



Attn: Mr Karl Fetterplace

14 May 2021

NSW Department of Planning and Environment
4 Parramatta Square & 12 Darcy Street,
Parramatta 2150

By Email:

Dear Karl,

**RE: SUBMISSION ON STATE SIGNIFICANT DEVELOPMENT
APPLICATION: SSD-10464 – 50-52 PHILLIP STREET, SYDNEY**

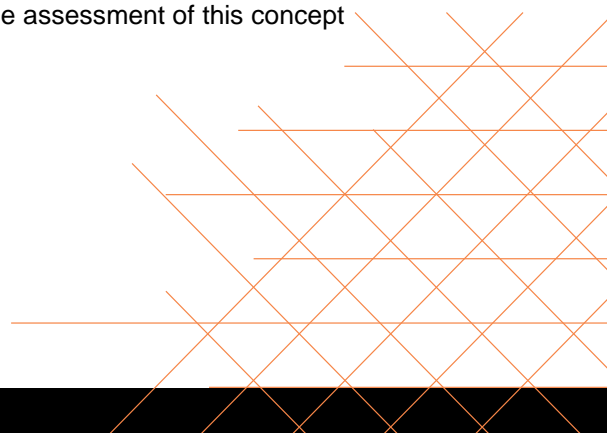
Jones Lang LaSalle NSW Pty Ltd (JLL) as Managing Agent, has prepared this submission letter on behalf of Aurora Place Investments Pty Ltd as the landowners of the site at 88 Phillip Street, Sydney, which is legally described as Lot 101 on DP1011617. The site and the asset are recognised as Aurora Place. The submission relates to the proposed Concept State Significant Development Application for the land at 50-52 Phillip Street, Sydney (SSD-10464).

It is understood that Built Development (Phillip St) Pty Ltd (the applicant) submitted SSD-10464 to the Department of Planning, Industry and Environment (DPIE) on 25 March 2021, seeking concept approval (building envelope) for a hotel and residential building. The application was on exhibition from 15 April 2021 to 12 May 2021. Written correspondence was received from DPIE on 11 May 2021 granting an extension for the receipt of submissions until 14 May 2021.

We have reviewed the Environmental Impact Statement (EIS) and suite of exhibited documents available on the DPIE Major Projects website. The property owners have some concerns with the proposal as it relates to potential impacts on Aurora Place. These include:

- The visual impacts in terms of view outlook and view sharing on Aurora Place and other surrounding commercial developments are unknown. The Visual Impact Assessment (VIA) prepared by Ethos Urban accompanying the development application is inconsistent with the Secretary's Environmental Assessment Requirements (SEARs) in terms of insufficient analysis of the proposals impact on private views.
- We note that the proposal is non-compliant with controls relating to built form and scale which could adversely impact the amenity of surrounding sites in terms of solar access, daylight access and view sharing, including:
 - The proposal is non-compliant with the setback requirements, particularly the Phillip Street setback and the existing State heritage item at 50 Phillip Street, and
 - The proposal is non-compliant with the Sun Access Plan (SAP) controls and effectively the height controls applying to the site.

These matters are discussed further throughout this letter. Please consider this submission as an objection and we request that the DPIE consider our concerns in the assessment of this concept proposal.





Proposed Concept Development SSD-10464

From reviewing the EIS and accompanying documents we understand that SSD-10464 seeks concept proposal for:

- Demolition of the existing commercial building at 52 Phillip Street,
- Retention of the existing heritage listed building at 50 Phillip Street and internal refurbishment to facilitate the proposed hotel,
- A new 48 storey mixed use hotel and residential building with a three-level basement area, comprising, 244 hotel rooms (up to level 35), 23 penthouse suites (level 36 to 47) and 23 residential car parking spaces,
- A building envelope with a max height of RL 207.22m (approx. 186.26m) and max gross floor area (GFA) of 25,374.5m² (approx. FSR of 15:1), comprising approximately 82% hotel floor space and 18% residential floor space, and
- Use of Phillip Lane (rear lane) as a pick-up and drop-off area, access to the three-level basement and a rear loading dock.

The proposed building envelope comprises:

- A podium envelope which retains the heritage building at 50 Phillip Street include a volume massing where the existing building at 52 Phillip Street is to be demolished and a massing in the light well of 50 Phillip Street which extends to a massing along the Phillip Lane frontage.
- A transfer / structural zone which seeks to respect the existing heritage building with a massing which cantilever over 50 Phillip Street to the north. The transfer zone sits from RL 48.39 atop the podium to RL 71.63, and
- A tower envelope above the transition zone up to a height of 207.22.

