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Our Ref: R/2020/12/A  
File No: 2021/206157  
Your Ref: SSD 10464

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Department of Planning, Industry and Environment

By Planning Portal

Dear Karl

**Request for Advice – 50-52 Phillip Street New Hotel Stage 1 Concept DA (SSD-10464)**

Thank you for your correspondence dated 13 April 2021 requesting for the City of Sydney Council (“the City”) to comment on the abovementioned State Significant Development application. The proposal relates to the Stage 1 concept proposal for a hotel and residential development on the site.

The accompanying documentation has been reviewed. The City raises significant concern regarding the impacts of the proposal. The proposed intrusions of the development to state heritage buildings within and in its air space are extensive. The development will create an undesired precedent, contrary to the overall objectives of heritage conservation of highly significant heritage buildings. **Accordingly, the City objects to the proposed development.** The following matters are raised:

**1. Heritage**

The proposal involves the division of the Public Works Building (PWB) at 50 Phillip Street from the Chief’s Secretary Building (CSB) at 121 Macquarie Street, the adaptive reuse of the PWB as a hotel, a building envelope for a new high-rise tower on a non-heritage site at 52 Phillip Street, which encroaches on the PWB. The proposal is assessed to have major adverse impact on 50 Phillip Street due to the extent of physical interventions and infiltrations by the proposed tower to the heritage spaces. The heritage site would be intruded by the indicative building envelope. The scale and form of the overhang over the heritage building is considered intrusive to the highly significant heritage building and is not in keeping with the scale and character of the Bridge Street, Macquarie Place, Bulletin Place Special Character area.

**a. Heritage listing and curtilage**

The CSB and PWB are listed as one heritage item under the State Heritage Register (SHR0766) and Sydney LEP 2012 (I1872). These buildings have always been regarded as one. When completed in 1893/4, the former Department of Public Works building at 50 Phillip Street was considered a natural extension of the CSB and has been managed by the State Government as an integral part of the CSB. While the latter part is less

elaborate than the first, they are internally connected and share common services.

Subsequently, as the CSB is currently part of the heritage item involved in the proposal at 50-52 Phillip Street, it should form part of the proposal. Any works associated with the proposed development, including the disconnection of the two buildings, changes to the circulation, access and services of the CSB should form part of the proposed scope of works. The exclusion of works and relevant assessments, including heritage and building compliance, of the CSB from the development is unacceptable.

Furthermore, any separation of the function and operation of the two buildings may cause management issues, as noted in Policy 6.5.1 of the updated CMP. Separate listings of the two buildings would require a relisting process, involving both the Heritage Council of NSW (SHR) and the City of Sydney (LEP).

If a separate listing proceeds, the curtilage of the PWB would require clarification and definition to ensure appropriate conservation. Under the proposal, and as demonstrated by the reference design, the function and physical relation of the proposed new building and the PWB are highly integrated and difficult to separate. The proposed new development appears to physically encroach upon the PWB site from many perspectives. The curtilage of the heritage building is difficult to define. If the proposal proceeds, then the curtilage may need to be extended to include 52 Phillip Street.

It is recommended that a study be carried out to assess the impact of the proposed separation of the CSB and PWB relating to function, access, fire safety and building services on the CSB. A separation and separate listings process should only be permitted if the separation is assessed to have acceptable heritage impacts. If the current proposal proceeds, consideration should be given to include the site of 52 Phillip Street in the curtilage of the heritage listing of the PWB.

#### **b. Updated Conservation Management Plan (CMP)**

The CMP 2016, developed by NSW Public Works and endorsed by the Heritage Council of NSW, provides significance ratings of both spaces and building components of the PWB. The revised CMP removes the rating of spaces, including the high level of significance of the southern and middle lightwells. This contradicts standard heritage procedures and questions the validity of the revised CMP.

The updated CMP also gives different ratings to the intact 1890s walls without justification. The southern walls of the 1890s addition, including the wall facing the southern lightwell, are rated as being moderate significance, while other walls of the same age and integrity, including the internal walls, are rated of high significance. It is also noted that the walls rated as being of moderate significance are intended to be modified under the proposal.

It is apparent that the significance ratings of the new CMP have been tailored to support the current proposal, rather than truly assessing the significance of the place and its components.

Significant internal and external spaces of the heritage building must be identified in the updated CMP to provide informed guidelines for any development relating to the heritage building. The significant spaces identified in the 2016 CMP should be accepted in the updated CMP. All the intact walls dating from the 1890s should be identified as having high significance. The rating should follow an objective universal standard rather than the intended intervention of the proposed development.

