



22 January 2020

Intercontinental Hotel Alterations and Additions (SSD 7693)

1. INTRODUCTION

1. On 27 September 2019, the NSW Independent Planning Commission (**Commission**) received from the NSW Department of Planning, Industry and Environment (**Department**) a State significant development (**SSD**) concept development application SSD 7693 (**Application**) lodged by Mulpha Australia Ltd (**Applicant**) in relation to the Intercontinental Hotel at 115-119 Macquarie Street (**IC Hotel**) and Transport House at 99-113 Macquarie Street (**Transport House**) (collectively the **Site**).
2. The Application seeks concept development consent to establish building envelopes and internal and external alterations to facilitate an increase in gross floor area (**GFA**) of 1,074m² for tourist and visitor accommodation, together with internal and external upgrades to the IC Hotel (**Proposal**).
3. As the Application is a concept development application only, it does not include any physical works. The detailed design of works will form part of separate future development application(s) (**Future DA(s)**).
4. The Commission is the consent authority in respect of the Application under section 4.5(a) of the *Environmental Planning and Assessment Act 1979* (**EP&A Act**) and clause 8A of the *State Environmental Planning Policy (State and Regional Development) 2011* (**SEPP SRD**). This is because:
 - the Application constitutes State significant development under section 4.36 of the EP&A Act as the Application comprises development for tourist related purposes, has a capital investment value (**CIV**) greater than \$10 million and is located within an environmentally sensitive area of State significance (i.e. the SEPP SRD identifies the former NSW Treasury Building, which is located on the Site and is listed on the State Heritage Register (**SHR**), as an ‘environmentally sensitive area’); and
 - the Department received an objection from the relevant local council, being Sydney City Council (**Council**).
5. Although the Application was submitted prior to 1 March 2018, and therefore prior to the commencement of clause 8A of the SEPP SRD, clause 8A still applies to the Application in accordance with clause 8A(3) of the SEPP SRD.
6. Professor Mary O’Kane AC, Chair of the Commission, nominated Chris Wilson (Chair), and Soo-Tee Cheong to constitute the Commission determining the Application.

1.1 Site and locality

7. The Department’s SSD Assessment Report dated September 2019 (**Department’s AR**), provides context for the site and locality.
8. The Site is located in the north-eastern part of the Sydney Central Business District (**CBD**) and occupies the southern two-thirds of the block bounded by Macquarie Street, Bridge Street, Phillip Street and Albert Street. The Site is located within the City of Sydney Local Government Area (**LGA**) (**Figure 1**).

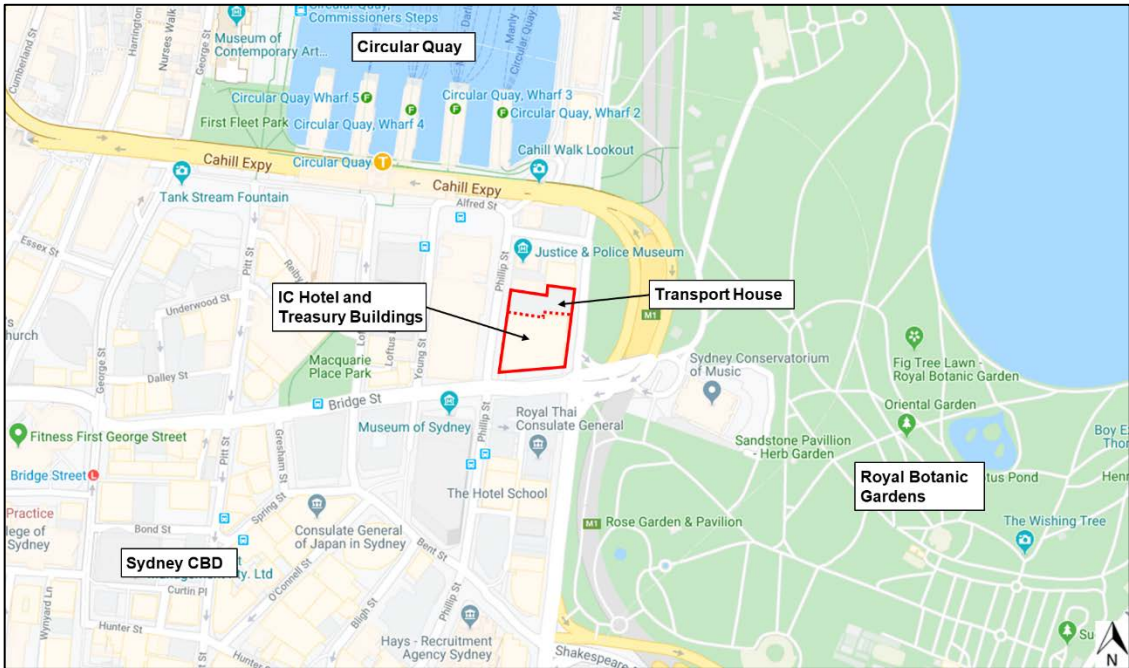


Figure 1 – Site location and context (Source: Nearmap)

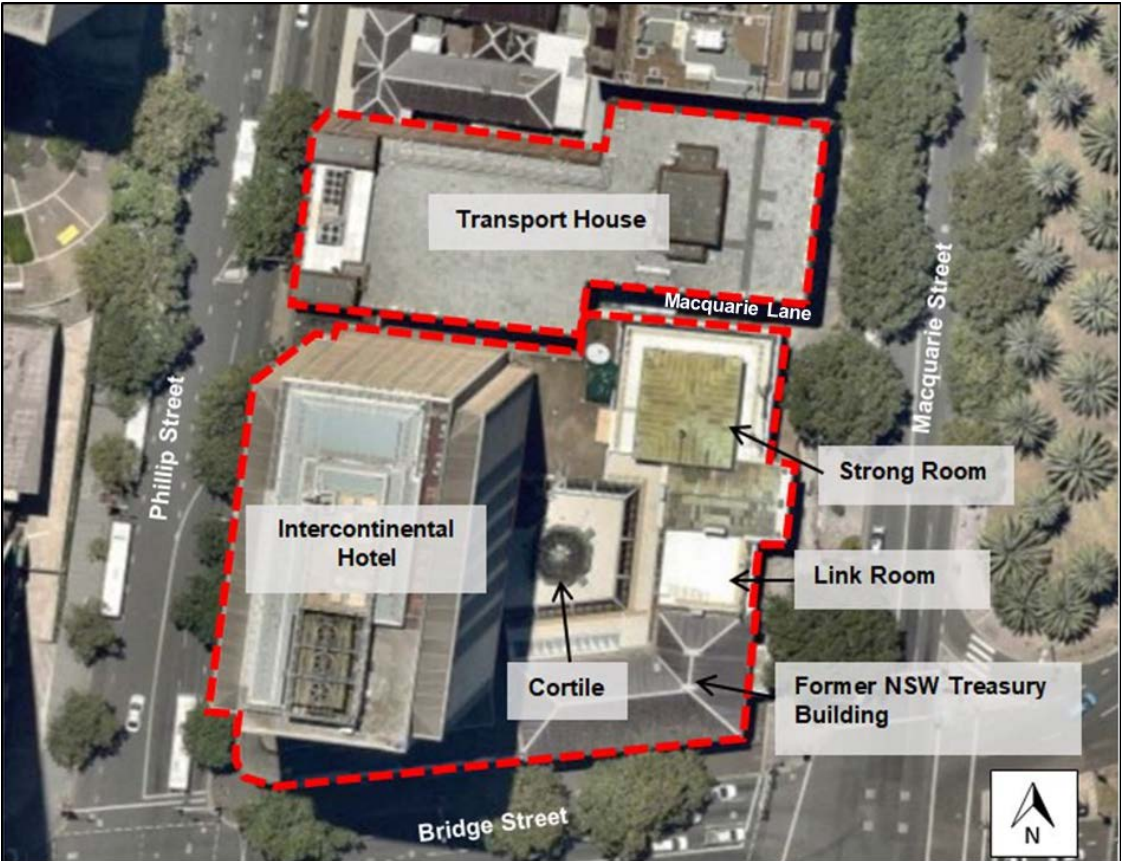


Figure 2 – Aerial view of the Site and relationship between the IC Hotel, Treasury Buildings and Transport House (Base source: Department’s AR)

9. The southern portion of the Site (115-119 Macquarie Street) contains two interconnected

buildings that comprise the five-star IC Hotel (**Figure 2**), including:

- the 32-storey IC Hotel tower, which is located on the corner of Phillip and Bridge Streets. The IC Hotel tower was constructed in the 1980s and has an existing 36m setback, above a podium, from Macquarie Street;
 - the former NSW Treasury Building (**Treasury Buildings**), which is located on the corner of Macquarie and Bridge Streets. The Treasury Buildings began construction in 1890 and comprise:
 - the original Treasury Building on the corner of Macquarie and Bridge Streets;
 - the northern wing extension (Strong Room and Link Building);
 - the western wing extension including highly intact sandstone façade on Bridge Street; and
 - an internal courtyard, which has since been converted into a covered atrium (the Cortile), located between the IC Hotel tower and the Treasury Buildings.
10. The IC Hotel contains 509 guest rooms (accommodating up to 1,000 guests and employing 470 staff) and ancillary meeting rooms, conference facilities, restaurants, ground level retail and food outlets, basement level ballroom, loading dock and 121 car parking spaces. A health club, pool and the Club InterContinental Lounge are located at levels 31 and 32 of the IC Hotel tower. Vehicle access to the site is provided at Phillip Street and vehicular exit via a right of way to Albert Street.
 11. The northern portion of the site (99-113 Macquarie Street) contains a seven-storey commercial building known as Transport House. The building has frontages to Macquarie Street and Phillip Street. Transport House is separated from the northern wing extension of the Treasury Buildings by a narrow laneway, known as Macquarie Lane.
 12. To the north of Transport House is the 10 storey plus plant (RL 46.6 m) Sir Stamford Hotel (**Stamford Hotel**) fronting Macquarie Street and the SHR-listed Justice and Police Museum buildings (also including the former Traffic Courts and Phillip Street Police Station) fronting Phillip and Albert Streets.
 13. To the east of the Site, on the opposite side of Macquarie Street, is the Royal Botanic Gardens (**RBG**). To the west, on the opposite side of Phillip Street is the 47-storey AMP Tower, which is currently undergoing redevelopment for a 50-storey tower comprising commercial and residential uses.
 14. To the south of the Site is the four-storey SHR listed Chief Secretary's Building and the locally listed 13-storey residential tower known as 'The Astor' at 123-125 Macquarie Street.

1.1.1 Site heritage and special character

15. The Site is located within an area characterised by historic Government buildings and streetscapes on the eastern periphery of Sydney's CBD. The Site contains two heritage-listed items:
 - the Treasury Buildings – listed on the SHR and identified as an outstanding example of Sydney's colonial development (**Figure 3**); and
 - Transport House – listed as a local heritage item under the Sydney Local Environment Plan 2012 (**SLEP 2012**) and identified as an outstanding example of the Stripped Classical style with intact interiors. The building is nominated for inclusion on the SHR (**Figure 4** and **Figure 5**).
16. The Site is also located within an area known as the Governor's Domain and Civic Precinct (**GDCP**), which is currently being considered for inclusion on the Australian National Heritage List.
17. The eastern part of the Site, fronting Macquarie Street and containing the Treasury Buildings

and Macquarie Street frontage of Transport House, is located within the Macquarie Street Special Character Area (SCA) under the SLEP 2012. The south-western corner of the site, containing the IC Hotel tower and podium, is located within the Bridge Street/Macquarie Place/Bulletin Place SCA.



Figure 3 – Macquarie Street (eastern) elevation of the Treasury Buildings elevations (Source: Department's AR)

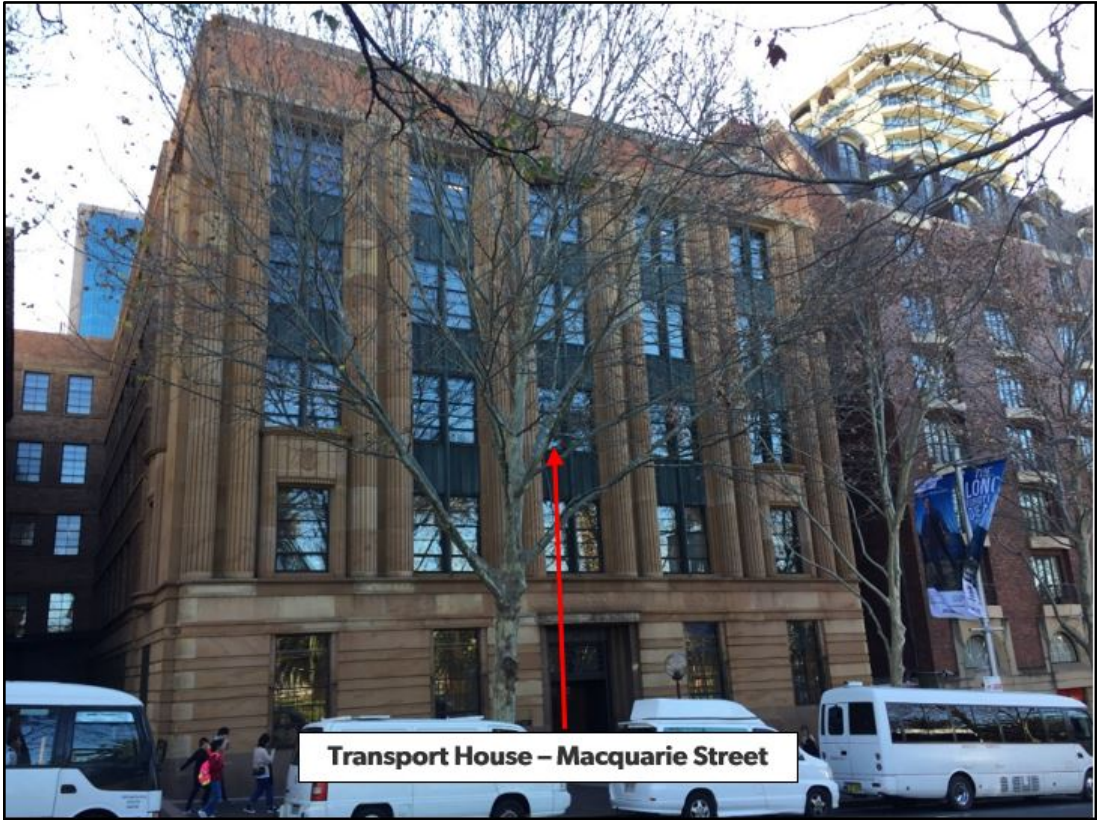


Figure 4 – Macquarie Street (eastern) elevation of Transport House (Source: Department's AR)



Figure 5 – Phillip Street (western) elevation of Transport House (Source: Department's AR)

