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## Heritage Submission

SSD Stage 1 Application

InterContinental Hotel

Former Treasury Buildings and Transport House

99 – 119 Macquarie Street,

Sydney, NSW 2000

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# 1 Introduction

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## 1.1 Commission

DFP has been commissioned by Stamford Property Services to prepare a submission objecting to the proposed State Significant Development Stage 1 application for addition of a swimming pool and ballroom, which would extend the InterContinental Hotel on top of Transport House, 99 Macquarie Street, Sydney and for alterations to the former Treasury Building.

This submission reviews the impacts of the proposed works against the assessed heritage significance of Transport House and the former Treasury Building and the significance of the Macquarie Street Special Character Area. For the purposes of this submission, the approach taken has been to critique the heritage documents submitted in support of the State Significant Development Stage 1 application.

The report has been prepared by Brian McDonald, Principal Urban Designer and Heritage Consultant, DFP Planning and reviewed by Amy Cropley, DFP Planning.

## 1.2 Report Limitations

This submission is limited to review of the heritage impacts of the proposed development, including commentary on the conservation management plans and the statement of heritage impact that accompanied the application.

## 2 Proposed Development

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### 2.1 Description of Proposed Works affecting Transport House

The indicative plans show a new store, hoist and plant room servicing the new pool/ballroom at level 8 (extending up to level 9) over the Macquarie Street wing of Transport House. A plant area is also shown at the Phillip Street frontage at this level. There is no information about whether windows would be changed or whether significant floor loadings would be imposed.

Also at level 8, the plans and elevations show a void space equivalent to a floor over the existing roof, apparently to accommodate the structure of the swimming pool.

The swimming pool is shown at level 9 with a recessed terrace on the north side and the upper level of the new store, hoist and plant room servicing the new pool/ballroom. This structure extends to the northern boundary of the Macquarie Street wing.

The ballroom is located at level 10 with the space extending up to levels 11 and 12. The plans show a service corridor on the west side which appears to sit on top of the two turrets of Transport House, which are an important design feature.

### 2.2 Description of Proposed Works affecting the Former Treasury Building

The documentation of the proposed works affecting the former Treasury Building is not clear and lacking in any detail. The information, in notations only, that can be gleaned, in notations only, from the drawings and associated statements indicates that it is proposed to make the following changes in areas of heritage significance:

- Activate Macquarie Street with food and beverage, replacing the current retail arcade. Food and beverage to extend into Cortile and out to Macquarie/Bridge Street terrace at level 5 (ground floor) (there are no details of where the access to the terrace will be and what fabric would be affected);
- At level 6: replace existing Treasury restaurant and heritage function room/office space with expanded all day dining with direct access to Macquarie Street (there are no details of where the access will be and what fabric would be affected);
- At level 6: Former hotel school administration converted into bridal retail with street presence and direct access (there are no details of where the access will be and what fabric would be affected);
- At level 6: improved meeting and function spaces replace Café Opera (in return relocated to former Treasury Restaurant/meeting space);
- At level 7: extended ballroom and with added flexibility, **subject to approved removal of heritage walls**, bridal retail with street presence and direct access and potential for wedding planning suite adjacent to bridal retail;
- At level 10: Construct new pre-function/meeting space above cooling tower enclosure (this extends above the northern section of the former Treasury Building and may cause structural intervention below)

### 3 Comments on Transport House Conservation Management Plan and Heritage Impact Statement

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#### 3.1 Conservation Management Plan

The version of the Conservation Management Plan for Transport House (CMP) by Urbis reviewed is a second draft dated 21 December 2016. The following discussion focusses on the flaws in the approach taken to determine an appropriate conservation policy framework, which is based on a foregone conclusion about whether it is acceptable to create upper level additions to Transport House. It is not necessary to comment on the Building Description and Historical Background sections of the CMP, which have been thoroughly researched and investigated. However, it is important to note that, based on the research of the documentary and physical evidence, the assessment of significance in the CMP reaches a conclusion that Transport House meets the threshold for significance at a state level warranting listing on the State Heritage Register.

##### 3.1.1 Significance Assessment

The CMP contains a statement of significance at Section 5.2, which recognises that the building is:

*“significant as a later (mid twentieth century) contributor to the long term Government based occupation of the area, which commenced with the Treasury Building in c.1849, and included other surrounding sites such as the Police and Justice Museum (former Water Police Court and Police Station), Health Department Building, and the Chief Secretary’s Building.”*

The statement of significance also states that:

*“Transport House is aesthetically significant at a state level as an outstanding example of modernist architecture evidenced by the Inter-War Stripped Classical style façade to Macquarie Street and Art Deco façade to Phillip street and interiors, and is representative of these typologies.”*

Section 5.3 of the CMP provides a detailed assessment of the comparative significance of the components of Transport House in the form of a table and colour coded drawings. This assessment can be summarised as follows:

- The overall external form of the Macquarie Street and the Phillip Street facades is rated as of exceptional significance;
- The wall materials and windows of all four facades are rated as high significance, with a few smaller decorative elements at the entries as being exceptional;
- The form of the Phillip street lift over-run / stair well / plant room towers is rated as high significance;
- The form of the Macquarie Street lift over-run and plant room structure is rated as moderate significance;
- Throughout the interiors there are surviving original fabric and finishes rated as high significance, including, but not exclusively: internal spatial configurations; scagliola – terrazzo flooring; coffered and Art Deco ceilings exposed brick walls; columns; terrazzo staircases; lift lobbies; tiled wall finishes; marble wall finishes; toilet fit outs; windows; and bronze faced doors;
- The Commissioner’s Room and Boardroom on the first floor are rated as high significance and;

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- The overall form and configuration of main registration hall and mezzanine gallery, as well as the timber cleat escalator from the sub-basement to the registration hall, are rated as exceptional significance.

