

The Executive Committee  
Strata Plan 51487  
Victoria Tower  
197 Castlereagh Street  
Sydney NSW 2000

1 May 2017

Ms Bridget McNamara  
Senior Planner  
City of Sydney Council  
GPO Box 1591  
Sydney NSW 2001

Dear Ms McNamara,

**DA/2017/349 – SUBMISSION FOR STATE SIGNIFICANT DEVELOPMENT APPLICATION FOR STAGE 1 CONCEPT APPROVAL FOR THE CONSTRUCTION AND USE OF A 50 STOREY (RL198.22) MIXED USE BUILDING**

On behalf of the owners of lots in Strata Plan 51487, known as Victoria Tower, 197 Castlereagh Street, Sydney we object to the State Significant Development Application for Stage 1 Concept Approval for the Construction and Use of a 50 storey mixed-use building at 201 -217 Elizabeth Street Sydney.

We strongly object as the proposed development will significantly adversely affect the amenity and privacy of occupants of Victoria Tower and other neighbouring buildings, including:

1. The proposed new tower breaches the objectives in clause 6.17 of Sydney Local Environmental Plan 2012 to ensure that buildings maximise sunlight access to public places and do not project higher than any part of the sun access plane taken to extend over the land and contravenes the principles expressed in Draft Central Sydney Strategy 2016, the City's most recent enunciation of policy.
2. The proposal unreasonably and significantly deprives occupants of Victoria Tower and neighbouring buildings of iconic and water views and sunlight, casting Victoria Tower and other buildings into shadow for much of the day throughout the year,
3. The size bulk and height of the proposed podium closes the access and view lines from the main eastern access along the William Street Boulevard to the Town Hall and future Town Hall Square and would create a virtual impenetrable wall of building along the western boundary of Hyde Park,
4. The proposed hotel rooms and southern and western tower apartments are perilously proximate to existing residences in Park Street and Castlereagh Street and will deprive occupants and future occupants of the proposed hotel and tower of privacy and amenity,
5. The building bulk and associated environmental impacts of the pavilion and tower particularly through noise, overshadowing and lack of sunlight significantly adversely affect Castlereagh Street,

6. Adverse traffic impacts as a result of the proposed 4 levels of basement parking, the hotel usage and be massive increase in floor space in the proposed development,
7. The uncertainty arising from proximity of the proposed development to future Pitt Street North Metro and uncertainty as to construction arrangements and the impact of rail operations under the building.
8. The request for bonus 10% floor space based on a purported architectural design competition where the allowance of such a bonus amounts to permission to breach the SLEP 2012 and Council policy on over-shadowing and sun access, and
9. Failure of the proponent to effectively conduct consultation with affected neighbours and misrepresentation of the level of concern of adversely affected neighbours.

### **Background**

The current development at 201 Elizabeth Street was approved prior to the commencement of the Environmental Planning and Assessment Act 1979 and prior to recognition of the importance of Hyde Park and policies to prevent overshadowing and blocking sunlight.

The current development is out of character with other development along Elizabeth Street, facing Hyde Park, being significantly taller and higher density than both older structures and structures completed since adoption of policies to protect Hyde Park.

The current structure results in very significant overshadowing of Hyde Park and impacts the Anzac Memorial and related structures.

Multiple residential developments have occurred or are underway in the blocks bounded by Park Street, Castlereagh Street, Liverpool Street and Pitt Street, including Park Regis, (hotel and residential) 27 Park Street, Victoria Tower, 197 Castlereagh Street, 189 Bathurst Street, Princeton apartments at 302 Pitt Street and Meriton serviced apartments at 329 Pitt Street. A 36 level mixed use residential tower has been approved at 203 Castlereagh Street, 110- 118 Bathurst Street and the Greenland project in Bathurst Street are currently underway. The application does not address the adverse impacts on the last 4 of these projects.

The 201 Elizabeth Street proposal will partially or totally extinguish views of Hyde Park, the Cathedral and Sydney Harbour affecting several hundred individual dwellings across these buildings and will very significantly adversely affect the amenity of several hundred further existing and under construction dwellings.

### **Northern Tower option**

The proposal to construct a new tower is a new development application for a building with substantially different uses than currently apply on the site.

The introduction of the podium element very significantly increases the bulk of development on the site.

Although not explicit, it is reasonable to assume that the current ground and basement level development on the site (which includes retail, rail access and a child care facility) was limited in height and mass to partially offset the extra height and bulk achieved in the existing tower, and to provide public amenity and light to also balance the overshadowing and loss of sunlight caused by the current Tower. We strongly submit that this should be the case while there is any tower development which exceeds the sun planes.

