

ATTACHMENT E

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**CONSIDERATION OF ENVIRONMENTAL
PLANNING INSTRUMENTS**

201-217 ELIZABETH STREET, SYDNEY

APPENDIX E ENVIRONMENTAL PLANNING INSTRUMENTS

To satisfy the requirements of section 79C(a)(i) of the EP&A Act, an assessment of the relevant Environmental Planning Instruments (EPIs) that relate to the DA has been carried out. The following EPIs apply to the site:

- *State Environmental Planning Policy (State & Regional Development) 2011;*
- *State Environmental Planning Policy (Infrastructure) 2007;*
- *State Environmental Planning Policy No. 55 - Remediation of Land;*
- *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005; and*
- *Sydney Local Environmental Plan 2012.*

Note: Clauses within the above EPIs that are not relevant to the application or have been considered within this report have been omitted from the below assessment.

COMPLIANCE WITH CONTROLS

State Environmental Planning Policy (State and Regional Development) 2011

Relevant Sections	Compliance	Comments
<p>3 Aims of Policy</p> <p>The aims of this Policy are as follows:</p> <p>(a) to identify development that is State significant development,</p>	Yes	The proposed development is identified as State Significant Development (SSD).
<p>8 Declaration of State significant development: section 89C</p> <p>1) Development is declared to be State significant development for the purposes of the Act if:</p> <p>(a) the development on the land concerned is, by the operation of an environmental planning instrument, not permissible without development consent under Part 4 of the Act, and</p> <p>(b) the development is specified in Schedule 1 or 2.</p>	Yes	<p>The proposed development is permissible with consent under Sydney Local Environmental Plan 2012 (SLEP 2012).</p> <p>The site is specified in Schedule 1.</p>
<p>Schedule 1 State significant development - general</p> <p>(Clause 8 (1))</p> <p>13 Cultural, recreation and tourist facilities</p> <p>2) Development for other tourist related purposes (but not including any commercial premises, residential accommodation and serviced apartments whether separate or ancillary to the tourist related component) that:</p> <p>(a) has a capital investment value of more than \$100 million</p>	Yes	The proposal is development for tourist related purposes and has a Capital Investment Value (CIV) of more than \$100 million.

State Environmental Planning Policy (Infrastructure) 2007

The application is subject to Clause 45 (Division 5 'Electricity transmission or distribution', Subdivision 2 'Development likely to affect an electricity transmission or distribution network') as it is likely in the proximity of underground electricity power lines. In accordance with the Clause, the application was referred to Ausgrid for comment. Ausgrid raised no objection, subject to conditions.

The application is subject to Clause 88 (Division 15 'Railways', Subdivision 2 'Development in rail corridors') as the development is above an interim rail corridor. The application was referred to Sydney Trains who raised no objection to the proposal, subject to conditions.

The application is subject to Clause 104 (Division 17 'Roads and traffic, Subdivision 2 'Development in or adjacent to road corridors and road reservations'). The application was referred to NSW Roads and Maritime Services (RMS) who raised no objection to the proposal, subject to conditions.

State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development

SEPP 65 seeks to improve the design quality of residential developments and encourage innovative design. The Apartment Design Guide (ADG) is closely linked to the principles of SEPP 65 and sets out best practice design principles for residential developments. An assessment of the proposal against the aims and objectives of SEPP 65 below:

SEPP 65 Design Principle	Response
1. Context and Neighbourhood Character	The proposal has been designed to ensure adequate solar access is maintained to Hyde Park throughout the year, and is generally consistent with the street frontage heights of development on Elizabeth Street. Appropriate conditions of consent have been recommended to ensure that any subsequent DA for detailed design and construction works provides appropriate articulation, modelling and materials, having regard to the character and of the surrounding area.
2. Built Form and Scale	The building design will be subject to a design competition and subsequent DA for detailed design and construction works. The proposed envelope is generally consistent with the applicable planning controls in relation to building height, street frontage heights and setbacks above street frontage height, and is considered to be suitable within the context of surrounding development. The application has demonstrated that the building envelope will result in acceptable solar access to adjoining residential development, and acceptable view impacts, subject to the removal of a portion of the podium envelope between RL 89.90 and RL 76.00. Appropriate conditions of consent have been recommended to ensure that the detailed design of the building has regard to articulation and modulation of the podium in response to the surrounding streetscape and to view impacts from adjoining residential development.
3. Density	Indicative plans demonstrate that the proposed envelope is capable of accommodating development of a density envisaged in the relevant planning controls. The proposed density is considered to be appropriate given the CBD context of the site, particularly given its proximity to

