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14 May 2021

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

**Attention: Karl Fetterplace**

Dear Karl,

## **RE: Submission on State Significant Development Application: SSD-10464 – 50-52 Phillip Street, Sydney**

This submission has been prepared by Perpetual Trustee Company Limited (**Dexus**) and Lendlease Funds Management Limited (**Lendlease**), the property owners of the land recognised as One Farrer Place, Sydney (**the 'asset'**), in relation to the proposed Concept (Stage 1) State Significant Development Application (**SSD DA**) at 50-52 Phillip Street, Sydney (**SSD-10464**).

We understand that Built Development (Phillip St) Pty Ltd (**the proponent**) submitted SSD-10464 to the Department of Planning, Industry and Environment (**DPIE**) on 25 March 2021. The application is currently on exhibition from 15 April 2021 to 12 May 2021 and DPIE is currently receiving submissions from surrounding stakeholders.

We have reviewed the exhibited documents associated with SSD-10464 as available on DPIE's 'Major Projects Portal' website. The property owners have some concerns with the proposed development and its potential impact on One Farrer Place. Specifically, these concerns relate to:

- Robustness and thoroughness of the Visual Impact Assessment (**VIA**). The VIA prepared by Ethos Urban and submitted with SSD-10464 is not consistent with the SEARs requirements with regards to views. The VIA provides little to no consideration of view sharing impacts to existing surrounding commercial developments and the view sharing impacts on our asset are unclear.
- The following non-compliances with key statutory controls are also acknowledged:
  - The proposed building envelope is non-compliant with the Sun Access Plan (**SAP**) controls under clause 6.17 of the *Sydney Local Environmental Plan 2012* (**SLEP**). The non-compliance could have impacts on the amenity of our asset with regards to overshadowing, daylight access and view outlook, and
  - The proposed building envelope seeks to vary the setback requirements under the *Sydney Development Control Plan 2012* (**SDCP**). Similar to the SAP non-compliance, these variations, particularly the varied setback to Phillip Street, has potential impacts on the amenity for our tenants in terms of reduced daylight and outlook, as well as impacts on view sharing. Noting the deficiencies of the VIA submitted, the impacts on our view outlook and sharing is unknown.

Each of these concerns are discussed further in the following sections of this submission letter. We wish to advise that this submission is to be registered as an objection in its current form and request that DPIE give due consideration to the stated matters.

# 1. SSD-10464 PROPOSAL

The following outlines our understanding of the proposal.

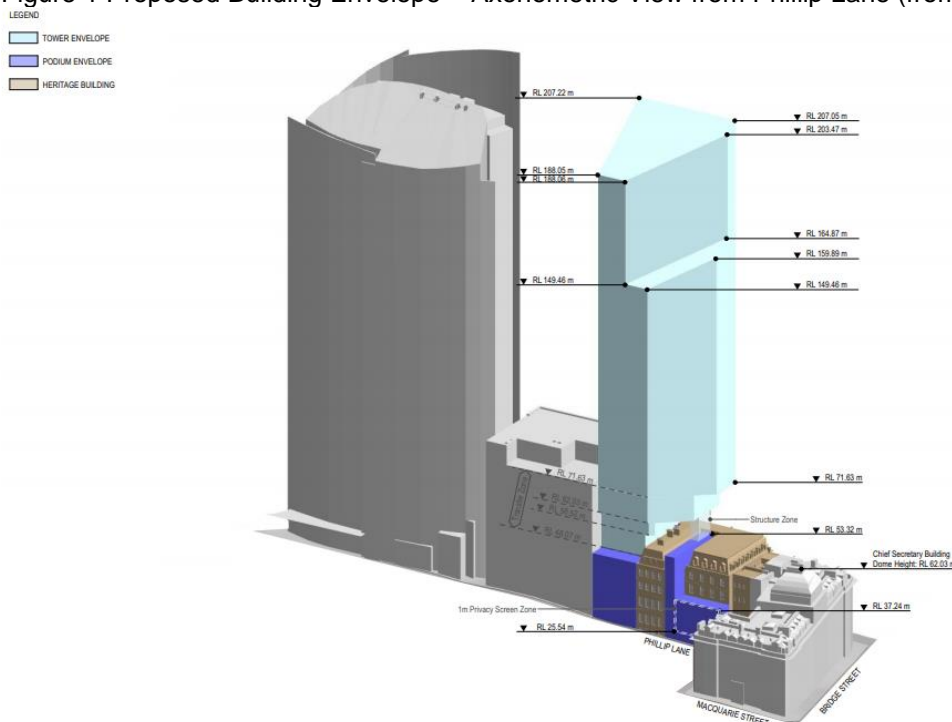
SSD-10464 is seeking concept approval for:

- 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 and max gross floor area (GFA) of 25,374.5m<sup>2</sup> (approx. FSR of 15:1), comprising approximately 81.5% hotel floor space and 18.5% 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 building envelope contains three components, a podium envelope, transfer / structural zone and a tower envelope. The podium envelope retains and responds to the scale and form of the existing heritage building, a volume in lieu of the demolished 52 Phillip Street, a volume in the light well of the heritage building and a rear extension on Phillip Lane. The transfer / structure zone provides a transition from the heritage item to respect the existing fabric and runs from RL 48.39 to RL 71.63. The tower envelope sits above the transition zone and runs up to RL 207.22.

We understand no construction or detailed design is sought as part of this Concept SSD DA.

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

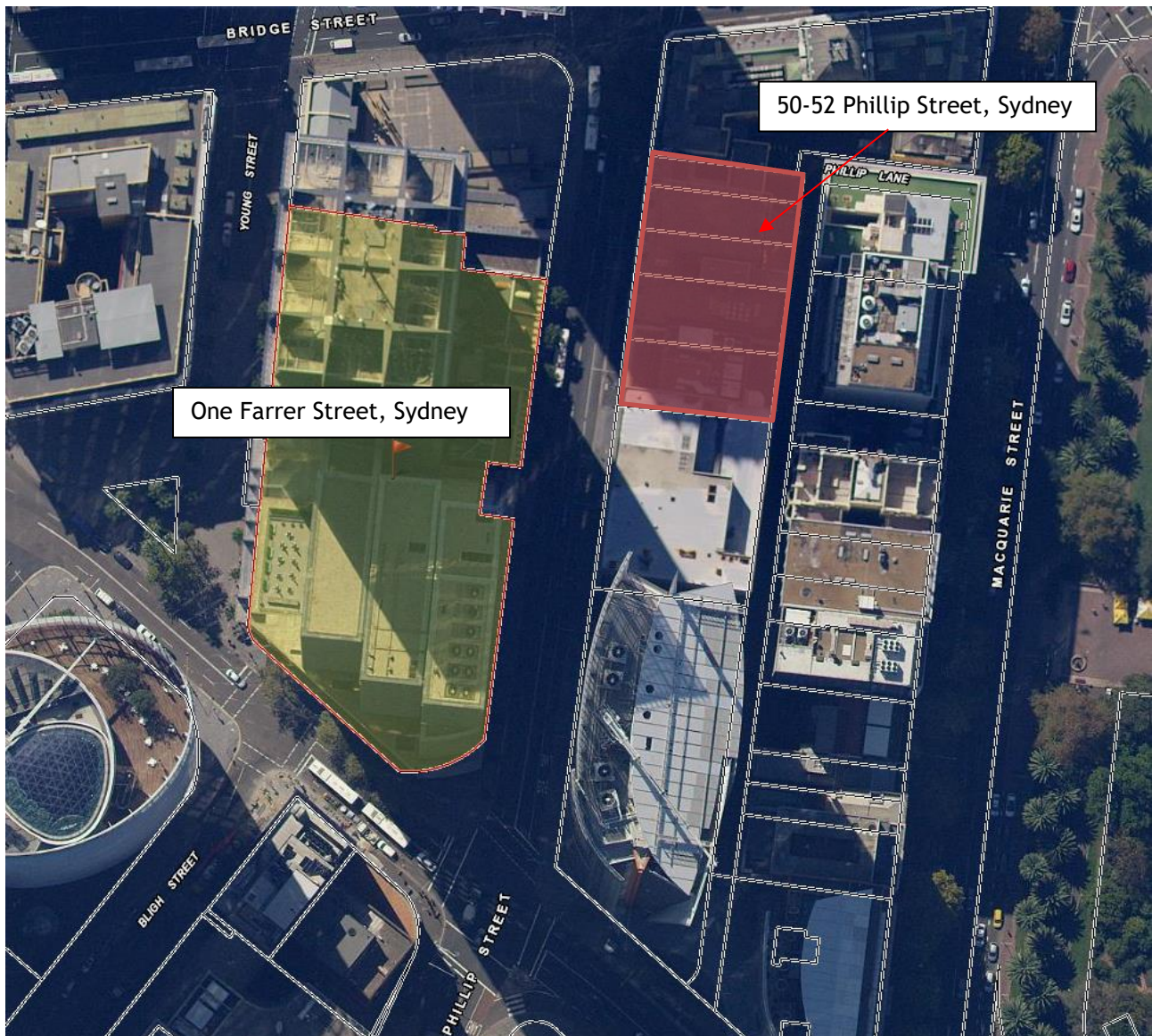


Source: FJMT

## 2. DEXUS AND LENDLEASE ASSET AT ONE FARRER PLACE, SYDNEY

Our asset at One Farrer Place, Sydney sits approximately 18 metres to the west and south-west of the subject site at 50-52 Phillip Street. Our site occupies the majority of the block on the west side of Phillip Street from Bridge Street in the north down to Bent Street in the south (refer **Figure 2** below), excluding the site of the 'First Government House Place' and the 'Young Street Terraces' situated in the northern portion of the block, both of which are State heritage listed items under the *Sydney Local Environmental Plan 2012 (SLEP)*.

Figure 2 Site Aerial of Dexus / Lendlease Asset



Source: Nearthmap