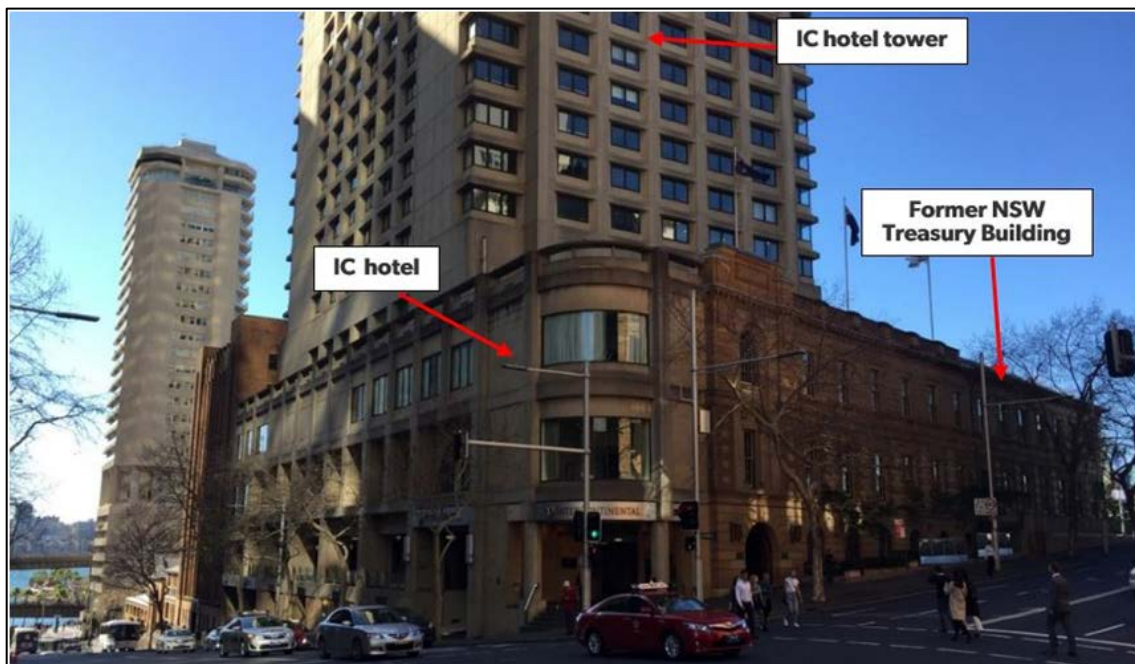


Figure 6 – IC Hotel elevations at the corner of Phillip and Bridge Streets (Source: Department's AR)

1.2 Background to the Application

1.2.1 Development setbacks

18. The Department's AR confirms that the Sydney Development Control Plan 2012 (SDCP)

“contains detailed [setback] controls applicable to SCAs to reinforce the existing character of these areas”. The setback controls for any additions above the Treasury Buildings and Transport House are (**Figure 7**):

- minimum 30m setback from Macquarie Street for the Treasury Buildings and Transport House;
- minimum 10m setback from Phillip Street for Transport House; and
- minimum 10m setback from Bridge Street for Treasury Buildings.

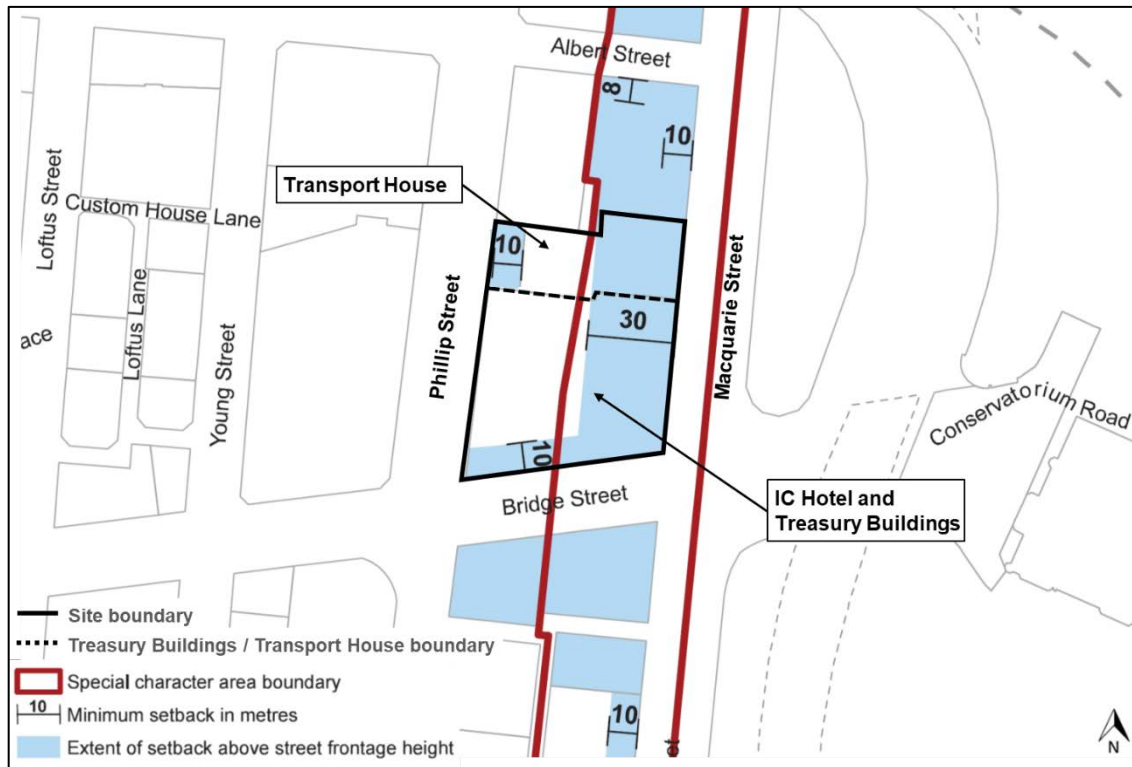


Figure 7 – SDCP setback controls relating to the Site. Note the above SDCP map has been altered to include the 10 m setback on Phillip Street for ease of reference (Base source: SDCP)

1.2.2 Relevant Council approvals

19. The planning history of the Site is summarised at Section 1.4 of the Department’s AR. The previous relevant approved development applications (**DA**) for the Site are summarised below.
20. On 22 October 2002 Council approved a DA (D2002/00739) for internal reconfiguration of the IC Hotel, the addition of a rooftop restaurant at level 32 and the construction of a roof addition to Transport House. On 19 May 2003, the consent was modified (D/02/00739A) allowing the staged construction of the approved works (hereafter collectively referred to as the **Original Approval**).
21. The Transport House addition allowed for by the Original Approval comprised (**Figure 8**):
 - a three-storey roof extension located above Transport House and connected to the northern elevation of the IC Hotel;
 - a 28m setback from Macquarie Street;
 - up to 3m setback from the northern elevation of Transport House;
 - up to 8.5m setback from Phillip Street; and
 - IC Hotel guest rooms and rooftop swimming pool.
22. The Department’s AR confirms that various components of the Original Approval have been

carried out. However, no works have commenced on the three-storey roof addition to Transport House.



Figure 8 – Original Approval for 3 storey Transport House roof addition layout (top) and section (bottom) highlighted in blue and the approved setback from Macquarie Street (Base source: the Original Approval)

1.2.3 The Sir Stamford Hotel, 93-97 Macquarie Street

23. A matter relevant to the context of the Application is the impact of the Proposal on the Sir Stamford Hotel (**Stamford Hotel**) located at 93-97 Macquarie Street to the north of the Site.
24. On 28 May 2015, the Land and Environment Court of NSW (**LEC NSW**) dismissed an appeal of the deemed refusal by Council of DA (D/2013/2011) for the redevelopment of the Stamford Hotel. The proposal the subject of the appeal was for the adaptive re-use of the former

Department of Health building, partial retention of the Stamford Hotel building, construction of a 19 storey (63.5m) tower building for residential and retail use. The Commission notes that the appeal was dismissed on the grounds that a site-specific development control plan had not been prepared in accordance with the SLEP 2012.

25. On 20 November 2017, a concept DA was lodged with Council (D/2017/1609) for the demolition of the Stamford Hotel, conservation of the former Department of Health building and creation of a 55 m tall building envelope for commercial and residential use (the **Stamford Hotel DA**)(**Figure 9**). The Stamford Hotel DA is considered in the Department's AR for the Proposal, as set out at 5.10.5 of this Statement of Reasons.
26. On 7 March 2018, the NSW Heritage Council's Approval Committee resolved to advise Council that it did not support the Stamford Hotel DA tower and that the SDCP controls, which also apply to the Site of the Proposal, should be amended to only support low-scale development between 89 to 121 Macquarie Street stating *"The current street wall height and existing low-scale setting of the precinct should be maintained as the dominant height for the full 30m depth of all sites fronting Macquarie Street"*.
27. At the time of writing this Statement of Reasons, Council had not determined the Stamford Hotel DA.

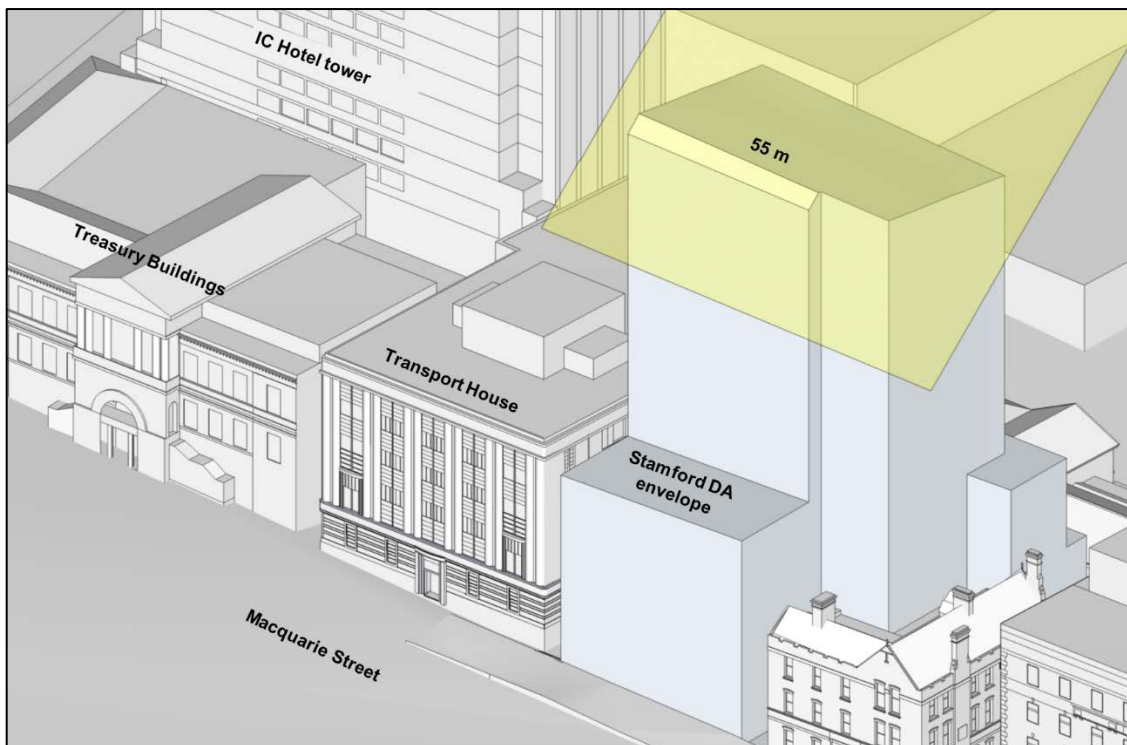


Figure 9 – 3D perspective of the proposed Stamford DA building envelope (including sun access plane) in context with Transport House and the Treasury Buildings (Base source: the Stamford DA)

1.3 Summary of the Application

28. The Application before the Commission for determination seeks concept development consent to establish building envelopes and internal and external alterations to facilitate extensions, alterations and additions to the IC Hotel.
29. The key components of the Proposal (including amendments identified at paragraphs 30 and 31) are summarised in **Table 1** and shown at **Figure 10** to **Figure 12**.

Table 1 - Key components of the Proposal (source: Applicant's Revised RtS and Amended Concept)

| Aspect | Description |
|-----------------------------------|--|
| Transport House building envelope | <ul style="list-style-type: none"> • Building envelope above Transport House (and partly over the IC Hotel podium, Treasury Buildings and Macquarie Lane) comprising: <ul style="list-style-type: none"> ○ two components a: <ul style="list-style-type: none"> - rectangular ballroom envelope, located above Transport House, cantilevered over Macquarie Lane and connected to the northern elevation of the IC Hotel tower; - square ballroom access envelope, located above the IC Hotel podium, part of the and Treasury Buildings and is connected to the eastern elevation of the IC Hotel; ○ a maximum envelope height of RL 48.3 m (9.86 m above Transport House roof height); ○ setbacks from Macquarie Street, including: <ul style="list-style-type: none"> - a maximum setback of 20.8 m; - a minimum setback of 20 m; and ○ an 8.5 m setback from Phillip Street. |
| IC Hotel tower building envelopes | <ul style="list-style-type: none"> • Two building envelopes above the IC Hotel comprising: <ul style="list-style-type: none"> ○ a single-storey envelope on the eastern side of the IC Hotel tower roof; ○ a two-storey envelope on the western side of the IC Hotel tower roof; and ○ a maximum envelope height of RL 114.55 m. |
| IC Hotel external works | <ul style="list-style-type: none"> • Two new awnings comprising: <ul style="list-style-type: none"> ○ a new canopy within Macquarie Lane between the Treasury Buildings and Transport House; ○ a glazed awning over the Phillip Street footpath adjacent to existing porte-cochere; • replacement of hotel cooling towers on the IC tower roof; and • reglazing of the IC Hotel tower windows within existing window openings. |
| IC Hotel internal works | <ul style="list-style-type: none"> • Refurbishment of the cortile and adjacent spaces; and • alterations and upgrade works to entries and internal areas including rooms, corridors, lobbies, bars and restaurants (SHR listed areas only). |
| GFA, FSR and rooms | <ul style="list-style-type: none"> • An additional 1,074 m² GFA (from 40,664 m² to 41,738 m²); • an increase of 0.2:1 FSR (from 7.4:1 to 7.6:1); and • a reduction of 17 hotel rooms (from 509 to 492). |

30. On 2 May 2019, the Applicant provided its Response to Submissions (**RtS**), which was further revised in October 2018, March and May 2019 (for ease of reference, the RtS and further revisions to the RtS will hereafter be collectively referred to as the **Revised RtS**). The key changes to the Proposal included with the Revised RtS are summarised at section 5.7 of the Department's AR.
31. On 13 November 2019, following the referral of the Application to the Commission, the Applicant submitted a revised Application to the Commission (paragraph 48) (hereafter referred to as the **Amended Concept**). The Amended Concept revised the Application that was initially referred to the Commission and included, as summarised below, the:
- reduction of the height of the ballroom building envelope by 2.8m (from RL 51.1m to RL 48.3m);
 - reduction of part of the Macquarie Street setback by 3.3m to between 20m and 20.8m (previously, between 20m and 24.1m);
 - provision of a uniform 8.5m building envelope setback to Phillip Street (previously, part

- 3.0m and 8m);
- reduction of the building envelope volume by 2,036m³ (from 13,987m³ to 11,951m³);
- retention of the wellness centre at level 31 resulting in a reduction of 19 proposed hotel suites;
- replacement of lifts with escalators for access to the ballroom (within the ballroom lobby/access component of the Transport House building envelope);
- revised structural solution to support the ballroom above Transport House; and
- further refinement of internal / external upgrade works to the hotel.