	<p>employment, services, established infrastructure, public transport, community and recreational facilities.</p> <p>The final amount and distribution of floor space will be subject to an assessment as part of any subsequent DA for detailed design and construction works. No quantum of floor space is recommended for approval.</p>
4. Sustainability	<p>Compliance with BASIX requirements will form part of any subsequent DA for detailed design and construction works in addition to any sustainability initiatives. An appropriate condition of consent has been recommended.</p>
5. Landscape	<p>The CBD context and DCP built form requirements generally preclude the provision of ground floor level communal open space and deep soil planting.</p> <p>The proposal seeks consent for an envelope and indicative land uses only and it will be necessary for analysis and assessment against landscape principles as part of any subsequent DA for the detailed design of the building.</p>
6. Amenity	<p>The proposal is for an envelope and indicative land uses only, with the amenity for future residents to be assessed upon lodgement of any subsequent DA for detailed design and construction works. However, the indicative scheme provided demonstrates that the proposed envelope is capable of accommodating a building designed in accordance with the SEPP design quality principles and that achieves the relevant SEPP objectives and ADG Design Criteria.</p> <p>An assessment of the indicative scheme indicates that the site is capable of providing an adequate level of amenity as:</p> <ul style="list-style-type: none"> • 85.5% of apartments in the indicative scheme receive at least 2 hours of sunlight to living rooms and private open spaces between 9am and 3pm at midwinter and which complies with the 70% minimum ADG requirement; • all residential apartments are located above the 9th storey and are therefore deemed to comply with the requirement natural cross ventilation; • all apartments are able to be provided with private open space, which will be detailed as part of any subsequent DA for the detailed design of the building. <p>Consideration will need to be given to wind and acoustic conditions as part of any subsequent DA for detailed design and construction works. Appropriate conditions of consent have been recommended.</p>
7. Safety	<p>The proposal is considered to be capable of delivering a future detailed design that optimises safety and security within the development and the public domain. Appropriate conditions of consent have been recommended particularly with regard to ensuring vehicular access on Castlereagh Street achieves acceptable pedestrian safety.</p>
8. Housing Diversity and Social Interaction	<p>The proposal is considered capable of accommodating a future detailed design that provides a mix of apartment sizes with flexible design features to suit existing and future housing needs and opportunities for social interaction.</p>

9. Aesthetics	The detailed design of the building will be the subject of a future design competition and subsequent DA for detailed design and construction works. A condition of consent has been recommended to ensure that opportunities to incorporate public art form part of any subsequent DA.
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State Environmental Planning Policy No. 55 - Remediation of Land

The aim of SEPP 55 is to ensure that a change of land use will not increase the risk to health, particularly in circumstances where a more sensitive land use is proposed.

A Phase 1 Environmental Site Assessment has been submitted with the application. The assessment includes a review of review of historic uses of the site and identifies 2 underground petroleum storage systems (UPSS) on site located on basement level 2. The assessment concludes that there is a low risk of contamination associated with the UPSS and remediation of the area after tank decommissioning should be reasonably practicable.

The City's Environmental Health Unit has considered the findings of Phase 1 Environmental Site Assessment and has recommended a condition of consent requiring a Detailed Environmental Site Investigation (and if necessary a Remediation Action Plan) to be submitted with any subsequent DA for detailed design and construction works. Accordingly Council staff are satisfied that the site can be made suitable for the future intended uses.

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of the Sydney Regional Environmental Plan (Sydney Harbour Catchment) (SREP) (deemed SEPP).

The Sydney Harbour Catchment Planning Principles must be considered in the carrying out of development within the catchment. The key relevant principles include:

- (a) protect and improve hydrological, ecological and geomorphologic processes;
- (b) consider cumulative impacts of development within the catchment;
- (c) improve water quality of urban runoff and reduce quantity and frequency of urban run-off;
- (d) protect and rehabilitate riparian corridors and remnant vegetation.

The site is within the Sydney Harbour Catchment and eventually drains into the Harbour. However, the site is not located in the Foreshores Waterways Area or adjacent to a waterway and therefore, with the exception of the objective of improved water quality, the objectives of the deemed SEPP are not applicable to the proposed development. The development is consistent with the controls contained with the deemed SEPP.

Sydney Local Environmental Plan 2012

The site is located within the B8 'Metropolitan Centre' zone. The proposal relates to a future mixed use development including uses defined in the Sydney LEP 2012 as 'Tourist and Visitor Accommodation', 'Function Centre' and 'Commercial Premises'. These uses are permissible with development consent.