### **c. Physical interventions**

The proposed physical interventions to the Public Works building and the overall site are extensive. Under the proposal, the following interventions are proposed on the heritage building:

- Separation from the CSB;
- Excavation under the southern wing and interventions to the footings of the PWB;
- Introduction of a mega column within the middle light-well; and
- Encroachment of the new development within the heritage building from the top, underground and south.

The above interventions would have major impacts on the internal spaces, the structure, footings, setting and architectural integrity of the PWB as it is not functionally independent. Its function and building services are integrated with the CSB since it was built. A separation of the building from CSB would need an overhaul of its access, fire safety and provision of building services. Similarly, the disconnection would affect the CSB. However, an update of CSB has not formed part of the proposal, thus its impact has not been assessed.

The extent of physical interventions and the adaptive reuse of the PWB requires that the building be upgraded to fully comply with relevant building standards. However, the application was not accompanied with reports demonstrating the investigations of the existing building for its capacity to comply to these standards. It is noted that the Heritage Construction Methodology suggests the building would need to be upgraded to comply with Australian Standards AS3826 – Strengthening existing buildings for earthquakes. Given the significant impacts on the heritage building by the proposed adaptive reuse and physical intervention, a BCA compliance assessment report should be prepared for the existing building at the Stage 1 application.

Whilst a Heritage Construction Methodology has been prepared, there are many contingencies identified in the assessment for future investigation. The excavation under the existing building and the construction of the mega column in the lightwell impose considerable risk to the heritage structure and fabric.

The new development encroaches the heritage spaces from the south, the east, underground and the air. The extent of integration of the new structure and space to the heritage building is considered to have major impact on its independence and integrity. The reversibility of the additions and the expectation of any future reinstatement of the heritage building's setting and exterior are highly questionable. In its current form, the additions and

integrations are considered to significantly compromise the heritage building and its significance.

The lightwells and window setbacks of the building from Phillip Lane are important elements of the building. These are features that are also evident on the CSB. The lightwells of the PWB facing Phillip Lane are also significant features of the building with high levels of heritage significance. They should be retained and not obscured or altered in the proposal.

The 3-storey addition along Phillip Lane should be deleted and the eastern wall of the 1889 addition, which is identified to have high significance should remain evident on Phillip Lane. The southern lightwell and the southern wall of the wing should be retained at all levels to maintain the separation between the heritage site from 52 Phillip Street. The extent of physical integration of heritage building with the new building at 52 Phillip Street should be reduced to maintain the independence and integrity of the heritage structure. The interconnections of the two buildings should be constrained to the new openings on the southern boundary.

Consideration should be given to shift the proposed mega column at middle lightwell to the eastern side of the main south-north corridor of the PWB, such that the existing lightwell remains unchanged and the risk of construction of the column to the significant fabric is reduced.

#### **d. Impact on Phillip Lane**

Phillip Lane is listed as a local heritage item under Sydney LEP (I1905). The lane is substantially enclosed by buildings, which also have heritage significance. The rear elevations and backyards of the CSB and PWB are important character defining elements at the northern section of the lane.

The proposed addition behind the PWB along the lane and the removal of the southern lightwell would considerably alter the streetscape of the lane at its northern end. The back windows and walls of the heritage buildings are obscured, and the characteristic back courtyard is removed under the proposal.

The proposed driveway within the heritage curtilage and parallel with Phillip Lane, which results in a dividing wall standing between driveways, is considered out of character of the lane. The scale of the lane is also affected by the proposed drop-off area which virtually widens the lane under the arch bridge. The cumulative impact of the new driveway and drop-off space is detrimental to the form and fabric of historic laneway between Phillip Lane and Phillip Street. Either the driveway or the drop-off widening should be removed so that the integrity of the laneway is retained.

Both the new driveway and the drop-off area have considerable impact on the scale and historic form of the laneway. One of these aspects must be deleted to reduce the intervention to the lane. The 3-storey addition along Phillip Lane should be deleted and the eastern wall of the 1889 addition, which has high significance, should remain exposed to Phillip Lane. The southern lightwell and the southern wall of the wing should be retained to maintain the separation between the heritage site from 52 Phillip Street.