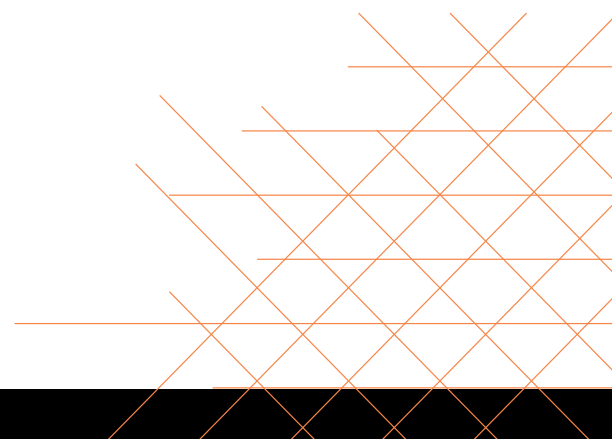
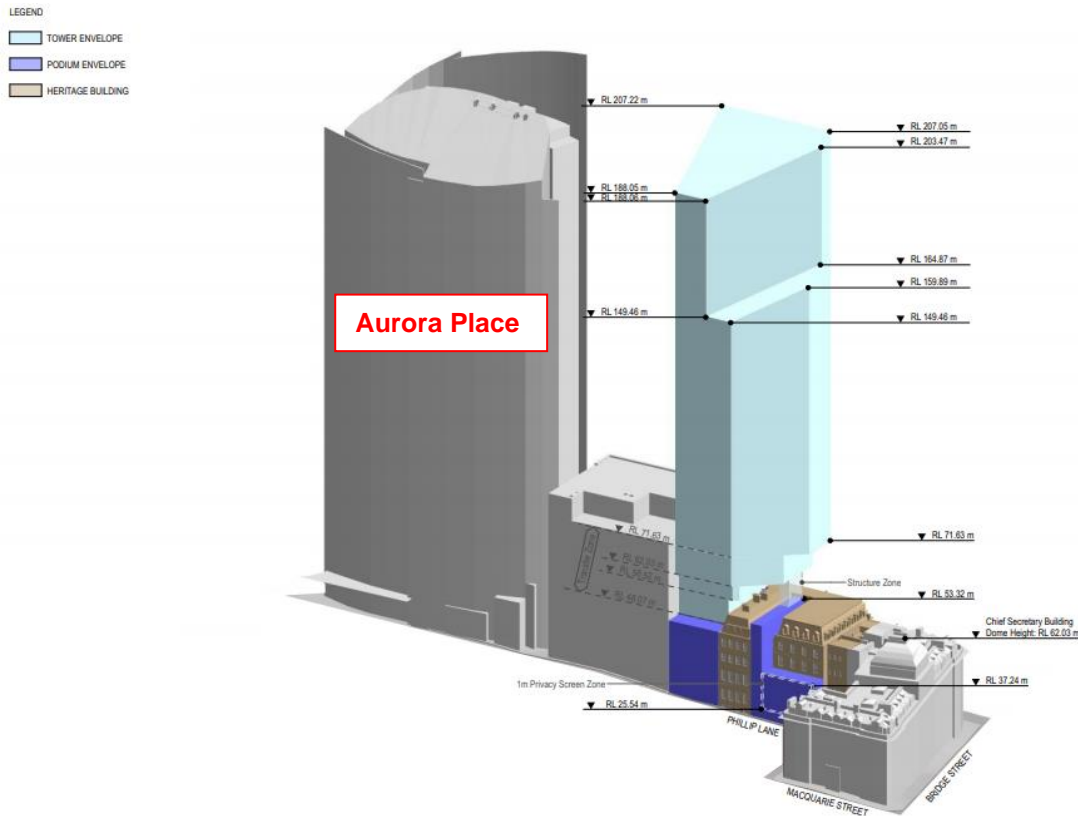




Figure 1 Proposed Building Envelope Relationship with Aurora Place – Axonometric View from Phillip Lane (from north-east)



