPP includes provisions specific to BTR housing developments if the development contains at least 50 dwellings intended to be occupied by individuals under residential tenancy agreements and all buildings are located on the same lot of land. Under the ARH SEPP, BTR developments cannot be subdivided into separate lots (applies to the tenanted component of the building), must apply for at least 15 years and must be operated by 1 managing agent who provides on-site management.
78. The Commission notes the BTR provisions in the ARH SEPP were introduced on 12 February 2021, and therefore sought advice from the Department with respect to these provisions and their bearing on the Application. The Department’s Response 2, dated 12 April 2021 (paragraph 49 above), which advises “*there are no saving and transitional provision applying to this amendment to the SEPP. As such, the prescribed condition [detailed in paragraph 83 below] would apply to all Build to Rent Housing developments, including the proposal*”. Consequently, the Commission is required to impose the prescribed conditions.
79. The Commission is satisfied the Application meets the BTR development standards under the ARH SEPP as they apply to building height, density, parking and design. With respect to design, the ARH SEPP requires the consent authority to “*be flexible in applying the design criteria set out in the [ADG]*” (clause 41E(2)(a)).

6.4.2 Relevant Proposed Instruments

80. The Commission has considered relevant proposed EPIs, including the draft *State Environmental Planning Policy (Remediation of Land)*, the *Draft State Environmental Planning Policy (Environment)* and the *Draft State Environmental Planning Policy (Housing Diversity)* in making its determination.
81. In terms of the Commission’s consideration of the Draft Environmental Planning Policy (Housing Density), the Commission notes the Government’s recognition of the growing need for secure, long term rental options in well-located areas close to transport and amenity. The Application provides BTR housing that is well-located above the Metro Box, will be professionally managed, provides onsite services and facilities and provides greater housing choice in this CBD location. Therefore, the Commission is satisfied the Application is consistent with the draft policy and the Government’s encouragement of this housing typology.

6.4.3 Relevant Development Control Plans

82. Clause 11 of the SRD SEPP states that development control plans (**DCP**) do not apply to SSD. The Commission does not consider any development control plans to be relevant to the determination of the Application.

6.4.4 Applicable Regulations

83. Clause 98F of the *Environmental Planning and Assessment Regulation 2000 (EP&A Regs)* prescribes conditions for development involving the use of buildings as BTR housing as permitted under Part 2, Division 6A of the ARH SEPP. The Commission has imposed the prescribed conditions, following the receipt of the Department's Response 2 described at paragraph 78 above.
84. The application satisfactorily meets the relevant requirements of the *Environmental Planning and Assessment Regulation 2000 (EP&A Regs)*, including the procedures relating to applications (Part 6 of the EP&A Regs), public participation procedures for SSD and Schedule 2 of the EP&A Regulation relating to EIS.

6.4.5 The Likely Impacts of the Development

85. The likely impacts of the Project have been considered in section 4.8 below.

6.4.6 The Suitability of the Site for Development

86. The Commission has considered the suitability of the Site. The Commission finds that the Site is suitable for the following reasons:
 - The land is zoned to permit residential and retail uses;
 - The Application aligns with the zoning objectives and is consistent with the strategic vision for the Site and surroundings; and
 - The proposed OSD tower provides housing diversity in an accessible location, well connected to transport, jobs and amenity.

6.4.7 The Public Interest

87. The Commission has considered the public interest in section 7 of this Statement of Reasons.

6.5 Additional Considerations

88. In determining this application, the Commission has also considered the following:

Pitt Street South Over Station Development Design Quality Guidelines

89. The Pitt Street South Over Station Development Design Quality Guidelines were created to guide the design of development on the Site. The Guidelines were updated in June 2019 and approved by the Department in August 2019 in satisfaction of condition A24 of the Concept Approval. Condition B1 provides that future applications shall address compliance with the Design Guidelines.
90. Appendix C of the Department's AR provides an assessment of the Application against the Design Guidelines. The Commission is satisfied with the assessment conducted on its behalf by the Department as set out in Appendix C.

7 KEY ISSUES

7.1 Built Form

91. As described at ARP 1.3.7, the Concept Approval establishes an Approved Building Envelope for the Site, which defines the street wall, setbacks and height of the OSD.
92. At ARP 6.2.2, the Department notes the proposed OSD occupies approximately 87% of the Approved Building Envelope, with the difference (i.e. < 13%) primarily the result of the increased setback (1.5 metres) on the eastern elevation.
93. Condition A15 of the Concept Approval requires the building to be contained within the Approved Building Envelope. However, the Application includes Glass Reinforced Concrete (GRC) façade elements that extend beyond the Approved Building Envelope on the southern, western and northern facades by between 10mm to 450mm. Therefore, the Applicant is seeking to amend Condition A15 to permit the encroachments, as follows (new text bold underlined):

*A15 Future development application(s) for the development must demonstrate that the building is contained within the building envelopes consistent with the plans listed in Condition A2 and as modified by this consent **with the exception of architectural façade features and elements, including balustrades and awnings, embellishments within the Articulation Zone.***

94. As described at ARP 6.2.12, the Department is satisfied the proposed GRC encroachments are an integral design feature and notes the window line of the proposed OSD building still fully complies with the Approved Building Envelope. The Department further notes the GRC elements “will not be discernible when viewed from Pitt Street and Bathurst Street” and “would not result in significant privacy and overshadowing impacts” (ARP 6.2.12).
95. The Department generally supports the proposed modification to condition A15, but recommends clarifying the condition wording for the reasons set out at ARP 6.2.14 to read:

*A15 Future development application(s) for the development must demonstrate that the building is contained within the building envelopes consistent with the plans listed in Condition A2 and as modified by this consent **with the exception of architectural façade features and elements, including balustrades, which, subject to remaining within the site, may protrude beyond the building envelope by up to 150 mm on the southern façade, by up to 200mm on the western façade and by up to 450 mm on the northern façade.***

96. The Commission agrees with the Department’s assessment of the proposed building envelope encroachments, and has imposed the modified condition A15 as recommended by the Department (paragraph 95 above).
97. With respect to the GRC elements along the eastern elevation, the Commission raised concerns that the depth of the GRC elements is likely to compromise the internal amenity of the southeast units within the OSD tower and as such requested further information from the Applicant to clarify. The Applicant’s Response 1 and Applicant’s Response 2 (paragraph 49 above) confirm shallower GRC elements would result in greater internal amenity. Therefore, the Commission has imposed condition B9(d) on SSD-10376, limiting the depth of six GRC elements to no greater than 200mm as they relate to the two southeast corner apartments on each level. The Commission notes this will not increase compliance with the ADG but will improve internal amenity without compromising overall design outcomes.

7.2 Building Separation

98. The Commission notes the majority of written public submissions and those presented at the public meeting were made by owners and occupants of the Princeton Apartment building,

which is a residential apartment building to the immediate south of the Site. A key concern raised in the submissions relates to the building separation from the proposed OSD tower and the Princeton Apartments, and the resulting amenity impacts (solar access, privacy and view) (paragraphs 27 to 40 above).

99. The Approved Building Envelope provides for a 12m setback from the southern boundary. Given the Princeton Apartment building provides a zero setback to the common boundary, this means the Approved Building Envelope results in a 12m building separation.
100. The ADG requires a minimum 24m building separation between habitable rooms, but the ADG specifies that the building separation should be distributed equally between sites, and therefore the Commission is of the view that half the minimum 24m separation distance should be applied on each side of the boundary (i.e. 12m each). As the Princeton Apartment building has been built to the boundary, the building separation cannot be shared equitably.
101. The proposed OSD tower provides a setback to the common boundary of 12m to the glass line of the building, with the proposed encroachments providing a minimum building separation of 11.85m, relating to the GRC façade elements described at paragraphs 93 to 96 above).
102. The Department's AR outlines its assessment of the proposed building separation at section 6.3. The Department concludes "*the relevant objectives of the control have been achieved, despite the numerical departure*" because the proposal results in equitable sharing of the building separation between sites and affords reasonable levels of external and internal privacy (ARP 6.3.10).
103. The Commission notes the significant level of concern raised in public submissions with respect to building separation. However, in the context of the Princeton Apartment building design with a zero northern setback, the Commission finds it is an unreasonable expectation that a setback greater than 12m be borne by the Applicant.
104. The Commission's consideration of solar access impacts and visual privacy impacts, as they relate to building separation, are discussed further in sections 7.1.3 and 7.1.4 below. However, given the planning controls applicable to the Site, the approved Concept Plan, and the high density, CBD context of the Site, the Commission is satisfied that the citing of the OSD building, particularly as it relates to the Princeton Apartments reflects an equitable share of recommended separation distances and that appropriate and practicable measures have been implemented to maintain reasonable solar access and visual privacy for surrounding developments.
105. The Commission also notes the Application results in a variation to the ADG building separation guidelines to the Edinburgh Castle Hotel. However, the Department has Recommended a Condition to resolve light and ventilation issues on the common boundary with the Edinburgh Castle Hotel and the Commission is satisfied the proposed variation will not result in unacceptable consequences.
106. Therefore, the Commission agrees with the Department's assessment and finds the Application to be acceptable with respect to building separation.

7.3 Solar Access

107. The Commission notes that solar access impacts on the Princeton Apartments to the south of the Site were a significant issue raised in the public submissions (paragraphs 27 to 35 above).
108. In particular, the public submissions cited inconsistencies with conditions B3(e) and B3(h) of the Concept Approval, which require the detailed development application to consider a varied, articulated setback from the Pitt Street (western) boundary to minimise solar impacts

to the living rooms of the Princeton Apartments (Condition B3(e)), and for the design to address compliance with the requirements of SEPP 65 and the ADG (Condition B3(h)).

109. The submissions argue there is potential for solar access to be improved by increasing building separation and/or modifications to the Approved Building Envelope, including a chamfer of the southeast corner. The submissions make comment that the extent of the various scenario modelling to test solar access impacts is “*tokenistic at best*”.
110. At its meeting with the Commission (paragraph 46 above), the Applicant described the measures undertaken to improve solar access to the Princeton Apartments, in the context of the approved concept envelope. The Applicant stated that it tested a number of design changes aimed at reducing the solar access impact on the Princeton Apartments between 9am to 3pm mid-winter. These changes included increasing the Site’s western (Pitt Street) setback and increasing the Site’s eastern setback. A summary of solar access to Princeton Apartments is provided in the extract below from the Applicant’s additional solar access analysis:

*Table 3 – Solar Access to the Princeton Apartments
(source: Applicant’s additional solar access provided to the Department in December 2020)*

