

5 MAY 2021

## **HARBOURSIDE SHOPPING CENTRE REDEVELOPMENT, DARLING HARBOUR (SSD 7874)**

### **SUBMISSION ON BEHALF OF THE OWNERS OF STRATA PLAN 49259 (50 MURRAY ST)**

This submission supplements the oral submissions made to the Independent Planning Commission (**IPC**) on 28 April 2021 by Beatty Legal and Dr Richard Lamb on behalf of the Owners of Strata Plan 49259 being the major residential development known as One Darling Harbour at 50 Murray Street, Sydney.

This submission addresses the following:

1. The Planning Context for the proposal;
2. Proposed public domain offering and its impacts;
3. View impacts, including impact of the proposed new rooftop public space; and
4. The draft conditions of consent: specifically, identification of the permitted concept envelope and the proposed conditions for management of demolition noise and dust.

Annexed to this submission are the following documents:

- a. Report of Dr Richard Lamb dated 5 May 2021 and its annexure, being the report of Dr Richard Lamb dated 10 November 2020 April 2021 (We note that a copy of the PowerPoint slides used by Dr Lamb on 28 April have already been provided);
- b. Letter from Acoustic Dynamics dated 4 May 2021 and its attached suggested amendments to demolition noise conditions; and
- c. Submissions of Beatty Legal on behalf of One Darling Harbour dated 10 November 2020 and 11 May 2020 (We note that a copy of the PowerPoint slides used by Beatty Legal on 28 April have already been provided).

Our client accepts and supports a redevelopment of the Harbourside Shopping Centre. However, any redevelopment including any concept envelope for the redevelopment must be consistent with the applicable planning controls and accepted standards regarding impacts on neighbouring sensitive residential receivers.

The proposal will have significant impacts on private views from One Darling Harbour (**ODH**). These impacts are not reasonable or justified. The view impacts are caused by an office block which is not consistent with the planning framework for the site. The impact of the proposed new rooftop public space not been sufficiently assessed by the applicant but will increase view and amenity impacts for residents of ODH (as well as being poorly conceived and unfit for purpose as functional public space). These impacts could be avoided with a more skilful design which nevertheless provides very substantial development outcomes for the applicant.



The proposed conditions constraining the concept envelope are inconsistent and vague. Amendment of the conditions for the management of demolition noise is needed to provide amenity outcomes appropriate for this densely populated area.

The proposal in its current form is not in the public interest and should not be approved.

### Planning Controls

1. This site is one of the few strategic foreshore sites subject to the Sydney Regional Environmental Plan (Sydney Harbour Catchment) (**Harbour SREP**). While there are no detailed building controls for the site (in the Darling Harbour Development Plan), the Harbour SREP sets out a very clear vision for this prime city foreshore land. This is set out at pages 9-11 of our May 2020 letter at Annexure C. Specifically, the Harbour SREP mandates that:
  - a. Development must be for the public good. For example, the planning principle in clause 2 mandates that for the foreshores and waterways area: *“the public good has precedence over the private good whenever and whatever change is proposed for Sydney Harbour or its foreshores”*
  - b. The area has aesthetic values of national significance to be protected and enhanced for the public and Sydney Harbour and its islands and foreshores should be recognised and protected as places of exceptional heritage significance.
2. The protection and enhancement of the unique and public nature of this site is the primary consideration when assessing the suitability of the site for this proposal and whether its adverse impact are acceptable.
3. The land is public land in NSW's premier tourist area. The permitted land use under the existing 99 year lease for the site (entered into in 1988) provides context and clarification of the “public good” and appropriate uses of the site consistent with its planning controls. Under clause 6.1 of the lease the permitted use is limited to *“a harbourside festival market (which shall include) a retail, restaurant, tavern, entertainment and refreshment complex”*. Similarly, the objective of the Darling Harbour Development Plan is to encourage the development of a variety of tourist, educational, recreational, entertainment, cultural and commercial facilities within that area.
4. The proposal will replace 20,000 sqm of retail space (primarily cafes, waterfront dining, shops) with 42,000 sqm residential, over 34,000 sqm commercial and a mere 8,000 retail. Thus the applicant will achieve a fourfold increase in building density in the premier tourist precinct in Sydney for which the public will see a 50% decrease in the public element.



5. The recently released Pyrmont Place Strategy provides only three special considerations for master planning on this site: 1) protection of solar access to the harbour foreshore public domain; 2) prioritisation of the delivery of employment, entertainment and tourism floorspace and 3) a tower below 170 RL. This proposal achieves only the last of these requirements. It will overshadow the waterfront and over half of the existing retail/entertainment area will be lost (including the jobs associated with that).
6. Pyrmont Bridge is an item of State heritage significance due to its aesthetic, historical and scientific cultural values. The Bridge also establishes the setting for Darling Harbour Cockle Bay and forms an essential connection between the City and Pyrmont. The importance of Pyrmont Bridge in the Harbour SREP is outlined at pages 5-6 of our May 2020 letter at Annexure C. The northern podium will sit a mere 7m from the bridge, initially at 2.2m higher than the bridge but then increasing in multiple 4m height increments.
7. By way of contrast, at Cockle Bay on the city side of Darling Harbour (where a greater GFA can more readily be justified), the proponent in order to obtain consent for a 89,000 sqm retail/commercial GFA shifted its tower to the South (away from the Bridge), offered to lower the height of the building for 65m strip from Pyrmont bridge along the Cockle Bay foreshore (roughly same dimensions as the northern podium) to 12m (the Pyrmont bridge level). The Cockle Bay proposal is depicted in diagrams at page 7 of our May 2020 letter (Annexure C).
8. The public domain view and heritage impacts of the proposal as depicted by the applicant need to be carefully examined. The images are of a concept proposal rather than a fully formed development application and the indicative drawings depict a building which is narrower and lower than the envelope. The difference between the concept and indicative design is readily apparent in the Shadow analysis (see for example the image extracted at paragraph 10(f) below. Images of a hypothetical building from the viewpoint of a low flying aircraft are of little use in understanding the building in a human scale from whether the public will see it. Some of the images are oddly cropped or from angles that distort the relationship of the building with existing structures (such as Pyrmont Bridge). And the site tour “brochure” offers a different design including a second ramp connecting to Pyrmont Bridge for which no approval has been sought or assessment undertaken.
9. An application for a concept envelope is required to be assessed with the same rigour as an application for a fully formed structure. The *Environmental Planning and Assessment Act 1979 (EP&A Act)* and the Courts have made it clear that 1) an application for a concept plan is an application for a development for which the consent authority must understand and assess all of its the impacts and 2) the subsequent development application must be consistent with the concept envelope – i.e. no more and no less (that is to say if this concept plan were approved – a development application for a building



which did not fill the envelope (e.g. lesser height) would arguably not be authorised by the concept plan). (see *The Uniting Church in Australia Property Trust (NSW) v Parramatta City Council* [2018] NSWLEC 158 per Preston CJ at paragraphs 42-44).

## Public Domain

10. The applicant has proposed a 3,500 sqm public space contribution to “offset” its 89,000sqm mixed use GFA. It has also agreed to re-pave land outside its lease but within the public waterfront domain. The utility and cost to the applicant of these public offerings should be considered relative to its very significant gains (i.e. an over fourfold increase in the GFA).
- a. The overriding objective of the planning context for this site is to maximise usable space for the public at the waterfront. Remarkably, this proposal actually takes approximately 1,000 sqm of public waterfront land for its construction. This appropriated Crown land sits outside the 99yr lease of the land. Accordingly, a range of additional approvals will need to be obtained to permit this land to be leased for the purpose of this development. An area of land at the waterfront currently occupied by the Harbourside Centre will not be developed under the proposal. However, this should not be used as a reason for taking waterfront land. Images extracted at page 11 of our May 2020 letter (Annexure C) identify how the current building sits comfortably within its lease envelope, unlike the current proposal.
  - b. Development application documents submitted for the original harbourside proposal identify the Pyrmont Bridge forecourt at 11.5m RL. The proposed 1,500 sqm “Guardian Square” sits at two levels. The section closest to (approximately 7m separated from) Pyrmont Bridge is at 13.75m RL (ie 2.2m higher than the level of the bridge). This proximity and height will dominate Pyrmont Bridge. Another smaller section is at 17.6m (ie 4 metres higher). The utility for the public of this higher space directly adjoining the Pyrmont Bridge forecourt is unclear. These elevations have not been driven by a desire to create a functional meaningful public space connected to the bridge forecourt with a subordinate relationship to the heritage listed Pyrmont Bridge or the primary waterfront domain. They have been placed at these heights as an afterthought to generate what purports to be a public benefit of the proposal.
  - c. The utility and permissibility of the new proposed 2,000 sqm public space perched at 25m RL on the roof of the northern podium (**Proposed Elevated Podium Public Space**) is questionable. It sits 3 storeys above “Guardian Square” and 25m above the waterfront. It has no apparent connection to any public domain or functional public purpose. Draft Condition C13 requires that it be accessible 24



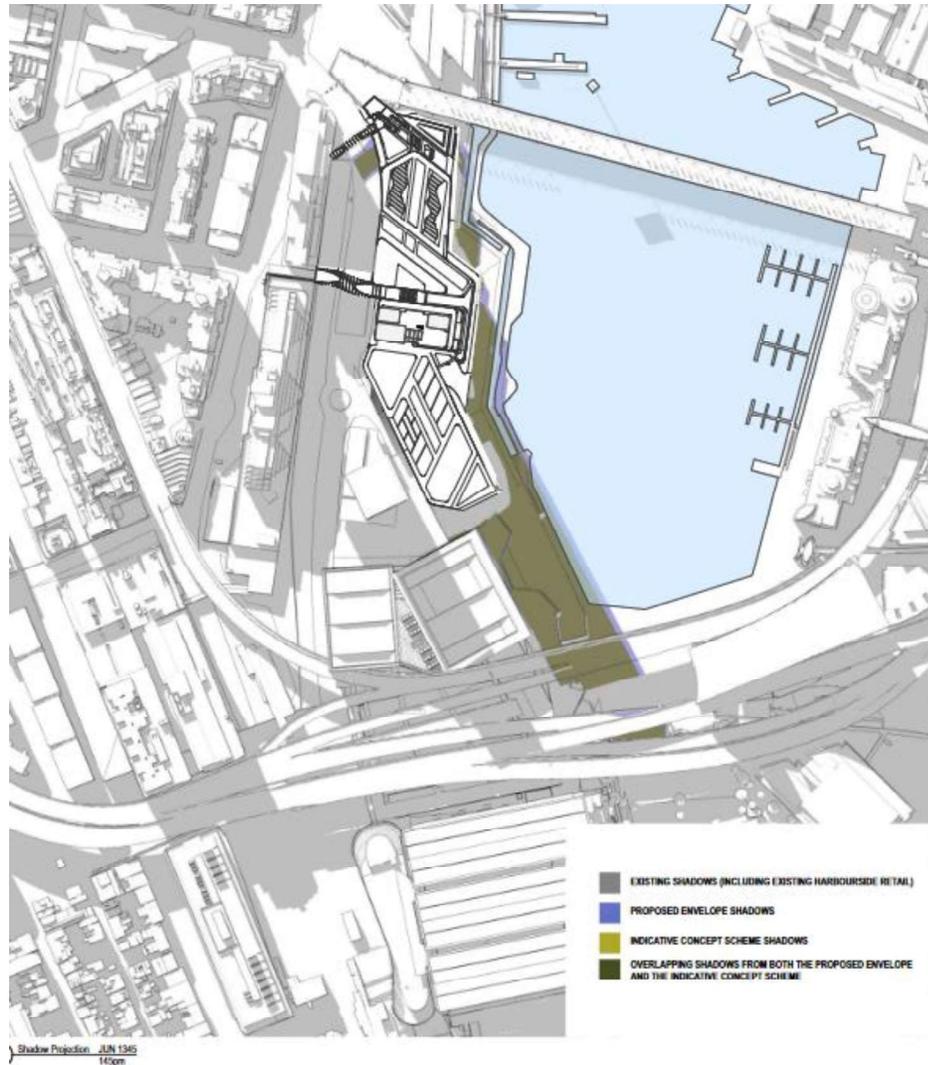
hours a day 7 days a week. This proposed public space will adjoin the 1,000 or so residents in the new proposed residential tower as well as the existing residents of Pyrmont (including the 750 residents of ODH). The privacy and acoustic impacts of public use of this space will not be shielded from residential users (as is the case for public space at the waterfront). The ultimate height (and hence view impact) of this space is also unclear. The elevation of this space will create wind and solar amenity issues which will need to be addressed by structures and tall tree landscaping (as required by draft condition C13). The proponent has in its November RTS (which is referenced in draft condition A2) requested that the envelope be increased to 26.5m RL – to accommodate the balustrading that will be needed to make this space safe. The depiction of this increased RL demonstrates that trees and structures will extend above the 26.5m RL height limit suggested by the applicant.