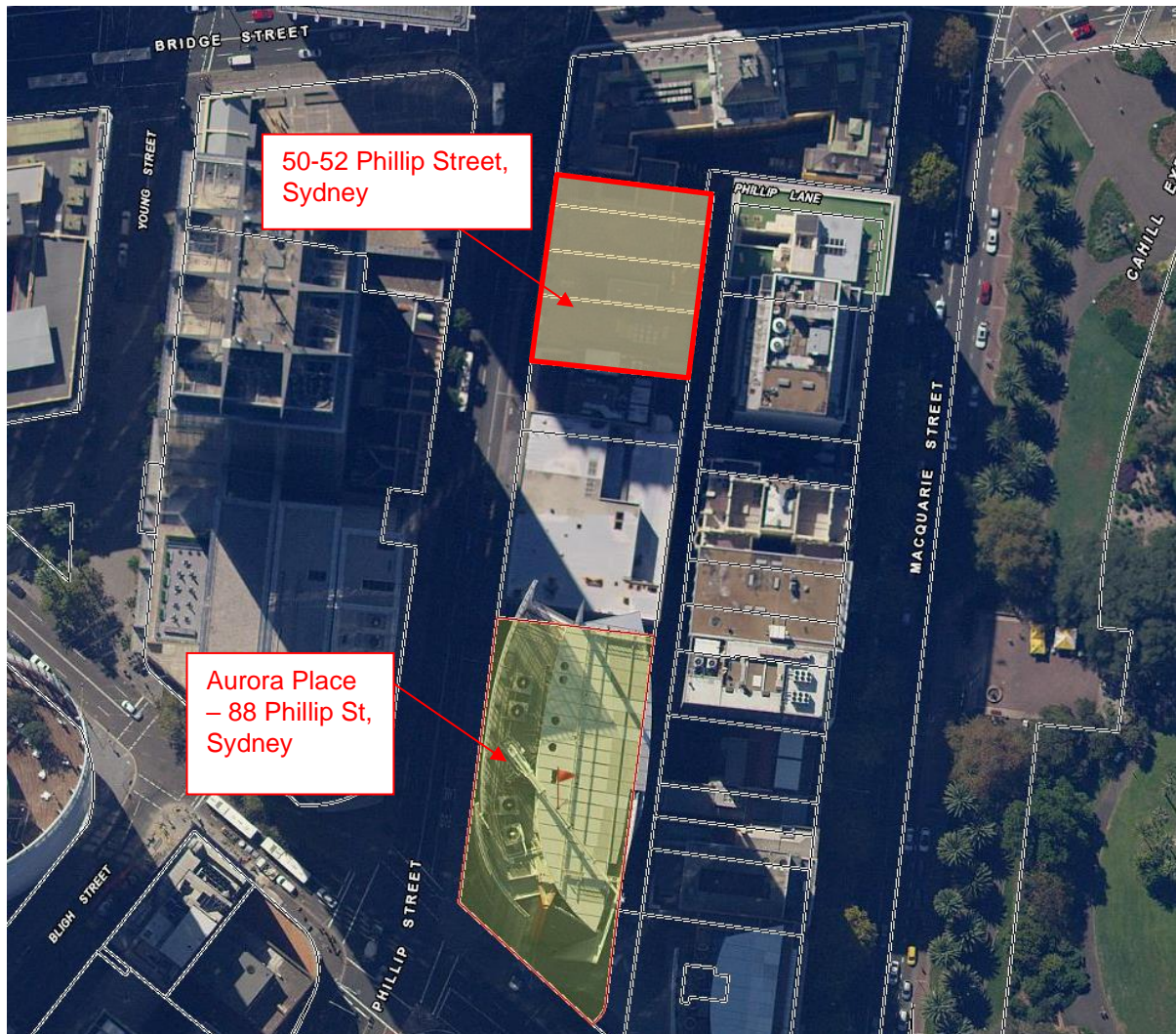
Source: FJMT

Relationship to Aurora Place at 88 Phillip Street

The landowners are particularly interested in SSD-10464 given its proximity to the asset located at 88 Phillip Street, Sydney (known as 'Aurora Place'). Aurora Place is a 41-storey commercial office building to the south of 50-52 Phillip Street. The subject site for SSD-10464 is situated on the eastern side of Phillip Street approximately 38 metres to the north of Aurora Place (refer figure below).