Amount of sun (minutes) between 9am to 3pm	Number of apartments receiving solar access		
	Existing	Approved concept building envelope	Proposed OSD tower
0	34	50	47
1-30	1	17	15
31-60	1	13	17
61-90	6	13	14
91-120	17	17	17
120 +	57	6	6

111. In the Applicant’s Responses 1 and 2 (paragraph 49 above), the Applicant stated it is reasonable in this CBD context to consider the amount of sunlight received during the extended hours of 8am to 4pm mid-winter. On the basis of the table below, submitted as part of the Applicant’s Response 2, the Applicant argues that, when using the measure between 8am to 4pm mid-winter, 27.6% additional dwellings in the Princeton Apartment building will receive less than 2 hours of sunlight, representing a minor variation to the ADG criteria under objective 3B-2, where solar access to neighbouring properties is not reduced by more than 20%.

*Table 4 – Percentage of Princeton Apartment units impacted
(source: Applicant’s response to Commission dated 26 March 2021)*

Solar access	Princeton apartments (no OSD)	Princeton apartments (with the Approved Building Envelope)	% change
> 2hrs 9-3 Living	54/116 (46.6%)	6/116 (5.2%)	41.4%
> 2hrs 8-4 Living	56/116 (48.3%)	24/116 (20.7%)	27.6%
> 2hrs 8-4 Habitable rooms	56/116 (48.3%)	39/116 (33.6%)	14.7%

112. The Commission has also considered the views of Council with respect to solar access matters. At ARP 5.3.1, the Department summarises the key issues raised in Council's submissions to the Department. The Commission notes solar access concerns are not listed. Further to this, at its meeting with the Commission (paragraph 46 above), Council acknowledged that in the CBD context, strict compliance with solar access requirements is generally not possible. Council further noted that compliance in this case is particularly difficult given the design of the Princeton Apartment building with a zero northern boundary setback and windows located on the shared boundary.
113. The Department sets out its consideration of solar access at sections 6.3 of the Department's AR. The Department notes the concerns raised by the public submissions with respect to overshadowing impacts at ARP 6.3.26 to 6.3.29.
114. The Commission agrees with the Department's statement at ARP 6.3.33, that the relevant ADG objective regarding overshadowing of neighbouring properties is Objective 3B-2, which states "*overshadowing of neighbouring properties is minimised during mid-winter*". There are no design criteria for this objective, but guidance is provided, including the following:
- *Where an adjoining property does not currently receive the required hours of solar access, the proposed building ensures solar access to neighbouring properties is not reduced by more than 20%*
 - *If the proposal will significantly reduce the solar access of neighbours, building separation should be increased beyond minimums contained in section 3F Visual privacy*
115. The Department outlined the justification for the Approved Building Envelope in the Department's assessment report for the Concept Approval, which acknowledged the Approved Building Envelope would reduce solar access to the Princeton Apartments by more than 20%, but that "*due to the Princeton Apartment's lack of setback from its northern boundary and the permissible density at this central Sydney location, strict compliance with the ADG solar access provisions is not a reasonable expectation*" (ARP 6.3.34).
116. In terms of whether an increased building separation would provide solar access benefits for the Princeton Apartment building, the Department's AR agrees with the concept application assessment report, which states increased building separation would not result in improved solar access for the Princeton Apartments because of the orientation and layout of the Princeton Apartments having living rooms and balconies oriented to the east and west, not to the shared, north boundary (ARP 6.3.34). By virtue of the height of the proposed OSD tower, the Department is of the view that any increased building separation will not have a significant benefit in terms of solar access to the living rooms in the Princeton Apartment building.
117. The Department notes the requirements of the Concept Approval conditions B3(e) and B3(h) and accepts the Applicant's modelling that shows a greater solar access benefit is achieved through setting back the OSD tower by an additional 1.5m to the east (creating a total 4.5m setback) than by providing further articulation to the Pitt Street (west) boundary as required by Condition B3(e) of the Concept Approval. The Department is satisfied the Application has met the requirements of Condition B3(e) because it considered a varied setback on Pitt Street, but the analysis demonstrates the proposed design solution achieves a better outcome for the Princeton Apartments than a design that involves further articulation of the Pitt Street Façade (ARP 6.3.43).
118. The Department concludes the Application provides better solar access benefits for the Princeton Apartment building when compared with the Approved Building Envelope (ARP 6.3.51). The Department notes the overshadowing and loss of amenity for the occupants of the Princeton Apartment building, but notes "*the extent of the impact is commensurate with the level of development permitted under the planning controls applying to the site and is reasonable given the site's CBD context*" (ARP 6.3.53).