The view impacts of these necessary additional structures (beyond the limited assessment of additional balustrading) have not been assessed, its additional overshadowing impacts have not been considered nor has there been any assessment of the public benefit of this space. Similarly, the amenity (e.g. noise, light spillage, privacy) impacts to existing residents (including those at ODH) or the residents of the proposed new tower, of making this a 24 hours per day/ 7 days per week public space have not been assessed. Absent such assessment the Proposed Elevated Podium Public Space cannot lawfully be approved.

- d. The concept envelope seeks approval for the taking of a 6.5m high section of airspace to replace the existing (circa 3m high) pedestrian footbridge between the Novotel/ODH and the Harbourside/Pyrmont Bridge. It also seeks an 11m high air space for the new Bunn St connection. It is unclear why such large volumes of space are required. In the case of the Novotel/ODH pedestrian bridge, the floor level of this bridge at the exterior of the ODH building is at approximately 16m RL and it presumably connects to the Harbourside at an equivalent height. It is unclear why an envelope height to 21.5m RL is needed.
- e. The 3,500 sqm public open space to be provided by the development is substantially less than that required for the Cockle Bay redevelopment on the Eastern side of Pyrmont Bridge (which has a similar GFA). The Cockle Bay development includes 5,500 sqm of new public space (making an open space contribution of 12,000 sqm).
- f. The development has substantial overshadowing impacts on the public domain. This is contrary to the Pyrmont Place Strategy – which in relation to this site requires the protection of the solar access of the harbour foreshore domain. The



technical documents underpinning the Strategy<sup>1</sup> clarify that this is specified to mean that the Darling Harbour foreshore along the development is required to have protection from 10-2pm in the winter solstice. This development shades the entire Darling Harbour foreshore at 2pm in the Winter solstice. The Department's report identifies that the proposal restricts significant overshadowing to after 1pm.



Extract of Shadow Analysis Winter Solstice 1:45pm (page SSDA1-408 8/10/2020)

- g. Previous urban planning for this site by the Sydney Harbour Foreshore Authority such as the 2016 Draft Darling Harbour Strategy have reinforced the need for a tiering of heights towards the harbour to enhance the sense of

<sup>1</sup> See Pyrmont Place Strategy: Urban Design Strategic Framework page 27

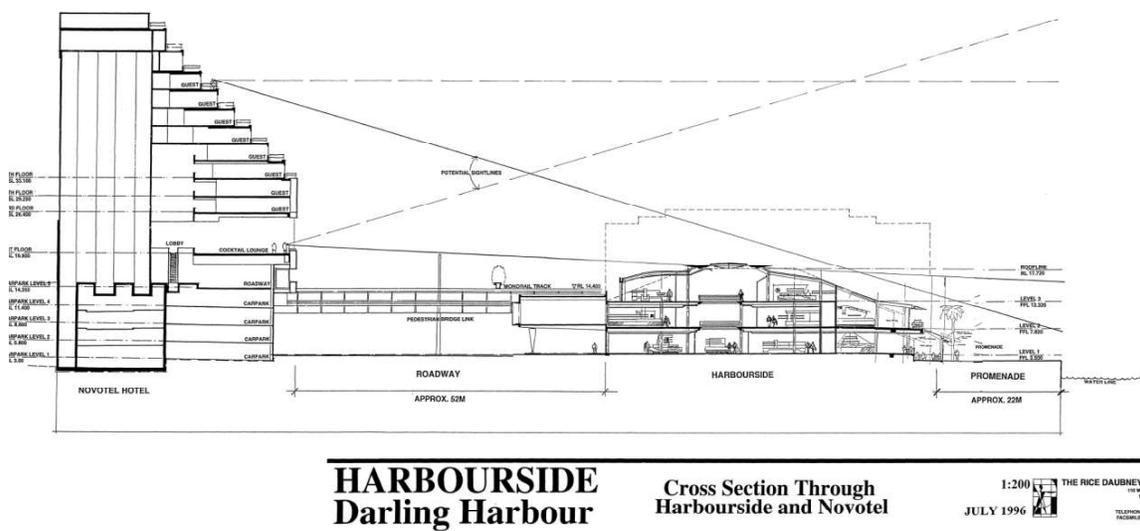
openness and space at the waterfront – the term “bowl” is often used. The 2016 Draft Strategy provided specific guidelines for the Harbourside site and also mandated only low rise development at the waterfront to accentuate the valley form and maximise “*the sense of openness and sunlight access to the central open spaces on the valley floor*”. The evolution and accepted urban planning foundations of the approach in the draft strategy is detailed in Mr Ingham’s February 2017 submission provided to the Department. The Pyrmont Place Strategy also requires tiering of development toward the waterfront. This makes it clear that ample, enjoyable public space at the waterfront is the preferred objective for this area.

### View Impacts

11. The reports of Dr Richard Lamb (at Annexure A) identify the extent of the view impacts for One Darling Harbour residents and the flaws with the Applicant’s (and the Department’s) assessment of the significance of the extent of the impact and the “reasonableness” of the impact. Dr Lamb concludes in his May 2021 report: “*the justification for the proponent gratuitously taking away views from One Darling Harbour is totally without any reasonable foundation and the IPC should reject it.*”
12. The principles for the assessment of view impacts of a proposed development are well established. We have documented an assessment using the “*Tenacity*” principles at pages 2 - 6 of our November 2020 letter (Annexure C). In short:
  - a. The water views enjoyed by ODH residents are iconic. These are the views that will be lost/severely impacted by the proposal. Other less valuable views to the South East will also be lost. All of the approximately 750 residents of ODH will suffer adverse view impacts.
  - b. The apartments are oriented around these views and the views are enjoyed from living areas. (We note that the images used by in the applicant’s assessment underestimate the impact as they are simulations of balcony views – not the actual views from the living areas of the apartments which will be more impacted by the proposal)
  - c. The extent of view impact is (without the additional impact of Proposed Elevated Podium Public Space) severe or moderate to severe for 49 apartments (approximately 150 residents) and moderate for a further 26 apartments. Once the impacts of the Proposed Elevated Podium Public Space are included the extent of severe or moderate to severe view impact will increase at levels 8, 9 and 10 and spill over to level 11.



- d. The aspect of the proposal causing view impacts on ODH (ie the 25mRL office block) is not reasonable. It is not consistent with the objectives of the applicable planning controls. It is not consistent with the benchmark suggested by Professor Webber: *“The negative impact on views from the lower level apartment[s] in 50 Murray Street caused by the two top floors at the northern end of the podium is not acceptable: such impact should not exceed those due to the existing building”*. Adjustment of the Northern podium by a more skilful design could minimise view impacts for residents whilst still providing a similar development potential for the applicant.
13. The impacts on the residents of One Darling Harbour are caused by the northern podium, an over height 5 storey (25m high) commercial office block placed directly between the residents and their waterfront and city skyline views. This office block is taller and wider than the existing building (which has a pitched roof (sloping down both towards the waterfront and Pyrmont Bridge) at max 17m AHD on its ridge. The image below demonstrates the care that was taken in the original Harbourside design to maximise view sharing. The permit for the existing building also specified that any subsequent development applications need take into account the *“impact on views across Harbourside from the adjoining development”*.



**Draft Conditions**

14. This application seeks approval for the demolition of the existing structure. Accordingly, the IPC is required to assess the impacts of those demolition works. The applicant has



finally provided an assessment report of those impacts. Attached in Annexure B is a letter from Acoustic Dynamic which:

- a. Identifies that the assessment underestimates the severity of the noise impacts of the development as it has modelled the proposed equipment individually – not operating simultaneously (on a cumulative basis); and
  - b. Suggests amendments to the Department's draft conditions to ensure better outcomes for the many residents of Pyrmont that will be affected by the approximately 18mths of demolition works at the site.
15. The demolition works will have substantial dust impacts for neighbouring developments and specifically ODH. It is standard practice to require that a developer undertaking such significant works be required to pay for the cost of soft washing the façade of adjoining affected buildings. We request that such a condition be included in any consent for the demolition.
16. We have set out in paragraph 10(c) inconsistencies within the draft conditions regarding the height of the northern podium and the nature and requirement for significant additional structures within the Proposed Elevated Podium Public Space to provide for public safety, amenity and function. These inconsistencies are also examined in more detail in Dr Lamb's 5 May 2021 letter (Annexure A).

### **Conclusion**

17. In assessing this proposal the IPC is required under section 4.15 of the EP&A Act to consider the public interest. This is public land which has been reserved for tourism purposes and public use for which the planning controls mandate that pursuit of the public good overrides private interests.
18. This concept plan is fundamentally about the private interests of the developer. The private gain of the developer cannot be a reason for allowing unacceptable impact on residents of ODH and by reason of the overshadowing at the waterfront, the public at large.