It follows from the assessment of significance that the entire external envelope and design quality, the internal spatial characteristics and internal fabric of Transport House are of such significance that these qualities must be protected and conserved.

### 3.1.2 Opportunities and Constraints

In Section 7.3 - OBLIGATIONS ARISING FROM HERITAGE SIGNIFICANCE, at page 198, the CMP sets out obligations arising from heritage significance. The fifth bullet point states:

*"The building's current envelope should be retained as existing and no major additions or removal of fabric should occur, other than those specifically referred to in Section 8; Conservation Policies.*

Section 7.4 -OBLIGATIONS ARISING FROM THE CONDITION AND INTREGRITY OF FABRIC AND PHYSICAL EVIDENCE, at page 199, contains the same statement and adds:

*"There is an opportunity to provide additional floor levels above the existing building form in accordance with the architect's original intent, as discussed in Section 3.3.3, subject to specific policies contained within Section 8 of this report, and detailed heritage advice."*

There is no evidence what the original architect's intent was except a reference at Section 3.3 of the CMP at page 97, which includes the following piece of information:

*"The Chief Secretary's Department, in December 1935, confirmed to Budden & Mackey that the building as designed conformed to the requirements of the Height of Buildings Act. However, should a further two storeys be added as intended, further internal works would be required, including construction of an additional staircase, protection of ceilings, fireproofing doorways and shafts. From this correspondence we can infer that the building was designed to be capable of accommodating further storeys in the future should the need arise. There are no plans available which confirm this intention, and the further storeys have never been constructed."*

It is most improper to draw a conclusion from such speculative evidence that additional floors were intended when the building was constructed and therefore, whether it is acceptable to construct additional floors now.

In fact, the physical evidence contradicts this assertion. The sandstone Macquarie Street façade is a highly ordered Inter War Stripped Classical style composition. It has a robust base storey punctuated by windows in the manner of an Italian Palazzo, four storeys with windows set between paired fluted columns and a top in the form of an unadorned entablature. This composition very clearly did not anticipate a vertical extension.

The Phillip Street façade was also designed as a complete composition in the Inter War Art Deco style. The emphatic verticality is characteristic of the American skyscraper influence on several Sydney city buildings in the 1930s, albeit all were somewhat truncated by the 150 foot height limit imposed by the Height of Buildings Act. The architectural composition here is highly ordered and complete. A powerful aspect of this form of architecture is that the vertical emphasis is heightened by the strongly expressed sandstone columns and the corner tower elements being read on the skyline. The decorative masonry spandrels between the columns are a clear expression that this is the top of the façade.

Section 7.5 - OWNER'S REQUIREMENTS at page 200 of the CMP notes that the owner intends to continue commercial office use. This section reveals that the owner is currently

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seeking a State Significant Development Stage 1 approval for additions and alterations to the InterContinental Hotel, which include a pool deck and a ballroom above Transport House.

The CMP asserts that there will be no change to internal configuration, structure or significant fabric of Transport House. This is a surprising comment to find in a CMP, which is meant to precede any development proposal. No evidence is provided to support the claim and there is no discussion on the likely impacts and acceptability, should it be found that physical impacts will be necessary. The CMP takes the owner's requirements at face value and pre-empts any proper assessment of the appropriateness of the proposed additions in terms of both physical and visual impacts. It is noted that section 3.3 of the Environmental Impact Statement includes the following piece of information:

*"The structural loads which the new ballroom addition will place on Transport house has been the subject of an initial review by Arup, who have had access to the original structural drawings. The initial design analysis has indicated that the existing structure appears to be able to support the proposed addition without significant additional strengthening."*

This statement hardly inspires confidence that **no internal structural intervention** would be required.

The CMP then goes straight to framing conservation policies assuming it is acceptable to seek approval for the overall form and scale of the additions and a highly dubious conclusion that there will be no requirement to augment the existing structure below and there would be no impacts to highly significant internal fabric and spatial characteristics.

The unchallenging approach is to accept the owner's requirement to add a swimming pool equivalent to two levels with a three storey high ballroom above, despite the fact that the detailed assessment of significance demonstrates that the form of the external envelope and architectural composition of Transport House is exceptionally significant and that the fabric and spatial characteristics of the interior are mostly highly significant, and exceptionally significant at the Registration Hall and Mezzanine. This is a fundamental flaw in the document and calls into question the conservation policies that flow on.

### 3.1.3 Conservation Policies

The following section of this submission reviews the CMP policies that are relevant to the proposed SSD Stage 1 application.

**Policy 8** states that elements of exceptional significance should be retained and conserved in-situ. It states that:

*"Any change should be minimal and retain significant values or fabric."*

Given that the external built form and architectural expression and the interior of the Registration Hall and Mezzanine are at this level of significance, the proposed additional structure cannot be regarded as a minimal change; it is a major change with unknown consequences for the interior.