119. The Department has undertaken an assessment of the Application against the relevant design criteria and objectives of the ADG and finds the Application to be acceptable having regard to the context and the envisaged development potential of the site (Department's AR, Appendix C). In this regard, the Department has formed the view that the proposed OSD tower is not inconsistent with the conditions of the Concept Approval.
120. The Commission agrees that there will be impacts on the solar access and amenity enjoyed by the occupants of the Princeton Apartment building. It is however acknowledged, that the main reason for this is because the Princeton Apartments are built to the side boundary and include north facing windows and private open space in close proximity to their northern boundary. From a planning perspective, the design of the Princeton Apartment building, in terms of sunlight and outlook, borrows from the currently undeveloped Site. This lends weight to the Applicant's use of the alternative performance criteria of 8am to 4pm mid-winter to determine solar performance and consistency with the guidance provided in the ADG. This is discussed further below.
121. The Commission requested further information from the Applicant with respect to the investigations and analysis undertaken by the Applicant to test solar access benefits or impacts on the Princeton Apartment building. In the Applicant's Response 1 (paragraph 49 above), the Applicant outlined five different design options and the resulting benefit or impact on solar access to the Princeton Apartments. The Applicant's Response 1 concludes that none of the options tested resulted in an improvement to the number of units in the Princeton Apartment building that achieve more than 2 hours of sunlight mid-winter. There were some additional minutes of sunlight access gained, but the Commission is of the view that these minor increases are not of great enough benefit to warrant the amenity impacts to the proposed dwellings in the OSD building or the redesign that would be required of the OSD tower.
122. The Commission notes the Applicant's Response 1 included a definition of compliant solar access that interprets solar access compliance differently to the definition provided in Objective 4A of the ADG. The Applicant confirmed in the Applicant's Response 2 (paragraph 49 above) that it applied a more onerous definition of 'compliant' solar access than that provided in the ADG. The Commission is of the view that a reduction in the number of units impacted by the proposed OSD building would not occur, regardless of which definition is used. In this case, the Commission agrees with the Department's conclusion that pursuing strict compliance with the numerical guidelines for solar access is not reasonable in the context of the Approved Building Envelope and the design of the Princeton Apartment building.
123. The Commission notes the Applicant's statement at paragraph 111 above that it is reasonable to adopt hours from 8am to 4pm mid-winter in considering reasonable solar access in CBD locations. While solar access to Princeton Apartments is reduced by the proposed development, the proposal complies with the Approved Building Envelope. The Commission notes opportunities to improve solar access were considered, but due to the limitations of the Site in relation to the Princeton Apartment building, the Commission finds the proposed OSD tower is a reasonable development expectation in this city centre location and is consistent with the design intent and density anticipated by the Approved Building Envelope. The Commission is of the view that requiring additional building separation or setbacks to the proposed OSD tower would be an unreasonable requirement.
124. In forming this view, the Commission has also considered the established principles of *The Benevolent Society v Waverley Council* [2010] NSW LEC 1082 as outlined at ARP 6.3.38. The Commission agrees that the proposed degree of solar access maintained to the Princeton Apartments is acceptable given the circumstances of the Site and given the Application complies with the height and FSR controls for the Site. The Commission finds the shape of the OSD tower has undergone minor and reasonable adjustments since the Concept Approval to increase solar access to the Princeton Apartments while still retaining the design intent of the Concept Approval.

125. In response to the concerns raised in public submissions that the Application is not consistent with Condition B3(e) of the Concept Approval, which requires consideration of a varied setback from the Pitt Street boundary of the Site, the Commission finds the proposed OSD tower adopts a varying setback of 4.5 metres to 5.9 metres to encourage solar access and visual privacy to adjacent buildings. The setback to Pitt Street aligns with the respective setback of the adjacent Princeton Apartments and reinforces the existing street alignment along Pitt Street. The Commission agrees with the Department's conclusion (paragraph 117 above) that setting back the OSD tower an additional 1.5m from the east boundary results in greater solar access benefit than further articulating the Pitt Street façade.
126. The Commission notes Condition B3(h) of the Concept Approval requires a development application to address compliance with the requirements of SEPP 65 and the ADG. The Commission finds the Application has addressed compliance with SEPP 65 and the ADG and provided justification where strict compliance with the numerical criteria cannot reasonably be achieved. The Department finds the Application to be satisfactory in consideration of the SEPP 65 and ADG requirements. The Commission agrees with the Department's assessment and finds the Application achieves the design principles of SEPP 65 and achieves the objectives of the ADG. The Commission notes the ARH SEPP provides for BTR housing types in appropriate locations as an alternative residential option through provisions to allow a flexible approach when applying the ADG to such developments (paragraph 79 above).
127. The Commission finds that appropriate measures have been explored and implemented in order to achieve the best ADG outcome, while balancing the considerations of the constraints imposed by the design of the Princeton Apartment building, maintaining the architectural integrity of the OSD tower, and the commercial objectives of the Application. The OSD tower design results in better solar access outcomes than those envisaged for the Concept Approval. Therefore, the Commission finds the solar access impacts to be acceptable in this case.

7.4 Visual Privacy

128. Visual privacy impacts were raised as a concern in submissions made to the Commission, in particular from residents within the Princeton Apartments (paragraphs 36 to 38 above).
129. The Commission notes that, as outlined at ARP 6.3.15, in response to concerns raised with respect to visual privacy during the Department's assessment, the Applicant amended the proposal as follows:
 - deleted the Level 6 communal open space, converting it into a non-trafficable landscaped terrace;
 - incorporated fixed privacy louvres to the south facing bedroom windows; and
 - altered the south-eastern balcony of each level, shifting the balcony to the north, away from the Princeton Apartments.
130. The Department's assessment at ARP 6.3.15 of the proposed privacy measures and amendments indicates the Department is satisfied that the location and design of the windows have been considered in order to minimise privacy impacts to the Princeton Apartments.
131. The Commission also notes the Sydney Metro Design Review Panel (**DRP**) advice that the installation of vertical louvres achieves visual privacy to the apartment windows facing the Princeton Apartments and that the proposed minor encroachment outside the Approved Building Envelope did not create any impact on privacy (ARP 6.3.15).
132. At Council's meeting with the Commission on 9 March 2021 (paragraph 46 above), Council raised concern in relation to the Department's Recommended Condition B9(a) with respect

to fixed obscure glazing as “fixed glazing for apartments would negate natural crossflow ventilation for those apartments that are provided with two aspects and fixed obscure glazing would also contravene objective 4B(1) of the ADG” (page 3 of the transcript).