### **Beatty Legal**



Andrew Beatty  
Director  
Beatty Legal Pty Limited  
ABN 44 273 924 764

Ballanda Sack  
Special Counsel





Our ref: 107016

5 May 2021

Owners of Strata Plan 49249  
One Darling Harbour  
50 Murray Street  
Sydney NSW 2000

C/- Beatty Legal Pty Ltd  
Attention: Ballanda Sack  
Suite 2303  
Governor Macquarie Tower  
One Farrer Place  
Sydney NSW 2000

Dear Sirs,

**SSD 7874 Redevelopment of the Harbourside Shopping Centre  
Addendum to Presentation made to the Independent Planning  
Commission**

**View sharing impacts of proposed further amended application**

**1.0 Background**

Richard Lamb and Associates (RLA) have been engaged by the Owners Strata Plan 49249 (the owners) at One Darling Harbour also known as 50 Murray Street, Sydney, to review, analyse and assess the potential visual effects and impacts on views of an amended Concept Proposal for the redevelopment of the Harbourside Shopping Centre in Darling Harbour, SSD 7874.

The author of this submission is Dr Richard Lamb, Principal and Managing Director of RLA. RLA prepared a submission for One Darling Harbour to the original application and a further submission on an amended proposal. An updated full CV for Dr Lamb can be found on our website [www.richardlamb.com.au](http://www.richardlamb.com.au) accessed from a tab on the Home page.

**2.0 Purpose of Report**

This addendum submission to my submission provided in November, 2020 on the then further amended proposed Master Plan, provides an independent review of proposed further



amendments made to the proposed development to which I referred in my submission to the IPC Public Meeting, on 28 April, 2021.

The content of my November, 2020 submission remains generally relevant. In that submission (which is attached) I made the following statements:

*I consider 49 apartments would have an extent of view impact of either moderate-severe or severe.*

*I do not agree with the overall levels of view impacts that are summarised in Section 5.3.2 of the VVIA and therefore many of the individual assessments that are tabulated in Table 12. I included in my November 2020 submission a table which identifies the extent of impact for each of the affected One Darling Harbour apartments.*

*I disagree fundamentally with the justification for the reasonableness of impacts on views provided by Mirvac. I cannot agree that moderate-severe or severe impacts caused by the proposal compared to that of the existing buildings is reasonable.*

*There is scope for an improved view sharing outcome by reconsidering the height and footprint of the northern section of the podium.*

However, between the time that the further amended proposed Master Plan became available and on which I commented in November, 2020 and the IPC meeting, the IPC having been constituted in 2021 to make a determination of the application with recommendations for approval from the Department of Planning, Industry and Environment, further amendments were made to the proposal by the proponent that would increase impacts on view sharing with One Darling Harbour.

These amendments were made without any public consultation, were not exhibited and were unknown to my clients until they appeared as part of the documentation presented to the IPC for approval.

### **3.0 The Latest Amendments to the Proposed Modified Development**

The amendments of concern to One Darling Harbour are the proposal (euphemistically described as an 'offer') to increase the public domain contribution of the proposal by 2000m<sup>2</sup>, using the top of the northern podium, formerly intended to be a passive, green roof, as public open space. This more than doubles the inadequate public open space contribution of the proposal.

One consequence of the 'offer' is to raise the level of the northern podium further, to carry the extra live loads of use as public open space. The height of the envelope would be increased to RL26.5. The additional height of approximately half a residential storey relative to One Darling Harbour will clearly cause increased view loss by itself.

Raising the podium height is the thin end of the wedge in a potential approval however, because a further proposal, details of the approval for which is not actually being sought in the SSDA, is that the public open space is to be landscaped in the future and contain the necessary facilities to allow the area to function as public open space. This is without any indication as to how the area would be accessed, to which spaces it would be connected



and how it would be serviced and managed as part of the 24-hour a day access requirement that is the same for all other public open spaces in the proposal.

The Department of Planning, Industry and Environment supports approval of the proposal, subject to conditions in the Draft Development Consent that include the proposed higher podium and future landscaped use of the northern podium top as public open space, as a *fait accompli*. Apparently, it is not necessary in the Department's view for amendments that are clearly contentious and potentially the cause of substantial further erosion of residual views from One Darling Harbour to be exhibited for public scrutiny and comment.

While approval for the height of the northern podium is sought in the SSDA, approval for the height of extra items that are permissible above the height of the envelope is not. Future DAs can propose to have various items that exceed the height of the envelope, with no indications of what those heights might be, or indeed what the structures or vegetation that are permitted to pierce the envelope would be likely to be or how, if at all, their heights would be controlled. As a result, despite the level of detail provided to analyse view sharing during assessment of the SSDA over a considerable period, the likely height of future additions to the podium is unknown. In my opinion it is totally inappropriate for the impacts on view sharing of a potential wall of vegetation and facilities on the northern podium to be ignored at this most critical stage of strategic planning for the site.

The extra public open space now proposed, is described in Schedule 2 of the Draft Development Consent at A15 as the Northern Podium Articulation Zone. The terminology is the same as for a similar zone, but a much lower podium, approved in the Cockle Bay development. The items projecting through the Development Consent envelope, for which consent would be granted would be granted later, would occur through individual and later Development Applications. Such items on the Northern Podium Articulation Zone are likely to conflict with view sharing with One Darling Harbour.

In the Draft Development Consent, subject to future DAs, this zone is permitted to have structures that extend above the RL25 or possibly RL26.5 envelope, such as balustrades, garden pavilions, shade structures, hard landscaping and vegetation. Other structures such as shelters, public toilets and so on would probably be necessary, given the isolation of the area from such facilities. It does not appear that any consideration has been given to how the public open space would be accessed, from where, at what levels and how and where it would be connected to other necessary facilities. Pop-up bars, retail outlets, coffee shops, fast food outlets and other similar facilities could realistically be proposed, given the isolation of the podium and the desire to activate the area, as intended in the Future Environmental Assessment Requirements (the future EARs).

It is also not clear what the actual proposed envelope height is, as follows:

1. The Envelope plan of 22 December 2020 that is referred to in Condition A2 of the Draft Development Consent nominates RL25 for the part of the podium directly in front of and east of One Darling Harbour. The Draft Conditions of Consent require that the development is 'in accordance' with the Envelope Plan, December 2020.
2. The Ethos Urban Response to Submissions, 27 November 2020 is also referred to in Condition A2 of the Draft Conditions of Consent and the development is required to be 'generally in accordance with the RTS'. However the RTS includes Appendix



1, Additional Open Space Opportunity Study, prepared by FJMT, which discussed the 'opportunity' to increase the podium height to RL26.5.

3. Condition A11 states:

- The maximum building heights for the development are shown on the concept drawings listed in Condition A2 and shall not exceed:
  - a) Maximum tower height RL 166.95
  - b) Maximum podium height RL 31.00
  - c) Maximum podium height adjacent to Pyrmont Bridge RL 13.75

The circular referencing in the Draft conditions of consent, the lack of a specified height for the envelope of the northern podium and the absence of any assessment of the likely impact of implementation of the Future EARs in Part C of the Draft Development Consent means that the impacts on views claimed by Ethos Urban for Mirvac in the VVIA do not reflect the likely effects of the proposal on views from One Darling Harbour.

In addition to the unknown level of the northern podium for which consent is sought, Part C of the Draft Development Consent, Future EARS at C15(a), in relation to landscaping, provides that landscape design on the podium will provide new plantings to green roofs with a mix of trees and shrubs from vegetation communities that originally occurred in the locality (ie. indigenous local species)

C15(b) requires maximum urban tree canopy

C15(c) required inclusion of medium to large canopy trees

C15(d) requires incorporation of taller trees and shrubs to 'enhance outlook from the west'. The use of the term outlook rather than view appears to be derived from a submission by the City of Sydney in which the absence of trees on the podium was claimed to be a 'missed opportunity'. Given that the City of Sydney does not support the development anyway, their recommendation for a green roof use of the podium is gratuitous and is really irrelevant. Leaving that aside, taking that opportunity will cause increased view losses for One Darling Harbour.

C15(e) while requiring minimising of impacts on the surrounding buildings in views from the west, also requires maximising planting and activation opportunities.

Part C, Future EARs at C25 concerns public and private views. It requires future DAs to include a Visual and View Loss Assessment, with the intention of 'minimising visual impacts where feasible' (my emphasis added).

Planting, trees and structures above the podium are required to be considered, to 'minimise impacts to views and maximise planting and activation opportunities'. Given the obvious conflicts that would occur between structures, landscape and vegetation on the podium with view sharing, the resolution by the consent authority at the DA stage would almost inevitably be in favour of hard and soft landscape over views, with views retained only 'where feasible'. The alternative, that a future view assessment would show that structures and landscape on the podium, although permissible, would be unreasonable, would be most unlikely to occur.



While appropriate landscape for the public open space if it is to be approved on the top of the podium is applauded, it would be totally unacceptable if this led to still further degradation of views from One Darling Harbour. This seems inevitable however, in application of the EARs in Part C, C15 of the Draft Development Consent. These matters require further consideration of the height of the northern podium, as I have stated is imperative in earlier submissions and I repeat this opinion, in this addendum.

#### **4.0 What the over-height podium does to the views**

The figure below that I adapted from the Supplementary Architectural Design Report by FJMT prepared for Mirvac shows eloquently what the massive and over-height northern section of the podium does to views from 1 Darling Harbour. The upper two storeys of the area coloured yellow, in what is described in the Draft Development Consent as the Northern Podium Articulation Zone, is the culprit in causing unreasonable view loss to levels of One Darling Harbour that currently have whole, water views of Darling Harbour.

Much was made by Ethos Urban on behalf of Mirvac, as a justification for the impacts on views from One Darling Harbour of the fact that the apartments affected by severe view loss retain views of the city skyline above and behind the podium dominating the foreground. Retaining a remnant of view in other words is being claimed to be a reasonable outcome, when what is causing the view loss to the residential property is a commercial building in the foreground.

The valued items that create the most important elements of the composition of the view and make it intelligible, alive and engaging, would be gone as result of the height of the podium. The remaining view is analogous to having a great painting, such as the Mona Lisa, but only being able to see the subject from the forehead up, or a Tom Roberts landscape, but only being able to see the sky, as a result of the rest being blocked by the back of house of a commercial building in the foreground. Noone could seriously believe that what remains is a view that is either valuable, compared to the existing view, or of sufficient value to compensate for the loss of the rest.

As I stated in my November 2020 submission, the justification for the proponent gratuitously taking away views from One Darling Harbour is totally without any reasonable foundation and the IPC should reject it.

