

17 December 2020

The Secretary
Department of Planning, Industry and Environment
Level 18
12 Darcy Street
Parramatta NSW 2150

Attention: Emily Dickson (Planning Assessments Team)

Dear Mr Betts

**SUBMISSION: SIRIUS STATE SSDA-10384
REGARDING 88 CUMBERLAND STREET, SYDNEY**

We write this submission as owners of the strata lot of the commercial strata lot and it is SP68837 at 88 Cumberland Street, The Rocks. Marks Henderson purchased the commercial office strata of the building in 2018. The building is well tenanted and includes Government agencies such as Destination NSW.

Whilst the overall quality of the design, the calibre of the design team and the process of design excellence is for the Sirius site is to be commended, this submission raises a number of concerns with the exhibited Sirius SSDA and requests both design amendments and conditions of consent, as follows:

- We consider a nil setback for the Cumberland Street pool building is inappropriate. ADG separation requires the proposal to be setback 3 metres from the boundary (non habitable). This recognises the possible redevelopment potential of 88 Cumberland Street (residential is permissible) and prevents our site being unduly penalised by a nil setback.
- A nil setback to both pool and plant rooms is also of great concern for the amenity of our existing tenants.
- We request shadow diagrams for the southern part of the site, showing a pool building complying with the site-specific height of RL38.2 and the proposed apartments (no greater than the existing Sirius envelope) in the southern part of the site. This will allow us to better compare if a "compliant scheme" has a better overshadowing impact for our site than a non compliant scheme. If a worse overshadowing outcome occurs, we recommend a compliant scheme is pursued.

- We request that DPIE and the applicant recognise that the 88 Cumberland Street building is not only a commercial building but that it also has residential apartments and assess those impacts accordingly.
- We request that DPIE consider whether the height exceedances in the southern portion of the site affects the integrity of the assessment of the original SSP height limits with respect to view corridors and the Opera House.
- Basement structures and buildings have a nil setback to our boundary. Given proximity to Christmas, we have not had the opportunity to have our team of technical consultants review the detailed acoustic, structural, BCA, construction management reports et al accompanying the application.
- In order to ensure there are no adverse impacts to our property, we reserve the right for our consultants to review the EIS reports in detail and allow us time to prepare a supplementary submission in January 2021 with any key concerns and/or any requested conditions of consent.
- We encourage the developer to reach out to us directly to further discuss the proposal and the concerns raised in this submission.
- We request that DPIE include our address on any further notifications regarding the proposal and/or amended plans.

88 Cumberland Street Site

The 88 Cumberland Street site is approximately 1,464m² in area and is located on the eastern side of Cumberland Street between Argyle Street and the Glenmore Hotel site to the south and the Sirius building site to the north.

The building on the site presents to Cumberland Street as a five-storey masonry commercial building with recessed upper levels. The upper most level contains four residential apartments.

Marks Henderson owns the commercial strata lot, whilst the residential apartment strata lots are in separate ownership. There are four strata lots registered on the site with Marks Henderson owning (lot 1-56 inclusive) in SP68837.



Figure 1 – Sirius building site (left) and 88 Cumberland Street (right)



Figure 2 – 88 Cumberland Street (site)

Key Issue 1: Insufficient setback of the Cumberland Street podium pool building

It is stated in the EIS that *"the Cumberland Street building has a 0m setback to the adjacent commercial building. Both buildings are for non-residential uses. The Sydney DCP 2012 controls allow for 0m setback up to street wall height (4-storeys in the case of the subject site). There are no easements on the subject site protecting access to light and air for the site at 86-88 Cumberland Street, The Rocks."*

We have a number of issues with the nil setback to our boundary:

- The documentation history of the Sirius site, including the State Significant Precinct documents and design competition jury report refer to 88 Cumberland street as a commercial building, when it is in fact a mixed use commercial and residential building.
- Whilst there are no easements for light and air on title, north facing windows are located on the boundary of the 88 Cumberland Street site and will therefore be obscured by the proposed nil setback. We understand that despite no easements on title, planning authorities do not automatically dismiss the presence of windows on a site and the amenity they provide.
- The 88 Cumberland Street site is not a listed heritage item and residential and commercial uses are permitted on the site via the Sydney Cove Redevelopment Authority Scheme (SCRA scheme). The redevelopment of the site in the future is therefore a possibility.
- The EIS states that *"there are no specific setback controls for the site under SEPP SSP, and as such the **ADG separation controls have been applied** and the Sydney DCP 2012 is used as a guide (despite not strictly applying to the site as it is located in The Rocks and is an SSD Application)."* **(our emphasis)**.
- However, the ADG separation controls have not been applied.
- The ADG would require an equitable distribution of separation of up to four storeys (approximately 12m), requiring 12m between habitable rooms/balconies; 9m between habitable and non-habitable rooms; and 6m between non-habitable rooms.
- Recognising that the 88 Cumberland Street site could be redeveloped in the future, the Sirius proposal should incorporate a setback/separation to the 88 Cumberland Street site, so that future development scenario is not penalised by the Sirius redevelopment. A setback of 3 metres is therefore required as per the ADG (non habitable to boundary).
- A pool building located on the boundary also raises a number of significantly acoustic concerns for the both the current and future development potential of 88 Cumberland Street. A nil setback means pool activity and pool plant and equipment is located closer to our

existing tenants. A nil setback would require Marks Henderson to inequitably provide a greater setback on our property in the event of redevelopment of our property.

