

12 May 2021

Department of Planning, Infrastructure and Environment  
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Parramatta NSW 2124

Submitted via website: <https://www.planningportal.nsw.gov.au/major-projects/project/34196>

To Whom It May Concern,

**Re: National Trust submission for 50-52 Phillip Street New Hotel/Residential Building Stage 1 Concept DA**

The National Trust of Australia (NSW) expresses its strong objections to the Stage 1 Concept DA for 50-52 Phillip Street, Sydney. This proposal is an insult to one of the most historically, socially, and architecturally important public buildings in Australia. It must not proceed.

The Trust wishes to see NSW's significant heritage places revived and cared for, however this should not come at the cost of losing the very elements that contribute to that significance. The conservation of an historic building should not be a trade-off for visual impact and encroachment on the place's fabric and setting.

This letter sets out our concerns in more detail.

**Summary**

In the recently completed *Macquarie Street East Precinct Review* (p.8), the Chief Secretary's Building is noted as:

*"by design, a symbol of power and politics. The building served as the seat of government administration for 120 years... **Heritage-listed as a building of both state and national cultural significance, it falls within a group of early buildings on Macquarie Street collectively called 'a poem in stone.'**"*

In the same report, both Lucy Turnbull and Paul Keating agreed (p.28) that the repurposing of the Chief Secretary's Building to accommodate government and/or administrative or cultural uses will provide a *"proper and appropriate use for **one of Sydney's most important historic buildings...** Ensuring that the building remains in public hands is of central importance given its historical role as a centre of public administration."*

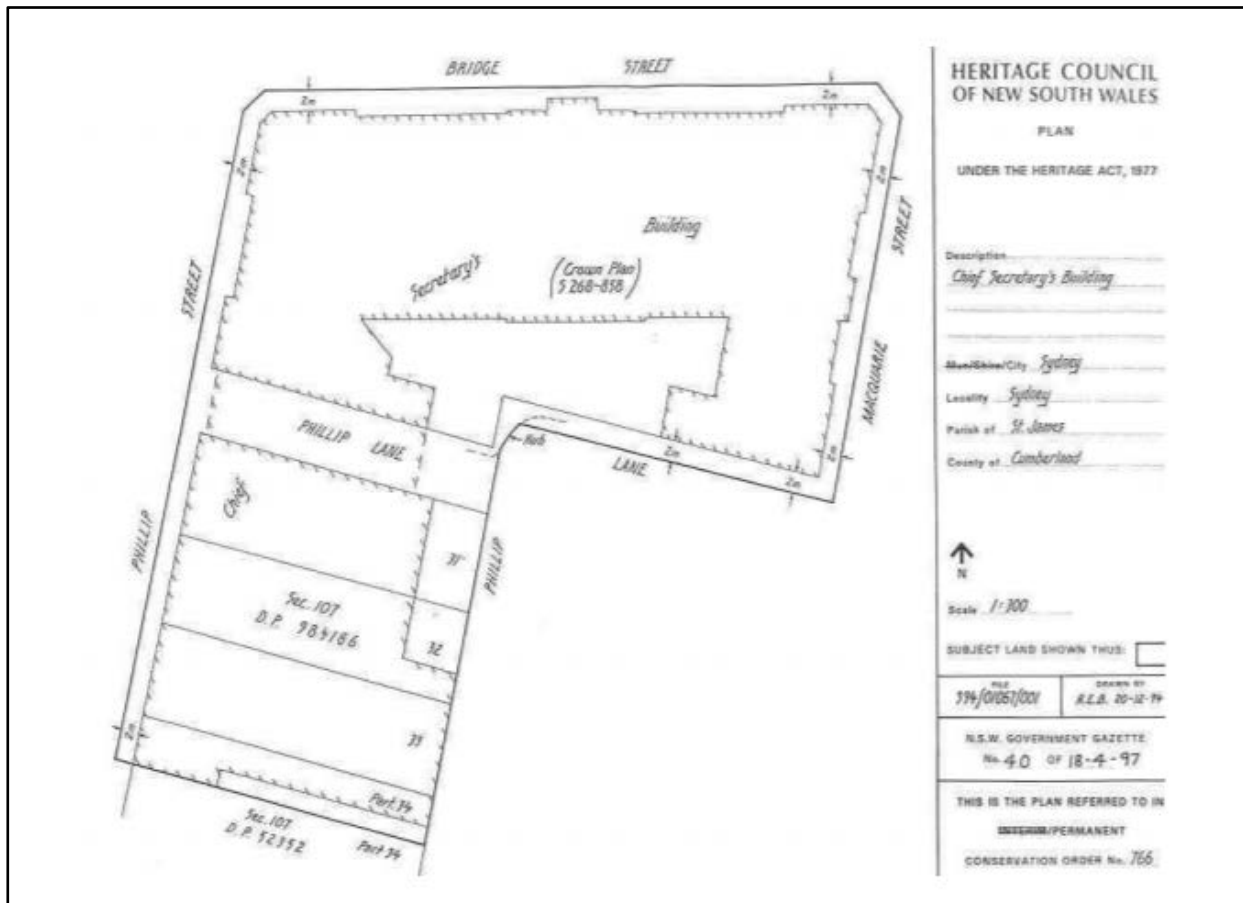
The National Trust has deep concerns about the proposal, its impact on the Chief Secretary's Building, heritage listed buildings nearby, and the information contained in the Conservation Management Plan (CMP) and Heritage Impact Statement (HIS) that for part of the proposal's Environmental Impact Statement (EIS).