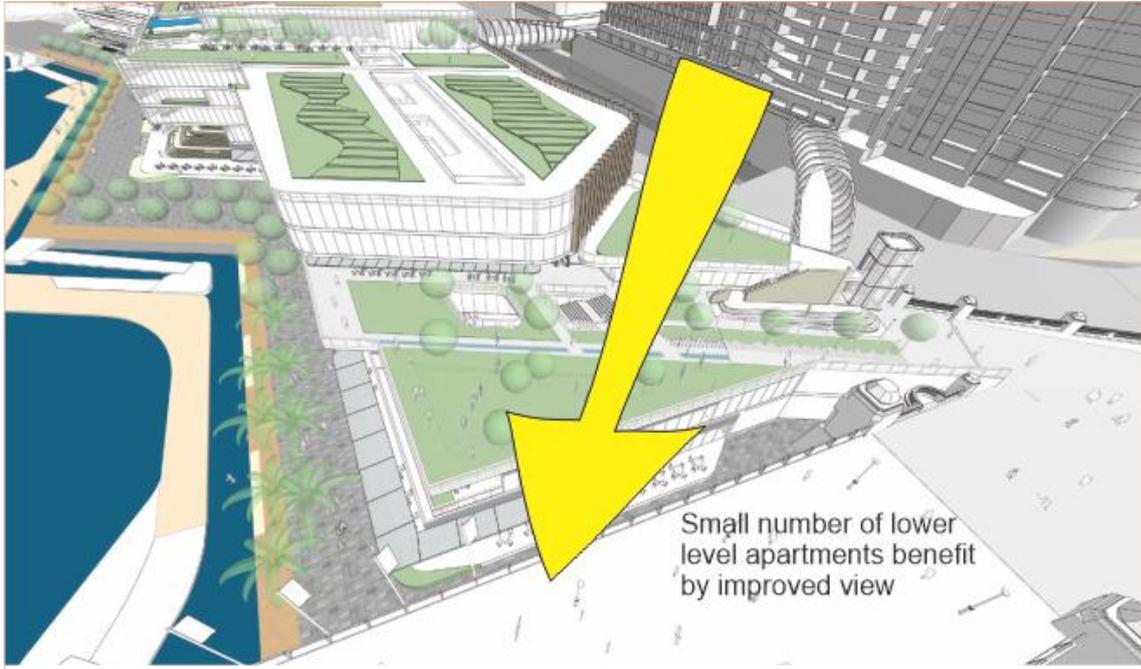


Image 31 Illustrative Scheme: Guardian Square

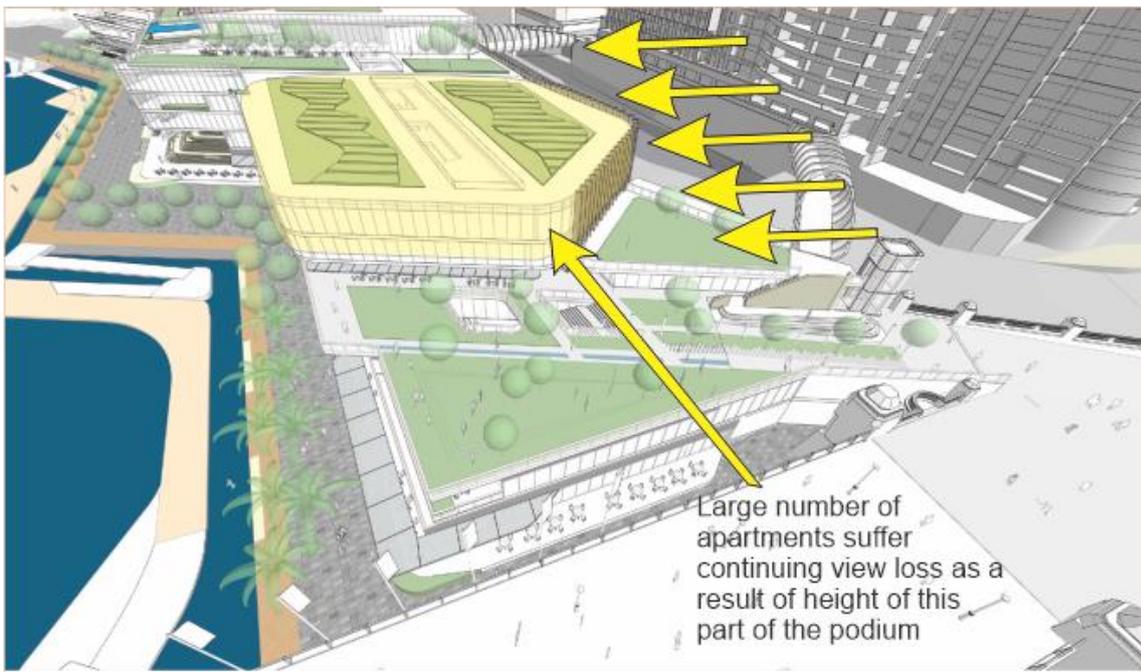


Image 31 Illustrative Scheme: Guardian Square

Figure 1  
Principle for more appropriate view sharing  
(Adapted from part of Page 3, FJMT Supplementary Architectural Design Report)



## 5.0 What amendments should be made to the podium, if approved?

The shape of the area in plan that is proposed to be included in the potential Guardian Square plaza is of limited benefit in view sharing to One Darling Harbour. This is illustrated in the figure above and in the photomontages prepared by Virtual Ideas. However, the lower podium is an improvement to the views from a small number of units, that is appreciated.

The benefit should be extended by moving the south boundary of the lowered section of the podium further south and on an alignment more directly easterly relative to One Darling Harbour, to the alignment of the next step in height in the podium that is currently proposed further to the south.

Reconsideration of the height, the function and the likely future character and height of items that could be approved on this part of the podium could provide a satisfactory outcome for One Darling Harbour in terms of view sharing.

At present, as has been the case for the last two iterations of the rolling ambit claims in favour of this proposal, the proposal is unsatisfactory with regard to view sharing with One Darling Harbour. The likely future impacts on views have now been further muddled by the last minute, knee-jerk decision to solve the problem of insufficient public open space by putting it on the northern podium. Further obscuring the understanding of what is actually proposed and potentially approved are the clearly conflicting and frankly unworkable draft conditions of consent provided by the Department of Planning, Industry and Environment.

If the public open space on the green roof to the northern podium as envisaged in the Draft Development Consent is to be approved, it is imperative to avoid conflict with the Future Environmental Assessment Requirements in Part C of the Draft Development Consent, that would cover future DAs. To avoid the conflict, the podium should be lowered to comply with the principle of Professor Webber, such that appropriate landscape can be added to the additional open space which will be of public benefit, but not be in conflict with reasonable view sharing.

Yours sincerely

A handwritten signature in black ink that reads 'Richard Lamb'.

Dr Richard Lamb



Our ref: 107016

7 November 2020

Owners of Strata Plan 49249  
One Darling Harbour  
50 Murray Street  
Sydney NSW 2000

C/- Beatty Legal Pty Ltd  
Attention: Ballanda Sack  
Suite 2303  
Governor Macquarie Tower  
One Farrer Place  
Sydney NSW 2000

Dear Sirs,

## **SSD 7874 Redevelopment of the Harbourside Shopping Centre Submission on Visual Effects and Impacts of proposed further amended application**

### **1.0 Background**

Richard Lamb and Associates (RLA) have been engaged by the Owners Strata Plan 49249 (the owners) at One Darling Harbour also known as 50 Murray Street, Sydney, to review, analyse and assess the potential visual effects and impacts on views of an amended Concept Proposal for the redevelopment of the Harbourside Shopping Centre in Darling Harbour, SSD 7874.

The author of this submission is Dr Richard Lamb, Principal and Managing Director of RLA. RLA prepared a submission for One Darling Harbour to the original application and a further submission on an amended proposal. An updated full CV for Dr Lamb can be found on our website [www.richardlamb.com.au](http://www.richardlamb.com.au) accessed from a tab on the Home page.

### **2.0 Purpose of Report**

This submission provides an independent review of the content and conclusions made in the following documents accompanying the supplementary modified Masterplan which are relevant to views and view sharing with One Darling Harbour:



1. Appendix A: Harbourside Shopping Centre (SSD 7874), Consolidated Agency, Government and Organisation Response to Submissions, dated .
2. Visual and View Impact Analysis, Harbourside Shopping Centre Redevelopment, prepared by Ethos Urban, dated 12 October, 2020.
3. Harbourside Private View Photomontage and 3D Report, prepared by Virtual Ideas, dated September, 2020.
4. Harbourside Stage 1 DA, Supplementary Design Report, prepared by FJMT, dated September, 2020.
5. FJMT Original Design A, Stage 1 Design Report, Part 6.

### **3.0 Proposed Modified Development**

The further modified application for a SSDA1 envelope results in a similar podium/tower envelope increasing in height to a top level of RL166.95. The tower element is proposed to be located in essentially the same location. A portion of the podium at the north adjacent to Pymont Bridge formerly proposed to be at RL30.50 is proposed to be reduced in height to RL13.75. A recess is also proposed on the west podium adjacent to Bunn Street. The overall GFA of the proposal is unchanged. In effect, the GFA 'lost' by reducing part of the height of the podium to produce a publicly accessible space, referred to as Guardian Square, and the recess in the west podium has been relocated to the tower. There no change to the development potential of the site although the residential GFA has increased by 400m<sup>2</sup>. The increased height sought for the tower in the further amended proposal does not cause further view loss for One Darling Harbour.

The recess in the western podium has no implications in terms of view sharing for One Darling Harbour. The reduction in height of the podium to provide the proposed Guardian Square is of benefit to the public domain and the merit of the application. While the provision of this public benefit assists with mitigating view sharing impacts on views from a small number of apartments in One Darling Harbour, those benefits do not in my opinion outweigh the impacts that remain on a much larger number, for reasons set out below.

#### **3.1 Effects of massing on views from One Darling Harbour**

The minor overall benefits of the proposed amended massing, on views from One Darling Harbour, is evident in the perspective showing the proposed massing as seen from the Cockle Bay shore of Darling Harbour on Page 5 of the FJMT Supplementary Design Report and also in the aerial perspective comparing the March 2020 and September 2020 proposals on Page 6. While it is claimed that the proposal for the Guardian Square is intended to respond to view sharing principles with One Darling Harbour (see Image 34 of the Supplementary Design Report), the primary intentions are to provide a link to Harris Street and a public space at grade with the Pymont Bridge. While these are public benefits, the benefit in view sharing with One Darling Harbour, compared to the March 2020 proposal, is primarily restricted to views through an oblique slot in the podium that is orientated toward the north-east.



While a small number of apartments at the lowest levels would benefit in terms of view sharing, a larger number at many more levels above would suffer view loss in excess of the effects of the existing shopping centre. I have attached a markup on Image 31 of the Supplementary Design Report that demonstrates the part of the northern podium that continues to cause excessive impacts on view sharing. A more reasonable design would reduce the height of this part of the podium further to produce satisfactory view sharing with One Darling Harbour.

#### **4.0 Private view photomontage and 3D report (Virtual Ideas)**

I was previously critical of the assessment of potential impacts on private views from apartments in One Darling Harbour, firstly because of the minimal or absent coverage of levels that would be significantly affected by view loss and secondly, failure to adopt the appropriate planning principle for view sharing, *Tenacity Consulting v Warringah [2004] NSWLEC 140*.