Our site currently comprises Governor Phillip Tower (62-storey commercial office building), Governor Macquarie Tower (41-storey commercial office building including a west facing terrace), Raphael Place dining precinct and the State heritage listed Phillip Street Terraces.



The Museum of Sydney is also included within our block of land. The associated public spaces and heritage buildings along Phillip Street which contribute to this area are of high significance and protection. In our view, as neighbouring property owners we are custodians of this area and have a responsibility to the community, surrounding residents and surrounding commercial tenants to protect this place, where possible, from adjacent overdevelopment.

The asset at One Farrer Place is currently home to a number of key long-term tenants, including global investment banks, higher tier law firms, corporate advisors and financiers.

### 3. SUBMISSION POINTS OF CONCERN

Whilst the SSD submission is largely acceptable and a robust application has been prepared, there are a few areas of concern that have the ability to have an adverse impact on One Farrer Place. This submission details these concerns and provides recommendations to DPIE which aim to result in an improved building envelope which protects the environmental amenity of our asset and would have the potential to represent an improved urban design outcome both now and in future detailed design.

#### 3.1. INSUFFICIENT VISUAL IMPACT ASSESSMENT

The development application SSD-10464 is accompanied by a Visual Impact Assessment (**VIA**) prepared by Ethos Urban. The VIA utilises existing photographs / photomontages and identifies five viewpoints within the public domain including one on Phillip Lane, three along the Bridge Street and Phillip Street sequence and one on Conservatorium Road.