**Separation of 50 Phillip Street (Former Public Works Building) and 121 Macquarie Street (Former Chief Secretary's Building)**

The Concept Proposal erroneously separates the two portions of the heritage place and excludes the Chief Secretary's Building from the Proposal and the assessment of its impact, despite the totality of the buildings comprising one heritage listing.



In all documentary evidence, from the National Trust's initial 1975 listing (see attachment), through to the actual heritage boundaries as identified in the State Heritage Register listing, through to the City of Sydney LEP heritage listing, the building has always been considered as one element, incorporating the original Chief Secretary's Building and its 1880s extension (referred to and separated in the proposal as the Former Public Works Building). The following Figure shows the statutory heritage curtilage of the place:



Heritage Curtilage map, indicating the one listing for the "Chief Secretary's Building" (Source: SHR Inventory)

The EIS's statement that (p.26) "Despite sharing a common boundary and having historic internal connections between both heritage buildings, the Former Public Works Offices on the site now functions as an independent building from the Former Chief Secretary's Building on 121 Macquarie Street. As such, the Former Chief's Secretary's Building does not form part of this SSD DA" **is erroneous and irrelevant**.

The current use of the different parts of the building have no bearing on the statutory heritage curtilage of the place and assessment obligations arising from this. Also irrelevant is the HIS's Heritage Curtilage Analysis, which argues that the lot plan for the site (drawn before the Chief Secretary's Building was even built!) comprises its heritage curtilage. It does not. The boundary on the National Trust, the local, and the state heritage listings is the heritage curtilage illustrated in the image above.

To argue that the 1880s addition is not part of the Chief Secretary's Building is akin to arguing that the 1888 Centennial Hall does not form part of Sydney Town Hall, or that the University of Sydney Quadrangle only comprises those earliest elements designed by Edmund Blacket. The heritage listing for the place incorporates both the original building and its extension. Any proposal affecting one part of the building must assess the proposal against the entirety of the heritage listed site. The exclusion of part of the heritage listed site from the HIS, CMP and EIS have resulted in these documents **being non-compliant with the SEARS issued for the project**, let alone heritage best practice guidelines and requirements.