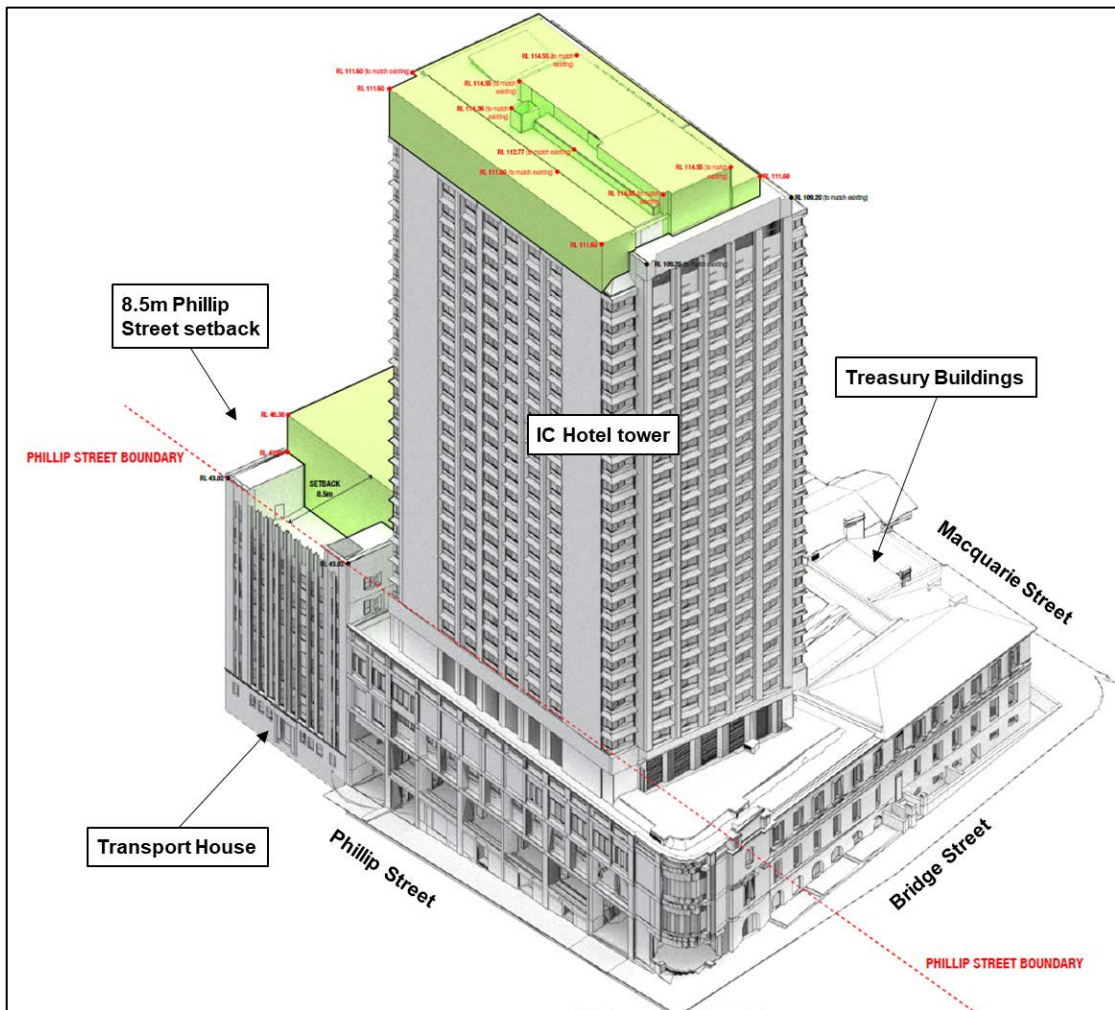


Figure 10 – 3D perspective of the Phillip Street (western) and Bridge Street (southern) elevations and proposed buildings envelopes and setbacks (Base source: the Applicant's Amended Concept)

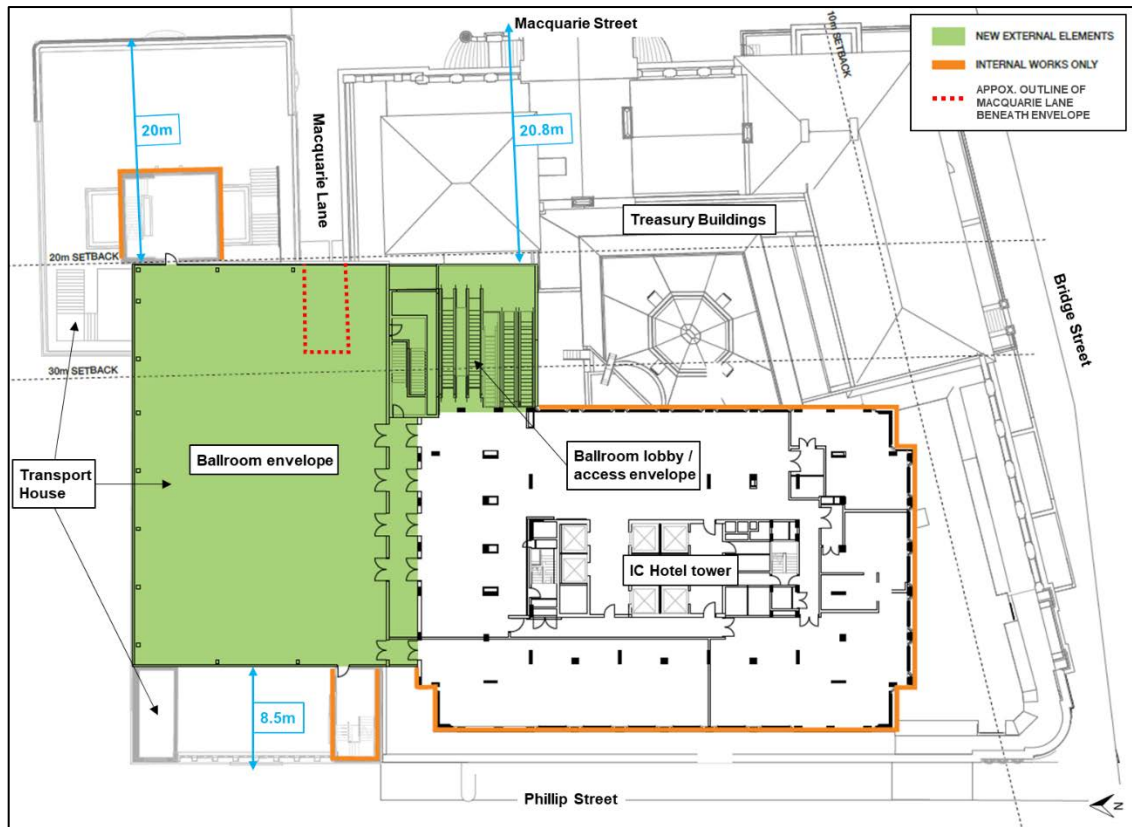


Figure 12 – Transport House building envelope layout and setbacks (Base source: the Applicant’s Amended Concept)

1.4 Stated need for Proposal

32. In its Environmental Impact Statement (EIS) dated August 2017, the Applicant stated “The objective of the project is to reinvigorate the hotel to create an integrated and vibrant luxury hotel commensurate with a global city and an iconic location that is recognised on the world stage.”
33. In addition, “The design intent is to minimise the impacts of the proposal on Transport House and the former NSW Former Treasury Building on the site, and to ensure a successful and acceptable relationship between the new building volumes on the site (primarily those associated with the new grand ballroom) and adjoining/nearby heritage items, including the Justice and Police Museum, and Macquarie Street.”
34. The Applicant concludes that the Proposal is justified on the basis that:
 - “tourism is a vital part of the local, State and National economy... the proposal represents a major \$203m commitment by the Applicant to the tourist market in Sydney which will result in significant employment generation (and spin-off effects) during construction and operation;
 - the Intercontinental Hotel is a significant part of the tourism infrastructure of Sydney;
 - improving, modernising, augmenting, supplementing, and further developing the hotel so that it can better satisfy guests and event market demands without giving rise to unreasonable impacts is both reasonable and appropriate; and
 - the heritage, bulk and scale, streetscape, amenity, construction and other impacts will be acceptable and where necessary mitigative actions can be required at Stage 2 to ensure successful and effective delivery and implementation of the project.”
35. In its meeting with the Commission, the Applicant provided examples of nine other ‘grand’

ballrooms located within central Sydney. These ballrooms were shown to be generally of square/rectangular shapes and range in size from 506 m² to 850 m². The Applicant stated that “you’ll see that that size of [the proposed] ballroom is more like the average of these [nine examples]. They vary a little bit in proportions. Some are a bit wider; some are significantly bigger... but most are around this size, and that is because you’re getting to what is perceived as the minimum... [for] cocktail events of around 900... seated events of around 500... that is the size that is demand[ed]... Now, when you reduce that down, as is being suggested with the 30-metre set-back... takes you to be smaller than all of the competition and starts moving more into the realms of the larger meeting rooms, rather than ballrooms. And when you’re in that level, then you take yourself out of the market altogether and you’re no longer a ballroom.”

2. THE DEPARTMENT’S CONSIDERATION OF THE APPLICATION

2.1 Key steps in Department’s consideration of the Application

36. The Department carried out the following key steps in relation to the Application:
- on 4 July 2016, issued Secretary’s Environmental Assessment Requirements (SEARs);
 - in August 2017, received the Application;
 - between 14 September 2017 and 27 October 2017 publicly exhibited the Application and relevant documentation. The Department received 11 submissions comprising six from public authorities and five from the public. The submissions are summarised at **Table 2** and paragraph 38;
 - on 2 May 2018, received the Applicant’s initial RtS;
 - on 4 May 2018, made the RtS publicly available on its website and renotified the relevant government agencies. The Department received four submissions from government authorities. No submissions were received from the public. The submissions are summarised at **Table 2** and paragraph 38;
 - in November 2018 prepared an SSD assessment report and notified the Applicant of its draft recommended conditions. The Applicant requested further time to consider the draft recommended conditions and provide further comment / amendments to the Application;
 - in March and May 2019, received supplementary information in response to the Department’s draft recommended conditions that updated and amended the RtS;
 - made the Revised RtS publicly available on its website and renotified Council and government agencies. The Department received 10 submissions comprising two from government authorities, one from Council and eight from the public. The submissions are summarised at **Table 2** and paragraph 38;
 - in September 2019 finalised the Department’s AR; and
 - on 27 September 2019, referred the SSD assessment report and recommended instrument of development consent to the IPC for consideration and determination.

2.2 Submissions

37. The submissions from public authorities, received by the Department during the exhibition and notification of the Application, are summarised in **Table 2**.

Table 2 - Summary of public authority submissions (source: Department’s AR)

| City of Sydney Council (Council) |
|---|
| <p>Council objected to the Proposal raising the following key concerns:</p> <ul style="list-style-type: none"> • inadequate draft Conservation Management Plan (CMP) to guide the future development of the buildings. The CMP should be endorsed by the Heritage NSW and Council, prior to determination of the Application |

| |
|--|
| <ul style="list-style-type: none"> • non-compliance with Macquarie Street (30m) and Phillip Street (10m) setback controls resulting in adverse visual and heritage impacts; • inappropriate addition of lift shaft at north-east corner of the hotel tower and Macquarie Street awning; • the building envelope may have an adverse impact on the former Treasury Atrium; • inadequate structural engineering detail and impact on fabric of Transport House; and • the building envelope exceeds the SLEP 2012 sun access plane control and is prohibited. |
| <p>Heritage Division of the Department of Premier and Cabinet (former Heritage Division of the Office of Environment and Heritage) (Heritage NSW)</p> |
| <p>Heritage NSW did not object to the Proposal. However, it stated that potential heritage and visual impacts should be minimised and raised the following key concerns:</p> <ul style="list-style-type: none"> • the draft CMP must be endorsed by the Heritage Council prior to finalisation of a Future DA and the final design should be in accordance with the CMP; • adverse impact on views to the Site from the Treasury Building, Transport House and Justice and Police Museum; • the building envelopes are out of scale and proposed setbacks fail to minimise their visibility. The building envelope should comply with the 30m Macquarie Street setback control and be set back from the northern (Albert Street) and western (Phillip Street) elevations of Transport House; and • inadequate information on the potential heritage impact from any structural intervention into Transport House to support the proposed addition. |
| <p>Royal Botanic Gardens and Domain Trust (RBGDT)</p> |
| <p>The RBGDT did not object to the Proposal. It stated that the envelope would not be visually dominant, would result in only minor overshadowing to the open space between Macquarie Street and Cahill Expressway and recommended the detailed design should achieve a high standard of design.</p> |
| <p>Transport for NSW (TfNSW)</p> |
| <p>TfNSW did not object to the Proposal and made recommendations in relation to traffic management and vehicular and pedestrian access.</p> |
| <p>Transport for NSW, Roads and Maritime (RMS)</p> |
| <p>RMS did not object to the Proposal and made recommendations in relation to detailed matters for consideration as part of any Future DA.</p> |
| <p>Environment Protection Agency (EPA)</p> |
| <p>EPA did not object to the Proposal and stated it is not the regulatory authority for the Proposal.</p> |

38. Following the public exhibition of the Application and notification of the final RtS the Department received a total of 12 public submissions, including 11 objections and one providing comments on the Proposal. The concerns raised in submissions are summarised below:

- non-compliance with SLEP 2012 setback and sun access plane controls;
- adverse visual impacts of future additions;
- inadequate draft CMP, structural engineering detail and uncertainty regarding heritage impacts;
- view loss and privacy impacts;
- adverse traffic, parking and access impacts;
- the Proposal does not achieve design excellence; and
- adverse impact on the future redevelopment of the Sir Stamford Hotel site.

2.3 The Department's AR

39. The Department's AR identified design excellence, built form, heritage and visual impacts, amenity impacts, traffic and car parking as the key issues associated with the Proposal.
40. The report concluded:
- *"The proposal would facilitate a comprehensive upgrade to the hotel's facilities, which are close to high profile tourist destinations and allow it to contribute to a competitive visitor economy in the Sydney CBD*
 - *the Department agrees with Council, Heritage Division and public submissions that the proposed setbacks... from Macquarie Street are inadequate and result in adverse heritage, visual and streetscape impacts*
 - *... the Department has recommended*
 - *... a 30 m setback from Macquarie Street. Minor intrusions into the 30 m setback could potentially be supported, but only if the built form within the envelope would not visually dominate the setting of heritage buildings...*
 - *detailed conditions to ensure the built form within the building envelope maintains the visual prominence of the existing heritage buildings on the site*
 - *...the competitive design process and future development application(s), have regard to, and comply with, the endorsed CMPs for the former NSW Treasury Building and Transport House*
 - *... the structural engineering solutions to be finalised in the detailed future development application(s)*
 - *The proposal would not have an adverse impact on amenity [or] result in adverse access or car parking impacts [or] significant additional traffic to the surrounding road network."*

3. THE COMMISSION'S MEETINGS AND SITE VISIT

41. As part of its determination, the Commission met with the Council, the Department, Heritage NSW and the Applicant as set out below. All meeting transcripts and presented materials and site inspection notes were made available on the Commission's website.