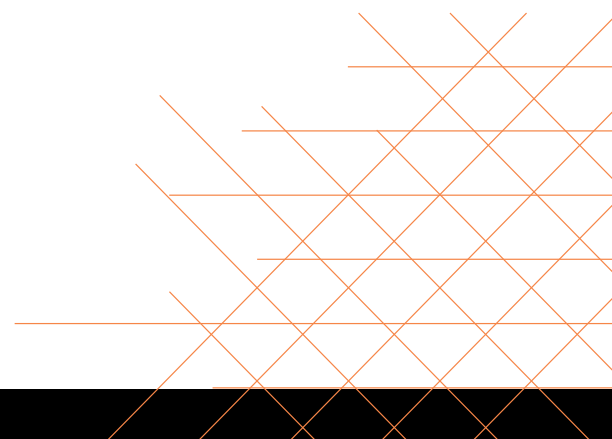
Figure 2 Aurora Place Aerial and Relationship to SSD-10464



Source: SixMaps, Marked by JLL

Aurora Place accommodates approximately 75 commercial and retail tenants including:

- Jones Day Lawyers
- Squire Patton Boggs
- Bell Potter Securities
- McKinsey & Company
- China Construction Bank
- Korn Ferry
- Executive Centre





Key Submission Matters

It is acknowledged that the concept proposal SSD-10464 provides an acceptable response to the site and surrounding context for the most part and a largely robust development application package has been submitted. However, there are some concerns with the proposed building envelope in terms of its ability to adversely impact Aurora Place. These key matters are discussed in further detail in the subsections below. Where suitable, recommendations or requests have been put forward for the applicant's consideration. These are intended to protect the amenity of the surrounds and provide a greater urban design outcome which will be guided by the design competition process and future design proposals.

Visual Impacts

We have reviewed the VIA prepared by Ethos Urban which accompanies SSD-10464. The VIA establishes five viewpoints within the surrounding public domain areas and uses existing photographs and photomontages to analyse these viewpoints. The viewpoints include one on Phillip Lane, three along the Bridge Street and Phillip Street sequence and one on Conservatorium Road.

Following the review, we have determined that, in our view, the VIA is inconsistent with the SEARs requirements issued by DPIE as it provides no assessment of the proposals impact on view outlook and view sharing to and from private domain areas. It is noted that item 5 of the SEARs states that the development application must prepare a VIA and view analysis which addresses, amongst other things, the following:

*Planning principles for impacts on **private** and public domain **views**.*

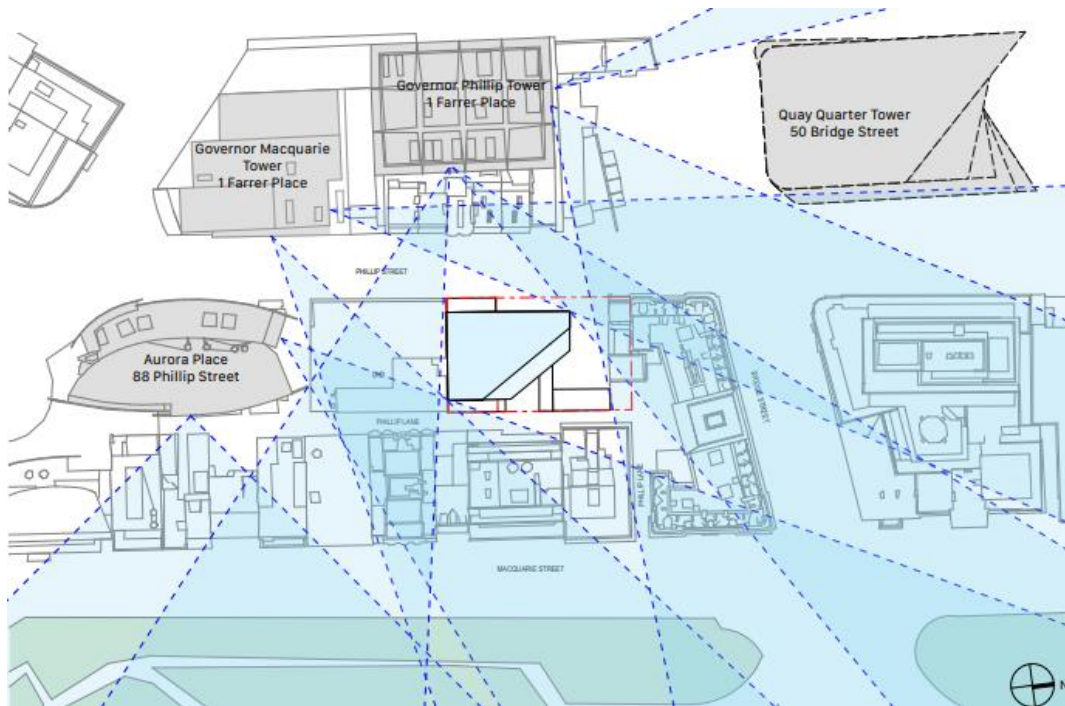
There is little evidence in the VIA for where the assessment and analysis of planning principles for impacts on private views has occurred. This is justified in the VIA by indicating that the focus of the *Central Sydney Planning Strategy (CSPS)* with respect to views is the protection of significant views to and from the public domain, such as significant places and buildings. Further, the VIA states that *Tenacity Consulting v Warringah [2004] NSWLEC 140* is not relevant in the context of the CSPS given it establishes a clear position on private views in Central (including the site). As a result, the VIA concludes that considering impacts on the private domain is excluded from the assessment.