### Additional SEARS requirements

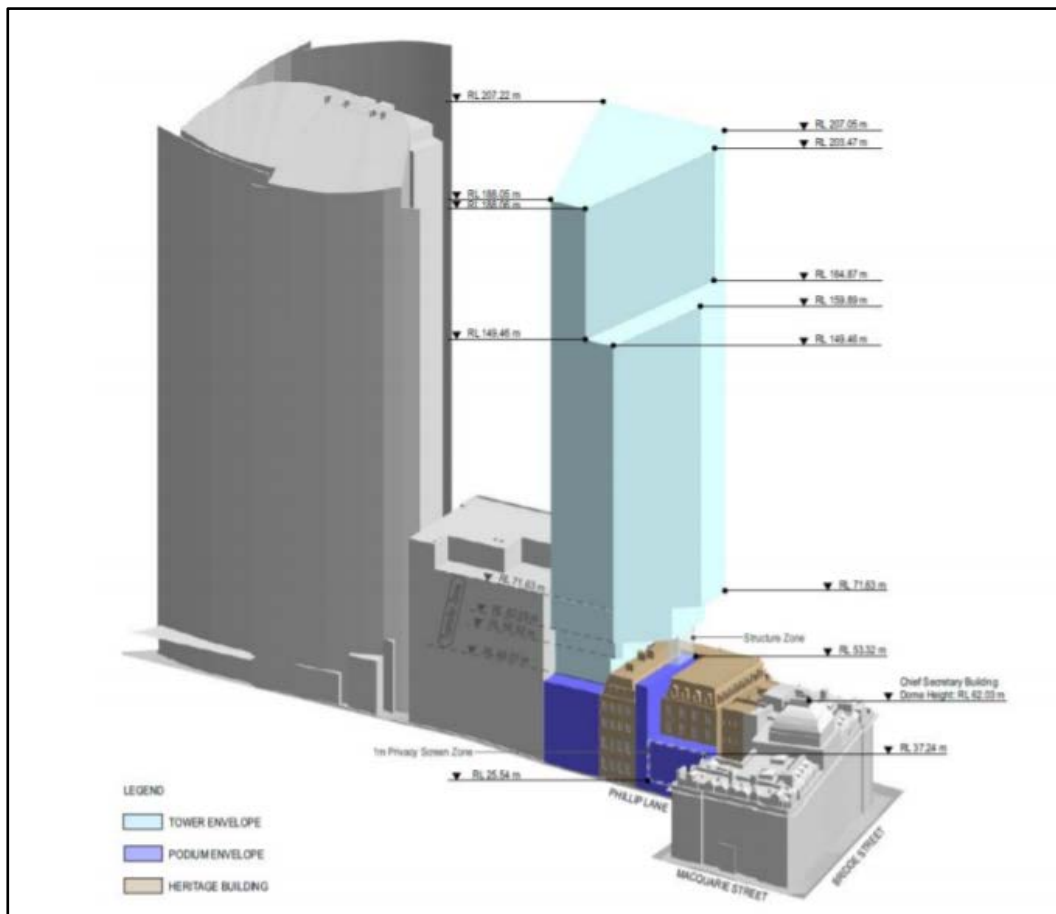
The SEARS requires:

- *Compliance with the policies and management guidelines contained in the current endorsed Conservation Management Plan (CMP). If an updated CMP is proposed to be submitted with the application, it must be endorsed by the Heritage Council prior to the finalisation of the proposal and submission of the EIS*

**National Trust response:** We note that the updated CMP has not been endorsed by the NSW Heritage Council and bring your attention to the fact that the NSW Heritage Council no longer endorses CMPs. Given this issue and issues with the lack of objectivity in the updated CMP (see below), the SEARS should be amended to state that the currently endorsed CMP should be used as the basis for assessment and the Concept Design must be consistent with its policies.

- *Demonstrate attempts to avoid and/or mitigate the impact on the heritage significance or cultural heritage values of the site and the surrounding heritage items and heritage conservation areas and provide an evaluation of the effectiveness of the proposed mitigation measures.*

**National Trust response:** As outlined above, the EIS and its supporting documents specifically separate the heritage listed site into two distinct buildings and exclude the northern portion of the building from its assessment. **This is extraordinary practice and should not in any circumstance be allowed.** Heritage does not exist in a bubble and the separation of this site and exclusion of part of it from the main analysis is a grave and deeply concerning approach that the Trust is outraged by. The following illustrations, taken from the EIS, clearly show the building as one and indicate the high visual impact the proposed Concept will have on the entire building.



**"Proposed Building Envelope" drawing, not even identifying the Chief Secretary's Building as a heritage item (Source: FJMT)**



- *Provide justification for any changes that may have a major impact of the heritage significance of the heritage items including any options analysis.*

**National Trust response:** Given the total exclusion of part of the heritage site from the assessments and the EIS, it is impossible that any form of impact could be adequately assessed. The Concept Proposal does not comply with this requirement.