### **e. Overhanging Tower**

The proposed tower takes a significant portion of the heritage building's air space. The setback from Phillip Street does not comply with Sydney DCP 2012 where a minimum 10 metre setback is required. The argument in the Design Report, which states that the average setback complies given the northern part of the heritage building has no rooftop addition, is not supported. The PWB, as the same as the CSB, is considered to have no potential of any vertical additions and thus the setback required from the street or lane would be the full depth of the site.

The top crest rail of the mansard roof has a height of RL 54.71, and the roof also has a chimney on the southern boundary with a height at RL 56.7. The stepped projections under the proposed building envelope is RL56.52, RL62.03 and RL71.63. The starting point of the projection conflicts with the chimney and is very close to the top of the existing roofline.

The extent of overhang is around 21 metres and constitutes two thirds of the frontage of the heritage building. The transfer zone height is approximately 5 metres. The transfer zone height is small in comparison with the overhang length. Due to the extent of the overhang, insufficient setback from Phillip Street and the proximity of soffits of the overhang to the heritage roof, the new tower would overwhelm and impose over the PWB.

The extent of overhang should not be more than half of the frontage length of the heritage building (approximately 16 metres). The gap of the overhang and the heritage roof is to be increased. The starting point of the projection from the boundary should not be less than 3 metres above the chimney at RL56.70. The angle of the overhang soffit is to be increased to 60 degrees.

## **2. Floor Space Ratio (FSR)**

In accordance with Sydney LEP 2012, the site prescribes a base FSR of 8:1 and is eligible for additional accommodation floor space of up to 6:1 for hotel uses as well as 4.5:1 for residential uses. Having regard to the indicative land use split of 80% hotel (4.8:1) and 20% residential (0.9:1), the maximum FSR permitted by the proposed development is 13.7:1.

The Environmental Impact Statement (EIS), prepared by Ethos Urban, indicates that the maximum FSR for the site, including accommodation floor space, is 15:1. The EIS also recognises an 'anomaly' in the mapping of FSR in the Sydney LEP 2012, which generally relates to the carriage way from Phillip Street. Overall, the EIS asserts the GFA of the development is 25,374.5sqm, premised from the 15:1 FSR where the unmapped area of the site is deemed to be unrestricted in generating floor space.

The EIS is unclear as to how the 15:1 FSR has been derived. Clarification must be sought on the establishment and calculation of the FSR for the development, noting that an area of the site has not been mapped and means that the FSR is not regulated on this land. Therefore, any consideration to GFA must be merit-based. Should it be deemed that an anomaly exists in the identification of FSR, a planning proposal or a Clause 4.6 variation request must be sought to correct this.

### **3. Privatisation of public land**

The proposal involves use of the Phillip Street carriage way as a drop off and pick up zone for the future hotel. This privatises the land for a use that would be dominated by vehicles, which is currently open and publicly accessible to both pedestrians and vehicles.

The carriage way is part of the pedestrian network that connects the Aurora Place plaza, located at the southern end of Philip Lane, to Macquarie and Phillip Streets at the northern end of the lane. There has been no consideration for pedestrians in the proposed hotel drop off use of the carriage way, with no provisions made to upgrade the carriage way or provide more equitable access for prams and wheelchairs. Currently, the footpaths on either side of the carriage way are narrow and cannot accommodate prams or wheelchairs.

Another consideration for pedestrian safety is lighting. The carriage way is dark and the contrast for drivers into the carriage way from the daylight of Phillip Street could be dangerous for pedestrians. Further, the vehicle access to the car lift occurs from the eastern end of Phillip Lane. The proposed width of the vehicle access is approximately 5.6m wide, which is stringent for two way access to the car lift and sterilises this part of Phillip Lane for any potential active uses that would improve the safety and security of the lane. The cumulative impact of the vehicular access to the car lift and the loading dock, leaves little frontage on the lane for potential activation. The proposal should seek for opportunities to active and pedestrianise Phillip Lane.

A further comment is made to the privatisation of public buildings. As previously mentioned, the PWB and CSB share a heritage listing as they were built at a similar time, of similar materials and architectural style, and had an initial purpose as government buildings. The proposal is for a 99-year lease for a hotel for 50 Phillip Street. However, the indicative tower at 52 Phillip Street relies on structures to be located on 50 Phillip Street. As such, the two sites are tied together in perpetuity. Once the structure places a 'foothold' in 50 Phillip Street, it would not be easily reversible. Having regard to the indicative residential land uses, there would be an inevitable private interest on public land as the apartments would be in individual ownership, with the overhang relying on 50 Phillip Street for its structure.