3.1 Meeting with Council

42. On 31 October 2019, the Commission met with Council to discuss the Application. The key points of discussion included structural integrity of Transport House, structural load and support requirements of the proposed rooftop addition, the proposed setbacks from Macquarie Street and Phillip Street, the roof addition separation from IC Hotel tower and impact on Transport House Phillip Street pylons, visual impact and overshadowing.

3.2 Meeting with the Department

43. On 18 November 2019, the Commission met with the Department to discuss its assessment of the Application. The key points of discussion included the proposed setbacks from Macquarie Street and Phillip Street, design excellence, overshadowing, awnings within Macquarie Lane and at Phillip Street, the level of detail provided within the concept drawings, development contributions, height of Transport House roof addition, the heritage significance and changes to the cortile roof and the Amended Concept.

3.3 Meeting with Heritage NSW

44. On 18 November 2019, the Commission met with Heritage NSW to discuss the Application. Key points of discussion included the Amended Concept, previous and current planning applications relating to the neighbouring Stamford Hotel site, Macquarie Street setback, Draft National Heritage Listing of the Governors' Domain and Civic Precinct (**Draft National GDCP Listing**).

3.4 Meeting with Applicant

45. On 18 November 2019, the Commission met with the Applicant to discuss its Application. Key points of discussion included IC Hotel details and operation, heritage and visual impact, evolution of revisions to the Proposal, the Amended Concept, structural impact on Transport House, height of Transport House envelope, access to the ballroom and associated envelope size, the cortile roof, heritage and visual impacts, the Stamford Hotel DA, consideration of the Proposal from various viewpoints, ballroom size, benchmarking and demand in Sydney, design excellence/competition process, clarification of the proposed IC Hotel upgrade works and awnings.

3.5 Site inspection

46. On 18 November 2019, the Commission conducted an inspection of the site and its surrounds. Nine representatives attended the inspection on behalf of the Applicant and assisted in showing the Commission relevant aspects of the Site. Apart from the Commission and Secretariat, the following people attended and observed the site inspection:
- Mr Ian Lomas (Woods Bagot);
 - Mr Igor Kochovski (Woods Bagot);
 - Mr Rohan Dickson (AE Design Studio);
 - Ms Fiona Binns (Urbis);
 - Mr Bob Chambers (BBC Planners);
 - Mr Greg Shaw (Mulpha Australia Pty Ltd);
 - Mr Tim Spencer (Mulpha Australia Pty Ltd);
 - Ms Catherine Hart (Mulpha Australia Pty Ltd); and
 - Mr Michael Watt (Mulpha Australia Pty Ltd).

47. A copy of the site inspection notes was made available on the Commission's website.

4. ADDITIONAL INFORMATION

Additional information from the Applicant

48. Prior to the Applicant meeting with the Commission, the Commission received from the Applicant a letter dated 13 November 2019 including attachments from Urbis Pty Ltd dated 11 November 2019 and Woods Bagot dated 13 November 2019. This additional information includes:
- the Applicant's review of a number of matters within the Department's AR;
 - further possible amendments to the Application, including the key changes summarised at paragraph 31 (being the Amended Concept). A full set of revised concept drawings were not included;
 - a revised visual impact assessment that considers and compares the visual mass of the exhibited Application, the Application as amended by the Department's recommended draft conditions of consent and the Amended Concept (summarised at paragraph 31); and
 - the Applicant's proposed changes to the Department's recommended draft conditions of consent. These amendments proposed to delete the requirement for a competitive design process, bicycle parking/storage, amend setbacks, heritage and heritage endorsement requirements.
49. On 19 December 2019, the Applicant submitted an updated set of concept proposal drawings (detailing the Amended Concept) to supersede the drawings originally referred to the Commission.
50. In response to questions raised at the Commission's meeting with Applicant, the Commission received a letter from the Applicant dated 19 November 2019, which included:

- a detailed summary of the changes made to the description of the Proposal as a result of the Applicant's proposed Amended Concept; and
 - revisions to Table 2, page 8, of the Department's AR to update what is now proposed as part of the 'Comprehensive Upgrade Works' (refer to the key components of the Proposal at **Table 1**).
51. On 20 January 2020, the Applicant provided correspondence to the Commission outlining their views on the Commission's proposed conditions, which had been forwarded to the Department for advice and uploaded to the Commission's website. The Commission has accepted the Applicant's letter as an unsolicited submission and has taken it into consideration in determining the application.

Additional information from Council

52. On 4 November 2019, the Commission received an email from Council in response to questions it raised with Council at its meeting. Council's email provided photographs of the Site taken from various vantage points along Phillip Street.
53. On 25 November 2019, the Commission received an email from Council, which included its comments in response to the Applicant's Amended Concept and submission of additional information (summarised at paragraphs 31 and 48). Council's key comments are summarised below:
- the Proposal should comply with the SDCP 30m setback requirement to Macquarie Street;
 - the reduction in the height of the ballroom reduces visual impact. However, it is insufficient to address impacts on the Treasury Building;
 - the cantilever of the building envelope above Macquarie Lane has adverse impacts when viewed from Macquarie Street;
 - the revised setback to Phillip Street is an improvement;
 - Council objects to the Applicant's amendments to conditions relating to setbacks (A10), design excellence and competitive design process (B2 to B4), amend heritage and heritage endorsement requirements (C3) and bicycle parking/storage (C12); and
 - Council suggested revised conditions in the event that the Commission determines to approve the Proposal.

Additional information from Heritage NSW

54. On 27 November 2019, the Commission received an email from Heritage NSW, which included its comments in response to the Applicant's Amended Concept and submission of additional information (summarised at paragraphs 31 and 48). Heritage NSW's key comments are summarised below:
- the Proposal should comply with the SDCP 30m setback requirement to Macquarie Street;
 - the approval should be on the basis of deferred commencement and subject to confirmation on the impact of structural intrusion into Transport House;
 - the detailed design of the future extension should be in accordance with the policies and guidelines of the endorsed Conservation Management Plan; and
 - the SDCP setback control for the neighbouring Stamford Hotel site should be amended and a 30m setback restriction also applied to that site.

Additional information from the Department

55. On 13 December 2019, the Commission received a letter from the Department in response to:
- the Applicant's Amended Concept and submission of additional information (summarised at paragraphs 31 and 48); and

- letters sent to the Department from the Commission dated 13, 14 and 25 November 2019 requesting further clarification of the Department's assessment.

56. The Department's key comments are summarised below:

- the Department reiterated its concerns about visual and heritage impacts and stated that a 30 m Macquarie Street setback should be provided to address these concerns;
- the Department reiterated its comments provided at its meeting with the Commission (paragraph 43) regarding the Phillip Street setback, the awning within Macquarie Lane, the level of detail provided within the concept drawings, development contributions and the heritage significance and changes to the cortile roof;
- the Applicant's Amended Concept has demonstrated the building envelope height can be reduced;
- the cortile roof was installed as part of the 1980s IC Hotel extension of the Site. Replacement of the roof would not have visual or heritage impacts;
- amended drawings, including sections and indicative views, should be provided prior to the Commission making its determination of the Application; and
- the Department did not support the Applicant's proposed amendments to conditions relating to setbacks (A10), design excellence and competitive design process (B2 to B4), amend heritage and heritage endorsement requirements (C3) and bicycle parking/storage (C12). The Department supported amendments to conditions C6 and C10 relating to external and internal refurbishment.

All additional information identified in paragraphs 48 to 56 has been made available on the Commission's website.

5. THE COMMISSION'S CONSIDERATION

5.1 Material considered by the Commission

57. In this determination, the Commission has carefully considered the following material (**Material**):

- the Original Approval;
- the SEARs dated 4 July 2016;
- the Application;
- the Stamford Hotel DA;
- the Environmental Impact Statement and its accompanying appendices prepared by BBC Consulting Planners and dated August 2017;
- all submissions provided to the Department in respect of the Application by the community, Council and government agencies;
- the Response to Submissions report and its accompanying appendices prepared by BBC Consulting Planners and dated May 2018;
- supplementary information and its accompanying appendices prepared by BBC Consulting Planners and dated October 2018, March and May 2019;
- the Department's AR prepared by the Department dated September 2019;
- the Department's recommended development consent;
- the matters raised in meetings with the Commission as summarised in paragraphs 41-45 and detailed in the transcripts on the Commission's website;
- the matters raised in the Commission's site inspection as summarised in paragraph 46 and detailed in site inspection notes on the Commission's website; and
- the additional information provided to the Commission described in paragraphs 48 to 56.

5.2 Mandatory considerations

58. In determining this Application, the Commission has taken into consideration the following

relevant mandatory considerations, as provided in s 4.15 of the EP&A Act (**mandatory considerations**):

- the provisions of all:
 - environmental planning instruments;
 - proposed instruments that are or have been the subject of public consultation under the EP&A Act and that have been notified to the Commission (unless the Secretary has notified the Commission that the making of the proposed instrument has been deferred indefinitely or has not been approved);
 - development control plans;
 - planning agreements that have been entered into under s 7.4 of the EP&A Act, draft planning agreements that a developer has offered to enter into under s 7.4;
 - the *Environmental Planning and Assessment Regulation 2000 (EP&A Regulation)* to the extent that they prescribe matters for the purposes of s 4.15(1) of the EP&A Act;
- that apply to the land to which the Application relates;
- the likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality;
- the suitability of the site for development;
- submissions made in accordance with the EP&A Act and EP&A Regulation; and
- the public interest.

5.3 Additional considerations

5.3.1 Amended Concept

59. Clause 55 of the EP&A Regulation states that a “*development application may be amended or varied by the applicant (but only with the agreement of the consent authority) at any time before the application is determined.*”
60. Following the referral of the Application to the Commission the Applicant wrote to the Commission (19 December 2019) to request that the Proposal be amended to include the changes proposed under the Amended Concept (summarised at paragraph 31 and 48).
61. In determining this Application, the Commission has considered the Applicant’s request that the Proposal be amended to reflect the Amended Concept.
62. The Council, Department and Heritage NSW have considered the changes proposed by the Amended Concept (paragraphs 53, 54 and 56).
63. The Commission considers the proposed amendments to the Application to be generally minor in nature and do not significantly alter the nature of the Proposal. The Amended Concept has been notified to the Department, Council and Heritage NSW and made publicly available on the Commission’s website and the Commission has considered the submissions received. In addition, the Commission notes, when compared to the Application originally referred to the Commission, the Amended Concept has:
 - been reduced in height (Transport House envelope) and the setback to Phillip Street has been increased; and
 - similar heritage and amenity impacts.
64. The Commission finds that the Application is consistent with the requirements of clause 55 of the EP&A Regulations and agrees to the amendment of the Application.

5.3.2 Draft National Governor’s Domain and Civic Precinct (GDGP) Listing and SHR nomination of Transport House

65. In determining this Application, the Commission has also noted the Draft National GDGP Listing and the nomination of Transport House for inclusion on the SHR.

66. The Department's AR confirms that the Australian Heritage Council is seeking to recognise on the National Heritage List a number of buildings and places located within the GDCP, which includes the Treasury Buildings. The Department's AR considered the Draft National Heritage Listing stating *"The Department has referred the application to Heritage Division and has carefully considered its response and any recommendations on suggested conditions"*.
67. The Commission notes that public consultation of the Draft National GDCP Listing ended almost two years ago on 24 February 2017.
68. During its meeting with Heritage NSW, the Commission asked for clarification about the progress of the SHR nomination of Transport House and timing for listing if successful. In response the officer attending the meeting on behalf of Heritage NSW stated *"... my understanding is that... there is an intention to move it forward..."*.
69. The Commission acknowledges the Draft National GDCP Listing and SHR nomination of Transport House. The Commission also notes that regardless of these nominations, the Treasury Buildings and Transport House are already heritage items. The Commission has carefully considered the submissions and responses from Council and Heritage NSW regarding heritage and heritage impacts in Section 5.9 of this Statement of Reasons.

5.4 Strategic considerations

70. In determining this Application, the Commission has also considered the:
- Greater Sydney Regional Plan – A Metropolis of Three Cities (**GSR Plan**), which sets out the NSW Government's 40-year vision and establishes a 20-year plan to manage growth and change for Greater Sydney and includes 10 directions;
 - Eastern City District Plan (**District Plan**), which aims to connect local planning with the longer-term metropolitan planning for Greater Sydney;
 - Sustainable Sydney 2030 (**SS30**), which sets out Council's vision to make Sydney a more global, green and connected city by 2030; and
 - Visitor Economy Industry Action Plan (**VEIAP**), which seeks to double overnight expenditure by 2020 and improve the NSW visitor economy.
71. Regarding the strategic merit of the Application, the Department's AR concludes that the Application supports the directions and objectives of the GSR Plan, District Plan, SS30 and VEIAP as the Proposal:
- *"facilitates upgrade works to an internationally rated hotel... supports the global role of the Sydney CBD and contributes to the attractiveness of the city as a world-renowned tourist destination;*
 - *... supports growth in the tourism economy in the Harbour CBD... improves the visitor experience by providing tourist accommodation close to high-profile tourist destinations with good access to the Circular Quay transport hub;*
 - *... would contribute to a strong international and domestic tourist base underpinned by tourist and accommodation facilities;*
 - *... would facilitate a comprehensive upgrade to the existing hotel accommodation in the Sydney CBD and nearby high-profile tourist destinations, which would support the visitor economy, contribute to accommodation capacity and increase visitation;*
72. The Commission accepts the conclusions of the Department's AR, as outlined in paragraph 71 above, as it has been demonstrated that the Application, subject to conditions, has strategic merit.

5.5 Relevant Environmental Planning Instruments

73. The following EPIs are relevant to the Application:
- SEPP SRD 2011;
 - State Environmental Planning Policy (Infrastructure) 2007;
 - State Environmental Planning Policy No. 55 – Remediation of Land;
 - Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005;
 - State Environmental Planning Policy (Coastal Management) 2018; and
 - SLEP 2012.
74. The Commission has carefully considered and accepts the Department's assessment of the relevant EPIs as set out within Appendix D of the Department's AR and is satisfied the Application is consistent with the requirements of the EPIs.