For elements of high significance, the policy states:

*"Minor change is allowed so long as significant values and fabric are retained and conserved."*

Again, the proposed changes are not minor.

**Policy 11** reiterates the findings of the assessment of significance – that *"Transport House has exceptional significance at the state level, for its aesthetic value, and at the local level for*

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*its historic, associative, rarity and representative values.*” The policy states that these values should be retained and conserved, but *“does not preclude sympathetic alteration in association with the ongoing use of the building and subject to regulatory conditions and approvals subject to other policies herein.”* The other policies relating to additions are discussed further on.

**Policy 13** states: *“Elements of exceptional or high significance not be obstructed by new works, structures or services, and they should be clearly visible and interpreted as part of any new works.”* The existing overall massing and architectural expression of Transport House is a complete composition. The types of changes to its built form envisaged by later policies that would affect the building’s profile against the skyline and require junctions that would obscure the clarity of the definition of the top of the building are prejudicial to preservation of these qualities and contradict this policy.

**Policy 14** invokes the Principles of the Burra Charter which advocates a cautious approach to *“do as much as necessary to care for the place and to make it useable, but otherwise change it as little as possible so that its cultural significance is retained.”* The proposed development of upper levels is not in any way necessary to preserve the building, which has already undergone an extensive programme of conservation works, such that development application D/2006/126 included an award of 5524 sq.m. of heritage floorspace. The intent of the heritage floor space system is to provide an incentive to properly conserve important heritage items and compensate for a theoretical loss of development potential. The owners of the InterContinental Hotel have relinquished the heritage floor space award to keep open the prospect of development on top of Transport House.

The previous conservation works programme is consistent with Policy 14. However, the proposed development on top of Transport House is only necessary to achieve the expansion objectives of the InterContinental Hotel to relocate and enlarge existing swimming pool and ballroom facilities. These objectives are totally unrelated to any consideration of *“but otherwise change it as little as possible so that its cultural significance is retained.”* It is also noted that there is a ballroom at level 7 of the hotel, which is apparently being retained and enlarged.

**Policy 19** recommends that the assessment of state significance warrants nomination for the State Heritage Register. If the NSW Heritage Council considered a nomination of Transport House with the proposed roof additions in place with the contribution of the most important characteristics contributing to its level of significance severely diminished, the conclusions might be very different than the considerations of the building in its existing state.

**Policy 23** addresses future uses of Transport House. Any proposed use should be compatible with the nature and significance of the building. *“Uses which require an unacceptable degree of intervention for upgrading and compliance are not acceptable.”* The existing uses within the building comply with Policy 23. The proposed new development comprises adding to the building so that uses that would not comply with Policy 23 can be accommodated. There is a glaring inconsistency in the logic that the proposal would be consistent with this policy.

**Policy 24** introduces the requirement, incorporated in the Burra Charter, that:

*“any future adaptation of the interior to suit new uses should be reversible and should not involve alterations to exceptional or highly significant fabric, such as the building facades, significant spaces (i.e. the Registration Hall, Main ground floor and Phillip Street lobbies, stair halls, or offices and hallways on the first floor), fabric or features or early fittings as identified in Section 5.4 of this report.”*

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Despite this, the CMP is set up to pre-emptively endorse the prospect of a significant imposition of structural loading on top of the building with no evidence that the existing structure would not be needed to be augmented by interventions that could not possibly be reversible.

Section 8.7.1 - MANAGING CHANGE: BASIS OF APPROACH, at page 209, quotes from the Burra Charter in **Policy 33**:

*“While recognising the need for change, the approach to the building fabric should be a cautious approach, one of minimal intervention – changing as much as necessary, but as little as possible. New work should respect and enhance significance, rather than distort or obscure significance. Changes which reduce significance should be reversible.”*

The later policies which anticipate the proposed additions on top of Transport House are contradictory to Policy 33 (and the Burra Charter) insofar as they would facilitate changes that: are not necessary to conserve the building; do not respect or enhance the significance of the built form and architectural expression of Transport House; and would not be reversible.

**Policy 34** allows intervention for purposes other than the conservation of building fabric that affect areas of lower significance. The proposed roof-top additions are an intervention for purposes other than the conservation of the building fabric, where the building form overall is rated as exceptional and therefore contrary to this policy. The later policies which anticipate the proposed additions on top of Transport House are contradictory to Policy 33 (and the Burra Charter) insofar as they would affect fabric of exceptional and high significance.

Section 8.7.2 provides policies that address exterior elements and fabric. Comments are set out below on those that are relevant to the proposed additions.

**Policy 39** notes that:

*“the principal facades of Transport House to Macquarie Street and Phillip Street are highly intact with proportions based in Classical and Art Deco symmetrical design principle. There should be no new changes to the openings or of the facades or any alterations which detract from the overall composition and symmetry of these facades.”*

An integral aspect of the composition of the Phillip Street façade is that it emphatically expresses the top of the building to read as the skyline. The proposed addition flush with the face, and on top of the significant turret elements, would completely negate this important quality of the design.

**Policy 46** considers the effect of any required roof plant, requiring it to *“be minimal and located to minimise visual impacts.”* It goes on to require any new work to *“not adversely impact in the facades but enhance the strength and integrity of views to the buildings from both the public domain and from surrounding buildings and respect the significant qualities of the buildings.”*

Surely if these stringent requirements apply to roof top plant they should apply more so to any proposal for much larger structures on top of the building.