#### **a. Structure**

The proposal does not provide alternatives for a tower that is supported solely on the non-heritage site 52 Phillip Street. Ideally, the tower is to be structurally independent of 50 Phillip Street. Notwithstanding this, no structural report has been provided to demonstrate how the building is supported and its impact on the former Department of Public Works building. Particularly, no information has been provided on the impact of structure to the foundations of 50 Phillip Street.

The proposed structure is to be located within the light well. The design report documents that the fabric that forms the light well is a combination of high and exceptional significance. The structure in the light well will obstruct the views of the heritage fabric and diminish the function of the light well which is to provide light to adjoining internal rooms. Furthermore, there is a proposed 550mm curtilage between the structure in the light well and the heritage fabric which is insufficient to allow maintenance of the walls and roof of the light well.

## **4. Urban design**

### **a. Building envelope**

The proposed upper level setbacks to Phillip Street are inconsistent with required front setback requirements prescribed in Section 5.1.2.1 of Sydney DCP 2012. The design report argues that Aurora Place and the Hotel Intercontinental both have upper level setbacks less than the required 8m in Sydney DCP 2012. It should be noted that both these buildings precede the current controls, and neither building along Phillip Street is located above a State heritage item. As such and in this instance, both buildings are not an appropriate precedent for establishing the upper level setback and a 10m upper level setback to Phillip Street is recommended consistent with the setback controls. It should also be noted that the only tower within this block of Phillip Street is Aurora Place.

The proposal includes a residential use, and as such, the Apartment Design Guide (ADG) applies. The tower is setback approximately 3.5m from the Phillip Street boundary. The minimum required separation distances from buildings to the side and rear boundaries are 12m to habitable rooms and 6m to non-habitable rooms. While the residential component of the tower occurs above the height of the Astor building, this does not discharge the proposal's responsibility to deliver appropriate separations regarding future redevelopment of surrounding properties for residential development.

The tower appears to align with the rear façade of the former Department of Public Works building and combined with the overhang of the tower, it could appear to have an overbearing relationship with the host heritage building. A view from the northern end of Phillip Lane looking back at the tower would be useful in understanding the relationship of the proposed bulk and mass relative to 50 Phillip Street along Phillip Lane. Greater upper level setbacks may reduce the wind impacts, especially to the roof top of the Astor building. Greater upper level setbacks to the tower may also assist in view sharing to towers located to the south.

The building envelope is built to the southern boundary and the reference scheme shows a setback from the southern boundary of approximately 5.6 metres. This setback in the reference scheme is not consistent with Section 3F-1 of the ADG if windows are located on the southern façade at the detailed design stage.

### **b. Wind**

The accompanying Wind Impact Assessment, prepared by Mel Consultants, details that the proposed building envelope satisfies the standing and walking comfort criteria for the surrounding streets and lanes when wind tunnel testing was conducted.

It is unclear in the indicative architectural plans as to whether the area on Level 35, that is indicated as hotel amenities and common open space for the residential uses, is enclosed. Consideration must be made in the wind assessment for the comfort levels of this area in the development to ensure it is fit for purpose and would not be unduly affected by wind.

### c. Overshadowing

The extent of overshadowing resulted from the proposed building envelope is within the shadow cast by the existing AMP tower. It appears that the proposal does not result in additional overshadowing to the Botanical Gardens and the Domain. However, the Sun Access Plane needs to be further examined to ensure all setbacks align correctly should the proposal proceed.

Furthermore, overshadowing of neighbouring buildings has not been adequately demonstrated. Notably in accordance with the Section 3B-2 Overshadowing of the ADG, overshadowing impacts with respect to the Astor apartments must be demonstrated.

## 5. Design Excellence

The submitted Design Excellence Strategy, prepared by Ethos Urban, does not comply with the LEP or with the City of Sydney's Competitive Design Policy. It is stated in the Strategy that it has been prepared in accordance with both the draft Government Architect's Design Excellence Competition Guidelines (the draft GANSW Guidelines) and the City's Policy. However, Part 2.4 of the draft GANSW Guidelines outlines that the Guidelines should be used only where the local design excellence competition policy or guideline does not exist or apply. The City's Policy exists, and the LEP which has statutory weight specifies that it applies.