133. The Commission notes the Applicant also raised concern with the Department’s Recommended Condition B9(a) at its meeting with the Commission (paragraph 46 above) and in the Applicant’s Response 1 (paragraph 49 above) for reasons including the “*extensive design development and refinement of the southern facade as presented to the Sydney Metro DRP and ultimately endorsed*”. The Applicant further notes that the louvres as envisaged by Recommended Condition B9(a) will reduce internal amenity to the proposed apartments.
134. As outlined in paragraphs 103 and 104 above, in the circumstances of the Site, whereby the Princeton Apartments are built to the common boundary, the Commission accepts the proposed 12m southern boundary setback is reasonable based on the ADG Objective 3F with respect to equitable distribution of building separation guidelines.
135. The Commission has considered the DRP’s advice and comments from Council and the Applicant with respect to the Department’s Recommended Condition B9(a) requiring fixed louvres and/or opaque glass on all windows on the southern boundary. The Commission has balanced the visual privacy considerations and internal amenity. In the circumstances where the living and kitchen windows are greater than 12m from the Princeton Apartments, and not directly opposite the Princeton Apartment boundary windows, the Commission has determined that the Department’s Recommended Condition that requires fixed louvres or opaque glass on the lounge and kitchen windows should not be imposed.
136. The Commission notes that Architectural Drawing 960003, Rev H, details the fixed privacy louvres proposed for the southern façade’s bedrooms and bathroom windows.
137. In considering the Applicant’s amendments, which include the fixed privacy louvres to the bedroom and bathroom windows in the southern façade, relocating the southeast balcony to the north away from the Princeton Apartments and the deletion of the communal open space on Level 6, the Commission finds that subject to the imposed conditions there would be no unreasonable visual impacts as a consequence of the Application.

7.5 Internal Amenity

138. The Commission notes the Department’s assessment of Internal Amenity can be found at section 6.4 of the Department’s AR.
139. At ARP 6.4.3 the Department describes the Applicant’s submission of a design report (Appendix A of the EIS), which addresses the Application’s compliance with the design criteria and design guidance of the ADG. The Department also notes the DRP has given consideration to the internal amenity of the proposed units as part of its review of the design.
140. The Department’s assessment of the Application against SEPP 65 and the ADG is located at Appendix C. The Department concludes it is satisfied the Application generally meets the ADG design criteria and design guidance for internal amenity, except for internal solar access and minor variations to communal open space, apartment size, balcony size and vertical circulation (ARP 6.4.5).
141. The Commission has considered the proposed variations to the design guidance offered by the ADG. With respect to internal solar access, the Commission requested further information from the Applicant about whether narrower GRC façade elements on the southeast corner of the floorplates would improve sunlight penetration into the units. In the Applicant’s Response 1 the Applicant advised narrower GRC elements would not result in an increase in the number of units that receive at least 2 hours of sunlight but would result in an increased area of sunlight coming through the windows. The Commission finds this would sufficiently improve the internal amenity of those units (the two units in the southeast

corner of the building) and have therefore imposed condition B9(d) on SSD-10376, limiting the depth of six GRC elements, as they relate to the two southeast corner apartments on each level, to no greater than 200mm (paragraph 97 above).

142. Other than the considerations in paragraph 141 above, the Commission is satisfied that the Application has been designed to maximise opportunities for solar access and the objectives in the ADG have been achieved in this case.
143. In terms of the variation to the communal open space provision, the Commission notes the size was reduced when the level 6 communal open space area was deleted to improve visual amenity for the Princeton Apartment building (paragraph 129 above). The Commission agrees with the Department's assessment as set out at ARP 6.4.16, and finds the proposed variation to be acceptable because it results in improved amenity outcomes for the adjoining Princeton Apartment building, is offset by appropriate indoor communal space, including a pool, and with the Site being located in proximity to Hyde Park the residents will have good access to quality public open space areas.
144. The Commission has considered the proposed unit sizes and notes 21 units at the northwest corner of the building on levels 14 to 34 (two-bedroom, two-bathroom units) have an area of 72m², where the ADG recommends 75m². The Commission agrees with the Department's assessment of this minor variation set out at ARP 6.4.19, and finds the proposed units will still achieve the objective of the ADG design criteria in terms of functionality and amenity.
145. With regard to balcony size, the Commission has considered the 54 proposed units that are provided with a balcony size less than the size recommended by the ADG, including one-bedroom units that are provided with a 6m² balcony rather than the 8m² recommended and two-bedroom apartments that are provided with a 7m² balcony rather than the 10m² recommended. The Commission notes the balcony of the two-bedroom apartment in the southeast corner of each floor was reduced in size and moved away from the Princeton Apartment building to improve visual privacy and to some degree solar outcomes for the neighbouring property. The Commission also acknowledges the DRP considered a number of design options regarding the layout of balcony sizes but did not support enlarging the non-compliant balconies at the expense of reduced apartment sizes (ARP 6.4.25). The Commission agrees that the proposed balcony sizes are reasonable in this high-density CBD location and will provide sufficient functionality for occupants.
146. In terms of vertical circulation, the Commission notes levels 9 to 13 have nine apartments per level, which represents a minor departure from the ADG recommendation of eight apartments per level. The Commission also notes the ADG recommends the maximum number of units serviced per lift to be 40. The proposal results in an average of 78 units serviced per lift. However, the Applicant submitted a vertical transport analysis that demonstrates the proposed lifts would result in servicing that meets or exceeds the capacity for a 'luxury' category of residential development under recognised industry standards (ARP 6.4.30). The Commission also notes the DRP supports the proposed lift numbers. Therefore, the Commission is satisfied that the proposed vertical circulation variations will not result in adverse impacts.
147. For the reasons set out above, the Commission finds the Application achieves appropriate levels of internal amenity in the context of the Site, subject to the imposed conditions.