The robustness of the VIA is of concern on our asset and other surrounding commercial sites. In our view the VIA is inconsistent with the SEARs requirements issued by DPIE in that it fails to consider the proposal's impacts on views and view sharing to/from the private domain. Specifically, SEARs 'key issue' item 5 states:

*The EIS must address the following specific matters:*

##### 5. Visual Impacts

*Prepare a Visual Impact Assessment and view analysis of the proposal to/from key vantage points including existing photographs, photomontages and perspectives of each elevation and 3 dimensional images of the proposal, addressing:*

*Key elements and views of the development from key locations, including close views showing the relationship of the heritage buildings with the proposed tower as well as Phillip Lane.*

*Key views, vistas and view corridors from the public domain and residential buildings that may be impacted as determined by the view analysis.*

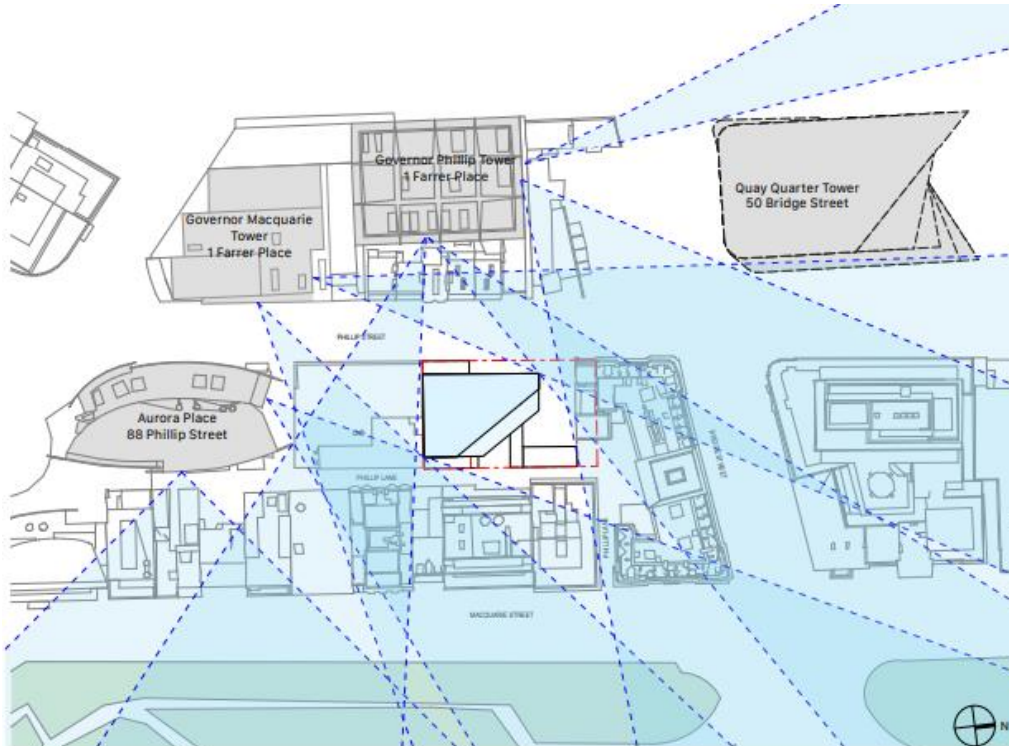
***Planning principles for impacts on private and public domain views.***

The VIA attempts to justify the analysis undertaken on the basis that the policy focus of the *Central Sydney Planning Strategy* in relation to views is on the protection of significant views to and from the public domain including significant places and buildings. To this point the VIA states '*Tenacity Consulting v Warringah [2004] NSWLEC 140 is also not considered relevant as the CSPS establishes a clear position on private views in Central Sydney, which includes the site*' and as such, '*consideration of impact on the private domain is excluded*', contrary to the requirements of the SEARs and an established court Planning Principle on view sharing.