This directly contradicts the DPIE's SEARs and an established court Planning Principle on view sharing. As a result, the proposals impact on view sharing to surrounding commercial and other developments, including Aurora Place, are unknown.

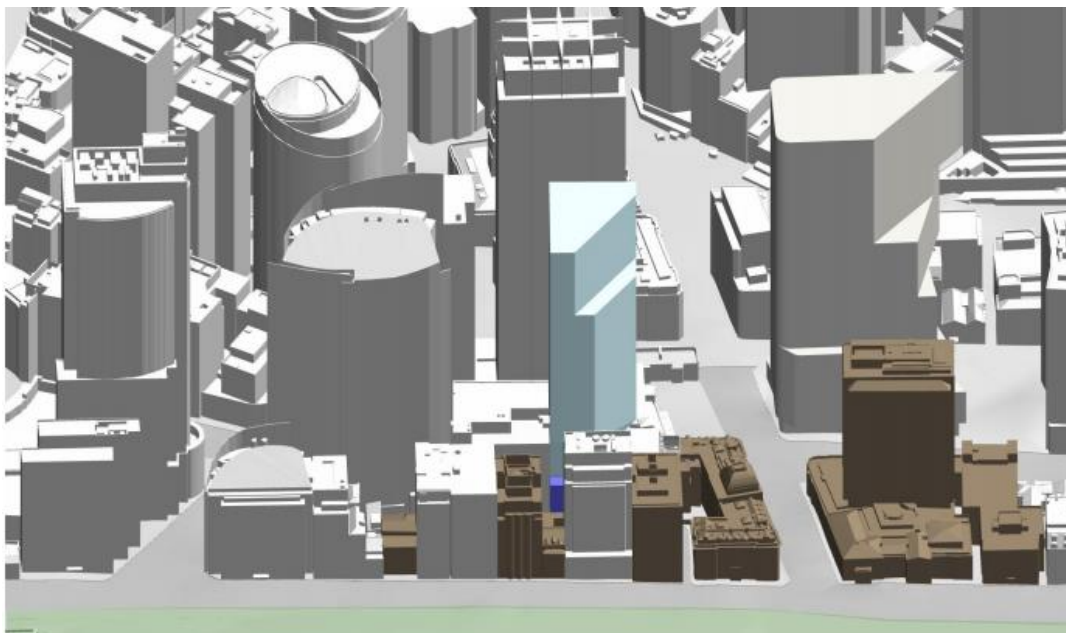
The Design Report accompanying SSD-10464 provides brief consideration of view sharing impacts (one page) which highlights what they appear to understand the impacts to view corridors of surrounding developments situated to the west and south-west (Aurora Place) might be. However, the insufficiency of the VIA and lack of information provided make it difficult to interpret what impacts the proposed building envelope may have on Aurora Place, as well as other surrounding developments. Particularly with regards to what levels these impacts to existing view corridors occur.