The first of these concerns is now met by the documentation accompanying the further amended proposal, as CGIs have been prepared for three view orientations from every unit with potential views over the site by Virtual Ideas in the private view photomontage and 3D report. The methodology adopted by Virtual Ideas is the same as before and is acceptable. The documentation indicates that the CGIs are generally reliable indications of the items that would be either lost or remain in the views. What they lack is the reality of features that enliven the real views and would give them higher scenic quality and value to residential viewers, which are evident in the few locations from which photorealistic photomontages have been prepared, which is the same minimal number as before.

It is important however to also note, that the proposal is not for the exemplar buildings, podiums and connections across Darling Drive, but is for an envelope that exceeds the exemplars in the graphics, in particular in relation to the impact of the likely bulk of the podium in east views and of the tower seen in the south-east views. Apartments from the centre to the north end of the building would be more affected by the extent to which the envelope and in particular the envelope of the podium proposed extends beyond the profiles of the exemplar design in the graphics. Assessment of view sharing is in relation to the proposed envelopes, should only be in relation to the impacts of the envelopes.

#### **5.0 Visual and view impact analysis (Ethos Urban)**

The second criticism noted above in Section 4.0, that the documentation of view sharing had not previously adopted the *Tenacity* planning principle for assessment of view sharing has now been addressed in the Ethos Urban visual and view impact analysis report (VVIA) in Section 5. The assessment is stated to be in relation to the proposed envelopes.

As previously stated, I consider that the placement of the tower component is more skilful than in the original application and that it has view sharing benefits.

The locations of apartments assessed is shown on Figure 16. Red dots indicate 3D view locations included in the Virtual Ideas private view photomontage and 3D report. The blue dots indicate photomontage locations, which have not changed. As noted below Figure 16,



the 'images', which are referred to are predominantly CGIs, which represent views from the terraces/balconies and illustrate the maximum extent of views available. As most of the apartments in One Darling Harbour are 3-bedroom apartments and no internal views have been assessed, the likely impact on living areas, which are identified as of special significance in Step 3 of *Tenacity* and therefore to be given weight in determining the reasonableness of view sharing in Step 4, have therefore been systematically underestimated. This is implicitly conceded in Section 5.3.1.

I prepared a table comparing Ethos Urban's assessment of extent of impacts with my own. The table is appended. There are three view orientations that have been analysed in the CGIs, but Ethos Urban have made a single assessment, I assume by averaging across or giving different weights to the impacts on each one. I have therefore made an overall impact of the extent of impact in the table. However, I have also included a column in the table that shows my assessment of the impacts on views to the south-east, which I consider have been under-estimated by Ethos Urban.

In my analysis, 49 apartments would have an extent of view impact of either moderate-severe or severe. The Ethos Urban assessment has 24 apartments with this extent of impact.

I therefore don't agree with the overall levels of view impacts that are summarised in Section 5.3.2 of the VVIA and therefore many of the individual assessments that are tabulated in Table 12. For example, for the northern portion of the building, it is stated that at low-rise levels, the view impact would be minor-moderate (despite the podium being noted as being higher than the existing shopping centre). Only 5 apartment may benefit from the lower part of the proposed podium in the low rise category. The impacts would be severe for others, as what remains of the valued items in the view would be expunged for these apartments, in most cases by the increased podium level of the proposal compared to the existing shopping centre.

I disagree with the overall levels of view impact claimed for the central portion of the building also, with the VVIA stating that the impacts to low rise apartments would be moderate-severe. The impacts would in my opinion be severe. In my opinion the view impact extents in the VVIA assessed are generally too low, as they appear to have given too much weight to part of the view that is unaffected in some cases and which is largely irrelevant, as the proposal is not visible in those views (the view north-east) and insufficient weight to loss of whole views, land-water interfaces, the spatial characteristics of the views impacted by the podium and the effects of the tower in views toward the south-east. I think more weight should be given overall because the CGIs do not consider the potential impacts on internal views, which would be far more restricted and focussed and where the entire scenic content of the view other than the horizon could be lost in many cases.

The spatial characteristics of the views across Darling Harbour and the composition of the whole view extending from the Barangaroo shore to the south end of Cockle Bay, including Pyrmont Bridge, the land-water interface, the continuous public foreshore and active retail frontage and the open prospect of the view east and south-east is highly valued from One Darling Harbour. Loss of those elements should be given the greatest weight. Retaining the view of the background horizon of high-rise buildings in the CBD and Centrepoint Tower is of lesser significance, should be given less weight and in any event it is achieved in most views.



The VVIA also states, in the middle of the summary of view impacts on the central portion of the One Darling Harbour building, that the extent of view loss, even though it is conceded to be moderate-severe in extent, is nevertheless, reasonable. Why this discussion appears in the analysis of the extent of impacts on one part of the building, instead of the conclusions, is not clear. It effectively pre-empts the findings of the whole VVIA in relation to One Darling Harbour.

The justification is that any reasonable development would have a comparable level of impact to that proposed. I have noted that the same statement is made in relation to the previous application and that this is an ambit claim that is made without any evidence whatsoever. The VVIA notes correctly that there are no planning controls over building heights, GFA, etc. The standard for reasonableness as I have previously stated has therefore to be established in relation to the environmental impacts of the proposal on view sharing, including application of the appropriate planning principle, not compliance with Mirvac's Key objectives, which may be contrary to the need to achieve a reasonable view share.

Similarly, I disagree with both the extent of impact claimed for the lower and mid rise levels of the southern portion of the building and the justification for the assessment of the reasonableness of the impacts, which is repeated verbatim, including typographical errors, from the discussion about the central portion of the building.

## **6 Ethos Urban response to RLA 50 Murray Street submission**

Ethos Urban provided a specific response in support of the current application referring to statements made in my submission in relation to view sharing on the February 2020 application. As there is now a new application, their statements of agreement or otherwise with the former submission are irrelevant.

Leaving that aside, the current application has been amended in ways that mean that the fundamental concerns I had with methodology, comprehensiveness of assessment and justification for conclusions in relation to view sharing have been addressed. For example, views from all apartments in One Darling Harbour have been considered, the planning principle in *Tenacity* has been applied in reaching the conclusions in the VVIA and quantification has been provided as regards the elements of the proposal that would cause view loss.

I do not however agree with the qualitative assessment of extent of impact on view sharing, notwithstanding the full coverage of views from apartments with an easterly aspect. I consider as noted above and detailed in Table 1 that the extent of impact has been underestimated and therefore that the number of levels and apartments affected in One Darling Harbour has also been under-estimated.

I also disagree fundamentally with the justification for the reasonableness of impacts on views. On my assessment, many levels and apartments are affected by severe impacts. Even if I accepted Ethos Urban's assessment, that half the number of apartments I assessed to have that extent of impact are affected by moderate-severe or severe impacts, I cannot see how that can be claimed to be reasonable, in fact essentially ignored, as it is by Ethos Urban. The justification given is that view losses such as are caused by the proposal are inevitable and that they are reasonable because they are in compliance with Mirvac's Key



objectives for the site. In effect, this dismisses the need for assessment of view sharing impacts. Indeed, it would justify increasing the height of the podium further.

The changes made to the form and height of the podium at the north adjacent to Pyrmont Bridge provides some view improvement for a very small number of low rise apartments in One Darling Harbour. A much larger number of apartments will suffer view loss, up to at least Level 7 on my estimation, that is caused by the height of the proposed podium further to the south of the alignment of the southern edge of the potential plaza space.

The shape of the area in plan that is proposed to be included in the potential future plaza is such that it is of limited benefit in view sharing however, as it is at its narrowest toward One Darling Harbour and the part that extends more widely to form the plaza and link to Harris Street is largely out of view, blocked for most apartments by the higher part of the north-east section of the podium. The main reasons for the shape of the 'cut out' on the podium appear not to be primarily to achieve view sharing, although there is a minor benefit there, but are the alignment with a formal link to Harris Street, space for a link across Darling Drive to One Darling Harbour and a link to the foreshore.

The lower podium is an improvement to views from One Darling Harbour that is appreciated, but the benefit should be extended by moving the south boundary of the lowered section of the podium further south and on an alignment more directly easterly, for example to the alignment of the next step in height in the podium that is proposed further to the south.

I have noted the part of the podium that is still of concern with regard to view sharing with One Darling Harbour on Figure 1 below, by means of a transparent yellow fill on a graphic adapted from Image 31 from the FJMT Supplementary Architectural Design Report. The slot in the podium benefits a small number of apartments, whereas the height of the part of the podium shaded yellow causes continuing unreasonable view loss for a much larger number. Reconsideration of the height of this part of the podium could provide a satisfactory outcome for One Darling Harbour in terms of view sharing.