We therefore, reiterate our request for a 3 metres setback for the pool building instead of the proposed nil setback.

Key Issue 2: Exceedance of site-specific planning controls on the south of the site

The Sirius site went through an extensive State Significant Precinct (SSP) planning process, which resulted in site specific built form controls being gazetted via the State Environmental Planning Policy (State Significant Precincts).

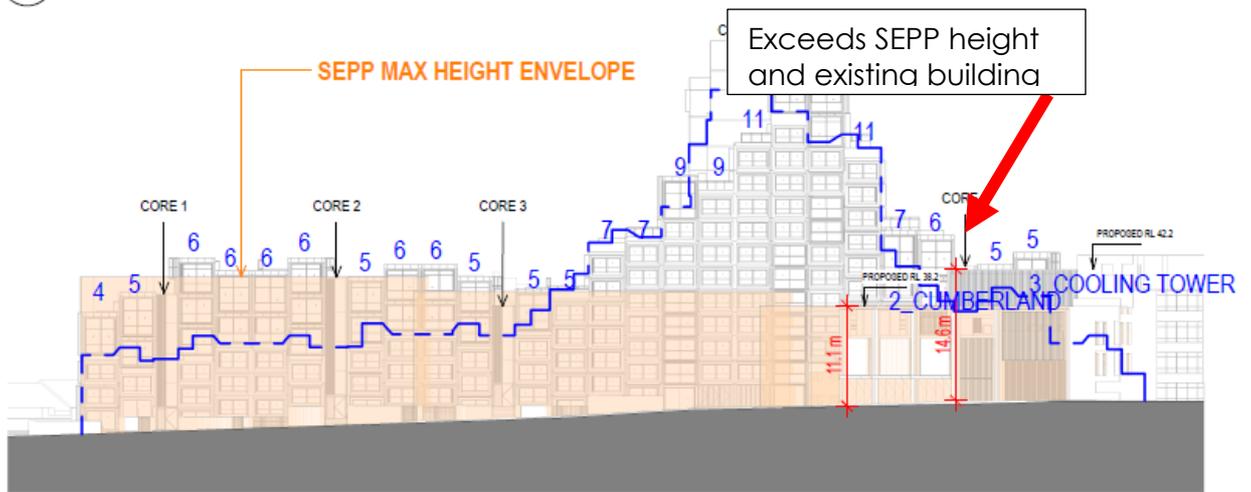
It is acknowledged that greater flexibility was provided in the drafting of the controls where re-use of the existing building is proposed instead of full demolition. Nonetheless, the final planning controls were framed around the following assessment in DPIE's report:

"The Department considers that the retention and enhancement of views to the Opera House is an important driver of future building height and scale. It is proposed that the heights included in the SEPP Amendment (ie, RL 38.2 at southern end of site, RL 39.8 in central part of site and RL 41.4 at northern end of the site) are retained".

It is noted that the proposal exceeds both this site-specific control (RL38.2), as well as the existing Sirius envelope at the southern end of the site (refer **Figures 3** and **4** below). However, this is the point of the site where the potential for greatest impacts occur – i.e overshadowing.

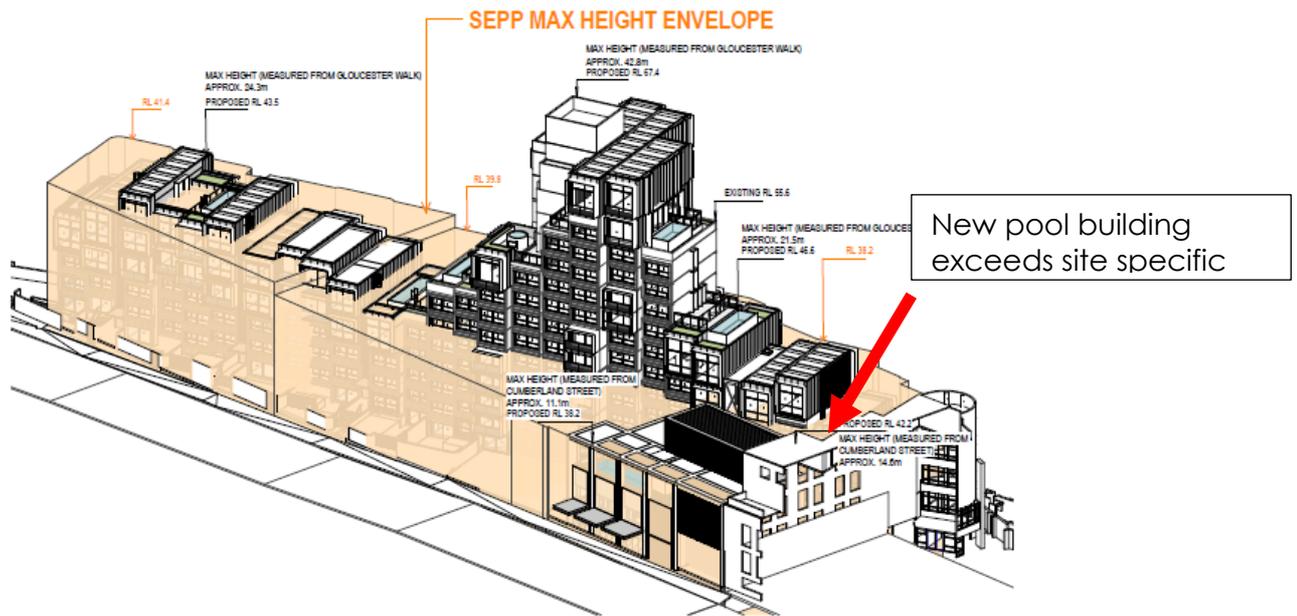
With respect to this issue, we request the following:

- Shadow diagrams are requested by DPIE for the southern part of the site, showing a pool building complying with RL38.2 and the proposed apartments no greater than the existing Sirius envelope (in the southern part of the site). This will allow us to better compare if a "compliant scheme" has a better overshadowing impact for our site than a non-compliant scheme. If a worse outcome occurs, we recommend a compliant scheme is pursued.
- We request that DPIE and the applicant recognise that the 88 Cumberland Street building is not only a commercial building but that it also has residential apartments and assess those impacts accordingly.
- We request that DPIE consider whether the height exceedances in this portion of the site affects the integrity of the assessment of the original SSP height limits with respect to view corridors and the Opera House. Given that the controls were drafted to be very site specific, variations to those controls may not be justifiable.



4 BUILDING HEIGHT WEST ELEVATION

Figure 3 – Height exceedance above existing envelope (southern part of the site adjoining 88 Cumberland Street)



1 SEPP HEIGHT AND PROPOSED BUILDING HEIGHT VIEW FROM SOUTHWEST

Figure 4 – Height exceedance from SEPP for new pool building

Key Issue 3: Basements and Cumberland Street built to boundary: technical concerns

We note that both basement structures and buildings have a nil setback to our boundary. Given proximity to Christmas, we have not had the opportunity to have our team of technical consultants review the detailed acoustic, structural, BCA, construction management reports et al accompanying the application. We are aware there are technical solutions to address boundary solutions. But we are also aware of well publicised incidents where building to the boundary has had disastrous construction consequences (e.g. adjoining building collapse).

Further, it is the expectations of our tenants that noise will be suitably managed both during construction and during the operational phases of the development (i.e. from pool plant).

In order to ensure there are no adverse impacts, we reserve the right for our consultants to review the EIS reports in detail and allow us time to prepare a supplementary submission in January 2021. We will raise any further key concerns and/or any requested conditions of consent and ask that the Department still consider these, even though this supplementary submission will be lodged after the formal exhibition period.

Key Issue 4: Consultation

The EIS states that *"Consultation has been undertaken with all agencies required by the SEARs, including:*

City of Sydney Council (Council);

Government Architect of NSW (AGNSW);

Heritage Council of NSW;

Place Management NSW (PMNSW);

Transport for NSW (TfNSW);

NSW National Trust; and

Special interest groups, including Save Our Sirius and Millers Point Residential Group. Consultation has also been undertaken with Tao Gofers, architect of the existing Sirius building".

The EIS also states that *"the project has been the subject of consultation with government agencies, the local community and key stakeholders".*

With respect to this consultation, we make the following comments:

- Marks Henderson did not receive notification of the SSDA exhibition from DPIE. We were informed of the exhibition period by the residential strata lot owners of 88 Cumberland Street. We query if our notification

may have gone amiss due to the confusion over the Strata lot arrangements of 88 Cumberland Street.

- As a directly adjoining neighbour, we consider that we are a *key stakeholder* and that consultation prior to EIS lodgement would have been desirable, particularly given the impact of the nil boundary setback to our property.
- We encourage the developer to reach out to us directly to further discuss the proposal and the concerns raised in this submission.
- We request that DPIE include our postal address on any further notifications regarding the proposal and/or amended plans.

Conclusion

We thank DPIE for the opportunity to comment on this SSDA. We would appreciate that any additional information is shared with us, such as the complying shadow diagram comparison and that we receive notification of any progress of the application. We also seek to provide a supplementary submission to you in January 2021 addressing any technical concerns we have in relation to acoustics, construction management, structure and BCA. If you have any questions regarding this submission, please do not hesitate to contact me on 0418 378 843.

Yours sincerely



Chris Marks
Director
Marks Henderson Pty Ltd
On behalf of Angelpark Pty Ltd ATFT MH Cumberland Street Unit Trust