7.6 Noise Impacts

148. Noise impacts were raised as a concern in the submissions made to the Commission by Princeton Apartment residents, with particular reference to the plant room located on Level 6 and noise as a consequence of the southern building setback (paragraph 41 above).
149. The Commission's views on the building separation are summarised at section 7.2 above of this Statement of Reasons.

150. The Commission notes that in response to concerns raised with the Department, with respect to acoustic privacy impacts on the Princeton Apartment residents from the initially proposed Level 6 open space area and southern operable windows, the Applicant made the following changes (ARP 6.3.15):
- Altered the south-eastern balcony of each level, in setting the balcony to the north, away from the Princeton Apartments;
 - Deleted the Level 6 communal open space and converted it into non trafficable landscaped open space;
 - Relocated the Level 6 plant room relocated further away from the southern boundary;
 - Made all windows on the southern elevation non operable, noting natural ventilation for the bedroom windows is provided by separate slot windows; and
 - Removed the blade in the southern façade recessed ventilation slots to reduce the potential for wind whistle.
151. The Commission notes that the location of the windows on the southern façade are within the Approved Building Envelope and have not been placed directly opposite any of the Princeton Apartment’s southern boundary windows. The Commission agrees with the Department’s assessment, that the location of the southern windows will “*ensure there is no direct acoustic transmission*” between the buildings. (ARP 6.3.16)
152. The Commission notes that DPIE’s assessment of the noise impacts in relation to the Princeton Apartments includes consideration of the proposed mitigation measures and the specific site environment, such as the location of the southern façade windows not being placed in direct alignment with the Princeton Apartment boundary windows, limiting the only openable windows to bedroom slot windows (for ventilation purposes) and that the Princeton Apartment’s boundary windows “*are not permitted to be operable under the BCA, therefore limiting noise transmission between the site.*” [sic] (ARP 6.3.16)
153. The Applicant’s EIS included an Acoustic Assessment Report that concludes that the acoustic impacts from plant on the site may be controlled, subject to the implementation of mitigation measures to be incorporated in the detailed design phase and a “*full and detailed assessment undertaken at both the detailed design phase and compliance testing following installation*”. (ARP 6.3.21 and 6.3.22)
154. The Commission notes that DPIE’s assessment of the mechanical noise impacts includes consideration of the proposed mitigation measures to be incorporated in the design such as “*procurement of quiet plant, use of silencers or attenuators for air discharge/intake, acoustic screens and enclosures.*” (ARP 6.3.22)
155. The Commission notes that since the Acoustic Assessment Report was prepared for the EIS, the Plant Room has been relocated further away from the southern boundary (paragraph 150 above).
156. The Commission is of the view that in the circumstances of the Site, the changes made to the location of the level 6 plant room in addition to the measures incorporated to minimise noise transmission, there will be no unreasonable acoustic impact. The Commission is satisfied residual noise impacts can be mitigated through the imposed conditions.

7.7 View Loss

157. The Commission notes the concerns raised in the public submissions regarding the loss of views from the Princeton Apartments to Sydney Harbour to the north (visible from living rooms and bedrooms) and the loss of views of St Mary’s Cathedral from the Century Towers building (paragraph 39 above) resulting from the Application.

158. In the Department's consideration of the view impacts, it is acknowledged that the Application will affect northern views from the adjoining Princeton Apartments. However, the Department notes these view impacts were considered in detail in the Concept Approval (ARP 6.3.58). The Department further notes, given the proposed building is generally within the Approved Building Envelope, the extent of view impacts would not be greater than those assessed and approved under the Concept Approval (ARP 6.3.59).
159. The Commission notes the Department considered the view impacts from the building envelope in its assessment of the concept application in the terms described in the Planning Principle for view sharing established by *Tenacity Consulting vs Warringah Council* [2004] NSWLEP 140. In making the determination to approve the Concept Plan, the Department noted the Approved Building Envelope is a reasonable development expectation for the Site and complies with the SLEP and the sun access plane. The Department concluded there are no feasible alternatives that would produce similar floorspace outcomes and reduce view loss impacts and that under the steps identified in *Tenacity*, the retention of views impacted by the Approved Building Envelope cannot be practically protected (Department's Concept Application Assessment Report).
160. With regard to the views to St Mary's Cathedral from the Century Tower building, the Department notes two apartments will lose an existing partial view and four apartments will experience a reduced partial view (ARP 6.2.27).
161. The Department concludes the proposal would not result in any adverse view impacts beyond those anticipated by the Concept Approval, and the increased eastern setback and articulation of the upper-level massing of the proposed OSD tower will allow the retention of views to St Mary's Cathedral from Century Tower building, consistent with condition B3(g) of the Concept Approval (ARP 6.2.31).
162. In its determination of the Application, the Commission agrees that the Application will have a net benefit in terms of view loss compared to that anticipated and approved in the Concept Approval. The Commission is satisfied the Application is acceptable in terms of view impacts.