The site is crucially located at the junction of the main eastern suburbs entry to the CBD via the William Street Boulevard and through the centre of Hyde Park. The approval of the proposed podium would effectively close off the entry point to the CBD from the east and impose a wall of structures along the entire western side of Hyde Park, almost as high as the Park is wide. The current treatment provides a break which allows a line of sight from the Park and William Street up to and including glimpses of Town Hall and the open space around Town Hall and the Cathedral and the future Town Hall Square. The unique gateway to the CBD and from the CBD to the east which currently exists and provides light, ambience and interest would be obliterated by the mass of the proposed pavilion.

### **FSR controls**

The EIS asserts that the project is entitled to an FSR of 15.26:1 however there are no calculations to support this assertion. The ratio assumes that the 10% design excellence bonus will be included in the project and is unclear as to how the ratio is calculated based on the mixed land use. The proponent should establish how the calculations are made and in particular ensure that there is no double counting.

### **Overshadowing**

Clause 6.17 (2) of SLEP 2012 provides that 'The consent authority must not grant development consent to the development on land if the development will result in any building on the land projecting higher than any part of a sun access plane taken to extend over the land under this clause.'

The proposed Northern Tower project is higher than the sun access plane for at least 65% or 70% of its mass. The proposal overshadows Hyde Park including extending almost to the boundary of Liverpool Street, overshadowing the Anzac Memorial and in particular the new additions being constructed to complete the Memorial and also the aboriginal Memorial facing Elizabeth Street

The proponent does not in any part of the documentation provide any justification for this breach.

Instead the proponent seeks to assume or appears to argue that the breach is acceptable under clause 6.18 which refers to certain exceptions, including that there will be a result of at least a 50 percent reduction in overshadowing by a current building. Any such exemption is a discretionary matter and should be supported on very strong grounds. At the least, there must be strong verifiable improvements in sun access. Adverse impacts on neighbouring properties should be given added consideration.

Draft Central Sydney Strategy 2016 proposes to remove this exemption and instead proposes that any excess floorspace be transferred to other sites. This draft plan represents current policy and should override the former policy. Approval of the current proposal would represent an abandonment of the policy and principles.

Further, the proponent has failed to provide any calculation or measurement to support the proposition that the new building produces a 50% reduction. Diagrams with the report appear to be inconclusive and show that a reduction in the surface covered by the shadowing occurs, however it is not possible to verify this. In any event, it is submitted that a proper interpretation of the existing clause 6.18 and its objectives would require a 50% reduction in the extent of overshadowing i.e. the distance over the Park, not the footprint of the shadow. It is the overshadowing extending beyond the sun access plane which is the offending issue.

### **Building Setback**

According to Sydney DCP 2012 Clause 5.1.2 Building Setbacks and Figure 5.6; there should be a minimum average setback of 8m above the required podium level on the main pedestrian north-south street (assuming it's Elizabeth St) and a minimum setback of 6m on the secondary streets. Appendix

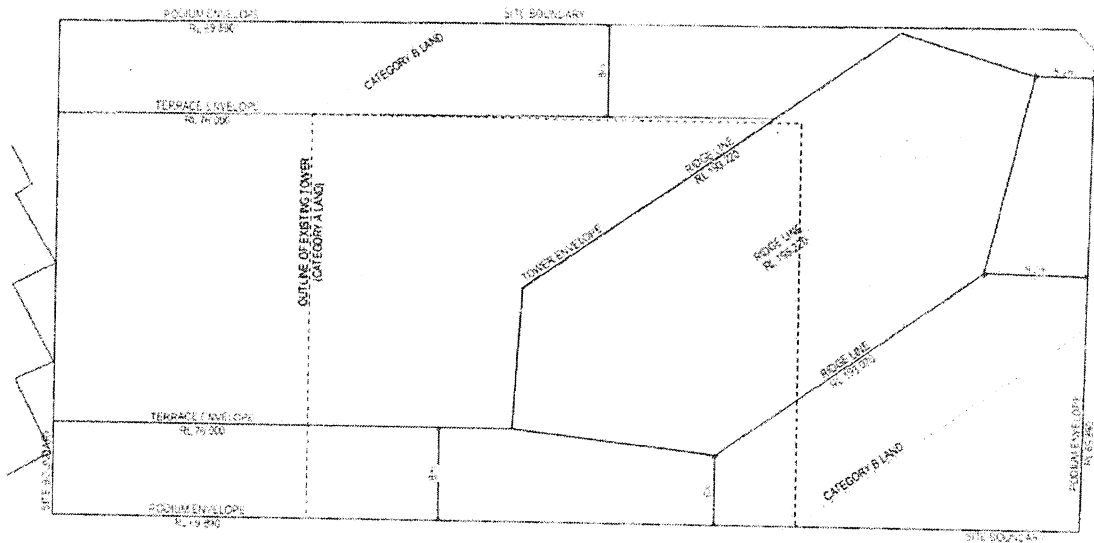
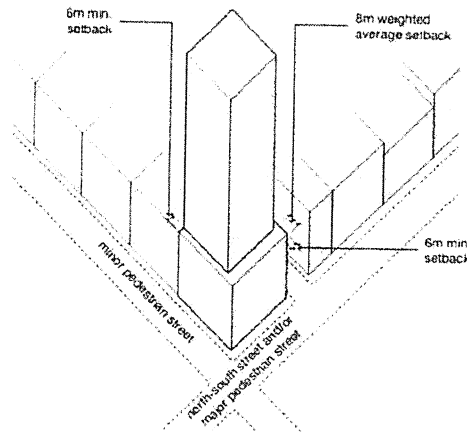
B Building Envelope – Roof Plan prepared by FJMT show that's these principles do not comply. The tower component encroaches on all 3 sides of the streets. The worst being Castlereagh Street where the proposed tower raises 50 storeys with zero setback.