Permissibility

75. The Department's AR has considered permissibility and confirms:
- *“... the proposed upgrade works to the hotel, including the ancillary ballroom and wellness centre, are classified as tourist and visitor accommodation, which includes hotel or motel accommodation. As such, the proposed development is permissible with consent within the B8 Metropolitan Centre zone;*
 - *The site is subject to the sun access plane provision under clause 6.17 of SLEP 2012... [and] the consent authority must not grant consent if the development would result in any building on the land projecting higher than any part of the sun access plane;*
 - *... the Department considers the proposed development is partially prohibited as only a portion of the development extends beyond the sun access plane... [and therefore] subject to consideration of the merit/impact of the proposal; and*
 - *Subject to clause 7.2 of SLEP 2012, development consent must also not be granted to development on land in Central Sydney unless a development control plan (DCP) has been prepared, where the site for development is greater than 1500 m² or if the development would result in a building higher than 55 m above ground level. However, section [4.23] of the EP&A Act allows for a concept development application to be carried out in lieu of the preparation of a DCP”.*
76. The Commission agrees with the Department's AR conclusion that as the Proposal is for the extension of hotel accommodation it is permissible with consent within the zone. In addition, the Commission finds that consent may be granted as the Proposal is not wholly prohibited, consistent with section 4.38(3) of the EP&A Act, and, as the Application comprises a concept SSD application, the preparation of a DCP is not required.

5.6 Relevant Proposed Instruments

77. The Draft State Environmental Planning Policy for the Remediation of Land (**draft Remediation SEPP**) is relevant to the Application.
78. The Commission notes the Department has provided an assessment of the Application against the relevant provisions of the draft Remediation of Land SEPP at Appendix D of its AR. The Commission is satisfied with the assessment and conclusions in the Department's AR for the reasons set out in Appendix D of its AR regarding the Application's compliance with the identified draft EPI.

5.7 Relevant Development Control Plans

79. Under clause 11 of the SEPP SRD, DCPs do not apply to SSD. Notwithstanding this, the Commission notes that the SEARs applicable to this Application recommend that the relevant planning provisions of the SDCP should be addressed.

80. The Commission notes that the SDCP contains provisions that are specific to this Site (including character, setbacks and sun access plans) and, in the absence of any other site-specific design controls, the SDCP provides a functional starting point to inform the merit assessment of the Application.
81. The Commission has considered the relevant provisions of the SDCP within Section 5.9 of this Statement of Reasons.

5.8 Applicable Regulations

82. The Commission notes the Department has provided an assessment of the Application against the matters for consideration under Section 4.15(1) of the EP&A Act at Appendix D of the Department's AR.
83. The Department's AR concludes that the Application complies with relevant EPIs and meets the relevant requirements of the EP&A Regulation. Furthermore, the likely impacts of the Application have been assessed, relevant DCPs have been considered, the Site has been assessed as being suitable for the development, consideration has been given to all submissions received and the Proposal is considered to be in the public interest, subject to conditions.
84. The Commission has considered the Application against the matters for consideration at Section 4.15(1) and agrees with the Department's AR conclusion, as summarised at paragraph 83.

5.9 Likely impacts of the development on both natural and built environments

85. The Commission considers the key issues associated with the Application are:
- building envelopes;
 - structural impacts;
 - design excellence;
 - external and internal upgrade works to the IC Hotel; and
 - amendments to recommended draft conditions of consent.

5.9.1 Building envelopes

86. As noted at paragraphs 79 and 80, DCPs do not apply to SSD and therefore in this circumstance any controls within DCPs are not required to be applied as a set of development standards. Notwithstanding this, the Commission notes that the SDCP contains recommended building setback controls that are specific to this Site and which are summarised at section 1.2.1. In the absence of any other site-specific design controls, the Commission considers the SDCP provides a functional starting point to inform the merit assessment of the Application. A comparison between the SDCP controls and the Proposal is provided at **Table 3**.

Table 3 – Comparison between the SDCP controls and the Proposal (Base source: Department AR)

| SDCP Setback Location | SDCP Setback Control | Proposed | Complies |
|--|----------------------|-------------------------------|----------|
| Transport House Building Envelope | | | |
| Macquarie St | 30 m | Part 20 m part 20.8 m | No |
| Bridge St | 10 m | No change to existing setback | Yes |
| Phillip St | 10 m | 8.5 m | No |

| IC Hotel Tower Building Envelopes | | | |
|-----------------------------------|------|---|-----|
| Macquarie St | 30 m | Approx. 33.5 m | Yes |
| Bridge St | 10 m | No change to existing setback | Yes |
| Phillip St | 10 m | A setback of 3.5 m is proposed, which is consistent with the existing building envelope | No |

87. The Commission notes, as summarised at section 1.2.2, the Original Approval allows for the construction of a three-storey addition above Transport House. A comparison between the Original Approval and the Proposal is provided at **Table 4**.

Table 4 – Comparison between the Original Approval and the Proposal (Base source: Department AR)

| Built form | Original Approval | Proposal | Difference between Original Approval and Proposal (+/-) |
|--|--|--|---|
| Setbacks: <ul style="list-style-type: none"> • Macquarie Street • Phillip Street | <ul style="list-style-type: none"> • Approx. 28m • Part nil, 7m and 8.8m | <ul style="list-style-type: none"> • Part 20 m part 20.8 m • 8.5 m | <ul style="list-style-type: none"> • - 7.2m to 8m • +8.5m, +1.5m, -0.3m |
| Height | 3 storeys (RL 47.4m) | 2 storeys (RL 48.3m) | +0.9m |



Figure 13 – Perspective view north-west from RBG to the Site and the Proposal (Base source: material presented at the Applicant’s meeting with the Commission)



Figure 14 – Perspective view west from Conservatorium Road to the Site and the Proposal (Base source: material presented at the Applicant’s meeting with the Commission)



Figure 15 – Distance perspective view north-west from RBG to the Site and the Proposal (Base source: material presented at the Applicant’s meeting with the Commission)

The Transport House building envelope

Public and Authority comments

- 88. Concerns were raised in public submissions about the visual impacts of the Proposal.
- 89. The Commission notes that Council objects to the visual and heritage impacts of the proposed Transport House building envelope. In particular, Council has raised the following concerns:
 - *The proposed addition to Transport House and the podium addition at the tower corner have a 20m setback from Macquarie Street. The Sydney DCP 2012 stipulates that any addition to the Treasury building site is to have a 30m setback from Macquarie Street. If this requirement is met, the proposed addition would be less visible from Macquarie St and its impact on the Treasury building could be considered acceptable;*

- *The addition will cantilever above [Macquarie Lane] and impose an unacceptable impact on both the Treasury building and Transport House when viewed from Macquarie Street;*
 - *... the proposed highly glazed facade of the [ballroom envelope] that is forward of the SDCP 2012 setback... [is] unsympathetic within the context of the finely detailed sandstone Treasury buildings*
 - *[the Proposal] as it relates to Phillip Street, is an improvement... [however] no dimension has been provided for the amended Phillip Street setback – this should be obtained; and*
 - *[the Proposal] would have detrimental impacts on three Special Character Areas identified under [the SDCP]... as a result of these highly visible additions.”*
90. Following consideration of the Amended Concept, Council recommended conditions requiring:
- *“The setback of the addition from Macquarie St is to be increased to the brick wall at the western end of the lane between Treasure building and Transport House; and*
 - *The addition above Transport House and the Continental Hotel is to have a uniform setback from Phillip St. It is to be behind the two brick pylons of Transport House.”*
91. Heritage NSW raised concerns about the proposed Transport House building envelope fronting Macquarie Street and its impact on the Treasury Buildings and other nearby SHR listed heritage items. Heritage NSW stated *“The roof configuration of the Treasury Building and associated buildings is considered to be of exceptional significance”* and raised the following concerns:
- *“... additions should be amended to comply with the SDCP 2012 setback requirements (30m) from Macquarie Street frontage to protect the heritage values and setting of the Treasury Buildings and the Macquarie Streetscape within the low-scale historic precinct;*
 - *The proposed development will also compromise the integrity of the surrounding historic precinct and Macquarie Street streetscape of exceptional value;*
 - *[the Proposal would have an] adverse impact on the setting and significant views to the Treasury Building, Transport House and Justice and Police Museum... [RBG] and the Sydney Conservatorium of Music and Chief Secretary’s Building; and*
 - *The footprint of the new additions cuts across multiple building lines and open setbacks/laneway, obscuring historic boundaries as well as impacting on the delineation and visual buffers between the buildings; and*
 - *[the Proposal] would encroach onto the existing setback between the [IC Hotel] and Treasury Building northern wing extension, also impacting on the northern view above from the cortile spaces and the former Treasury Building Atrium.*
92. Heritage NSW recommended that any approval be subject to a condition requiring *“the architectural character including style, massing, materiality and solid to void ratio to be sympathetic and subservient to the historic roofscape and the former treasury building.”*

Applicant’s consideration

93. The Applicant stated in its EIS and Revised RtS that the:
- *... former Treasury buildings and Transport House sit within an already substantially altered and continually evolving CBD urban environment... [the Proposal would not] result in a detrimental visual impact that adversely affects the setting of the heritage buildings or streetscapes;*
 - *... proposed additions are considered minor and will not visually or physically overwhelm the more pedestrian scaled heritage buildings... the proposal still seeks to mitigate visual impacts providing for substantial setbacks from Macquarie Street...;*
 - *... proposed additions... [add] to the richness of traditional and contemporary development and architecture which characterises this area;*

- ... an addition within the proposed envelope will be apparent in views above the cortile to the north, adjacent to the existing tower, however it is considered that this does not unreasonably impact on the enjoyment of or interpretation of the cortile as a space;
 - ... proposal will introduce new built form within the context of the [GDPC] however this is not considered to be a negative outcome... The Conservatorium and Government House Lodge and entrance gate are substantially distanced from the site; and
 - ... Transport House [addition would not]... dominate over the [Justice and Police] Museum site. There is already an abrupt interface between the low scaled [Justice and Police] Museum, and the much higher Phillip Street elevation of Transport House.”
94. The Applicant stated in support of its Amended Concept that:
- *The reduction in height of the building envelope... with a proposed 20.4 m setback from Macquarie Street ensures retention of the heritage significance of the Transport House and the Treasury Building as well as ensuring the impacts... [on the] streetscape are minimised.*
 - *all views show the heritage items cast against a backdrop of contemporary tower development and... there are opportunities for the future façade treatment to further mitigate visual impacts by providing for a considered and sympathetic façade treatment,*
 - *it is proposed to reduce the overall height of the addition by one storey... [which] has the effect of substantially minimising the overall scale of the addition in views from Macquarie Street...”*
 - the Amended Concept provides for a ballroom of 760m² (785 person capacity), whereas a ballroom meeting the recommended 30m setback would be 530m² (560 person capacity). The Applicant argues that the reduced size “... impacts so greatly on the project that it becomes non-viable for a contemporary ballroom...”
95. The Applicant updated its Visual Impact Analysis (VIA) assessment in support of its Amended Concept. The assessment concluded that the Amended Concept is less visible when compared to the previous iterations of the Proposal. It also stated that “*The proposed alterations and additions primarily block views to portions of the Intercontinental Hotel tower and the AMP Centre tower which are not valuable or desired views.*”
96. The Applicant has requested that the Department’s recommended condition A10, which requires a 30 m setback from Macquarie Street, be amended to allow for a 20 m setback and delete the Department’s recommended provision to allow further ‘minor reductions’ to the Macquarie Street setback.

Department’s consideration

97. The Department’s AR has considered the visual and heritage impacts of the Transport House building envelope and states:
- “... *the proposed building mass, established by the envelope, fails to suitably integrate with the varied roof forms and heritage building heights on site and surrounding the site and the streetscape;*
 - *... the Department agrees with Council and Heritage Division that the proposed setback... is inadequate and [the mass is] overbearing in the context of the defined heritage streetscape and surrounding heritage buildings;*
 - *... a setback from Macquarie Street (30m) should be applied to the proposed Transport House building envelope;*
 - *a minor intrusion into the [30m] setback would potentially be acceptable as part of [Future DA(s)], but this would need to be informed by a [CDP], that would be subject to review by the Department, GANSW, Heritage Division and Council;*
 - *... the proposal has been amended to reduce the building envelope at [Phillip Street]... The Department considers this a positive design response that has aimed to minimise heritage and visual impact streetscape issues; and*

- ... the northern elevation of Transport House envelope sits 2-3 m forward and 3.7 m higher than [the Original Approval. However,]... it would not be overbearing or have a detrimental heritage impact on the setting of the Justice and Police Museum.”
98. In response to the Amended Concept, the Department confirmed that it “... shares the concerns raised by Council and the Heritage Division... whilst the reduction in the height of the envelope reduces the overall bulk and scale of the building envelope, the proposed setbacks from Macquarie Street do not sufficiently mitigate the detrimental heritage and visual impacts of the proposal on Transport House and the streetscape”.
99. The Department reiterated its support for recommended condition A10, which requires a 30m setback to Macquarie Street and allows for a minor incursion, if informed by a Competitive Design Process (**CDP**) and review by key stakeholders.

Commission’s consideration

100. As discussed at paragraph 86, the SDCP does not apply to the Application as it is SSD. However, it provides a functional starting point for the consideration of appropriate setbacks for the Site.
101. The Commission has considered the SDCP Macquarie Street 30m setback control for the Site and notes that it is a uniform setback, which does not respond to the varied site boundaries or existing building setbacks (above street wall height). Furthermore, the SDCP does not include a rationale for the depth of the 30m setback. However, the Commission notes Council’s comments at paragraph 89 that adherence to the 30m setback would result in additions that are less visible and have a reduced impact on the Treasury Buildings.
102. The Commission agrees with Heritage NSW (paragraph 91) that the roof configuration of the Treasury Buildings is of exceptional heritage significance. Given its significance the Commission considers that the Treasury Buildings should be afforded a high level of preservation/protection and that developments should respect its historic importance and setting.
103. The Commission notes, that Transport House is of local significance and, notwithstanding that it is a fine building, in the hierarchy of heritage significance it is not as significant as the Treasury Buildings. Furthermore, the Original Approval (section 1.2.2) has demonstrated that Transport House is capable of accommodating a roof extension.
104. The Commission acknowledges that the Treasury Buildings and Transport House are read against a backdrop of existing taller structures surrounding the Site; however, these buildings do not crowd or dominate the Treasury Buildings or Transport House. The Commission agrees with the Applicant (paragraph 94) that amendments to the Proposal, particularly the reduction in the height of the Transport House building envelope, has reduced the visual impacts of the Proposal from key vantage points by reducing its bulk and scale.
105. Notwithstanding the above improvements, the Commission considers the Transport House Building envelope in its current form has not sufficiently addressed the likely visual and heritage impacts to the Treasury Buildings. The Commission agrees in part with the Department’s conclusions at paragraph 97, that “*the proposed building mass, established by the envelope, fails to suitably integrate with the varied roof forms*” and “[the mass is] *overbearing in the context of the defined heritage streetscape and surrounding heritage buildings*”.
106. In this regard, the Commission notes the proposed Transport House building envelope:
- includes a ballroom lobby/access envelope (proposed to contain escalator access to

the ballroom) located east of the IC Hotel tower, west of the Treasury Buildings Strong Room and adjacent to the cortile. The Commission agrees with Heritage NSW (paragraph 91) that this element of the Proposal would encroach onto the existing setback between the IC Hotel and Treasury Building northern wing extension. The Commission, as described in paragraph 104, also considers this component of the building envelope, due its location and scale, is likely to dominate the Treasury Buildings;

- footprint crosses over the Transport House, Treasury Building and IC Hotel podium building-lines and agrees with Heritage NSW (paragraph 91) that this arrangement has negative visual and heritage impacts; and
- cantilevers over Macquarie Lane, as shown at **Figure 12**. The Commission also notes that the VIA does not include a clear perspective of this component and the Applicant has not clearly illustrated the visual impact of the cantilever or its relationship to the Treasury Buildings. Consequently, in the absence of evidence to the contrary, the Commission agrees with Council (paragraph 89) that this element could have an adverse visual impact on the Treasury Building and Transport House.