Relevant Sections	Compliance	Comment
4.3 Height of Buildings	Acceptable	<p>The maximum building height permitted is subject to the Hyde Park West sun access plane.</p> <p>A maximum height of 170.7m is proposed (up to RL 198.22), which exceeds the sun access plane. Refer to the discussion regarding the provisions of Clause 6.18 relating to exceptions to sun access planes.</p>
4.4 Floor Space Ratio	Capable	<p>A base FSR of 8:1 applies to the site. The site is also eligible for bonus accommodation floor space in accordance with Clause 6.4.</p> <p>Indicative plans submitted with the application provide for a gross floor area of 59,551.7m², equivalent to a FSR of 15.3:1. This includes a potential 10% bonus floor space that may be obtained following the successful completion of a competitive design process and accommodation floor space attributed proportionately on the following basis:</p> <ul style="list-style-type: none"> 47% residential floor area 45% hotel accommodation floor area 8% retail floor area <p>No quantum of floor space is recommended for approval. The proposed building envelope is capable of accommodating the maximum permissible FSR and provides an acceptable level of flexibility for any competitive design process to achieve design excellence. Appropriate conditions of consent has been recommended.</p>
5.9 Preservation of trees or vegetation	Capable	<p>Appropriate conditions of consent have been recommended to ensure the retention of street trees surrounding the site and requiring any subsequent DA for the detailed design and construction works to be accompanied by an Arboricultural Impact Assessment.</p>
5.10 Heritage conservation	Capable	<p>The site is not a heritage item, nor is it located within a heritage conservation area. The site is located within the College Street/ Hyde Park Special Character Area and is in close proximity to a number of heritage items of State and Local significance, including but not limited to:</p> <ul style="list-style-type: none"> • Hyde Park (SHR 01871,Local Item No. I1654); • Anzac Ware Memorial including Pool of Reflection, pavements, plantings, flagpoles, staircase, platform, interiors, lightwells, bas reliefs, statues, sculptures and movable heritage (artefacts and memorabilia at 120 Elizabeth Street (SHR 01871,Local Item No. I1742);

		<ul style="list-style-type: none"> • Museum Railway Station including interiors (SHR 01207,Local Item No. I1743); • Municipal sewer vent corner of Elizabeth and Bathurst Streets (SHR 01642,Local Item No. I1752); • Former Australian Consolidated Press facade' at 189–197 Elizabeth Street (Item No. 1751) • 'Former CENEF House" including interiors' at 201 Castlereagh Street (Item No. I1700) • 'St George's Church including interior and forecourt' at 201A Castlereagh Street (Item No. I1701) • 'Porter House" including interior' at 203 Castlereagh Street (Item No I702) • 'Former tram shelter including interior' at 110 Elizabeth Street (Item No. I741) <p>A Heritage Impact Statement was submitted with the application, which concludes that the proposal will not result in unacceptable impacts on surrounding heritage items or on the College Street/ Hyde Park Special Character Area. It is noted that the height of the proposed tower is similar to that of the existing tower, and that the proposed tower will provide an increased setback to Elizabeth Street.</p> <p>The proposal was reviewed by Council's Heritage Specialist who has raised some concern regarding impacts associated with the bulk and scale of the proposed podium. In particular, the loss of views from Hyde Park and solar access to St George's Church at 201A Castlereagh Street has been identified as resulting in potential detrimental impacts on the significance of the locally listed heritage item. It is noted that the podium complies with the maximum permissible street frontage height under SDCP 2012.</p> <p>As the proposal relates to a building envelope which provides flexibility for further detailed design, it is considered reasonable to address these concerns through conditions of consent to guide the competitive design process and future subsequent DA. Accordingly, conditions of consent have been recommended to ensure that any subsequent DA for the detailed design and construction works provides appropriate architectural modelling, articulation and materials that respond to surrounding heritage items and the College Street/ Hyde Park Special Character Area.</p>
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Part 6 Local provisions - height and floor space		
<p>Division 1</p> <p>6.4 Additional floor space in Central Sydney</p>	Capable	<p>The site is located within 'Area 2' and based on the indicative land uses proposed is eligible for additional accommodation floor space of up to 4.5:1 for commercial uses and 6:1 for hotel and residential accommodation uses.</p> <p>Accommodation floor space has been included in the indicative plans, however no FSR is approved as part of this application.</p>
<p>6.11 Allocation of heritage floor space (HFS)</p>	Capable	<p>Any floor space ratio in excess of 8:1 shall be subject to a requirement to purchase heritage floor space (HFS) in accordance with the requirements of Clause 6.11.</p>
<p>6.16 Erection of tall buildings in Central Sydney</p>	Yes	<p>The proposed envelope has a height in excess of 55 metres, and as such, the provisions of Clause 6.16 are applicable.</p> <p>The proposed building envelope is considered to be consistent with the objectives of Clause 6.16 including those objectives to provide amenity and privacy for occupants of neighbouring buildings and to protect the amenity of public places. The proposed building envelope does not result in unacceptable overshadowing of adjoining residences or public places, including Hyde Park, and complies with the required building separation distances under the ADG.</p>
<p>6.18 Exceptions to Sun Access Planes</p>	Yes	<p>The proposed building envelope exceeds the Hyde Park West sun access plane.</p> <p>Shadow diagrams have been provided which demonstrate that those parts of the envelope exceeding the sun access plane are located on Category A land and result in at least a 50% reduction in overshadowing on Hyde Park between 12.00 and 14.00 on 21 June. Refer to Section 5 of this report.</p>
<p>Division 4 Design excellence</p> <p>6.21 Design Excellence</p>	Capable	<p>In accordance with Clause 6.21 a bonus of up to 10% additional height or FSR may be awarded if a competitive design process has been undertaken, and it is considered that the detailed design scheme exhibits design excellence.</p> <p>As this application relates to a concept proposal for a building envelope, no architectural design details have been provided. It is anticipated that a competitive design process will be undertaken prior to lodgement of any subsequent DA for the detailed design and construction works. An appropriate condition of consent has been recommended to ensure that any competitive design process is undertaken in accordance with the Design Excellence Strategy prepared by Ethos Urban</p>