As previously discussed, **Policy 47** is based on a vague assumption, unsupported by any evidence. Even if there had been an expectation of vertical extension of the building at the Phillip Street side, the approach at that time was to create seamless extensions that most likely would have transferred the detail seen against the skyline to the new termination of the façade. As time has passed, the seamless approach has fallen out of favour.

The policy encourages roof top additions to be set back from Macquarie Street behind the existing lift shaft structure but not Phillip Street, it could be presumed, because it is based on a

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design concept known at the time. The proposed setback from Macquarie Street is in the order of 22 metres. Section 5.1.3 of Sydney Development Control Plan 2012 emphasises the significance of the Macquarie Street Special Character Area by requiring a setback of 30 metres.

The policy does not set a setback from Phillip Street. It does not require new work not to obscure the original form of the Phillip Street parapet and towers as viewed from the public domain and it allows proposed roof top additions not to incorporate setbacks from the Phillip Street façade. This requirement is internally contradictory for the reasons previously discussed. It also fails to take into account Section 5.1.2(3) of Sydney Development Control Plan requiring a 10 metre setback

This policy is highly prescriptive in limiting any roof top addition to two to three storeys in scale above the height of the Phillip Street Towers. This might be viewed as a rather arbitrary policy setting if it were not for the fact that it is tailored to correspond to the proposed additions, which appear to be three storeys above the height of the towers.

The policy relies on a process involving detailed assessment and demonstration of design excellence as appropriate for this significant CBD location. While it is appropriate that new work should be distinguishable from the original fabric and design, a design of excellence in the abstract must be considered in its context. If it is in the wrong place any claim to design excellence is irrelevant. The photomontages, while indicative of the outcome, demonstrate that the proposed roof-top structure will have a visually intrusive effect on the exceptionally significant built form of Transport House. In a location exposed to public views encompassing the Police and Justice Museum, it will also be an intrusive element, regardless of the quality of design. Furthermore, the outcome of a design excellence process cannot be guaranteed to produce an acceptable result as the additions to the Museum of Contemporary Art at Circular Quay demonstrate.

Again, this policy appears to be pre-empting the proposed addition on top of Transport House with the requirement to “*appear as light weight*”. Again, it must be said that it will not matter what it looks like if the built form is in the wrong place from a heritage point of view.

If structural strengthening is required, the policy relies on investigation of appropriate strengthening methods and detailed heritage advice. It then goes on, without any testing of the likely consequences of increased structural loading on the existing structure, to accept that additional floors above the building are permissible subject to a structural response that enables the retention of the heritage item and does not compromise the significant fabric. This contradicts the previous unsupported assertions that structural intervention would not be necessary. This part of the policy framework does not anticipate the possibility of the degree of structural intervention to be found to be unacceptable and contrary to the rest of the policy framework, when such investigations are carried out. By leaving this matter to Stage 2 of the State Significant Development process, or later, it would be too late to arrest the momentum of the project. The water in the swimming pool alone, assuming it measures 15 x 6 metres and assuming only one metre deep as scaled from the drawings, would weigh 90,000 kilograms. This factor should prompt a degree of caution in drawing any premature conclusions about structural intervention and the unknown consequences.

### 3.2 Heritage Impact Statement

The Heritage Impact Statement (HIS) by Urbis is dated 23 August 2017.

#### 3.2.1 Executive Summary

The executive summary contains the following statement:

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*“The proposed volumetric works to be included in this Stage 1 SSD application are restricted to approval for the overall building envelope of the new ballroom / pool roof top addition to Transport House, minor additions to the 1980s hotel podium, and the external refurbishment / alteration of the 1980s hotel tower including a minor extension to the level 32 club lounge. The refurbishment presents a significant opportunity to enhance the setting of the heritage item through an improved façade solution.”*

With the benefit of observation of the changes to this former government precinct over decades, the writer is of the opinion that the 1980s hotel tower adversely impacted on the setting of the exceptionally significant heritage items in the precinct when it was first built. Dressing the tower in a new suit of clothes will not change this situation and adding a substantial volume of built form over Transport House will further degrade the setting.

The executive summary also includes a revealing statement:

*The envelope of the ballroom addition provides for the maximum volume available, with consideration for the heritage constraints of transport house and feasibility for practical use.*

Nowhere in the conservation management plan or in the heritage impact statement is there any explanation as to why, or how, the “*maximum volume available*” was determined. The only indication of the determination of the volume available is that the owner wants to expand the hotel facilities over Transport House with a swimming pool and a three- storey height ballroom. With this pre-determined goal as the rationale, the CMP tailored the constraints on upper level additions to satisfy what the owner wants.

Section 6 of the HIS comprises the impact assessment by reference to the regulatory framework.

### 3.2.2 Sydney Local Environmental Plan 2012

Section 6.1.1 reviews the proposed development against the heritage provisions of Clause 5.10 of Sydney Local Environmental Plan 2012 (SLEP 2012).

The response to 5.10(1) – Objectives, presumed to be to objective (b), includes the following comments:

*“No alterations are proposed to existing external facades of the heritage items.”* While it may be true that the proposal might not impact on the walls and windows of the external facades, an intrinsic quality of the facades of Transport House is how they express the vertical termination of the building and how they read against the sky. These qualities would be lost if the proposed development goes ahead. Detailed consideration of the interface of existing and new construction cannot ameliorate this degree of impact.