107. The Commission does not support the creation of a building envelope located above or cantilevering over the Treasury Buildings for the reasons given in paragraph 105.

108. The Commission considers that the Transport House building envelope should be amended to address the concerns raised in paragraph 105 and reduce its visual and heritage impacts on the Treasury Building. Consequently, the Commission recommends new conditions (condition B5 and C1A) to require (**Figure 16**) the:

- deletion of the ballroom lobby/access component of the Transport House building envelope; and
- deletion of the component of the Transport House building envelope that is cantilevered over Macquarie Lane and set that part of the building envelope behind the eastern parapet of Transport House in that location. However, noting the Commission's conclusions at paragraph 105, the Commission considers that this element could be reintroduced were it demonstrated through the CDP and in compliance with the CMP that it would achieve design excellence and not have unacceptable visual, heritage impacts or dominate the Treasury Buildings.

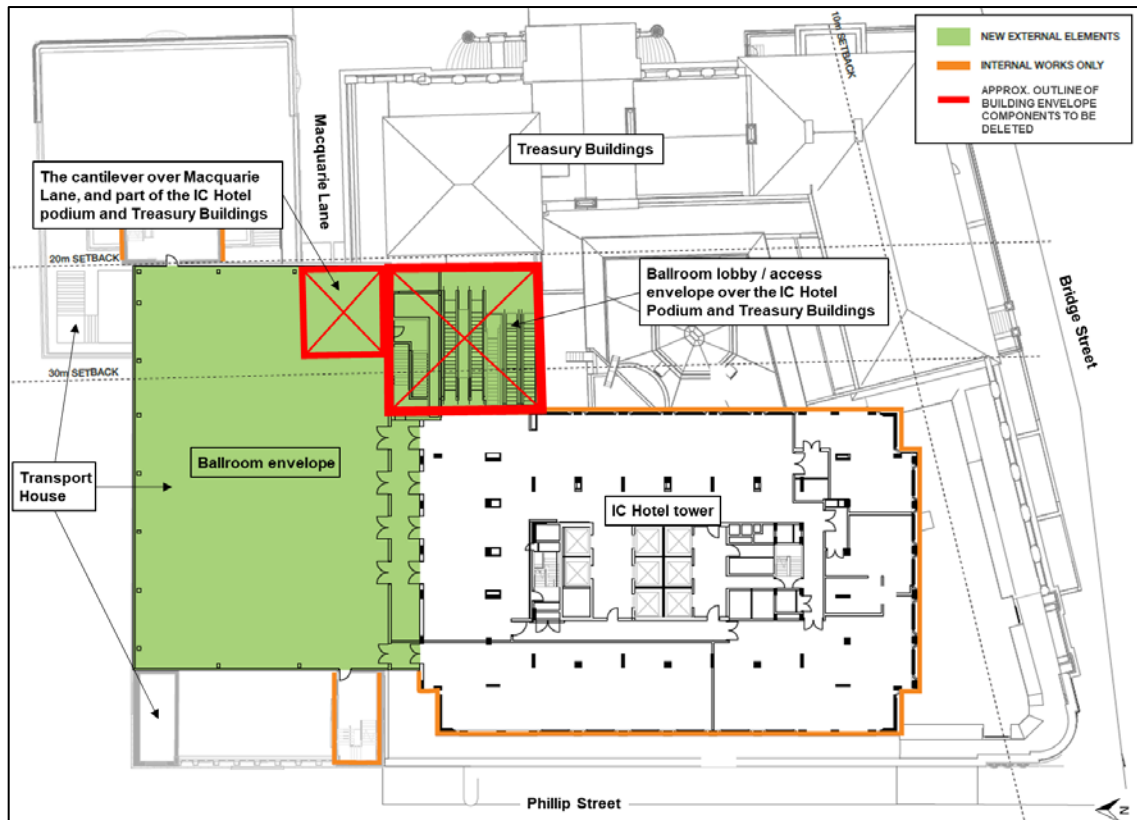


Figure 16 – Approximate outline of building envelope components to be deleted (conditions B5 and C1A)

109. Subject to the above amendments the Commission considers the Proposal would:
- retain an appropriate visual separation between the IC Hotel tower and the Treasury Buildings Strong Room;
 - reduce the dominance of the Proposal over the Treasury Buildings; and
 - resolve the construction over multiple building-lines as the roof addition would be contained to the roof of Transport House.
110. The Commission notes the difference in the heritage significance between the Treasury Buildings and Transport House. It also notes the non-site specific / uniform nature of the SDCP 30 m setback and that a three-storey roof extension has already been approved above Transport House that provides a 28m setback from Macquarie Street.
111. The Commission considers that subject to its recommended amendments (paragraph 107), the remaining Transport House building envelope is acceptable (i.e. with an approximately 20m setback), as it:
- is contained wholly above Transport House and would be visually associated with that building;
 - provides appropriate physical and visual building separation to the Treasury Buildings;
 - is located behind the existing Transport House lift tower, which is a prominent existing feature of Transport House roofscape;
 - it is of a comparable height to the Original Approval (**Table 4**) and the existing Stamford Hotel building (paragraph 12);
 - provides for an articulated envelope, which could encourage innovative detailed design approaches in achieving design excellence; and
 - is a concept building envelope and the Commission agrees with the Applicant (paragraph 93) that there are opportunities for the future façade treatment to further mitigate visual impacts by providing for a considered and sympathetic façade.

112. The Commission accepts the conclusions of the Department outlined in paragraph 97 that the northern elevation of Transport House envelope would not have a dominating or detrimental heritage impact on the setting of the Justice and Police Museum for the reasons given by the Department at paragraph 97.
113. The Commission notes that the Transport House building envelope has been amended to increase the Phillip Street setback to 8.5m (paragraph 94) and this change has been shown on the amended concept drawings submitted to the Commission (paragraph 49). In addition, as shown at **Table 4** the amended setback is uniform, and in part, slightly greater than the Original Approval setback. The Commission supports the proposed setback and considers this addresses Council's concern about the Phillip Street setback (paragraph 89).
114. The Commission agrees with the Applicant's request to amend condition A10 (paragraph 96) to reference a 20m setback from Macquarie Street and delete provision for 'minor reductions' to the Macquarie Street setback, subject to the Commission's recommended amendments to condition A10 (paragraph 107).
115. The Commission notes the Department's recommended conditions relating to CDP and design excellence (B2 to B3 and C2), design quality (C1) and protection of heritage (C3 to C6). The Commission is satisfied these conditions, coupled with the Commission's new/amended conditions, set appropriate requirements to guide the detailed design of the Transport House roof addition to ensure it has an acceptable and appropriate relationship to heritage items. The Commission therefore agrees with Heritage NSW that the proposed additional condition (paragraph 92) is necessary.
116. Based on the Material and for the reasons in paragraphs 105 to 115, the Commission finds that the proposed Transport House building envelope would not have adverse visual and heritage impacts on the Treasury Buildings and Transport House, subject to the Department's recommended conditions (as amended by the Commission).

The IC Hotel tower building envelopes

Council's, Department's and Applicant's comments

117. Council did not raise any built-form concerns about the proposed IC Hotel tower building envelopes. However, the Commission notes that Council raised concern about potential overshadowing of the RBG, which the Commission has considered at section 5.10.4.
118. The Department's AR states that it *"... supports the proposed envelope above the hotel tower given its modest scale and sensitive integration."*
119. The Applicant stated in its EIS that it intends to expand *"the Club InterContinental (roof) lounge, which is a major attraction for Hotel guests... The expanded club lounge will provide increased capacity and improved functionality to better capitalise on the world class views of Sydney Harbour. No increase is proposed to the existing maximum overall height of the tower."*

Commission's consideration

120. The Commission notes that the proposed IC Hotel tower building envelopes represent minor additions to the building and would not increase the overall height of the tower. The Commission notes Council has not raised any built form concern about the IC Hotel tower envelopes and the Commission therefore accepts the conclusion of the Department outlined in paragraph 118.

121. Based on the Commission's conclusions at paragraph 120, the Commission finds that the IC Hotel tower building envelopes are acceptable.

5.9.2 Structural impacts

Public and Council comments

122. The Commission notes that concerns were raised in public submissions that insufficient detail has been provided about the structural (and associated heritage) impact of the future roof addition above Transport House.

123. Council objected to the Proposal on the following grounds:

- more investigations are needed to confirm the strength of the existing building, its ability to support the Proposal and the feasible strengthening solutions. This should be undertaken prior to determination;
- future structural supports, retrofitting and seismic upgrades have the potential to adversely impact on the interior and heritage fabric of Transport House and this matter has not been adequately addressed; and
- the Amended Concept does not include an updated structural engineering report so it is unclear whether the elimination of the internal bracing works has been confirmed by engineers.

124. Notwithstanding its above objection and following consideration of the Amended Concept, Council recommended a new structural engineering condition (if the Commission was to grant consent) as follows:

"In order to eliminate or minimise the addition's impact on significant internal fabric and space, the addition must not introduce new bracing structure or unsympathetically alter existing structure and fabric to achieve seismic resistance compliance."

125. Heritage NSW raised concerns stating *"Based on the structural information provided there are concerns around physical impacts and impacts on the interior of Transport House. Options that reduce heritage impacts should be considered and adopted."*

126. Heritage NSW considered the Amended Concept and raised concern that *"Although proposed structural loads have been reduced by the deletion of one floor from Transport House additions, it is considered that the information submitted is indicative only and future structural interventions may be required at building stage to realise the proposed development."* Heritage NSW recommended a condition requiring deferred commencement subject to confirmation the Proposal can be realised without structural intrusion into Transport House.

Applicant's consideration

127. In response to Council's concerns about the structural integrity of Transport House and structural loading, the Applicant's Revised RtS removed the pool above Transport House and included a peer reviewed Structural Engineering Report (**SER**). The SER confirmed that *"Major strengthening to the columns and footings for the additional vertical load will likely not be required. However... strengthening would be required to the lateral stability system."*

128. In response to the SER's findings and Council's continued concerns, the Applicant's Amended Concept further revised the Proposal to lighten the structural load on Transport House, its preferred option included the following changes:

- remove an entire floor (the wellness centre) from the proposed building envelope above Transport House and reduce the ballroom height;

- confirm the integrity of the existing Transport House structure and provide lightweight ballroom framing; and
- no lateral strengthening of Transport House or complicated connections with the IC Hotel.

129. The Applicant confirmed that these changes “resulted in a structural solution that eliminates the previously proposed internal bracing works within Transport House. This will be further developed as part of the next stage of development...”. The Applicant’s revised structural option is shown at **Figure 17**.

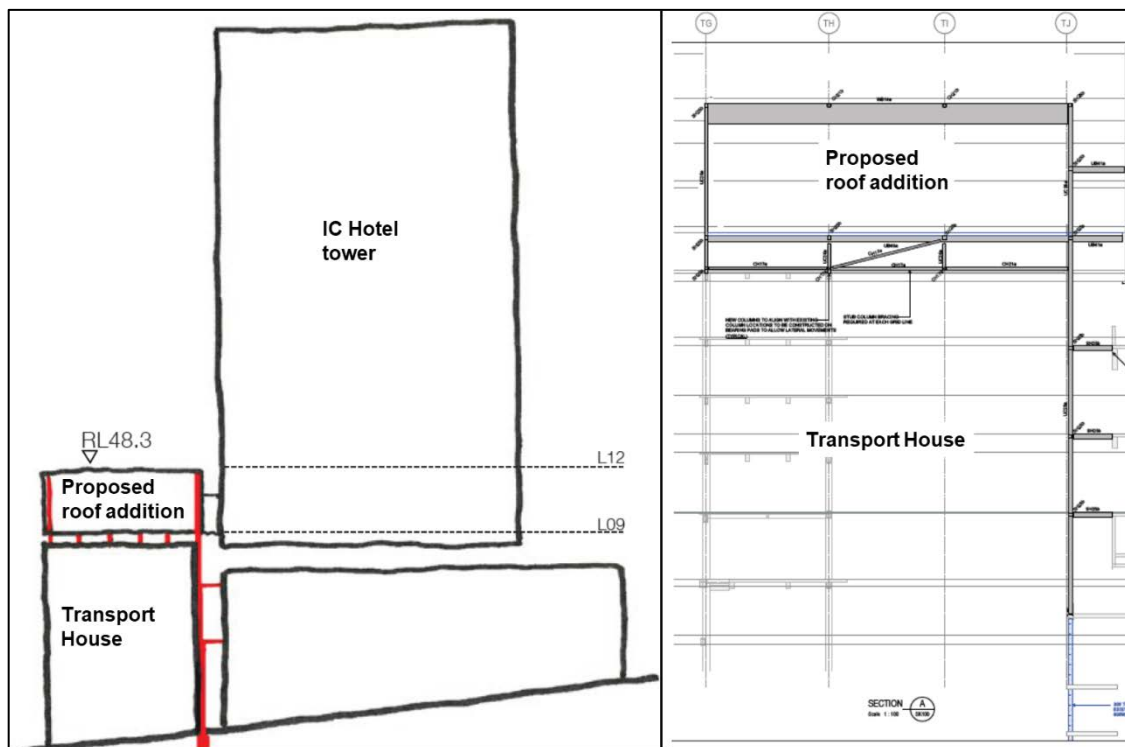


Figure 17 – Amended Concept suggested structural solution option (Base source: material presented at the Applicant’s meeting with the Commission)

Department’s consideration

130. The Department’s AR has considered the structural impacts of the Proposal and states “it is appropriate for the detailed structural investigations to be undertaken in detailed future DAs for the following reasons:
- *“the RtS included amendments... to reduce the structural load of the future additions;*
 - *there would be no internal changes to the interior of Transport House as part of this application, which only seeks approval for a building envelope;*
 - *the development concept demonstrates... [the provision of] an area of separation between the existing roof surface and the underside of the proposed addition;*
 - *the range of structural engineering solutions... minimise intervention into significant spaces, fabric and finishes to the interior of Transport House; and*
 - *structural issues would also be considered as part of the competitive design process prior to the lodgement of future DAs.”*
131. The Department has recommended conditions requiring future DA(s) to address structural impacts, including:
- conditions B2, B3, C2 and C3 which require a competitive design process and design excellence strategy that have regard to an endorsed CMP;

- condition C7 which requires confirmation of structural integrity of Transport House;
- condition C8 which requires a fire safety and services strategy be prepared; and
- condition C9 which requires a structural design report and heritage statement be prepared in consultation with Heritage NSW and Council.

132. The Department did not revise or update its conclusions and recommended conditions (paragraphs 130 and 131) following consideration of the Amended Concept.