### **Objectivity of the Conservation Management Plan (CMP)**

The Trust has serious concerns regarding the updated CMP, prepared by the same consultant who has written the Statement of Heritage Impact, and which has been prepared as an accompanying Technical Report to the EIS and used as the basis for informing the EIS's recommendations.

The site had a previous CMP to guide its future care and management, prepared in 2016. Standard industry recommendations for updating CMPs are 5-10 years – the review of this CMP within 4 years is rapid. The updated CMP contains critical changes that support the proposed development and are not justified. This includes the downgrading of elements of significance from exceptional to high, with no explanation, assessment or justification as to why significance levels have been changed. For example, the updated CMP downgrades significance and then allows for more removal of the downgraded fabric. This raises issues of objectivity in the CMP and concern for the retention of elements of significance at the site.

### **Inconsistent application of CMP, DCP and HIS policies**

The Heritage Impact Statement for the proposed concept DA states that *“This report also assesses the proposal against the principle conservation policies contained within the previous endorsed Conservation Management Plan (CMP) prepared in 2016, and updated Conservation Management Plan (2020)”* and goes on to confirm that the proposal has been prepared in accordance with the detailed policies contained within both CMPs. However, given that the two CMPs contain contradictory policies and contradictory levels of significant elements, it is impossible for this statement to be the case.

In addition, the EIS for the Concept Proposal states that it includes *“a high-level assessment of the Concept Proposal against the relevant provisions of Sydney Development Control Plan 2012 (Sydney DCP 2012).”* However, this high level assessment fails to acknowledge or address the DCP requirement (General Provision 3.9.4) that states that:

*Development of sites of State heritage significance or containing more than one heritage item, **where they propose building over more than 20% of a heritage item's building footprint within the airspace above the item, but not within the airspace next to the item, the consent authority should:***

- a) appoint a committee that includes heritage professionals to examine and advise on the merits of the proposal;*
- b) be satisfied that that committee has followed an appropriate public process for the purpose of that examination; and*
- c) consider the advice of the committee, but is not bound by the advice of the committee.*

The EIS did not address these DCP requirements and thus is misleading in its commentary around the aligning with the provisions of the DCP as they relate to heritage. The Trust also notes that the setbacks of the proposed Concept are not consistent with the DCP heritage provisions and the Trust does not support the proposed setbacks.

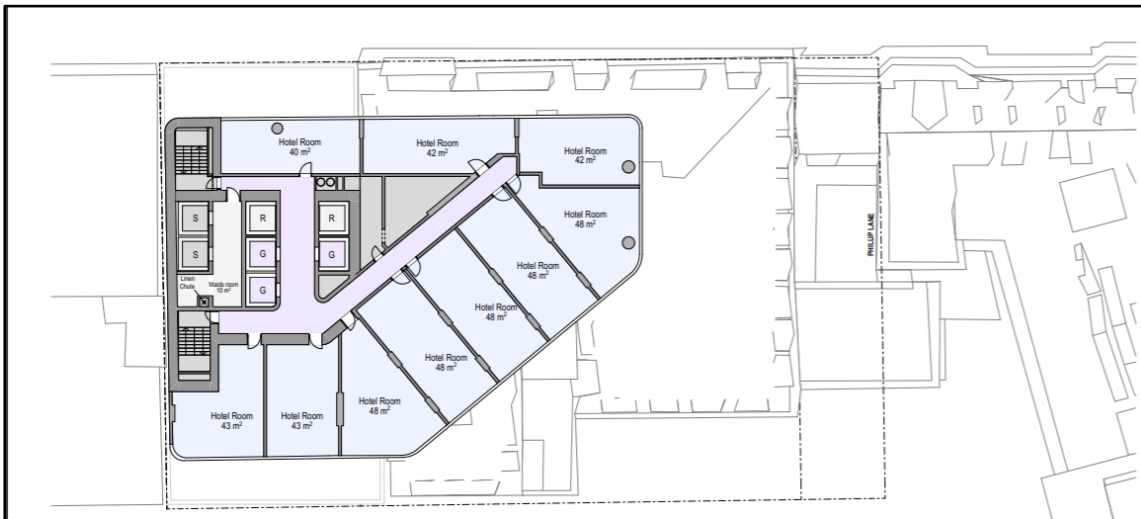
### **Setting, Impact and Cantilevering**

The Trust is unequivocally opposed to the proposed new tower cantilevering into the airspace above the historic building, and inserting the lift core for such a proposal into the lightwell for the historic building. The proposed new building's bulk, scale and placement is not consistent with the highly significant character of the area around it. It will negatively impact the setting of these historic buildings, the character of the area and the important viewlines to and from the site.