Given the deficiencies in the VIA, the actual view sharing impacts on One Farrer Place and other existing commercial developments within the surrounds is unclear. Currently our site and existing commercial buildings enjoy unencumbered views to and from Sydney Harbour toward the north-east and east. Whilst we acknowledge the Design Report, forming part of the application, includes an image which attempts to

highlight view sharing impacts resulting from the proposal, again we reiterate there is a lack of information in the assessment as to what extent view sharing from our site is impacted.

Figure 3 2D View Sharing Diagram



Source: FJMT

As such, we question the disproportionate sharing of views on our asset and other surrounding commercial developments up to level 48 (i.e. up to the maximum building height). The current proposal could have significant impacts on the amenity (in terms of view sharing) for key anchor tenants including global investment banks, higher tier law firms and corporate advisors and financiers. Specifically passing views onto a few “individual” residents at the expense of many commercial tenants. This becomes increasingly significant in the current climate where we’re seeking to bring the CBD workforce back to the financial core precinct to support the local businesses and stimulate the local and state economy.

**We request that the proponent provide further information and prepare a revised VIA which provides a robust assessment in accordance with the requirements of the SEARs, in order for One Farrer Place and other key surrounding stakeholders to understand the actual view sharing impacts of the proposal on our land.**

### 3.2. BUILDING ENVELOPE NON-COMPLIANCE CONSIDERATIONS

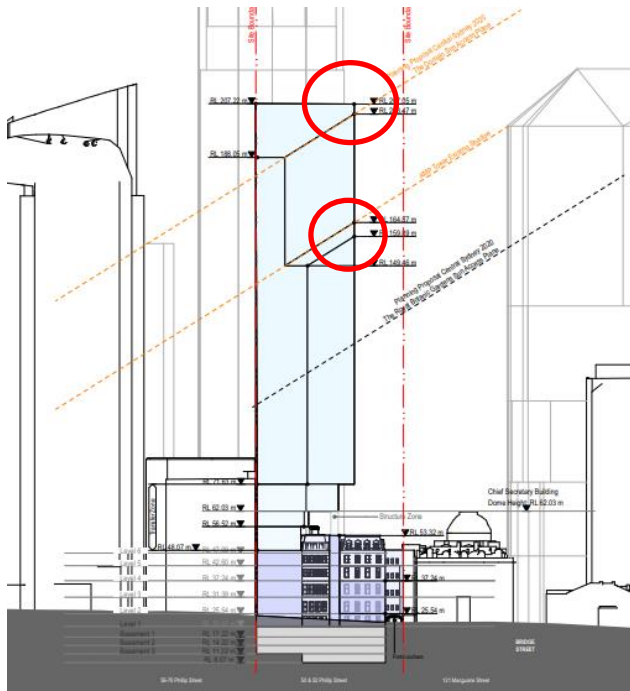
We wish to acknowledge the proposal’s non-compliance with key statutory controls, in particular, the Sun Access Plane and building setback metrics. Along with the floor space ratio (FSR) controls, these metrics inform the potential density that can be achieved across the site.

#### 3.2.1. Sun Access Plane (SAP) Non-Compliance

The site is located in ‘Area 3’ and is not subject to a maximum height of building height under clause 4.3 of the SLEP as per the note under clause 4.3(2). The maximum height is therefore largely determined by the sun access plan (SAP) controls under clause 6.17 of the SLEP. The objectives of clause 6.17 are to maximise sunlight access to the public places identified and the facades of sandstone buildings in special character areas.