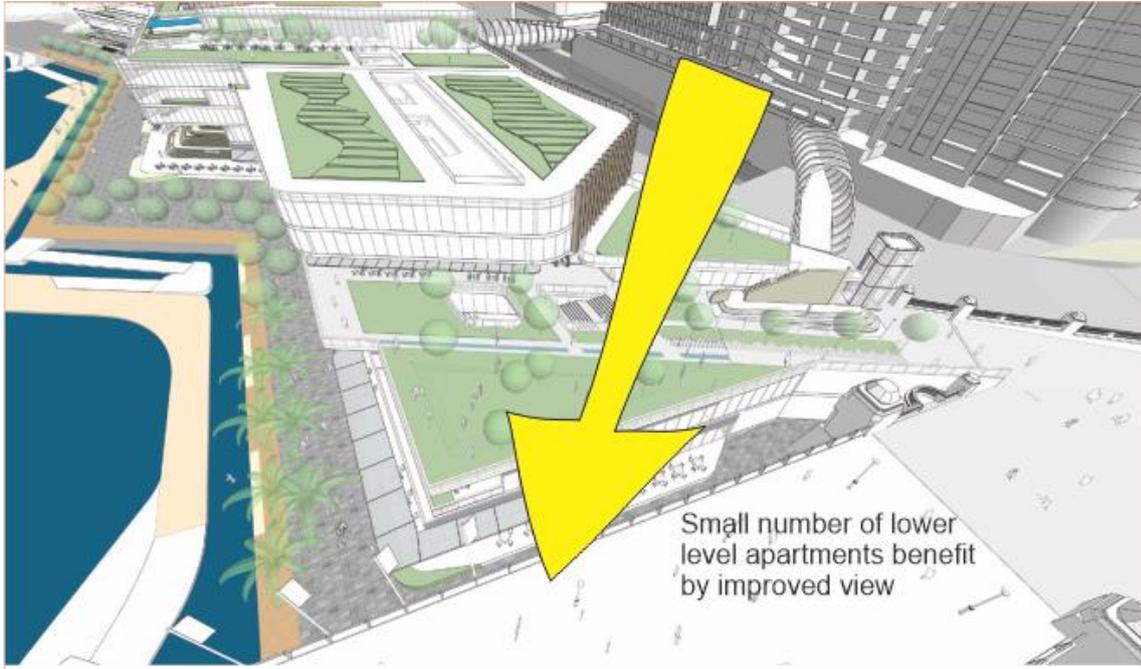


Image 31 Illustrative Scheme: Guardian Square

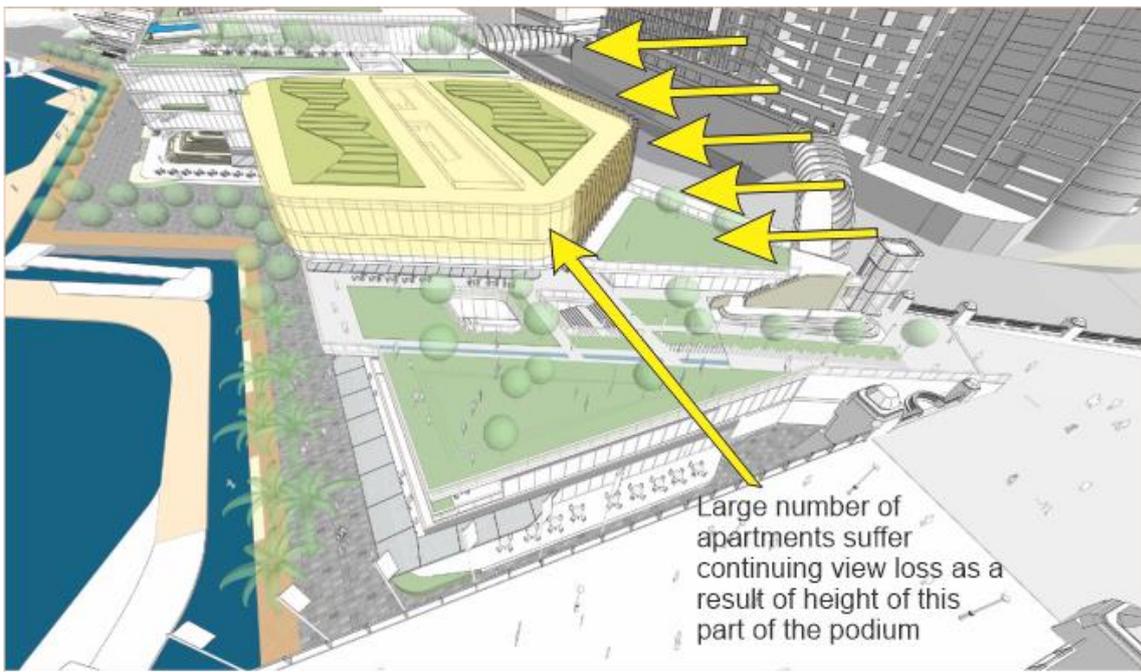


Image 31 Illustrative Scheme: Guardian Square

Figure 1  
Principle for more appropriate view sharing  
(Adapted from part of Page 3, FJMT Supplementary Architectural Design Report)



## **6 Principles for reasonable view sharing**

### **6.1 Independent Urban Design Review**

The Independent Urban Design Review comments of Emeritus Professor Peter Webber in February and May 2018 relevant to view sharing state and in my opinion remain relevant:

- a) *The observation deck should not cause any additional obstruction of views from the west by comparison with the roof profile of the existing building.....*
- c) *The fifth level of the podium extends for approximately one third of the full length of the site and is not acceptable due to its significant intrusion on views from the west.*

In May, 2018 in relation to the podium, Professor Webber stated:

*The negative impact on views from the lower level apartments in 50 Murray Street caused by the top two floors at the northern end of the podium is not acceptable: such impact should not exceed those due to the existing building.*

Changes have occurred to the proposal in the meantime, however I remain in agreement with the principle embodied, which is that the podium that is primarily the cause of view loss to One Darling Harbour in the views to the east should not exceed the height of the existing building.

I agree that there may be competing objective for the redevelopment of the site and that some view loss is an inevitable outcome of a podium/tower concept. However, this has already been accepted by One Darling Harbour in consultation with the Applicants. One Darling Harbour accepted the result that there would be significant view loss to most apartments in One Darling Harbour in views to the south-east, including loss of view of significant valued items.

Ethos Urban's approach on behalf of the applicant is to simply reject the principle above, notwithstanding at the least, on their estimation, 24 apartments with an easterly orientation would be affected by moderate-severe or severe view impacts. On my estimation the number appropriately assessed would be more than double that, at 49. As the application is not subject to any development controls against which the reasonableness can be tested, the test is whether it has unacceptable impacts on views, not whether it matches some theoretical target of profitability or yield. The principle above is a reasonable starting point. It is not expected that there would be no additional view loss for all apartments. But a more reasonable outcome must surely be possible than significant impacts on 49 apartments.

If it is true that the cut out in the northern part of the podium is really intended to foster better view sharing, there is clearly the potential to extend that means of achieving this by cutting the northern extent of the main northern section of the podium further back. There was no loss of GFA involved in making the concessions associated with the Guardian Square podium, so there would seem to be none involved in cutting the height and bulk of the podium back further, to achieve a more equitable view sharing outcome.

A full analysis and assessment of view loss has now been provided, as required by the Department of Planning, Industry and Environment, which stated in relation to the podium:



*Provide a visual analysis model that compares the existing shopping centre with the proposed building envelopes. Illustrate the change in the building bulk and massing as viewed from the potential vantage points (including properties on Murray Street, Bunn Street, Pyrmont Bridge and the waterfront promenade on both eastern and western side of Cockle Bay).*

In my opinion the visual analysis model provided is now adequate to illustrate the changes proposed in views from One Darling Harbour. It is unfortunate that the comprehensive assessment remains dismissive of the significance of impacts and does not provide any adequate justification for the extent of view loss that would be caused or why it should be considered reasonable, even if the impacts on views caused by the higher section of the northern podium and the tower are ignored.

## **7 Conclusions**

The proposed modified application which locates the tower element of the proposal further south, sandwiched between the Bunn Street axis and the ICC Hotel, provides a significantly better and a more skilful outcome in terms of view sharing with upper level units in One Darling Harbour.

The documentation of views with the application is now satisfactory in relation to view sharing with One Darling Harbour. I disagree with the assessment of both the extent of impacts on views and the reasonableness of the proposal.

The cut back of the podium at the north end to provide space for the potential Guardian Square has benefits for a small number of units, some with a significant improvement in view. 49 apartments would be affected by moderate-severe or severe impacts. The assessment provided by the applicant has under-estimated the extent of impact and thereby the number of units affected.

Even if I agreed with the applicant's assessment of the ultimate number of apartments affected, I cannot agree that moderate-severe or severe impacts caused by the proposal compared to that of the existing buildings is reasonable.

In my opinion there is further scope to spread the improved view sharing outcome provided by the lowered section of the podium to benefit a more equitable number of apartments, by reconsidering the height and footprint of the northern section of the podium.

Yours sincerely

A handwritten signature in black ink that reads 'Richard Lamb'. The signature is written in a cursive, flowing style with a large, sweeping flourish at the end.

Dr Richard Lamb

Table 1: Comparison of RLA and Ethos Urban ratings of extent of impact

	Overall Extent of impact	Overall Extent of impact	Impact on SE views
Apartment	RLA	Ethos Urban	RLA
101	Severe	Moderate	Seveve
109	Minor	Negligible	Seveve
110	Minor	Negligible	Seveve
111	Minor	Negligible	Seveve
201	Severe	Severe	Seveve
202	Severe	Severe	Seveve
203	Severe	Severe	Seveve
204	Severe	Severe	Seveve
212	Minor	Negligible	Seveve
213	Minor	Negligible	Seveve
214	Severe	Severe	Seveve
301	Severe	Mod/Sev	Seveve
302	Severe	Mod/Sev	Seveve
303	Severe	Mod/Sev	Seveve
304	Severe	Mod/Sev	Seveve
305	Severe	Mod/Sev	Seveve
313	Mod/Sev	Min/Mod	Seveve
314	Mod/Sev	Min/Mod	Seveve
315	Severe	Mod/Sev	Seveve
401	Severe	Mod/Sev	Seveve
402	Severe	Mod/Sev	Seveve
403	Severe	Mod/Sev	Seveve
404	Severe	Mod/Sev	Seveve
412	Mod/Sev	Min/Mod	Seveve
413	Mod/Sev	Min/Mod	Seveve
414	Severe	Mod/Sev	Seveve
501	Severe	Mod/Sev	Seveve
502	Severe	Mod/Sev	Seveve
503	Severe	Mod/Sev	Seveve
504	Severe	Mod/Sev	Seveve
512	Mod/Sev	Min/Mod	Seveve
513	Mod/Sev	Min/Mod	Seveve
514	Severe	Mod/Sev	Seveve
601	Mod/Sev	Mod/Sev	Seveve
602	Severe	Mod/Sev	Seveve
603	Severe	Mod/Sev	Seveve
604	Severe	Mod/Sev	Seveve
612	Mod/Sev	Min/Mod	Seveve
613	Severe	Min/Mod	Seveve
614	Severe	Mod/Sev	Seveve
701	Mod/Sev	Moderate	Seveve
702	Mod/Sev	Moderate	Seveve
703	Mod/Sev	Moderate	Seveve
704	Severe	Moderate	Seveve
712	Mod/Sev	Minor	Seveve
713	Mod/Sev	Minor	Seveve

Table 1: Comparison of RLA and Ethos Urban ratings of extent of impact

	Overall Extent of impact	Overall Extent of impact	Impact on SE views
Apartment	RLA	Ethos Urban	RLA
714	Severe	Minor	Seveve
801	Moderate	Minor	Mod/Sev
802	Severe	Minor	Mod/Sev
803	Severe	Moderate	Mod/Sev
804	Severe	Moderate	Mod/Sev
812	Moderate	Minor	Mod/Sev
813	Moderate	Minor	Mod/Sev
814	Moderate	Minor	Mod/Sev
901	Moderate	Minor	Mod/Sev
902	Moderate	Minor	Moderate
903	Moderate	Moderate	Moderate
904	Mod/Sev	Moderate	Moderate
912	Moderate	Minor	Moderate
913	Moderate	Minor	Mod/Sev
914	Moderate	Minor	Moderate
1001	Moderate	Minor	Moderate
1002	Moderate	Minor	Moderate
1003	Moderate	Moderate	Moderate
1004	Mod/Sev	Moderate	Seveve
1012	Moderate	Minor	Mod/Sev
1013	Moderate	Minor	Mod/Sev
1014	Moderate	Minor	Mod/Sev
1101	Moderate	Minor	Moderate
1102	Moderate	Minor	Moderate
1103	Mod/Sev	Moderate	Mod/Sev
1104	Mod/Sev	Moderate	Mod/Sev
1112	Minor	Minor	Min/Mod
1113	Minor	Minor	Min/Mod
1114	Minor	Minor	Minor
1201	Moderate	Minor	Min/Mod
1202	Moderate	Minor	Min/Mod
1203	Moderate	Moderate	Min/Mod
1204	Moderate	Moderate	Seveve
1212	Moderate	Minor	Mod/Sev
1213	Minor	Minor	Moderate
1214	Minor	Minor	Minor
1301	Minor	Minor	Minor
1302	Minor	Minor	Moderate
1303	Moderate	Moderate	Mod/Sev
1311	Minor	Minor	Moderate
1312	Minor	Minor	Minor
1313	Minor	Minor	Minor
1401	Minor	Minor	Minor
1402	Min/Mod	Minor	Min/Mod
1403	Min/Mod	Minor	Moderate
1410	Minor	Minor	Moderate