**5.1.2.1 Front setbacks**

- (1) Buildings must be set back a minimum weighted average of 8m above the required street frontage height. This setback may be reduced in part by up to 2m provided that the weighted average setback from the street frontage alignment is 8m as shown in Figures 5.4 to 5.6. No part of the building is to be setback less than 6m.
- (2) The weighted average setback may be reduced on secondary or minor pedestrian streets, provided that an average weighted setback of at least 8m is maintained on north-south streets and major pedestrian streets.
- (3) New buildings or additions above a heritage item must have a setback of at least 10m from the street frontage as shown in Figure 5.7 *Minimum setback above a heritage item*. However, a conservation management plan required as part of the development application may require a greater setback.

**Note:** The weighted average setback may be reduced on corner sites and where the secondary or minor street has a minimum width of 6m and the street block has a depth of less than 30m.

**Figure 5.6**  
Where sites have three street frontages smaller setbacks may be acceptable on both minor pedestrian streets provided an average weighted setback of at least 8m is maintained to north-south streets and major pedestrian streets



### **Loss of views and amenity**

The northern tower and the pavilion will result in the total or partial loss of views over Hyde Park, the Cathedral and Sydney Harbour, North Head and Garden Island for several hundred residences.

We have sought and attach advice from Milestone (Aust) Pty Ltd, Development Managing and Town Planning consultants (Annexure A) in relation to view loss planning principles and relevant application of existing case law and rules in relation to view sharing. We incorporate the Milestone advice as part of our submission, however note that iconic view loss occurs from Level 8 to the top of the building and that apartments with a northern elevation also lose the same iconic views. To the extent that some views may open to South Hyde Park, and these views are not available to the north eastern apartments, these views in no way compensate for the loss of iconic park and harbour views of the proposed development.

Further, as indicated above the documentation does not address view loss or loss of sunlight in respect of the projects at 203 Castlereagh Street, the Greenland project, Princeton Apartments and Meriton serviced apartments.

The Tower will restrict sunlight totally to residences in Victoria Tower and Park Street and 189 Bathurst Street, casting many apartments into permanent shadow.

### **Consultation**

The proponent's consultation to date has been severely inadequate. Although claiming to have delivered 500 letters, residences and occupants in Victoria Tower, Park Street and Pitt Street have not received any correspondence from the proponent.

Potentially, the consultation effort was derailed by the error contained in most of the proponent's documents describing Victoria Tower as 201 Castlereagh Street rather than 197 Castlereagh Street. It is not clear what consultation or notice occurred in relation to other properties identified in this submission.

It is also noted that the consultation notice for a single meeting was only 8 days.

The attendance of just 12 at the consultation shows that it was lacking in validity.

### **Site access and parking**

Increasing the car park from 2 basements to 4 indicates a doubling of traffic movements. In addition, the hotel use will greatly increase traffic movements in Castlereagh Street which is already fully utilised for traffic and buses.

### **Design excellence**

It is noted that the proponent expects to receive the 10% FSR bonus based upon conducting a design competition.

The bonus is a discretionary matter and is intended to be applied where a competition produces outstanding design and urban outcomes. It is apparent from the proposal submitted by the proponent that the design competition envisaged is no more than a routine tender process to select an architect to do the detailed documentation for the project. The composition of the panel, 3 proponent representatives and 3 others cannot be expected to produce an independent outcome. The Stage 1 application which defines the building envelope and location of structures means that any contribution

by the stage to architect will be limited to detailed design elements and incorporation of BASIX and other requirements for modern buildings

Further, the practical effect of providing a bonus floorspace at this site is to facilitate breaching the relevant policies designed to protect sunlight in Hyde Park and venting construction above the sun access plane.

In all these circumstances the application should be refused.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Mark Wallace', written over a horizontal line.

Mark Wallace

**Chairperson SP51487**