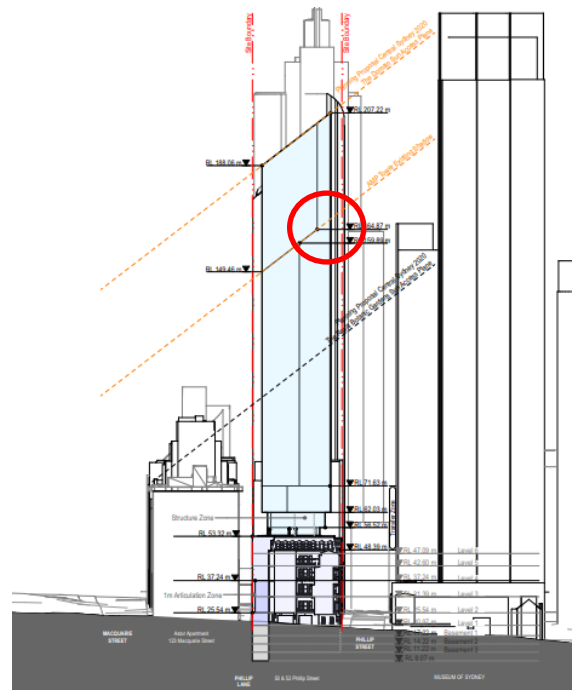
The proposed building envelope height exceeds both the Domain 7 SAP and Royal Botanical Gardens 8 SAP under the SLEP. The proposal seeks to justify this exceedance by utilising the modified SAPs for The Domain and Botanical Gardens under the Central Sydney Planning Proposal 2020 (**CSPP 2020**), notwithstanding the fact that the proposal still exceeds the modified Royal Botanical Gardens SAP (refer figure below).

Figure 4 CSPP 2020 SAP Non-Compliances (highlighted)



### Picture 1 East Elevation

Source: FJMT



### Picture 2 North Elevation

Source: FJMT

Whilst we understand there is no height control under clause 4.3 of the SLEP, we put forward that the objectives of this clause should still be considered in determining an appropriate building envelope height. To this point, we note that clause 4.3(1)(c) of the SLEP outlines the objective to ‘*promote the sharing of views*’. We question whether the breach of the draft CSPP controls has adequately considered the objectives of clause 4.3, notwithstanding the non-compliance with clause 6.17 of the SLEP. This ties into early commentary provided with regards to the “robustness” of the VIA accompanying the development application.

It is noted that non-compliance with the SAP (i.e. height) controls could result in significant view sharing, daylight access and overshadowing impacts to our site which may cause adverse amenity impacts to existing tenants and site visitors. **We request that the building height is further investigated to address adverse amenity impacts to our site and improve daylight access and overshadowing.**

Further, we question the development application'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.

**As such, we request the proponent provide legal clarification of the pathway utilised to vary clause 6.17 of the SLEP.**

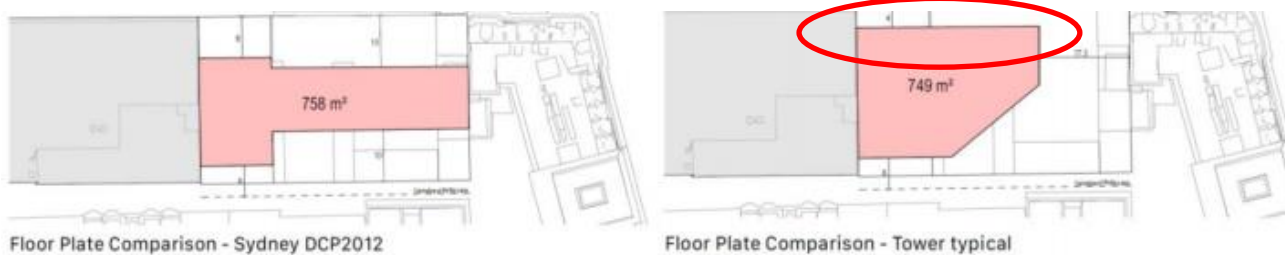
### 3.2.2. Building Setbacks Non-Compliance

Pursuant to Clause 11 of *State Environmental Planning Policy (State and Regional Development) 2011*, the application of local development control plans is excluded when assessing SSD applications.

Notwithstanding, in the circumstances of Central Sydney, the applicable *Sydney Development Control Plan 2012 (SDCP)* remains relevant when guiding building envelope design and assessing the proposal against key controls relating to built form, bulk and scale, and setbacks to adjoining development given these controls are readily and consistently applied.