*“There are no proposed changes to the interior of the heritage items as part of this Stage 1 SSD application.”* This claim leaves open the possibility that there could be changes in the SSD Stage 2 application, or later, despite the unsubstantiated assertion that: *“The proposed roof-top addition is able to be achieved without structural intervention or reinforcement to Transport House.”*

A following comment reveals how dubious the above claim is:

*“Should further investigation reveal instead that some further structural bracing of Transport House would be required to accommodate the proposed roof-top addition, the form, extent, location and method of installation of such bracing will be the subject to detailed heritage advice and assessment to achieve a structural response that enables*

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*maximum retention of the heritage item and does not compromise significant fabric or spaces.”*

The adverse impact of additional internal structure within Transport House was a key consideration in the assessment of heritage impact in the previous application to erect an extension of the hotel tower over Transport House in 1997. This matter is discussed later in this submission.

Clause 5.10 (4) requires the consent authority to consider the effects of proposed development on heritage significance. The responses in the HIS to this clause include the following comments:

- *“The existing form, scale, design and materiality of the existing Transport House building will not be obscured and be able to be read.”* As previously noted the architectural expression of the vertical termination, an intrinsic element of the façade design, would no longer be read against the sky.
- *“This setback ensures that the additions are as minimally visible as possible from significant view points along Macquarie Street.”* The setback is in line with the east face of the Macquarie Street lift over-run and positioned to provide the floor area required for the ballroom. It is about 22 metres and not 30 metres as required by Section 5.1.3 of Sydney DCP 2012 recognising the Macquarie Street Special Character Area. The photomontages and 3D images accompanying the Stage 1 SSD application do not include a view that demonstrates the visibility of the proposed addition above the parapet of the Macquarie Street facade of Transport House.
- It is claimed that *“the proposed roof-top addition will be of a high standard of contemporary design, subject to a full design competition, and be distinguishable as new work compared with the existing building.”* The only part of this claim that can be accepted with certainty is that the addition will *“be distinguishable as new work compared with the existing building.”* There is a considerable risk that a design competition will preclude the careful and deliberate process that is essential when adding to a heritage building. Competitions by their nature encourage solutions that are eye-catching and strive to be different. Furthermore, the degree of design excellence cannot compensate for the visibility of a structure that should not be there not be there in the first place.
- *“It is understood that the addition can be achieved without structural intervention to Transport House.”* As previously discussed, without any substantiation of this statement, a consent authority has nothing to go on to assess the likely impact. This matter should not be left to a later stage in the application process.

The HIS also states that the proposed works will not impact the heritage significance of the former Treasury Building (the c1896-18899 W.L Vernon portion) and are achievable without substantial interventions to the existing fabric. The SSD Stage 1 plans referenced in the report are indicative only and noted as subject to the Stage 2 SSD application and detailed heritage advice. No details are included in the SSD Stage 1 documentation other than notes on the drawings that show that it is proposed to make changes at the Macquarie Street entrances, activate Macquarie Street with food and beverages, substantially reconfigure the interior at Level 6 and enlarge the existing ballroom at level 7, **subject to approved removal of heritage walls**. It is also shown that a new pre-function/meeting space would overlap the norther part of the former Treasury Building at level10. There is no information to indicate whether there would be impacts to the significant interiors below.

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The HIS includes a comment that the SSD Stage 1 proposal demonstrates that the additions are achievable without substantial interventions to existing significant fabric. The former Treasury Building is a State Heritage Item, listing number 00355. The building's heritage status warrants much more certainty at the SSD Stage 1 rather than waiting until a later stage to discover and assess the impacts.

Clause 5.10 (5) deals with impacts on the significance of items in the vicinity of the proposed development. The response claims, without any detail, that the HIS satisfies this requirement. It is noted that the Secretary's Environmental Assessment Requirements (SEARS) issued on 4 July 2016 for the Stage 1 SSD application require the HIS to address several issues in relation to Clause 5.10(5), which are listed but not addressed in this part of the HIS. A serious omission is the absence of any discussion about how the development proposal might affect the area nominated and mapped for the Colonial Sydney National Heritage list. The site is within that area. There is no information in this part of the report to justify the conclusion that:

*"This Heritage Impact statement satisfies the above SEARS requirement."*

The HIS discusses the requirement for a conservation management plan under Clause 5.10(6). The draft CMP for the Former Treasury building has been submitted to the NSW Heritage Council for endorsement. The draft CMP for Transport House has been submitted to the Sydney City Council for endorsement and to the Heritage Council for comment. The CMPs have not been endorsed to date. The preceding section of this submission comments on several shortcomings in the CMP for Transport House.

### 3.2.3 Sydney Development Control Plan 2012

This section of the submission discusses the application and the associated heritage documentation regarding relevant sections of Sydney Development Control Plan 2012 (SDCP 2012).