7.8 Heritage

163. The Commission notes the Site is not heritage listed, nor is it within a heritage conservation area. However, the L-shaped allotment does wrap around the heritage listed Edinburgh Castle Hotel and is in proximity to a number of other heritage items as listed at ARP 6.5.1.
164. The Application included a Heritage Impact Statement and Heritage Interpretation Strategy in accordance with the requirements of Condition B8 of the Concept Approval.
165. The Commission notes, after some further information provided during the assessment of the Application, that Heritage NSW, the City of Sydney Council, the DRP and GANSW reviewed the Application and found it to be satisfactory (ARP 6.5.7 to 6.5.10).
166. At ARP 6.5.12, the Department describes that the "*key element of the overall built form that will affect adjacent heritage items is the external design of the Metro Station Box, which is not subject to assessment under this application*". However, the Department indicates it has considered the design of the OSD Pitt St entry due to the integrated nature of both developments. The Department is satisfied the proposed OSD Pitt St entry respects the heritage values of the Edinburgh Castle Hotel and concludes the Application will not "*result in any adverse impacts to the heritage significance of that item*" (ARP 6.5.13).
167. With regard to the Sydney Water Board building opposite the Site, the Department considers the OSD tower would "*have no material impacts on surrounding items... (and) forms part of the typical backdrop of high-rise buildings in this part of the CBD*" (ARP 6.5.14).
168. The Commission has considered the Application in the context of heritage impacts and the Material before it, including the advice from Heritage NSW, the DRP and the Department.

The Commission is satisfied the Application appropriately respects the heritage significance of the Edinburgh Castle Hotel through the use of sympathetic building materials and finishes and the provision of a recessed, glazed Pitt Street entry point that provides a visual separation between the Hotel and the Metro Box. The Commission also finds the Application will not unreasonably detract from other heritage items in the vicinity, including the Sydney Water Board building or the Castlereagh Fire Station.

169. The Commission has imposed conditions, as recommended by Heritage NSW and the Department, with respect to archival recording, consultation and the development of the Heritage Interpretation Plan and finds the Application to be acceptable from a heritage perspective.

7.9 Other Issues

Bicycle Parking

170. As described at ARP 6.7.9, the Application includes bicycle parking for residents, visitors and staff. The Department notes the parking arrangements were amended in the SRTS (dated 12 November 2020) to respond to concerns raised by Council and Transport for NSW (TfNSW). The Department's AR notes the amended parking scheme in the SRTS includes a total of 234 bicycle parking spaces, comprising 210 resident bike storage lockers, 12 resident visitor bike racks and 12 retail bike racks. (ARP 6.7.9).
171. The Commission understands there is a discrepancy in the bicycle parking numbers in the SRTS, as confirmed in the Department's Response 2 to the Commission dated 12 April 2021 (paragraph 49 above). The Department's Response 2 confirms there is capacity for 203 spaces on Level 3 and additional spaces on Level 2 to serve the retail use in the podium.
172. In its submission to the Department, Council identified there is a shortfall in the number of bicycle spaces provided with respect to the requirements of Council's DCP. The Department is of the view that the number of bicycle parking spaces provided on Site and included in the Recommended Conditions is adequate to serve the needs of future occupants and notes it exceeds the requirements for a 5 Green Star rating (ARP 6.7.12).
173. The Commission notes the Applicant sought for all residential and retail bicycle parking to be provided on Level 3, which is accessed via the loading dock and a goods lift (ARP 6.7.9). However, the Department does not support the provision of retail parking and residential parking in the same area for security reasons (ARP 6.7.13). Therefore, the Recommended Conditions include a Condition B39 to locate the retail parking spaces adjacent to the retail end-of-trip facilities on Level 2. The Commission agrees with this approach and has imposed the condition for 12 retail spaces to be located on Level 2 accordingly.
174. Therefore, on the basis of the Department's Response 2, the Commission finds the number of bicycle parking spaces to be sufficient to serve the building in this CBD context above a new metro station and where no vehicular parking is provided. The Commission finds the Recommended Conditions B38 (requiring a total of 203 resident spaces on Level 3, including 191 resident and 12 resident visitor spaces) and Condition B39 (requiring 12 retail spaces on Level 2) to be appropriate and agrees with the Department that the residential and retail spaces should be separated. The Commission has also imposed the Recommended Conditions for end-of-trip facilities and to provide a secure courier bike parking space.
175. At ARP 6.7.14, the Department notes Council and TfNSW raised concerns regarding the potential conflicts between vehicles and bicycles accessing the loading dock. The Department agrees with these concerns and included a Recommended Condition requiring a Road Safety Audit and Pedestrian and Cyclist Safety Plan demonstrating the safety of all users to the satisfaction of an independent TfNSW accredited road safety auditor (ARP 6.7.16).