Table 1: Comparison of RLA and Ethos Urban ratings of extent of impact

	Overall Extent of impact	Overall Extent of impact	Impact on SE views
Apartment	RLA	Ethos Urban	RLA
1411	Minor	Minor	Min/Mod
1412	Min/Mod	Minor	Min/Mod
1501	Min/Mod	Minor	Min/Mod
1502	Moderate	Moderate	Seveve
1509	Minor	Minor	Min/Mod
1510	Minor	Minor	Min/Mod
1511	Minor	Minor	Min/Mod
1601	Minor	Minor	Min/Mod
1602	Moderate	Minor	Moderate
1609	Min/Mod	Minor	Moderate
1610	Min/Mod	Minor	Min/Mod
1611	Min/Mod	Minor	Min/Mod
L17 communal	Minor	Negligible	Minor



**Sydney Head Office**  
Suite 2  
174 Willoughby Rd  
St Leonards NSW 2065  
T: 02 9908 1270

**Melbourne Office**  
Suite 11  
70 Racecourse Rd  
Nth Melbourne VIC 3051  
T: 03 7015 5112

**ABN: 36 105 797 715**  
PO Box 270  
Neutral Bay NSW 2089  
E: [info@acousticdynamics.com.au](mailto:info@acousticdynamics.com.au)  
W: [www.acousticdynamics.com.au](http://www.acousticdynamics.com.au)



Project 4150  
4 May 2021

**The Land Owners/Residents at One Darling Harbour**  
C/o- **Beatty Legal Pty Limited**  
Attention: Ms Ballanda Sack  
Level 4, 235 Macquarie Street  
SYDNEY NSW 2000

Email: [REDACTED]  
Mb: [REDACTED]

Dear Ballanda

**ONE DARLING HARBOUR RESIDENTS – HARBOURSIDE SHOPPING CENTRE**  
**DRAFT ACOUSTIC CONDITIONS FOR DEMOLITION WORK**

## 1 BACKGROUND

Acoustic Dynamics is engaged by **Beatty Legal Pty Ltd** on behalf of Owner Corporation SP 49259 to conduct a technical review of, and provide amendments to, the draft acoustic conditions for the proposed demolition of the Harbourside Shopping Centre, Darling Harbour.

## 2 REVIEW

Acoustic Dynamics has conducted a review of the Renzo Tonin and Associates Acoustic Report prepared for Development Application (ref. TH964-03F02 DA Report for Demolition (R5), dated 12 October 2020.

Our review of this acoustic report considers the ambient background monitoring and determination of the project specific noise criteria to be appropriate. Noise sensitive receivers surrounding the proposed works have been identified correctly. A summary of proposed work stages, activities and equipment are provided and a brief description of the type of work method and typical sound power levels for the typical construction equipment is detailed.

Acoustic Dynamics considers the noise emission assessment to lack detail regarding demolition scenarios for each stage (i.e., Cumulative impacts from multiple noise sources operating simultaneously). We conducted some basic calculations using multiple noise sources and predicted higher levels, therefore we consider the predicted noise impacts at each of the receivers, in particular the residential receivers with operable windows and balconies at 50 Murray Street “One Darling Harbour” residents, to likely be an underestimate.

## 3 CONCLUSIONS

The implication, of these potential underestimated noise predictions, is how the consent conditions are read and understood by the authorities, hence Acoustic Dynamics has amended the draft consent conditions to reflect the concerns that we have with the acoustic assessment for this project.

We trust the above information meets with your immediate requirements and expectations. Please do not hesitate to contact us on 03 7015 5112 (VIC) or 02 9908 1270 (NSW) should you require more information or clarification.

Kind Regards

**ACOUSTIC DYNAMICS**




**MATTHEW A WESTON**

*Senior Consultant, MDesSc(Audio & Acoustics), MAAS, AASA*

Document	Rev	Date	Prepared	Reviewed	Authorised	Approved
4150L002.MW.210504	0	4 May 2021	MW	RH	RH	

## PART C DURING DEMOLITION

### APPROVED PLANS TO BE ON-SITE

- C1. A copy of the approved and certified plans, specifications and documents, incorporating conditions of approval, modifications and certification must be kept on the Site at all times and must be readily available to view by any officer of the Department, Council or Certifier or a member of the public.

### SITE NOTICE

- C2. A site notice(s) must be prominently displayed at the boundaries of the Site for the purposes of informing the public of project details, including details of the builder, Certifier and structural engineer. The notice(s) must satisfy the following requirements:
- (a) be able to be read by the general public
  - (b) be rigid, durable and weatherproof and displayed throughout the works period
  - (c) specify the approved hours of work, the name of the site/project manager, the responsible managing company (if any), its address and 24-hour contact phone number for any inquiries and complaints
  - (d) mounted at eye level on the perimeter hoardings/fencing
  - (e) include a statement that unauthorised entry to the Site is not permitted.

### CONTACT TELEPHONE NUMBER

- C3. The 24-hour contact telephone number must be continually attended by a person(s) with authority over the works for the duration of the development.

### IMPLEMENTATION OF MANAGEMENT PLANS

- C4. The requirements of the **DEMP (including DNVMP)**, **DTPMP**, and **DWMP** required by **Conditions B9, B10 and B17** of this consent must be implemented during demolition.
- C5. The relevant requirements of the Transplantation Methodology Report required under **Condition B7** must be implemented.

### HOURS OF DEMOLITION

- C6. Demolition, including the delivery of materials to and from the site, may only be carried out between the following hours:
- (a) between 7 am and 6 pm, Mondays to Fridays inclusive; and
  - (b) between 7~~8~~ am and 5~~1~~ pm, Saturdays.
- C7. No work may be carried out on Sundays or public holidays.
- C8. Activities may be undertaken outside of these hours if required:
- (a) by the Police or a public authority for the delivery of vehicles, plant or materials; or
  - (b) in an emergency to avoid the loss of life, damage to property or to prevent environmental harm.
- C9. Notification of such activities must be given to affected residents before undertaking the activities or as soon as is practical afterwards.

### DEMOLITION NOISE MANAGEMENT

- C10. Demolition works shall be undertaken with the aim of achieving the construction noise management levels detailed in the City of Sydney Construction Hours / Noise within the Central Business District Code of Practice 1992 and the Interim Construction Noise Guideline (Department of Environment and Climate Change, 2009). All feasible and reasonable noise mitigation measures shall be implemented and any activities that could exceed the

construction noise management levels shall be identified and managed in accordance with the DNVMP, approved as part of the DEMP.

C11. If the noise from a demolition activity is substantially tonal or impulsive in nature (as described in Chapter 4.5 of the NSW DECC Interim Construction Noise Guideline, with similar guidance in Chapter 4 of the NSW Industrial Noise Policy), 5dB(A) must be added to the measured construction noise level when comparing the measured noise with the construction noise management levels.

C12. Continuous unattended noise monitoring is to be undertaken at the most affect external residential boundary (which may include a balcony) for the duration of the demolition work. This noise monitoring is to be analysed, reviewed and submitted as a summary, on a fortnightly basis to council and should be incorporated in the DNVMP and DEMP.

C13. The Applicant shall undertake noise measurements/monitoring in response to a complaint which has arisen as a result of noise emanating from the demolition work, or in response to Council requests for acoustic performance certification. Attended measurements shall be conducted for a minimum of 30mins at a point between 1.2m and 1.5m above the ground or floor (whether inside or outside) as appropriate, in accordance with Part 6 of the City of Sydney Construction Hours / Noise within the Central Business District Code of Practice 1992.

C14. Based on the noise monitoring results from the continuous unattended noise monitoring (detailed in C12) and guidance from Council's review of the submitted noise monitoring reports, the Applicant shall provide respite periods to protect the amenity of nearby sensitive receivers and should be scheduled at appropriate times of day to reflect times or periods when receivers are likely to be adversely impacted by adjacent demolition activities. For these activities and any activities predicted to result in exceedances of the Highly Noise Affected Threshold (as identified in the EPA Interim Construction Noise Guideline), respite periods to be adopted as follows (unless other arrangement with the affected noise receivers is agreed):

- (a) 7am to 9am (Monday to Saturday)
- (b) 12pm to 1pm (Monday to Saturday)
- (c) 5pm to 6pm (Monday to Friday)

~~C12. The Applicant shall schedule intra-day 'respite periods' for demolition activities predicted to result in the 75dB(A) "highly noise affected" target being exceeded. Respite periods shall be scheduled at the same time each day (e.g. 8 am to 11 am Monday to Saturday or 12 pm to 3 pm Monday to Friday or 4 pm to 6 pm Monday to Friday) unless otherwise negotiated with the most affected noise sensitive receivers.~~

~~C13. For Category A appliances (as identified in the city of Sydney Construction Hours / Noise within the Central Business District Code of Practice 1992), respite periods shall be applied for activities predicted to result in exceedances of the Highly Noise Affected Threshold (as identified in the EPA construction noise guideline). For these activities, respite periods to be adopted as follows (unless other arrangement with the effected noise receiver is agreed):~~

- ~~(a) 7am to 8am (Monday to Saturday)~~
- ~~(b) 1pm to 2pm (Monday to Saturday).~~

These respite periods do not apply to periods of equipment set up or similar.

~~G14~~C15. Any noise generated during the construction of the development must not be offensive noise within the meaning of the Protection of the Environment Operations Act, 1997 or exceed approved noise limits for the Subject Site.

~~G15~~C16. The Applicant shall undertake a safety risk assessment of demolition activities to determine whether it is practicable to use audible movement alarms of a type that would minimise the noise impact on surrounding noise sensitive receivers, without compromising safety.

## **VIBRATION CRITERIA**

~~G16~~C17. Vibration caused by demolition at any residence or structure outside the Subject Site must be limited to:

- (a) for structural damage vibration to buildings (excluding heritage buildings), British Standard BS 7385 Part 2-1993 Evaluation and Measurement for Vibration in Buildings

- (b) for structural damage vibration to heritage buildings, German Standard DIN 4150 Part 3 Structural Vibration in Buildings Effects on Structure
- (c) for human exposure to vibration, the evaluation criteria presented in *British Standard BS 6472- Guide to Evaluate Human Exposure to Vibration in Buildings* (1Hz to 80 Hz) for low probability of adverse comment

**G17C18.** These limits apply unless otherwise outlined in a DNVMP, approved as part of the DEMP. **DISPOSAL OF SEEPAGE AND STORMWATER**

**G18C19.** Any seepage or rainwater collected on-site during demolition or groundwater shall not be pumped to the street stormwater system unless separate prior approval is given in writing by the EPA in accordance with the New South Wales *Protection of the Environment Operations Act 1997*.