The response to the Central Sydney objectives set down in Locality Statements - **Section 2.1** make several statements that are contested in this submission:

*"The proposed works as described herein meet the objectives of the Central Sydney Locality by retaining the entirety of the heritage items and their significant spaces, fabric and elements."*

*"Further, the view lines to and from the subject heritage items, as well as their setting and context, will be maintained with the existing tower being refurbished, and provision for reasonably scaled roof-top additions to Transport House and the 1980s hotel building, substantially set back from Macquarie street."*

*"The proposed plans referenced in this report provide indicative internal proposed changes that will be subject to a detailed Stage 2 SSD application and detailed heritage advice. As such, the indicative proposed internal changes are not included in this Stage 1 SSD building envelope application, and have been provided as reference for future intended works only."*

In relation to the last statement, the indicative internal proposed changes are not more than notes on the drawings and words in the HIS. However, the proposed activation proposals for Macquarie Street must involve some form of physical intervention and change of appearance. No other information or heritage guidelines are provided in the application or in the HIS.

**Section 2.1.6** provides principles for the Macquarie Street Special Character Area – the primary responses of the HIS are that:

## 2 Comments on Transport House Conservation Management Plan and Heritage Impact Statement

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- The proposed setback from Macquarie Street means that the roof-top addition will not detract from the Macquarie Street frontages. As previously discussed the proposed setback is determined by the size of the ballroom and does not comply with the 30 metre setback required by Section 5.1.3 of Sydney DCP 2012 and there is no evidence in the photomontages and 3D images lodged with the application that this will be the case. The setback proposed is achieved at the cost of no setback at the Phillip Street frontage contrary to Section 5.1.2(3) of the DCP.
- *“The refurbishment of the exterior of the hotel tower as well as the contemporary roof-top ballroom addition, will enhance the visual appeal of the Intercontinental Hotel within its significant Sydney CBD setting, as is appropriate for its prominent Macquarie Street address.”* The addition of more intrusive building bulk to an already intrusive building cannot enhance the setting of the heritage items contributing to the Macquarie Street Special Character Area, no matter whether the existing tower has updated facades or how clever the design of the new built forms.

**Section 3.9.4** has provisions for development of sites of state significance or containing more than one heritage item. Subsection (1)(c) qualifies the proposed roof-top addition as a “major change” because it will cover more than 20% of the building footprint within the air space of Transport House and more than 20% of the airspace over the combined footprints of all the heritage items on the site. While Transport House is not on the State Heritage Register, the CMP recommends that it should be. There is no dispute about this recommendation. The roof-top addition covers 68%, much more than 20% of Transport House air space above.

**Section 3.9.4 (1)(c)** would, if the application was not for a State Significant Development, trigger the requirement under subsection (2) for Sydney City Council to appoint a committee that includes heritage professionals to examine and advise on the merits of the proposal. This implies that an independent expert assessment is required. This is not the same as Urbis heritage consultants providing advice or having consultations with the NSW Heritage Division, City of Sydney Council, Sydney Living Museums and the Heritage Council. The degree of independence in this process is questionable given that Urbis is an advocate for the proposal and its director responsible for the CMPs and the HIS is the current chair of the NSW Heritage Council.

Most of the issues arising from the responses of the HIS to **Section 3.9.5** dealing with requirements relating to heritage items have already been discussed. A few points deserve to be highlighted, however.

Subsection (1)(a) requires the extent of change to significant fabric, elements or spaces to be minimised. A roof-top addition equivalent to five stories cannot be regarded as a minimal change, particularly when the consequences for the interior of the building are not known.

Subsection (1)(d) *“Provide a use compatible with its significance and which with any changes proposed, including BCA upgrade or introduction of services will have minimal impact on significant fabric, elements or spaces.”* Although the proposed new uses would be on, not in, Transport House, they are incompatible because Transport House was conceived as a government office building and the impacts within Transport House have not been properly considered.

Subsection (1)(g) requires new work to be removed with minimal damage or impact to significant fabric. This subsection is consistent with the requirement in the Burra Charter for changes to be reversible. The response of the HIS contends that:

*“Theoretically, these additions are reversible as they do not require the significant structural intervention to Transport House.”*

## 2 Comments on Transport House Conservation Management Plan and Heritage Impact Statement

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This is not a credible response. First, the capital investment in the construction of a swimming pool and a large ballroom would ensure its permanence. Second, given the lack of evidence that the existing structure was intended to take additional floors, this proposal is for the equivalent of five floors – a substantial additional loading on the building. On top of this loading would be approximately an additional 90,000 kilograms of water. Therefore, the response to Subsection (2)(i) that there would be no internal changes to significant spaces or rooms as part of this Stage 1 SSD envelope application raises considerable uncertainty, because it is difficult to see such a large amount of extra structure not requiring intervention in the structure below and, because these words leave open the scope for internal changes to significant spaces or rooms in the SSD Stage 2 application.

Responses to Subsection (4) stretch the imagination. Regarding the visual impact on the Police and Justice Museum, the response is:

*“The proposed roof-top addition will read as an extension to the hotel tower from which already forms part of the back from (sic) of views from Albert Street and Phillip Street, behind the Police and Justice Museum.”*

This appears to be making a case that extension of an already out of scale and intrusive tower building will be more acceptable than it would be if it reads as an extension of Transport House.

*“The restricted height of the proposed roof top addition ensures that when viewed from the public domain or proximate heritage items, the addition does not dominate the Transport House Building in scale, and subject to detailed design as part of further Stage 2 SSD, can be further mitigated through sympathetic materiality.”*

In what sense is the height restricted? This is surely relative. It is less than the previous proposal to extend the InterContinental tower onto Transport House. In terms of additions to heritage buildings in Sydney CBD the restriction is commonly to one storey, two storeys at most, depending on view lines from the public domain. Often, if an application fails the view line test, the council does not consent to applications for upper level additions. This is restrictive. The equivalent of five storeys cannot be regarded as restrictive when it is actually set by a pre-determined brief.