Section 5 of the SDCP includes specific controls relating to Central Sydney in which the SSD site is sited. An assessment of the proposal has highlighted that the proposal seeks to vary the setback requirements, most notably in relation to our site, is the variation to the Phillip Street 8 metre weighted average front setback (minimum 6 metres) (refer figure below).

Figure 5 Tower SDCP Compliant Building Envelope and Proposed Building Envelope Comparison



Source: FJMT

Generally, the objectives of the setback requirements are to enhance amenity in terms of daylight, outlook, view sharing, ventilation, wind mitigation and privacy (in the case of residential uses).

We submit that the proposed non-compliant Phillip Street setback could result in adverse impacts on the amenity of our asset with regards to reducing our daylight and outlook, as well as impacting upon our view sharing, particularly our current unencumbered views to and from Sydney Harbour (towards the north and north-east).

**We request that the proposed Phillip Street setback is investigated further to mitigate adverse impacts to One Farrer Place, particularly regarding improving daylight/solar access and view outlook.**

### 3.3. DESIGN POINTS OF CONSIDERATION

It is requested that the following public amenity and design matters be considered in the assessment and ongoing development of this SSD DA, as well as the future design competition process (i.e. design competition brief) and subsequent Stage 2 detailed design/SSD DAs. Key points for consideration are summarised below.

- Public Amenity issues:
  - Potentially adverse wind impacts on pedestrian comfort / safety in Phillip Street and in particular First Government House as a significant public space. Consideration should also be given to surrounding outdoor dining areas.
- Heritage:
  - Heritage issues such as the relationship of new development to the scale of the Chief Secretaries Building and the Phillip Street Terraces when viewed from the street level.
  - Any adverse impacts on vistas to the Chief Secretaries dome and roofscape should also be carefully considered.

- One Farrer Place including the Museum of Sydney and neighbouring First Government House Place are listed on the Institute of Architects nationally Significant 20th Century architecture. Any new development in this precinct and the subject site should not detract from the significance of these built form elements.
- The Modern Movement Architecture (1945-1975) in the Central Sydney Heritage review (March 2019) identified various items that warrant consideration for inclusion in Schedule 5 of the SLEP 2012. It also recommended that the study be extended to include buildings constructed during the last quarter of the 20th Century. It is considered that the One Farrer Place site would be an item on this extended study for assessment.
- Private Amenity considerations:
  - The built form composition of any tower forms in this precinct should carefully address urban design considerations with the surrounding historic context. Any new development should address all amenity issues such as view sharing, overshadowing, solar and daylight access, wind, privacy and building separation (amongst others).

**We request and encourage ongoing consultation with key stakeholders of One Farrer Place during the design phase to consider the abovementioned issues.**

### 3.4. LANDOWNER'S CONSENT

We note that the site is part privately owned by the proponent of SSD-10464 (52 Phillip Street) and part owned by the State Government (50 Phillip Street). Whilst we acknowledge that landowner's consent is required prior to any determination of a DA under the EP&A Act, we would like to attest that appropriate conflict of interest and probity procedures are enacted given DPIE (a State Government department) is assessing a proposal that resides on State owned land.

## 4. CONCLUSION

This submission letter has been prepared by Dexus and Lendlease the joint owners of One Farrer Place, Sydney, in response to SSD-10464 currently on exhibition.

We have reviewed the public exhibition documents associated with SSD-1464 and have requested a number of measures including recommended conditions of consent should the SSD be approved to rectify identified concerns as detailed in this letter.

Dexus and Lendlease also encourage a continual dialogue with the nearby site and would appreciate being informed of future amendments to the scheme.

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 me on +61 400 807 848 or [jeff.mcwilliam@dexus.com](mailto:jeff.mcwilliam@dexus.com)

Yours sincerely,



Jeff McWilliam  
General Manager - One Farrer