		(dated January 2018) and the requirements of SLEP 2012.
Part 7 Local provisions—general		
Division 1 Car parking ancillary to other development	Capable	<p>The proposal has the potential to accommodate up to 4 basement levels.</p> <p>Car parking numbers for commercial, residential and hotel uses can only be assessed as part of a subsequent DA for the detailed design of the building. Car parking numbers are determined having regard to the amount of commercial floor space, the residential unit mix and the size and number of rooms within the hotel, which is only conceptual at this stage.</p> <p>A condition is recommended to advise that no consent is granted under this application for the number and configuration of basement levels, car and bicycle parking spaces, loading spaces, or for the number and configuration of vehicular access crossovers.</p>
7.14 Acid sulphate soils	Yes	<p>The site is identified as containing class 5 acid sulphate soil, and is not located within 500m of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian Height Datum.</p> <p>Any subsequent DA for the detailed design and construction works will be required to identify if the proposed basement excavation works are likely to lower the water table by 1m.</p>
7.15 Flood planning	Capable	<p>A condition of consent has been recommended to ensure that any subsequent DA for the detailed design and construction works is accompanied by a flood assessment report to determine flood planning level (FPL) requirements for the subject site. The assessment will be required to include the FPL requirements for the proposed pedestrian connection to Museum Station.</p>

Sydney Development Control Plan 2012

The SEARs requires the EIS to address the Sydney DCP 2012. An assessment against the relevant provisions of the DCP is provided below.

3. General Provisions		
Development Control	Compliance	Comment
3.1 Public Domain Elements	Capable	The indicative scheme includes a through-site link extending in an east-west direction. A condition of consent has been recommended to ensure that any through-site

		link provided as part of any subsequent DA for the detailed design and construction works is designed in accordance with the requirements of Section 3.1.2.2 of SDCP 2012.
3.2 Defining the Public Domain	Yes Capable Yes Yes	<p>Shadow diagrams have been submitted which indicate that the proposal minimises overshadowing on publicly accessible open space, including Hyde Park, between 9.00am and 3.00pm on 21 June.</p> <p>The proposal is generally considered to have acceptable impacts on views from the public domain to public places, parks and heritage items, however it is noted that views to St George's Church on the western side of Castlereagh Street are likely to be affected. An appropriate condition of consent has been recommended to ensure that the detailed design of the podium has regard to maintaining these.</p> <p>The appropriateness of the public domain interface, including street activation and the scale, finishes and character of the street frontages will be subject to detailed assessment as part of any subsequent DA for detailed design and construction works.</p> <p>A wind impact assessment was submitted as the proposed envelope exceeds 45m in height. The assessment demonstrates that the proposal will not result in unacceptable wind conditions. Further wind testing will be required as part of the detailed design of the building. An appropriate condition of consent has been recommended.</p>
3.3 Design Excellence and Competitive Design Process	Yes	As the proposed envelope exceeds 55m in height a competitive design process is required. A Design Excellence Strategy has been submitted with the application in accordance with the requirements of SDCP 2012, and is recommended for approval.
3.6 Ecologically Sustainable Development	Capable	The proposal has the potential to deliver a range of ESD measures. An appropriate condition of consent has been recommended to ensure that any subsequent DA for the detailed design and construction works adopts the ESD targets and sustainability initiatives set out in the Design Excellence Strategy and ESD report submitted with the application.
3.7 Water and Flood Management	Capable	An appropriate condition of consent has been recommended to ensure that any subsequent DA for the detailed design and construction works addresses stormwater requirements and is accompanied by a flood assessment report to determine flood planning level (FPL) requirements for the site.
3.9 Heritage		A Heritage Impact Statement was submitted with the application. The proposal is not considered to result in unacceptable impacts on the setting of adjacent heritage items or the College Street/ Hyde Park Special Character Area subject to the imposition of the recommended conditions of consent.
4. Residential flat, commercial and mixed use developments		