## 4 SEARS for Stage 1 New Ballroom and Hotel Upgrade Intercontinental Hotel and Transport House, Sydney (SSD 7693)

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### 4.1.1 Heritage and Built Form requirements of the SEARS

The Department of Planning and Environment issued Secretary's Environmental Assessment Requirements (SEARS) for the proposed Stage 1 SSD application on 4 July 2016.

Critical requirements incorporated in the SEARS to which the application's heritage and other documentation do not respond or do not adequately address are:

Under the heading Built form and scale, the EIS shall:

- *outline how the proposal will achieve and demonstrate design excellence;*
- *address the height (including plant), bulk, scale and setbacks of the proposal within the context of the locality, noting the heritage significance of the site;*
- *Identify any change to the use and/or layout of the existing buildings and associated impacts on circulation movements, access and linkages;*
- *Undertake a view analysis 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;*
  - *Key views, vistas and view corridors from the public domain and residential buildings that may be impacted as determined by the view analysis; and*
  - *Planning principles for impacts on private and public domain views;*
- *Identify impacts on the relevant special character areas; and*
- *Outline potential design considerations aimed at mitigating any impacts identified.*

Where there has been any response to these issues, it is incomplete or selective. The height and bulk of the proposed roof - top addition to Transport House is taken as a given (there is no discussion as to why an addition is acceptable in the first place or whether a lower or less bulky addition would be acceptable); key views to Transport House in Macquarie Street are not provided; the impacts on the special character area are addressed in cursory manner; and there is no discussion of potential measures to mitigate the identified impacts.

Under the heading Heritage, a heritage impact assessment is required that addresses a list of matters. These issues have already been discussed in the preceding parts of this submission. However, it is noted here that two key requirements have not been met. In the justifications for the proposed roof-top addition in the CMP and the HIS there is no serious consideration of alternative options and the potential impacts of the proposed setbacks and height on the area nominated and mapped for the Colonial Sydney National Heritage list is not addressed.

### 4.1.2 NSW Heritage Council

NSW Heritage Council wrote a letter on 23 June 2016 in response to a request for input into the SEARS. Two points are highlighted:

*Structural adequacy*

*Documentary evidence be provided by Structural Engineer, with experience in heritage buildings, confirming that the existing building is capable of withstanding the proposed works.*

As previously discussed, this information has not been provided. The SSD Stage 1 application relies on matters of this kind being resolved at a later stage.

*Justification for the proposed changes*

### 3 SEARS for Stage 1 New Ballroom and Hotel Upgrade Intercontinental Hotel and Transport House, Sydney (SSD 7693)

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*The heritage impact assessment should provide justification for any changes that may have a major impact on the heritage significance of the subject heritage building including any alternative options, and reasons for discarding them.*

The proposed roof-top addition would clearly have major impact due to its bulk and built form. The only justification in the heritage impact assessment for this, and other changes, appears to be that they meet the owner's perceived need to upgrade the five-star rating of the InterContinental Hotel. It is noted that there is a ballroom at level 7 of the hotel which the application intends to enlarge.

#### 4.1.3 Sydney City Council

The Sydney City Council's response to a request for SEARS was in the form of an email dated 29 June 2016. The email is comprehensive and covers matters discussed elsewhere in this submission.

The Council expresses concern about risks of dominating the setting of Transport House and the Police and Justice Museum in views from Phillip Street and the impact of creation of a direct access from Macquarie Street through window openings of the former Treasury Building, a building of exceptional significance. As contended elsewhere in this submission, there is more than a risk.

The HIS does not provide any description of the consequences of the proposed changes to the former Treasury Building, suggesting that they can be satisfactorily resolved in the SSD Stage 2 application with heritage advice.

The Council draws attention to the National Heritage List nomination - Colonial Sydney and the Macquarie Street Special Character Area. As discussed elsewhere, the CMP and the HIS do not deal with these important matters adequately.

The Council is of the view that compliance with the provisions of Sydney DCP 2012 is critical, specifically: Setbacks in SDCP2012 Section 5.1.2(3) for 10 metres from the Phillip Street wall and Section 5.1.3 for 30 metres from Macquarie Street.

The Council's view is that the proposal must be amended to conform to the above setbacks.

The Council points out that the proposal does not meet the criteria in Clause 6.21(5) of Sydney LEP 2012 under which a design excellence strategy would not be necessary and states:

*"Accordingly a Design Excellence Strategy must be prepared in accordance with section 3.3.2 of the Sydney DCP."*

The HIS provides little comfort that a design excellence process would address the many untested conclusions already made and the unresolved critical issues, the most important of which is that the proposed structure should be there in the first place.

The Council highlights the point that:

*"Any structural upgrades must not impact upon the significant Chamber including its ceilings, walls, columns and the significant finishes of these components that have recently been restored."*

## 5 Judgement in A.P.T Peddle Thorpe and Walker v Sydney City Council: No 10359 of 1997 NSWLEC 186 (4 December 1997)

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This case was heard by Justice Bignold, assisted by Commissioner Watts, in 1997. The key issues were: proposed redevelopment and adaptive re-use of a significant heritage building; impact of proposal on heritage significance, heritage impact so adverse as to require refusal of development consent.