Commission's consideration

133. The Commission notes the Applicant's response to the concerns raised about the structural integrity of Transport House (paragraphs 127 and 129) and considers the amendments to the roof addition would have the intended effect of lightening the structural load on Transport House. The Commission also notes the evolution of the Applicant's structural solution to address impacts on Transport House and this gives the Commission confidence that a detailed structural resolution will be found as part of the detailed design of future DA(s).

134. The Commission accepts the conclusions of the Department outlined in paragraphs 130 and 131. The Commission notes that the Department's recommended conditions (listed in paragraph 131) require future DA(s) to address structural impacts in consultation with Heritage NSW and Council, prior to lodgement and also as part of the competitive design process. The Commission is satisfied that sufficient safeguards are in place to ensure that a future roof addition to Transport House must consider, address and mitigate any structural impacts on the existing building.

135. Noting the above considerations (paragraphs 133 and 134), the Commission does not agree with Heritage NSW (paragraph 126) that a deferred commencement condition is required. However, the Commission does agree with Council's recommended condition (paragraph 124) as this provides additional clarity and certainty around the appropriate preservation of Transport House, and recommends a new condition (condition C4A) accordingly.

136. Based on the Material and for the reasons in paragraph 134, the Commission finds that subject to the appropriate safeguards contained within the Department's recommended conditions (as amended by the Commission), a future roof addition should be designed to address any structural impacts on Transport House.

5.9.3 Design excellence

137. The Applicant proposes to establish a *"Design Review Panel (DRP) to be appointed and agreed with [Council] and the [Department]... It is proposed that the DRP would meet at regular intervals through all phases of the design of the project to ensure a consistent level of design excellence is achieved and maintained from the [Application through to future DA(s)]."*

Public and Council comments

138. The Commission notes that Council objects to the Proposal on the basis that the Applicant has not agreed to undertake a CDP. Council noted that the Proposal does not meet the SLEP 2012 CDP exemption criteria.

139. Following Council's review of the Amended Concept, Council stated *"Having regard to the scale of the nature of the development and prominence of the building's location within the context of Sydney CBD, the City recommends that the [CDP] must be undertaken in accordance with the Clause 6.21 of Sydney LEP 2012 and the City of Sydney Competitive Design Policy."*

140. Concern was raised in a public submission that the Proposal does not achieve design excellence.

Applicant's consideration

141. The Applicant has stated that requiring a CDP would be unreasonable and unnecessary as:
- the [concept] *has been devised by architects who are recognised for their design excellence*
 - *the design process has been rigorous and comprehensive...*;
 - *the Applicant does not seek additional bonus GFA or FSR for the site;*
 - *the roof of the building envelope... is well below the 55.0m [SLEP 2012] height...; and*
 - *no public view corridors are affected by the proposed development.*
142. The Applicant has also stated that it *"is committed to achieving an outstanding architectural solution for the site and will work with the consent authority and stakeholders to achieve outcomes. Submissions have argued for a design competition; however similar outcomes could be achieved through working with a Design Panel of expert practitioners."*
143. In support of its Amended Concept, the Applicant stated a CDP *"... may have been more appropriate for the previously proposed substantial façade change to the tower, however, it is not appropriate or necessary for the scope of work which is now proposed, and particularly for the very specific operational and design needs associated with the new ballroom."*

Department's consideration

144. The Department's AR states *"The Department has consulted with GANSW, which considers future applications must proceed through a [CDP], as the requirements of the sub-clauses under Clause 6.21(6) of SLEP 2012 that would preclude this process cannot be met... The Department has recommended a condition requiring the detailed design of the subsequent stages to be subject to a competitive design process."*

Commission's consideration

145. The Commission notes that the Application does not meet the CDP exemption criteria listed in the SLEP 2012 and therefore accepts the conclusions of Council and the Department outlined in paragraphs 138, 139 and 144 that future DA(s) should be subject to a CDP.
146. The Commission also refers to its findings at section 5.9.1 and its recommendation that the cantilevered component of the Transport House building envelope is only permitted subject to detailed consideration through the CDP.
147. Based on the Material and for the reasons at paragraph 145, the Commission finds that a CDP is required in accordance with the SLEP 2012. Subject to the CDP, the Commission is satisfied the future DA(s) will be capable of demonstrating design excellence.

5.9.4 External and internal upgrade works to the IC Hotel

Macquarie Lane and Phillip Street awnings

148. Macquarie Lane is a pedestrianised no-through lane that separates the Treasury Buildings and the eastern half (Macquarie Street wing) of Transport House. The lane is approximately 25m long and 5m wide and ends at the rear of the western half (Phillip Street wing) of Transport House. It is mostly uncovered, except for a small steel and glazed awning located at the western end of the lane where it meets the rear of Transport House (**Figure 18**).



Figure 18 – View west from Macquarie Street towards Macquarie Lane (left) and the existing awning within Macquarie Lane (right) (source: Council's email dated 25 November 2019 and the Commissions site visit)

149. The Commission notes that the provision of an awning within Macquarie Lane and at Phillip Street form part of the Proposal (as summarised in **Table 1**). In addition, although the awnings were originally shown on the proposed drawings submitted with the EIS, they are no longer shown on the current Amended Concept drawings.

Authority comments

150. The Commission notes that Council objected to the provision of a new awning within Macquarie Lane. In particular, Council stated insufficient information has been provided to justify the awning with respect to the heritage significance and setting of the Treasury Buildings and Transport House and stated that any awning should avoid:
- attaching additional structures to the two heritage listed buildings;
 - drainage of the canopy towards the two heritage facades and associated potential overflow onto the heritage facades on either side; and
 - fixings, chasings and insertions into the facades of the heritage items.
151. Heritage NSW did not provide comment on the Macquarie or Phillip Street awnings.

Applicant's consideration

152. In its Revised RtS the Applicant stated that *“There is already a glazed canopy over the western end of [Macquarie Lane] ...”* and that the provision of a new canopy *“... is a matter for further detailed consideration as part of the Stage 2 DA”*. In addition, the Applicant stated that *“There is no detrimental heritage impact as a result of this element, which can be designed as a light-weight glazed insertion which is reversible, and does not fix into or incorporate drainage against the significant facades.”*
153. At its meeting with the Commission, the Applicant stated with regard to the:
- Macquarie Street awning that *“... we would look to extend that out from its current location, because we want to use that for access to the ballroom so that we don't have everyone coming in one location, and it creates a much better access to the building.”*
 - Phillip Street awning that *“... we are reviewing whether we can actually do the canopy*

over Phillip Street and what that will be, so that's the next stage of this staging of the works."

Department's consideration

154. In its letter dated 13 December 2019, the Department stated "*The proposed canopy on Macquarie Lane was identified as part of the EIS drawings and it was assessed as a part of the Concept proposal. The Department considers that the proposed awning is acceptable as it is a minor element which would improve the amenity of the entrance fronting Macquarie Lane. Further, the Department is satisfied it would not result in any significant visual, amenity or heritage impacts, given its location and minor scale.*"
155. The Department's AR states with regard to both awnings that "*potential impacts associated with these works can be considered as part of a subsequent DA(s).*"
156. The Department recommended condition C1(h), which states that the "*final design of the canopy to the existing laneway should be recessive in scale.*"

Commission's consideration

157. The Commission notes that existing constraints are likely to influence, and may constrain, any future awning design within Macquarie Lane and at the corner of Phillip and Bridge Streets, in particular:
 - Macquarie Lane is a narrow lane framed by two heritage items; and
 - the corner of Phillip and Bridge Streets is located adjacent to the Treasury Buildings' Bridge Street heritage façade and also adjacent to existing mature street tree planting.
158. The Commission accepts the conclusions of the Department outlined at paragraph 155 that potential impacts associated with the awnings can be assessed as part of the consideration of future DA(s). However, due to the existing constraints identified at paragraph 157, the Commission is not convinced of the Department's conclusions at paragraph 154 that the Macquarie Street awning would have minor visual, amenity and heritage impacts and agrees with Council's concerns (paragraph 150) that the Application does not include sufficient information to allow for an assessment of impact at this stage.
159. The Commission supports the Department's recommended condition C1(h) (paragraph 156), which would require future DA(s) to ensure the design of an awning within Macquarie Lane be recessive. However, the Commission considers it appropriate that future DA(s) should also be required to justify the provision of an awning in this sensitive location and consider and mitigate any likely visual and heritage impacts. Consequently, to ensure an awning within Macquarie Lane does not result in unacceptable visual and heritage (including structural) impacts the Commission recommends condition C1(h) be amended to require future DA(s) justify the visual and heritage impact of proposed awning within Macquarie Lane and address Council's concerns listed at paragraph 150.
160. Noting the existing and likely constraints on the provision of an awning at the corner of Phillip and Bridge Street (paragraph 157), the Commission also considers it appropriate that the above requirements (paragraph 159) also apply to the proposed awning at the corner of Phillip and Bridge Streets.
161. Based on the Material, the Commission finds that the provision of awnings within Macquarie Lane and at the corner of Phillip and Bridge Streets are acceptable in principle subject to future DA(s) demonstrating the awnings would not have unacceptable impacts in accordance with the Department's recommended condition (as amended by the Commission).

5.9.5 Amendments to recommended conditions

162. As part of its additional information dated 13 November 2019 (paragraph 48), the Applicant recommended amendments to eight of the Department's recommended draft conditions of consent.
163. The Commission has already considered the proposed amendments to four conditions, including condition A10 (setbacks) and B2 to B4 (design excellence), at sections 5.9.1 and 5.9.3. The Commission has considered the amendments to the remaining four conditions below.

Condition C3 – Heritage endorsement requirements

164. Recommended condition C3 is reproduced below. The Applicant recommended that this condition be amended to require the Transport House CMP to be accepted, rather than endorsed, by Council:

*C3. The future development application(s) must comply with the Conservation Management Plans (CMPs) for the former NSW Treasury Building endorsed by the NSW Heritage Council and for Transport House ~~endorsed~~ **accepted** by the City of Sydney. Future development applications must not be lodged until the CMPs have been endorsed.*

165. Council did not comment on the Applicant's proposed amendments to the condition.
166. The Department does not support the Applicant's amended condition stating "it is appropriate that a CMP be endorsed by Council given Transport House is a local heritage item and to ensure any residual heritage impacts are appropriately mitigated and managed."
167. The Commission agrees with the Department's conclusion at (paragraph 166), that it is appropriate for Council to have an endorsing role of the Transport House CMP as this building is a locally listed building. The Commission therefore does not support the proposed amendment to condition C3.

Condition C6 and C10 – External and internal refurbishment

168. Recommended conditions C6 and C10 are reproduced below. The Applicant recommends that condition C6 be deleted as the Proposal no-longer includes external refurbishment of the IC Tower and condition C10 be amended to only require consultation with Heritage NSW for internal works to heritage areas:

~~*C6. The external refurbishment of the hotel tower should be designed with input from a suitably qualified heritage consultant to ensure that the final design in terms of materiality, reflectivity and colour, mitigate the existing impact of the structure on the heritage buildings and other heritage items in the vicinity by enhancing the setting of these items.*~~

*C10. Detailed guidelines for necessary upgrades to comply with the National Construction Code shall be developed in consultation with the NSW Heritage Council prior to the detailed design of the new built form **for internal works to heritage areas.***

169. Council did not comment on the Applicant's recommended amendments to the draft conditions. The Department supported deletion of condition C6 and amendment of condition C10.
170. The Commission agrees with the Department's conclusion (paragraph 169) as the amendments address an error (condition C6) and provide greater clarity (condition C10) and are therefore administrative in nature.

Condition C12 – Bicycle parking

171. Recommended condition C12 is reproduced below. The Applicant recommended that condition C12 be deleted as it overlaps with condition C15 (travel plan) and bicycle parking can be addressed as part of future DA(s):

C12. Future development application(s) shall provide bicycle access and servicing in accordance with Sydney Development Control Plan 2012

172. Council objected to the deletion of condition C12 stating “*there is scope to investigate renewed options for bicycle access and servicing to the site in accordance with the Sydney DCP 2012 which is considered to a positive outcome for the future use of the hotel*”. The Department does not support the deletion of condition C12 for the same reason as given by Council above.

173. The Commission agrees with the conclusions of Council and the Department (paragraph 172) that condition C12 should be retained as the SDCP provides helpful guidance on bicycle and servicing facilities and should be considered by future DA(s) during the detailed design stage.

Commission’s consideration

174. Based on the Material, the Commission finds that the Applicant’s recommended amendments to:

- conditions C6 and C10 are acceptable as these changes are administrative in nature;
- condition C3 is not acceptable as it is appropriate for Council to endorse the Transport House CMP; and
- condition C12 is not acceptable as the SDCP bicycle and servicing guidelines should be considered by future DA(s).

5.10 Other relevant issues

5.10.1 Other issues

175. In addition to the Commission’s consideration of key issues (section 5.9), the Commission also considers that the following other issues are relevant to the Proposal. These other issues are addressed in sections 5.10.2 to 5.10.5 below.

- traffic and parking;
- private view impacts;
- overshadowing of the RBG; and
- Stamford Hotel DA.

176. Section 6.7 of the Department’s AR also identifies a number of other issues relevant to the Application, including:

- draft CMP;
- vehicular access, loading dock;
- construction and operational traffic, parking and access;
- construction, operational noise and acoustic impact;
- waste management;
- reflectivity; and
- wind.

177. The Commission agrees with the Department’s assessment of the issues outlined at paragraph 176 that these matters can be mitigated and/or managed to an acceptable level through the recommended conditions of consent.

178. External and internal works was also listed as an 'other issue'. The Commission agrees with the Department's assessment of this issue with the exception of the proposed Macquarie Lane and Phillip and Bridge Streets awnings. The Commission considers the impact of these awnings to be a key issue and its consideration is provided at section 5.9.4.

5.10.2 Traffic and parking

Public and authority comments

179. The Commission notes that concerns were raised in public submissions about traffic and car parking impacts. TfNSW provided comments on traffic management and pedestrian access. RMS provided comments on management during construction. Council raised no objection to traffic or parking impacts.

Applicant's consideration

180. The Application includes a Traffic and Transport Assessment (**TTA**) (updated by the Revised RtS), which considers the Proposal's predicted traffic and car parking impacts. The TTA concludes the Proposal would generate:
- up to 45 additional vehicles during weekdays; and
 - 91-137 additional vehicles during weekends.
181. The Applicant's EIS confirms *"No changes are proposed to the existing 121 parking spaces on the site. This number of spaces already exceeds the number that would be permitted for a replacement new hotel with the same number of rooms."*
182. The TTA states *"During busy periods, other off-street car parks in close proximity to the site will be utilised to accommodate residual demand. There are a number of publically [sic] available parking facilities in the area which have spare capacity during the evenings when parking demand is highest at the IC Hotel."*
183. The Applicant's EIS concludes that *"the traffic generation impacts of the proposal are not likely to be significant... Parking impacts from the proposed alterations and additions, including the grand ballroom (which will be ancillary to the hotel and not a separate use in its own right) are unlikely to be significant."*

Department's consideration

184. The Department's AR states *"... the additional traffic generated by the development is relatively minor and the traffic impacts arising from the proposed development are acceptable and can be appropriately managed."*
185. In addition, *"sufficient parking exists on the site and in the surrounding parking stations to satisfy the demand generated by major events within the proposed ballroom in the evening and at the weekend"*, noting:
- *"the maximum additional demand generated by the proposal represents 13% of the capacity of the surrounding car parks; and*
 - *the site is located in close proximity to high frequency, high capacity public transport infrastructure, including the future light rail route, which terminates at Circular Quay."*

Commission's consideration

186. The Commission accepts the Applicant's and Department's conclusions outlined in paragraphs 180 to 185 above, as the Application has demonstrated that the Proposal is unlikely to result in unacceptable traffic and car parking impacts.