Development Control	Compliance	Comment
4.2.1.1 Building height –	Yes Yes	Indicative plans submitted demonstrate that the proposal is capable of achieving the minimum floor to ceiling height requirements for commercial and residential uses. The height of the proposed envelope is generally consistent with the scale and form of surrounding buildings, and is considered to be appropriate to the CBD location of the site. Refer to the discussion of street frontage heights in the assessment against DCP provisions 5.1.1 elsewhere in this report.
4.2.2.2 Building setbacks – setbacks above street frontage heights		Refer to the discussion of setbacks above street frontage heights in the assessment against DCP provisions 5.1.2 elsewhere in this report.
4.2.3 Amenity	Capable	Indicative plans submitted demonstrate that the building envelope is capable of achieving acceptable outlook and flexible dwelling mix. Refer to the discussion of solar access and privacy contained in Section 5 of this report. A condition of consent has been recommended to ensure that acoustic amenity is addressed as part of any subsequent DA for the detailed design and construction works.
4.2.4 Fine grain, architectural diversity and articulation	Yes Capable	The floor plate of the tower which is proposed to contain residential uses is 948m ² , which complies with the maximum floor plate permitted of 1,000m ² . The proposed envelope provides street frontage lengths to Castlereagh and Elizabeth Streets of approximately 87m which exceeds the maximum street frontage length permitted of 40m. The street frontage length to Park Street is 37.5m. As the proposal relates to a building envelope that provides flexibility for the competitive design process to incorporate modulation and articulation, this is considered to be acceptable, subject to recommended conditions of consent.
5. Central Sydney		
Development Control	Compliance	Comment
5.1.3 Street Frontage Heights and Setbacks for Special Character Areas	Yes Acceptable	The proposal complies with the maximum street frontage height of 45m permitted in the College Street/ Hyde Park Special Character Area, and is consistent with the predominant street frontage heights in the vicinity of the site. The proposal generally complies with minimum setback of 8m required above the street frontage height, with the exception of the tower setback to Elizabeth Street. The minimum setback above the street frontage height to Elizabeth Street is 4m. This is considered acceptable as discussed under Section 5 of this report.

5.1.5 Building Bulk	<p>Yes</p> <p>Yes</p> <p>Acceptable</p>	<p>The proposed envelope provides for a tower floor plate of 948m², which complies with the maximum floor plate permitted for residential uses of 1,000m².</p> <p>Above 45m, the maximum horizontal dimension of the tower facade parallel to the street frontage is 20.4m to Castlereagh Street and 16.3m to Elizabeth Street, which complies with the maximum permitted of 40m.</p> <p>It is noted that the proposed envelope includes a stepped terrace above 45m for recreation facilities on the podium (between RL 69.89 and RL 76.00). The southern portion of upper podium envelope with frontage to Castlereagh Street is approximately 47m in length, which exceeds the maximum horizontal dimension permitted of 40m. The indicative scheme indicates an area of approximately 280m² of GFA within the envelope of the upper podium which is also intended to accommodate shade structures and other minor built elements associated with recreation facilities. Given that the intent of the building envelope is to provide flexibility for future detailed design, this portion of the upper podium, which is set back from Castlereagh Street by 8m, is not considered to comprise part of the building facade, and it's length is considered to be acceptable. A condition of consent has been recommended to ensure that the design of the building provides appropriate facade treatments and articulation, and that any structures or landscaping located on the upper level of the podium are design and located with regard to protecting existing views from adjoining residential development.</p>
5.1.10 Sun Access Planes	Acceptable	<p>The proposed envelope exceeds the Hyde Park west sun access plane. The exceedance is acceptable as it satisfies the requirements of Clause 6.18 of SLEP 2012. This is discussed in detail in Section 5 of this report, and in the assessment against SLEP 2012 provisions under Clause 6.18.</p>