The proposed development comprised extension of the InterContinental hotel over the roof of Transport House with associated structural intervention into the significant interiors to support the weight of the new structure.

In determining that the appeal should be refused, Justice Bignold gave weight to several matters relevant to the proposal now under consideration.

Regarding the evidence of the parties on the impacts of the proposed extension of the hotel tower over Transport House, Justice Bignold wrote:

*“Having regard to the totality of the evidence I decisively prefer the evidence adduced by the Council on this issue and find that the tower component of the proposed development significantly adversely impacts on the heritage significance of Transport house, both in its own right and in its heritage setting (including the Macquarie Street heritage streetscape).”*

The question will be put that the effect of an upper level addition equivalent to five storeys is more acceptable than an addition the same height as the existing tower. In our submission the distinction is only in the degree of visibility and how the structure interfaces with the built form and detail of Transport House. A structure equivalent to five storeys is substantial in relation to the existing height of Transport House, which is eight storeys at the Phillip Street wing – it would be more than a 50% increase in height.

Would any addition on top of Transport House be acceptable? The State Heritage Inventory listing sheet for Transport House (database number 2423813) includes recommended management policies. The last paragraph reads:

*“The building should be retained and conserved. A Heritage Assessment and Heritage Impact Statement, or a Conservation Management Plan, should be prepared for the building prior to any major works being undertaken. **There shall be no vertical additions to the building** and no alterations to the façade of the building other than to reinstate original features. The principal room layout and planning configuration as well as significant internal original features including ceilings, cornices, joinery, flooring and fireplaces should be retained and conserved. **Any additions should be confined to the rear in areas of less significance, should not be visibly prominent and shall be in accordance with the relevant planning controls.**”*

Neither the conservation management plan or the heritage impact statement pays any regard to the above conservation management requirements.

Justice Bignold also considered the potential impact on the interior spaces and fabric:

*“I should also mention one other matter concerning the proposed tower much discussed in the evidence, namely its impact on the significant interior sections of Transport House, especially the Registration Hall, by necessity of its necessary structural penetrations to provide foundations and support for the tower. This potentially adverse impact is far more problematic than the external adverse impact of the tower and I would prefer to not express a final opinion on this matter other than to say it is one important demerit in an*

## 4 Judgement in A.P.T Peddle Thorpe and Walker v Sydney City Council: No 10359 of 1997 NSWLEC 186 (4 December 1997)

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*otherwise commendable proposal to refurbish and adaptively reuse the retained elements of Transport House.”*

These concerns apply to the present application. The unsubstantiated claims in statements supporting the application that there will be no internal impacts arising from an upper level addition equivalent to five storeys that include a swimming pool cannot be taken on face value. Furthermore, the statements include contradictory information addressing the possibility that there could be internal impacts. The assertion that, should this be the case, the impacts can be addressed with heritage advice in the State Significant Development Stage 2, does nothing to allay concern and uncertainty about the future consequences.

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## 6 Conclusion and Recommendations

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### 6.1 Unacceptable Heritage Impact

The main contentions in this submission relate to the unacceptable impacts of the proposed works subject to the SSD Stage 1 application on the heritage significance of Transport House and its setting, the former Treasury Building and the Macquarie Street Special Character Area. The unsatisfactory aspects the proposal and the heritage policy framework of the CMPs and the assessment of impacts in the HIS are summarised below:

- The conservation management plan is tailored to facilitate the owner's perceived needs for a swimming and a ballroom on top of Transport House with no serious examination of the acceptability of such a proposal or discussion on other options that would not impact on Transport House, or would have less impact;
- The CMP for Transport house and the HIS both contain internal contradictions, most importantly on the question of the potential for structural intervention to the interior of Transport House. The proposed addition is substantial and includes the weight of the water in the swimming pool as well as the load of the building structure. With the knowledge of the unacceptable structural interventions that would have resulted from the refused application to extent the hotel tower over Transport House and 50 years of experience as an architect, the writer is highly sceptical of the claims that there would be no need for internal structural intervention based on no concrete evidence. This matter is too important to leave investigation of this issue to a later stage. If such interventions are found to be necessary, this factor alone means that the impacts on the significance of the building would be unacceptable to the point that it should not proceed further.
- The bulk and scale of the additions above Transport House will be visually intrusive and out of character with its exceptionally significant architectural qualities and built form;
- The proposed addition would not enhance the heritage values of Transport House and its setting or the setting of the Police and Justice Museum;
- The heritage documentation provides no design guidelines to avoid or mitigate adverse impacts, suggesting that these matters can be satisfactorily managed at a later stage because heritage advice will be provided;

### 6.2 Uncertainty

Notwithstanding the fact that the application is for State Significant Development Stage 1, there is too much uncertainty about the visual and physical impacts of the proposed works on the heritage significance of the external form and fabric and the interior of Transport House and the Macquarie Street façade and the interior of the former Treasury Building.

The heritage documentation that accompanies the application leaves critical issues unresolved and draws conclusions on insufficient evidence.

### 6.3 Recommendation

As discussed throughout this submission, the heritage impacts that would result from the proposed development are not acceptable and have not been justified by the supporting heritage documentation. The State Significant Development Stage 1 application should not be allowed to proceed further.