176. At its meeting with the Commission (paragraph 46 above), Council confirmed it agrees that all previous concerns with respect to safety and the location of the retail bicycle spaces have been addressed through the Recommended Conditions.
177. Therefore, for the reasons set out above, the Commission is satisfied that the Application includes appropriate provision of bicycle parking to serve the development, subject to the conditions imposed as recommended.

Traffic, Car Parking, Loading and Waste

178. The Concept Approval allowed for 34 onsite parking spaces. However, the Application proposes no onsite car parking in order to maximise public transport use and minimise traffic movements.
179. The Commission is therefore satisfied that any potential operational traffic impacts would be limited to those associated with loading and unloading.
180. The Commission agrees with the Department's assessment at ARP 6.7.5, that deleting the parking from the development is consistent with the broader planning policies aimed at reducing reliance on private vehicles in favour of alternative transport methods in locations such as this.
181. The Department is satisfied the loading dock provides sufficient space for turning circles for trucks (ARP 6.7.2) and that the volume of traffic entering and exiting the site will not have a discernible impact on the local traffic network (ARP 6.7.4).
182. The Commission is satisfied the Application will not result in adverse traffic outcomes, subject to the imposed conditions as recommended by the Department and TfNSW.
183. At its meeting with the Commission (paragraph 46 above), Council noted that its previous concerns about waste collection have also been addressed in the Recommended Conditions, which require that a private contractor must be engaged for waste removal prior to the release of the occupation certificate or commencement of use. The Commission has imposed this condition accordingly and is satisfied with the waste collection arrangements.

Stratum subdivision

184. The Commission notes the Application proposes a staged stratum subdivision to create a station lot (Lot 1), a commercial and residential lot (Lot 2) and an airspace lot (Lot 3). The stratum subdivision is proposed to separate the Metro Box with the OSD above, including the vertical circulation required to access the OSD through the Metro Box podium and the OSD facilities in the Metro Box podium. The airspace lot is proposed for the airspace around the tower at 2 metres above the highest point of the Approved Building Envelope and above (Applicant's subdivision plans, EIS Appendix C.2).
185. The creation of these lots are proposed to be staged to allow for the sequential creation and registration of allotments to occur as is required to coincide with the construction and occupation program.
186. The Department has Recommended Conditions with respect to the requirements to be satisfied prior to the issue of the subdivision certificate. The Commission agrees with the Recommended Conditions and has imposed them accordingly.

7.10 Objects of the EP&A Act and Public Interest

7.10.1 Objects

187. The Commission has considered the Application against the relevant objects of the EP&A Act and is satisfied with the Department's assessment of the objects of the EP&A Act as set out in Appendix C of the Department's AR.

Ecologically Sustainable Development

188. The Commission has considered the Application having regard to the principles of Ecologically Sustainable Development (**ESD**). The Commission finds the proposed ESD measures to be appropriate, including efficient building systems, double glazing, insulation, fixed shading, energy and water efficient appliances, rainwater capture and reuse, close proximity to public transport and amenities, low reliance on private vehicle usage and waste minimisation measures.

189. The Commission is satisfied the proposed sustainability initiatives will encourage ESD, in accordance with the objects of the EP&A Act.

7.10.2 Public Interest

190. In considering whether the Application is in the public interest, the Commission has weighed up all the Material before it, relevant strategic and statutory planning policies, the objects of the EP&A Act, the principles of ESD and socio-economic benefits. On balance, the Commission finds the Application to be an appropriate development in this location and the likely benefits resulting from the provision of housing diversity in a highly accessible location warrant the conclusion that an appropriately conditioned approval is in the public interest.

8 THE COMMISSION'S FINDINGS AND DETERMINATION

191. The views of the community were expressed through public submissions and comments received (as part of exhibition and as part of the Commission's determination process), as well as in oral presentations to the Commission at the Public Meeting. The Commission carefully considered all of these views as part of making its decision.
192. The Commission has carefully considered the Material before it as set out in section 4.4 of this report. Based on its consideration of the Material, the Commission finds that the Project should be **approved** subject to conditions of consent for the following reasons:
- The Application is not inconsistent with the Concept Approval as amended;
 - The Application provides build-to-rent residential accommodation in a highly accessible site for transport and urban services, thereby achieving State, regional and local planning objectives;
 - The proposed land uses are permissible and the built form of the development has regard to the planning controls that apply to the Site;
 - The Application has undergone a stringent design review process and the Commission finds that the outcome achieves design excellence;
 - The proposed use increases secure rental housing supply and choice in an appropriate location;
 - The Commission finds the impacts resulting from the proposal are not unreasonable in the context of the Approved Building Envelope, the high-density CBD location and the constraints posed by the design of the Princeton Apartment building to the immediate south; and
 - The Commission is satisfied the Application is consistent with ESD principles.
193. For the reasons set out in paragraph 192 above, the Commission has determined that the consent should be granted subject to conditions. These conditions are designed to:
- prevent, minimise and/or offset adverse environmental impacts;
 - set standards and performance measures for acceptable environmental performance
 - require regular monitoring and reporting; and
 - provide for the on-going environmental management of the development.
194. The reasons for the Decision are given in the Statement of Reasons for Decision dated 14 April 2021.



Chris Wilson (Chair)
Member of the Commission



Helen Lochhead
Member of the Commission