Figure 3 Private View Impacts

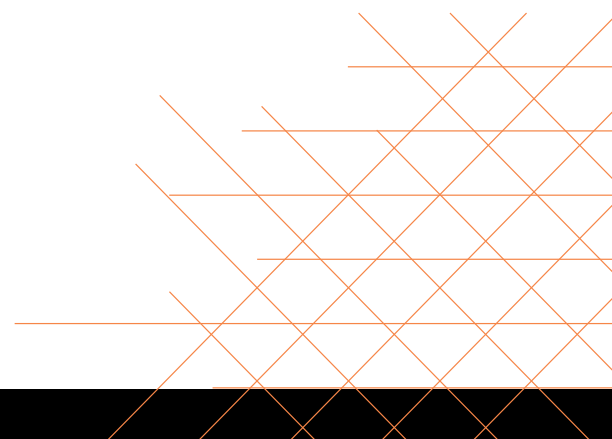


Picture 1 View Sharing Diagram



Picture 2 Aerial View from the East

Source: FJMT





From the images above it appears as though the proposed building envelope could have adverse view impacts on Aurora Place which would impact significantly on the amenity of existing tenants. In particular, the proposal appears as though it could obscure the significant existing view corridor from Aurora Place to Sydney Opera House and Harbour (toward the north) and potentially the view corridor to Circular Quay along Phillip Street. Potential amenity impacts such as these further hinder the incentives for the workforce of Aurora Place return to working in the CBD and has spill over effects on surrounding local businesses.

It is requested that further information on view impacts and an updated VIA that adequately analyses and assesses private view sharing impacts to surrounding developments such as Aurora Place as per the SEARs issued by DPIE.

Building Envelope Non-Compliances

Whilst there is no objection to the notion of development occurring at 50-52 Phillip Street, it is our view that there is minimal consideration impacts on the amenity of the existing buildings within the surrounds. This is highlighted by the proposals non-compliance with the setback and SAP controls.

Building Envelope Setbacks

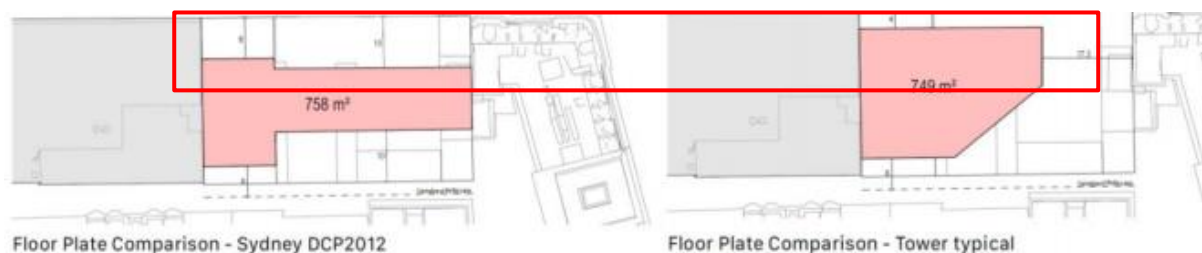
Following our review of the EIS and exhibited documents accompanying SSD-10464 it is apparent that the proposal is seeking to vary some of the setback controls contained within the *Sydney Development Control Plan 2012* (SDCP).

Whilst we acknowledge DCPs do not strictly apply to SSDs in accordance with Clause 11 of the *State Environmental Planning Policy (State and Regional Development) 2011*, the SDCP provides various controls which are considered relevant in determining the suitability of built form, bulk and scale and separation to neighbouring developments. We understand the City of Sydney Council readily apply the SDCP when assessing SSDs.

The objectives of the SDCP setback requirements relate to enhancing amenity with regards to daylight access, outlook, view sharing, ventilation, wind mitigation and privacy.

In particular, the proposal is non-compliant with the 8-metre weight average setback control to Phillip Street and the 10 metre setback requirement to the State heritage listed building at 50 Phillip Street. The applicant has provided a comparison of an SDCP compliant envelope and the proposal in which we have marked up the non-compliance (refer figure below).

Figure 4 Comparison of the Proposal and an SDCP Compliant Envelope



Source: FJMT

In our view, the proposed non-compliant envelope which breaches the required Phillip Street and heritage item setback could adversely impact on the amenity of Aurora Place situated to the south in terms of reducing solar and daylight access (particularly overshadowing to the western façade), and impacting upon the existing view corridor to the north along Phillip Street (as previously discussed).



There are also concerns that the Phillip Street setback non-compliance results in a longer building interface which presents to the southern boundary and effectively Aurora Place. In addition to the beforementioned amenity impacts, this could result in additional privacy impact considerations for future detailed designs.

As such, it is requested that the applicant and DPIE give further consideration to a compliant building envelope (in terms of setback) and mitigating adverse overshadowing, daylight, and view sharing impacts as this will provide improved amenity to Aurora Place.