Further, the Strategy refers to undertaking a competitive design alternatives process. For a project of this scale, a full architectural design competition is recommended. Where an Architectural Design Competition is undertaken in accordance with the Competitive Design Policy, a minimum of 5 Competitors would be required to participate. More importantly, given the heritage sensitivity of the proposal, it is imperative that at least one of the Jury members be a qualified heritage consultant in accordance with 3.3 of the Policy.

Additional comments are made to the submitted Design Excellence Strategy and is contained in **Attachment A** accompanying this letter.

## 6. Transport and Access

It is acknowledged that the design and quantum of bicycle parking, end of trip facilities as well as the exact loading and servicing provisions are generally determined at the detailed application stage.

Accordingly, any future application must comply with the bicycle parking and end of trip facility requirements of Sydney DCP 2012 and Australian Standard AS 2890.3:2015 Parking Facilities Part 3: Bicycle Parking Facilities. It is the City's preference for bicycle parking for visitors to be located at an accessible at-grade location.

Further, loading should be provided as per the requirements of the Sydney DCP 2012, including the number of loading and servicing parking spaces. All loading and servicing requirements must be accommodated onsite and the development should not be reliant on on-street kerbside parking arrangements. Kerbside arrangements are open to other users, set to meet wider community needs and subject to change. The laneway bridge height is restricted to 2.8m and limits the



loading and service vehicle access to Phillip Lane as well as hotel drop off and pick up.

The indicative design, including the height of the length of the loading bays, illustrates that the development is unable to accommodate a City waste vehicle. Further, the use of the two adjacent loading bays at the same time, as shown in the indicative design, is questioned. Details of the loading and servicing requirements and the appropriate provision of this is required to be addressed in any future application. Details of vehicle access and queuing arrangements for the indicative mechanical parking, including the vehicle lift and waiting areas, is also required to be addressed in any future application.

## **7. Waste**

The submitted Operational Waste Management Plan (OWMP), prepared by Elephants Foot, is insufficient and must comply with the criteria of the City of Sydney Guidelines for Waste Management in New Developments 2018. Specifically, the City does not support residential waste collection by a private waste contractor. It should be noted that residential collection frequency is once per week. Twice a week collection for residential waste and/or recycling is not acceptable and as such, the indicated waste generation wastes detailed in the Report must be recalculated accordingly.

Additionally, the proposed commercial collection frequency of 7 days a week is not supported. Space must be provided to store at least 2 days generation of all waste streams. Waste generation calculations to support the proposed number and configuration of bins should be based on GFA for the development type. Therefore, the 'hotel' and 'function' generation rates, as per the City's waste generation rates, must be applied and the indicated waste generation calculations must also be recalculated accordingly.

The proposal must demonstrate dedicated areas for bulky waste and problem waste for recycling as well as identify bin charting routes and path of access to be used for residents, cleaners/staff and collection vehicles. The nominated waste collection point for the development must be from inside the property and no more than 10m from the waste storage location. Adequate clearance heights for access by collection vehicles, including a City waste vehicle, no less than 4m at any point if a vehicle is required to enter the site to service bins. Dual chute systems must be installed within a chute room on every residential floor. These must be accessible, not adjacent a habitable area and contain one spare mobile garbage bin (MGB) for each waste chute in case of chute failure. The indicative architectural plans appear to have no access to a dual chute system.

The OWMP must provide details of the ongoing management of chute systems including bin transfers, rotation and arrangements for periodic servicing and chute failure. Further, details of the ongoing management of the storage and collection of waste, including responsibility for cleaning, transfer of bins between storage areas, chute rooms, collection points, rotation of bins in waste storage areas, maintenance of signage and security of storage areas must be provided.

## **8. Environmentally Sustainable Design (ESD)**

The Sustainability Report, prepared by Stantec Australia, sets out sustainability commitments and targets for the development. Whilst these are generally acceptable, the Report provides conflicting advice on the provision of rooftop solar

photovoltaics to offset grid electricity usage and reduce energy consumption. This must be clarified and more importantly, a NABERS commitment agreement must be secured. The development must demonstrate best practice sustainability, climate adaption and resilience.

Should you wish to speak with a Council officer about the above, please contact Reinah Urqueza, Specialist Planner, on 9265 9333 or at [rurqueza@cityofsydney.nsw.gov.au](mailto:rurqueza@cityofsydney.nsw.gov.au)

Yours sincerely,

A handwritten signature in black ink, appearing to be 'GJahn', written in a cursive style.

**Graham Jahn** AM LFRAIA Hon FPIA  
**Director**  
City Planning | Development | Transport