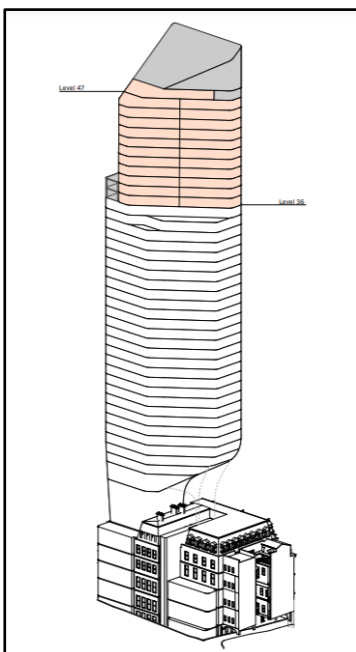


The airspace above this heritage building is owned by the public and is a highly valuable commodity due to its transferrable development rights. The proposed development nudges into more than 20% of that airspace and represents a bad deal for the people of NSW. Airspace rights are designed to be traded away from the site for the site's long term protection and preservation, not built over and not apportioned on the site, which diminishes the potential future returns for the site.

The Trust note that the proposed concept states *"No heritage curtilage will be altered or encroached upon. No existing significant views to or from heritage items in the vicinity will be obscured. Although the proposed development will form a new element in the existing setting of the heritage item, it has an acceptable heritage impact."* **The Trust absolutely disputes this analysis** – the proposed development encroaches into the airspace above this nationally significant heritage building, in essence squatting over it and infilling its lightwell, and will be visible from the *Governor's Domain Precinct* recently listed on the National Heritage List.



**Image showing the footprint of the historic building and the extent of the proposed new building's elements that will cantilever over the historic building. (Source: FJMT)**



**Image showing extensive scale and bulk of the proposed development in contrast to the existing character and scale. (Source: FJMT).**



### **Inadequate Consultation**

The Trust has been contacted by numerous concerned community members regarding the proposed development and we bring attention to the proposed DA's documentation that noted the National Trust is generally consulted for developments affecting significant places. The Consultation Report notes that while there were 12 meetings with government agencies as part of the consultation process, there was only one brief "information webinar" for the entirety of the community aspect of the consultation.

As stated in the National Trust Position Paper "*Community Consultation on State Significant Development*", we note that for community consultation to be worthwhile, it must be true "engagement" with the community and that "the community" must include community organisations with specialised knowledge and experience - not a randomly selected group of community members.

The SEARs for the project require that "During the preparation of the EIS, you must consult with the relevant local, State or Commonwealth Government authorities, service providers, **community groups** and affected landowners." The Trust has not been contacted by the proponents or included in their consultation, despite representing the interest of more than 22,000 community members and being NSW's foremost community heritage organisation.

### **Conclusion**

Whilst the National Trust of Australia (NSW) consistently advocates the importance of adaptively reusing heritage places to ensure their care and protection, the proposed development is not supported due to the negative impact it will have on:

- the character of the nationally-significant historic area it is within;
- its impact on important sightlines to and from the historic building; and
- the impact that the cantilevered building will have on the nationally significant building beneath.

In addition, the Trust does not believe the SEARs for the EIS have been complied with for this proposal, and that setting such a precedent for one of our most important buildings will have disastrous consequences for other State Heritage Listed items throughout the state – which the public rightly assume should be protected by their heritage listing.

The Chief Secretary's Building is a public asset, and one of the most important buildings in Australia. It warrants, and deserves, the highest level of protection. The National Trust of Australia (NSW) expresses its strong objections to the Concept Design and recommends that it should be withdrawn.

Yours sincerely,

Debbie Mills  
**Chief Executive Officer**