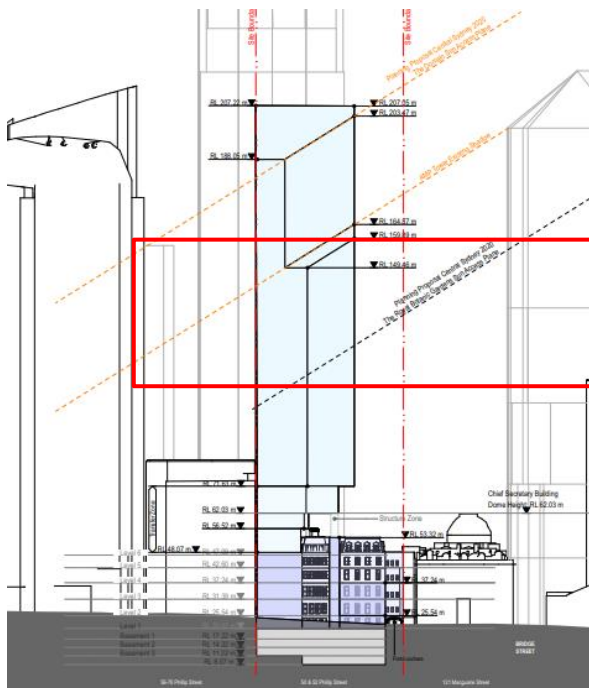
Building Height and Sun Access Planes

The proposal is non-compliant with The Domain 7 SAP and Royal Botanical Gardens 8 SAP under clause 6.17 of the *Sydney Local Environmental Plan 2012* (SLEP). We note that these controls are used to determine suitable building height in the absence of an applicable height control under clause 4.3.

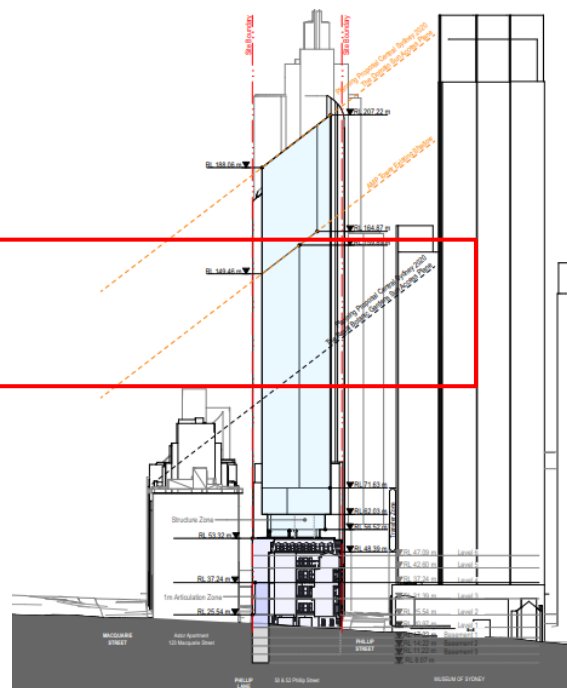
The proposal attempts to justify the non-compliances by indicating that the proposal adopts the slightly modified SAPs established in the Central Sydney Planning Proposal 2020 (CSPP 2020). However, it is noted that the lower massing portion of the proposed building envelope is non-compliant with the modified SAP for the Royal Botanical Gardens outlined under the CSPP. Notwithstanding the proposal's compliance with the CSPP Domain SAP, it is still non-compliant with the requirements under clause 6.17 of the SLEP.

The proposals non-compliance with clause 6.17 of the SLEP and CSPP Royal Botanical Garden SAP are illustrated in the figure below.

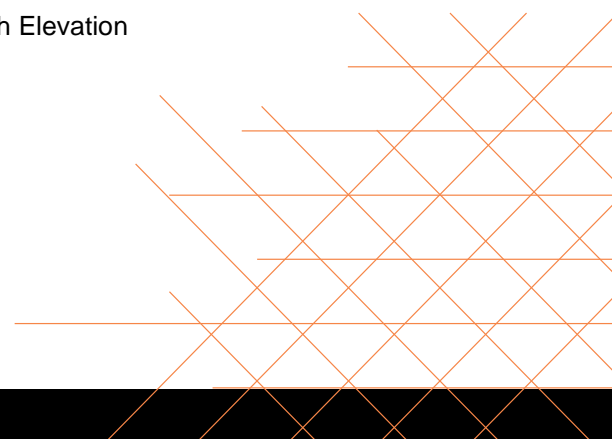
Figure 5 CSPP 2020 SAP Non-Compliances (outlined in red)