187. The Commission notes that conditions C12 to C14 and C16 relate to traffic, access and car parking and require future DA(s) to consider, in detail, all matters relating to traffic and car parking impacts. In particular, condition C16 requires future DA(s) also include provision of necessary mitigation measures including consideration of intersection and infrastructure upgrades where deemed necessary. The Commission is satisfied that the Department's recommended conditions are necessary, reasonable and appropriate.
188. Based on the Material the Commission finds that traffic and car parking impacts can be appropriately managed and/or mitigated subject to the conditions referred to in paragraph 187 which require further detailed analysis at future DA stage.

5.10.3 Private view impacts

Public comments

189. The Commission notes the concerns raised in public submissions about the potential impacts of the Proposal on private residential views from The Astor.

Applicant's consideration

190. In response to a request from the Department, the Revised RtS includes a view impact analysis (**VIA**), which assessed the impact of the Proposal on the private residential views from level 10 of The Astor and the rooftop common area. The Revised RtS concluded *"The portion of the view which is obscured is minimal given that the broader vista (from Circular Quay across the Harbour and out to Sydney Heads) is unaffected by the proposal... views to the Opera House and Harbour are unaffected... the extent of impact on the whole property is minor..."*

Department's consideration

191. The Department's AR considered the potential view impacts to The Astor and concluded *"... the view impact because of the non-compliant setback to Macquarie Street is minor and would not adversely affect the amenity of the apartments or the communal rooftop given the broader vista that would be retained, including views to the Opera House. Furthermore, this part of the proposed building envelope is well below the maximum 55 m height limit under SLEP 2012 and would not result in any unreasonable view impacts."*

Commission's consideration

192. The Commission accepts the conclusions of the Applicant and the Department outlined in paragraphs 190 and 191 as the Application has demonstrated that the Proposal will not result in significant or unacceptable view impacts to The Astor.
193. Based on the reasons set out in paragraphs 190, 191 and 192, the Commission finds that the Application would not have unacceptable impacts on views.

5.10.4 Overshadowing of the RBG

Council's and public's comments

194. Council has objected to the height of the Proposal stating *"The existing building exceeds the Royal Botanic Garden Sun Access... (i.e. extension of the existing lounge)... which is prohibited under Clause 6.17 of Sydney LEP 2012... [and] causes an increase in the afternoon mid-winter overshadowing (from 14.30pm to 15.00pm) of the [RBG]"*.
195. The Commission notes that concerns were raised in public submissions about the Proposal's non-compliance with the RBG Sun Access plane.

196. The RBGDT did not object to the predicted overshadowing and stated that it is “... satisfied that the proposed amendments would appear to ensure that there would be no additional overshadowing of the Garden. On this basis we have no further comments.”

Applicant’s consideration

197. In its Revised RtS the Applicant stated “The overshadowing diagrams provided by Hassell indicate that there is only a very small area of increased shadowing caused by the proposed additions. This is limited to a small portion of the park opposite to the former Treasury buildings and the road. This overshadowing is not overshadowing any significant area of the Royal Botanic Gardens and is not considered to have a detrimental heritage impact.”

Department’s consideration

198. The Department’s AR concludes the overshadowing impact on the RBG is acceptable as **(Figure 19)**:

- “The additional shadow cast by the proposal on The Domain would be generated by the future addition above Transport House... [which is] below the maximum height control of 55 m that the sun access plane applies to;
- the shadow would fall on a small, isolated area of relatively poor quality public open space, forming an island surrounded on three sides by busy roads; and
- the shadow would be cast for a relatively short period of time (approximately one hour).



Figure 19 – Predicted overshadowing of RBG at 2:40 pm during mid-winter (Source: Department’s AR)

Commission’s consideration

199. The Commission agrees with the Department’s conclusions at paragraph 198 and notes that the predicted overshadowing is minor in nature, is cast over a traffic island and occurs for a relatively short period. The Commission also notes that the RBGDT confirmed the Proposal has addressed its concerns about overshadowing.

200. The Commission therefore finds that the proposed overshadowing is minor in nature and would not have a negative amenity or heritage impact on the RBG and is therefore acceptable.

5.10.5 Stamford Hotel DA

Public and authority comments

201. The owners of the Stamford Hotel made a submission requesting that the Panel consider the impact of the Proposal on the proposed redevelopment of the Stamford Hotel, which includes the creation of residential accommodation.
202. Heritage NSW requested that the Commission delay the determination of the Application to allow for an amendment to the SDCP to apply a 30 m setback requirement for all properties between 89 and 121 Macquarie Street, which would include the Site and the Stamford Hotel site.

Applicant's consideration

203. In response to a request from the Department, the Revised RtS includes an assessment of the impact on the Stamford Hotel, which concludes “... *the west facing window and balcony orientation of [the Stamford Hotel] accommodation rooms results in only oblique views to windows in the northern façade of Transport House. Having regard to the commercial daytime office use of Transport House and the commercial hotel use of Stamford, privacy issues are not significant either presently or will be once the proposed ballroom is constructed.*”

Department's consideration

204. The Department's AR considered the Stamford Hotel DA and notes “*the Land and Environment Court has issued an Order to restrain Council from making a determination in relation to the current DA.*”
205. Notwithstanding the LEC Order, the Department's AR considered the impacts of the Proposal on the Stamford Hotel DA and concluded “... *there would be no significant privacy impacts from the northern façade of the future building within the envelope above Transport House given the separation and orientation of the proposed apartments on the Stamford site... The proposed envelope is located to the south of the Stamford site and would not result in any overshadowing impacts or loss of view to Sydney Harbour.*”

Commission's consideration

206. The Commission accepts the conclusions of the Applicant and the Department outlined in paragraphs 203 and 205. In any event, the Commission gives limited weight to the possibility of impacts of the Application on an as yet notional neighbouring development.
207. The Commission notes Heritage NSW's submission regarding amendment of the SDCP (paragraph 202). The Commission does not consider that there are grounds to delay the determination of the Application, noting that the Commission has already considered the setback requirements for the Proposal at section 5.9.1.

5.11 Suitability of the site for the development

Applicant and Department's considerations

208. The Applicant's EIS considered site suitability and states the “... *continued use (and enhancement) for [a tourist accommodation] purpose is well-suited to the site as a whole. The site is an excellent location for a five-star hotel and the existing heritage-listed item comprising the former NSW Treasury Building is well-suited to its continued re-use as part of the hotel. The site is therefore suitable for the proposed development.*”

209. The Department's AR concluded it *"assessed the merits of the proposal, taking into consideration advice from the government agencies and Council. Issues raised in public submissions have been considered and all environmental issues associated with the proposal have been thoroughly addressed... The site is suitable for the development as addressed in Section 4 and 6 [of the Department's AR]"*.

Commission's consideration

210. The Commission agrees with the Applicant's and Department's conclusions at paragraphs 208 and 209 and is generally satisfied that the Application is suitable for the Site as the:
- Application is generally consistent with the planning priorities set out in the GSR Plan, District Plan, SS30 and VEIAP as outlined at paragraph 71;
 - Proposal would not alter the established use of the Site for tourist accommodation purposes;
 - likely environmental issues, outlined in section 5, associated with the Application have been addressed by the Department's recommended conditions (as amended by the Commission) and/or can be adequately addressed through management / mitigation measures;
 - Application is a concept proposal and relates to the establishment of building envelopes, therefore:
 - the detailed design and impact of the development will be further considered on its merits as part of the assessment and determination of future DA(s)
 - Future DA(s) will be subject to a CDP, which will inform and refine the detailed design of the development and ensure the Proposal; and
 - Proposal does not include the creation of basements or disturbance of soil/geology and therefore does not give rise to the consideration of issues relating to contaminated land.

5.12 The public interest

Applicant's and Department's consideration

211. The Applicant's EIS states *"The public interest is best satisfied by quality development which meets a perceived need in general compliance with the relevant controls, policies and guidelines applying to the land to which the application relates. In this regard, the proposal is in the public interest"*.
212. The Department's AR considered the consistency of the Application with the objects of the EP&A Act and concluded that it was consistent with those objects, stating that the Application:
- *"...facilitate upgrade works to the existing hotel close to high profile tourist destinations and a transport hub in the Sydney CBD. The proposed building envelope is appropriately sited to minimise visual and heritage impacts on the surrounding area, subject to careful design of the new built form in future DAs;*
 - *...includes measures to deliver ecologically sustainable development (ESD);*
 - *...maximises the efficient use of the site [and] ...represents the orderly and economic use of the land;*
 - *...is not required to provide or maintain affordable housing;*
 - *...would not adversely impact any native animals and plants, including threatened species, populations and ecological communities, and their habitats;*
 - *[has been assessed including]... any impacts of the proposal on the built and cultural heritage;*
 - *...seeks only to establish building envelopes to facilitate the future upgrade of the building. The design quality of the proposal [has been assessed];*
 - *[has been] ...publicly exhibited ...the Department consulted closely with Council and the*

Heritage Council NSW in relation to the heritage issues;

213. The Department's AR noted the Application was considered in relation to the principles of ESD stating "Whilst the proposal is only for a concept development application, the ESD report provided by the Applicant proposes ESD initiatives and sustainability measures that could be included in detailed future DAs...". The Department concluded "Overall, the proposal is consistent with ESD principles and the Department is satisfied the proposed sustainability initiatives would encourage ESD..."
214. The Department concluded that the Proposal was in the public interest subject to its recommended conditions of consent.

Commission's consideration

215. In determining the public interest merits of the Application, the Commission has had regard to the objects of the EP&A Act. The Commission is satisfied with the Department's AR conclusions that the Application is consistent with the objects of the EP&A Act, including the principles of ESD, as discussed in paragraphs 212 and 213.
216. The impacts of the project have been discussed throughout Section 5.9 of this Statement of Reasons for decision and have been found to be acceptable, subject to conditions.
217. The Commission refers to its conclusions in section 5.9.1. Contrary to the Applicant's request for a uniform 20 m Macquarie Street setback and Council's, the Department's and Heritage NSW's recommendation of a 30 m setback, the Commission finds that it is in the public interest that a revised Transport House envelope be provided that responds to the existing building-lines and is contained wholly above Transport House.
218. The Commission has taken account of the Material and finds that the Proposal is in the public interest because it:
- demonstrates consistency with the objects of the EP&A Act, in particular by promoting the orderly and economic use and development of the land in consistent with relevant strategic planning, as referred to in section 5.4;
 - is consistent with the principles of ESD as summarised at paragraph 213; and
 - would not have adverse environmental, heritage or amenity impacts, subject to the Department's recommended conditions (as amended by the Commission).

6. HOW THE COMMISSION TOOK COMMUNITY VIEWS INTO ACCOUNT IN MAKING ITS DECISION

219. The views of the community were expressed through public submissions received by the Department in response to the public exhibition and notification of the Application, as summarised at paragraph 38.
220. In summary, views expressed by the community raised a number of concerns about building envelope setbacks, overshadowing, visual impacts, heritage and structural impacts, privacy, traffic and parking, design excellence and the impact on the Stamford Hotel site.
221. The Commission has carefully considered all of these concerns in making its decision. The way in which these concerns were considered by the Commission is set out in section 5 of this Statement of Reasons.

7. CONCLUSION: THE COMMISSION'S FINDINGS AND DETERMINATION

222. The Commission has carefully considered the Material before it.

223. The Commission finds that the:

- amendments to the Proposal can be made under clause 55 of the EP&A Act and agrees to their inclusion as part of the Application (section 5.3.1);
- Application meets the objects of the EP&A Act as discussed in paragraph 212;
- Application has strategic merit as it supports the relevant directions and objectives of the GSR Plan, District Plan, SS30 and VEIAP as outlined at paragraph 71;
- Proposal is consistent with relevant and proposed EPIs, and the requirements of applicable regulations (section 5.4);
- Proposal is partly prohibited; however, consent may be granted consistent with section 4.38(3) of the EP&A Act as the Proposal is not wholly prohibited. In addition, as the Application comprises a concept SSD application the preparation of a DCP in accordance with the SLEP 2012 is not required (section 5.5);
- Draft National GDCP Listing and SHR nomination of Transport House have been considered; however, as consideration of the merits of both of those upgraded listings has not concluded, limited weight has been attributed to them (section 5.3.2);
- Transport House building envelope would not have adverse visual and heritage impacts on the Treasury Buildings and Transport House, subject to the Department's recommended conditions (as amended by the Commission) (section 5.9.1);
- IC Hotel tower building envelopes would not increase the overall height of the IC Hotel tower, are minor in nature and are acceptable (section 5.9.1);
- future roof addition would be capable of being designed to address structural impacts on Transport House, subject to the appropriate safeguards contained within the Department's recommended conditions (as amended by the Commission) (section 5.9.2);
- CDP is required in accordance with the SLEP 2012 and is also required to justify cantilevering over Macquarie Laneway (section 5.9.3);
- provision of awnings within Macquarie Lane and at the corner of Phillip and Bridge Streets are acceptable subject to conditions requiring that future DA(s) demonstrate the awnings would not have unacceptable impacts in accordance with the Department's recommended condition (as amended by the Commission) (section 5.9.4);
- Applicant's proposed amendments to (section 5.9.5):
 - conditions C6 and C10 are acceptable as these changes are administrative in nature;
 - condition C3 is not acceptable as it is appropriate for Council to endorse the Transport House CMP; and
 - condition C12 is not acceptable as the SDCP bicycle and servicing guidelines should be considered by Future DA(s).
- traffic and car parking impacts can be appropriately managed and/or mitigated (section 5.10.2);
- Application would not have unacceptable impacts on views (section 5.10.3);
- overshadowing impacts to the RBG are minor in nature and would not have a negative amenity of heritage impacts (section 5.10.4);
- other issues outlined at section 5.10.1 can be mitigated and/or managed to an acceptable level through the recommended conditions of consent;
- Department's recommended conditions of consent are adequate to manage environmental impacts resulting from the Application, subject to the further amendments of the Commission; and
- Site is suitable for the development and the Application is in the public interest as set out in sections 5.11 and 5.12.

224. For the reasons at paragraph 223, the Commission has determined that the consent should be granted subject to conditions. These conditions are designed to:

- prevent, minimise and/or offset adverse environmental impacts;

- set standards and performance measures for acceptable environmental performance; and
- provide for the on-going environmental management of the development.



Chris Wilson (Chair)
Member of the Commission



Soo-Tee Cheong
Member of the Commission