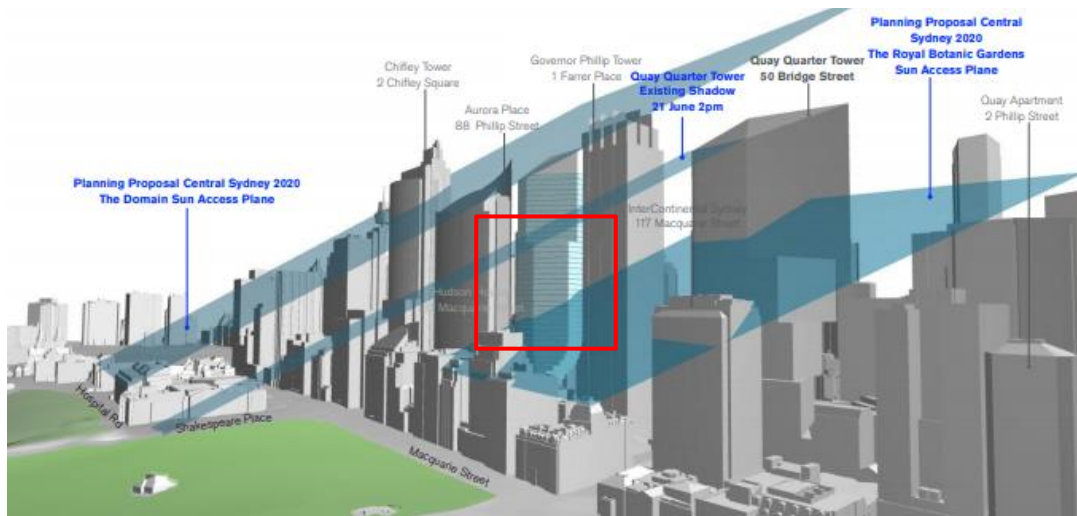


Picture 3 East Elevation



Picture 4 North Elevation





Picture 5 North-East Axonometric View of Botanical Gardens SAP Non-Compliance

Source: FJMT

The non-compliances with both the SLEP and CSPP SAP controls could cause adverse amenity impacts to existing tenants at Aurora Place with regards to overshadowing. The proposed building envelope and Aurora Place are similar in height. As such, it is considered that any reduction in height to achieve compliance with the SLEP SAP controls will improve solar and daylight access to Aurora Place, particularly to the upper floor tenancies.

It is requested that the applicant provide information for their non-compliances with the SLEP controls, particularly in terms of providing an overlay which demonstrates the height breach (similar to Picture 5 above but for the SLEP controls). In addition, it is requested the applicant further consider complying with these controls to enable greater solar and daylight access for Aurora Place, thus improving the amenity for existing tenants.

Further information is requested regarding the applicant's utilisation of section 4.38(3) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) to vary the requirements of clause 6.17, noting that there are varying interpretations of this provision in terms of whether it is a 'non-discretionary' or 'prohibition' clause.

Even though 201 Elizabeth Street is one example of a SAP breach, precedent alone is not a reasonable argument. One interpretation is that the clause is 'non-discretionary', on the basis that 'prohibitions' relate specifically to land uses. On this interpretation the SAP controls under the SLEP would have to be strictly applied and the proposal would not be able to vary the controls via clause 4.6 variation request.

Conclusion

This submission letter has been prepared by JLL on behalf of the owners of Aurora Place at 88 Phillip Street, Sydney, in response to SSD-10464 currently on exhibition.

We have reviewed the public exhibition documents associated with SSD-1464. Further information has been requested to fully understand the extent of impacts associated with the proposal on Aurora Place, along with further consideration of reducing the scale of the building envelope to improve amenity outcomes for surrounding development.



JLL would welcome the opportunity to engage with the applicant so they can further understand our concerns and would appreciate being notified of any future changes to the proposal. JLL also seeks engagement in future applications and the detailed design of the tower form.

In making this submission, we confirm that we have not made any political donations in accordance with Section 10.4 of the *Environmental Planning and Assessment Act 1979*.

We trust that the DPIE will consider this submission as part of the exhibition and overall assessment process. Should you have any queries regarding this submission letter, please do not hesitate to contact the undersigned.

Yours sincerely,

Ben Nicholson
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General Manager, Aurora Place

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