### **WASTE MANAGEMENT**

**G19C20.** Notwithstanding the **DWMP** referred to in **Condition B17**, the applicant must ensure that:

- (a) all waste generated by the development is classified and managed in accordance with the EPA's *Waste Classification Guidelines Part 1: Classifying Waste 2009*

Our Ref: ARB:BES:277  
Your Ref: SSD7874

10 November 2020

BY EMAIL

Anthea Sargeant  
Executive Director Compliance, Industry and Key Sites  
Department of Planning, Industry and Environment

David Glasgow  
Principal Planning Officer

Dear Ms Sargeant and Mr Glasgow

**Re: Submission on behalf of One Darling Harbour \_Harbourside Shopping Centre  
RTS\_ SSD7874 (the RTS)**

This submission is made on behalf of the owners of Strata Plan 49259 which comprises the major residential development known as One Darling Harbour. One Darling Harbour is located at 50 Murray Street, Sydney and is home to approximately 750 residents.

This submission is made in response to the amended design and documents submitted by the proponent in its Response to Submissions dated October 2020 (**RTS**) and exhibited by DPIE (**Amended Design**).

Our client acknowledges that the RTS has in its Amended Design provided a response to the public interest and private view impacts raised in our client's previous submission and that, as a consequence of the Amended Design, some One Darling Harbour apartments will be less adversely impacted by the proposal. However, our clients note that:

- a) The Amended Proposal will have moderate to severe impacts on 49 One Darling Harbour apartments, home to approximately 150 residents. Additional apartments will suffer moderate impacts. The severity of these view impacts are significantly underestimated in the Applicant's visual impact assessment documentation which assesses moderate to severe impacts on 24 apartments. Please see attached report by Dr Richard Lamb.
- b) The northern podium, which is the cause of the primary view impacts for our clients, does not represent a reasonable development proposal. Further modification of the design could be achieved without loss of development potential (GFA) so as to provide a better public domain outcome whilst also minimising the severity of the view impacts for our client.

### **Private View Impacts**

Our client appreciates that the Applicant has at last provided detailed CGI images to represent the likely future impact of the proposal on views from residential apartments at One Darling Harbour. Our client notes that these CGI images confirm that:

- 104 apartments and the east facing common areas of One Darling Harbour will have views adversely impacted by the proposal (in that South and South East cityscape views will be blocked)



- 48 of these will lose all, or substantial key elements of, the valuable iconic water views they currently enjoy.

Our client and its expert (Dr Richard Lamb) disagree with the characterisation of the severity of this view impact provided by the proponent. Dr Lamb's report is attached. In Dr Lamb's expert opinion the Amended Design benefit a total of four apartments in One Darling Harbour, 2 at each of Levels 2 and 3, as a result of lowering of part of the northern section of the podium. The overall view impacts to an extent that is moderate to severe would remain for a further 49 apartments.

We note that these significantly affected apartments are home to approximately 150 residents. We also note that in Dr Lamb's opinion the view impact images provided tend to underestimate the actual impact of the proposal as:

- the impacts have been assessed using CGIs representing views from the extremity of balconies, other than for one view from communal space on the roof of One Darling Harbour. This should result in extra weight being given to impacts on the whole apartments. The result however is under-estimating the likely impacts on internal view; and
- the building envelope is significantly larger than the exemplar building depicted in the images.

Our client appreciates that the creation of the proposed "Guardian Square" provides a corridor for improvement of the adverse view impacts for some One Darling Harbour apartments, as well as its primary function of providing additional public space.

Our client notes that this improvement of the design was achieved at no loss of GFA for the proposal.

### **Principles for the assessment of view impacts**

The general principles for the assessment of the impacts of a proposed development on private views are well known and well established. They are set out in the decision of Senior Commissioner Roseth in *Tenacity Consulting v Warringah Council* (2004) NSWLEC 140 (*Tenacity*).

The four step process set out in paragraphs 25-29 of *Tenacity* is one of the "planning principles" promulgated by the Land and Environment Court. A planning principle "is a statement of a desirable outcome from a chain of reasoning aimed at reaching, or a list of appropriate matters to be considered in making, a planning decision". Planning principles are specifically identified by the Court to provide assistance when making a planning decision where, **as in this case, there is a void in policy, where policies expressed in qualitative terms allow for more than one interpretation; and where policies lack clarity.**<sup>1</sup>

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<sup>1</sup> [http://www.lec.justice.nsw.gov.au/Pages/practice\\_procedure/principles/planning\\_principles.aspx](http://www.lec.justice.nsw.gov.au/Pages/practice_procedure/principles/planning_principles.aspx)



*Tenacity* establishes a 4 step process to help decision makers assess whether the taking by a proposed development of views enjoyed by an existing development is reasonable. Given that the proponent has inferred that *Tenacity* is of less relevance, or has a different application, in this case because there are no specific building controls regulating height, bulk or scale under the relevant environmental planning instruments, we have extracted the planning principle in full so that its application can be properly understood.

*26 The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (e.g. of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.*

The spatial characteristics of the views across Darling Harbour and the composition of the whole view extending from the Barangaroo shore to the south end of Cockle Bay, including Pyrmont Bridge, the land-water interface, the continuous public foreshore and active retail frontage and the open prospect of the view east and south-east is highly valued from One Darling Harbour. Loss of those elements should be given the greatest weight. Retaining the view of part of the background horizon of high-rise buildings in the CBD and Centrepoint Tower is of lesser significance, should be given less weight and in any event it is achieved in most views

*27 The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.*

One Darling Harbour residents enjoy direct panoramic views across Darling Harbour, Pyrmont Bridge and the City from a sitting and standing position from their living spaces, across what can be considered the front boundary in relation to this step of *Tenacity*. It would be reasonable to expect these views to be protected. The further amended proposal has provided a modest improvement in protection of views from One Darling Harbour that is appreciated. However, a significant number of apartments is affected by view loss in excess of the existing situation. 49 apartments are affected to an extent of impact moderate-severe or severe assessed by Dr Lamb and Ethos Urban concede the same level of impact on at least 26 apartments. On either estimation, the reasonable expectation for protection of views across the front boundaries has not been achieved

*28 The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.*

Dr Lamb has assessed the severity of the view impacts as follows:  
The extents of view impact assessed in the VVIA are generally too low, as they appear to have given too much weight to part of the view that is unaffected, insufficient weight to loss of whole views, land-water interfaces, impacts on the spatial characteristics of the views impacted by the podium and the effects of the combined podium and tower in views toward the south-east. The table attached to Dr Lamb's report compares his assessment of overall view impacts with the Applicant's and includes a column assessing impact on the south-east view that includes the higher section of the podium and the tower, the effects of which on view impact extent appears to have been either ignored or minimised

*29 The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.*

[The application of this fourth step is discussed below]

We note that the Court has also promulgated a planning principle for the assessment of impact on neighbouring properties in *Davies v Penrith City Council* [2013] NSWLEC 1141 at [116] to [121] (**Davies**). It proposes the following criteria [at 121] for assessing impact on neighbouring properties:

- *How does the impact change the amenity of the affected property? How much sunlight, view or privacy is lost as well as how much is retained?*
- *How reasonable is the proposal causing the impact?*
- *How vulnerable to the impact is the property receiving the impact? Would it require the loss of reasonable development potential to avoid the impact?*
- *Does the impact arise out of poor design? Could the same amount of floor space and amenity be achieved for the proponent while reducing the impact on neighbours?*
- *Does the proposal comply with the planning controls? If not, how much of the impact is due to the non-complying elements of the proposal?*

### **The “reasonableness” of the Proposal**

Together, *Tenacity* and *Davies* make it clear that what is required in assessing the reasonableness of the proposal that is causing the adverse view impact, is consideration of:

- the proposal's acceptability in its planning context;

- whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours; and
- the vulnerability of the affected neighbouring property.

In this regard we note that:

- a) Professor Peter Webber, in the independent Urban Design Review, has suggested a benchmark for the assessment of the reasonableness of the proposal causing the view impact. He has suggested that *no additional impact* on the views from One Darling Harbour in excess of what is caused by the existing Harbourside building is a standard which the podium north of the proposed tower in the proposal should achieve.
- b) The planning controls require that the public good take precedence in the assessment of development proposals in the foreshore area. We note that Guardian Square provides 1,500sqm public space (at an RL of 13.75m AHD, being above the level of bridge walkway). In contrast, for example, the Cockle Bay development was required to provide 5,500sqm of open space adjoining Pyrmont Bridge (at an RL of 12m AHD);
- c) The development will increase the GFA of the property by 67,000 sqm (to 87,000sqm from 20,000sqm). The public open space suggested to be provided by the development appears less than that required for the Cockle Bay redevelopment on the Eastern side of Pyrmont Bridge (which has a similar GFA). The open space component of the Harbourside development which is on the leased site is limited to the two stairways and the new proposed Guardian Square. We note that the development appropriates a section of public (non-leased land) for the development.
- d) The scale of commercial use proposed is inconsistent with the planning objectives for the site. We note that it is a commercial use that is causing the view impact for our residential clients.
- e) The improvement to the urban realm and public domain that is asserted to justify the development can be achieved without creating a substantial east/north east view impact for One Darling Harbour residents. The residents will already experience an adverse view impact to the S and SE due to the tower and its podium.
- f) Adjustment of the Northern podium by a more skilful design could minimise view impacts for residents without adversely impacting the GFA. The applicant has already taken a step in this direction. This has been achieved by transferring commercial GFA on the northern podium to additional residential GFA in the tower (i.e. at no loss of GFA to the development). We note that a greater residential GFA component may be a preferred outcome for the proponent given the significant increase in new commercial space in the area due to the Cockle Bay and Ribbon developments and the potential declining demand for commercial office space in the CBD due to COVID.



The applicant has suggested that the assessment of the view impacts for One Darling Harbour would achieve a similar outcome to the DPIE/PAC assessment of view impacts for the three other identified recent Darling Harbour area developments. However, these view impacts and their assessment differ from the current situation faced by One Darling Harbour residents as follows:

- IMAX – the impacted private views were identified as distant skyline/harbour views from a CBD location.
- Cockle Bay – the development is located within the CBD (city fringe), a lesser number of units were impacted, the impacted water views were more distant and some oblique, an alternative design (such as a lower tower) would still have had a substantial impact and movement of the tower north would have significant impacts on heritage and the public domain.
- SICEEP- mid/distant views impacted, improvement of view impact would require relocation of tower element which would create adverse public domain impacts.

In contrast to the view impacts assessed for all of these developments, our clients currently enjoy immediate harbour views, from outside the City fringe, and further relatively minor modification of the northern podium to achieve a better view outcome could easily be achieved and would achieve better public domain/urban realm outcomes, by for example expanding the public space adjacent to Pyrmont Bridge.

In short, the severity of the view impacts on around 150 One Darling Harbour residents is underestimated by the Applicant and the impact of the northern podium on views is unreasonable. A reasonable proposal would provide for a lesser impact (i.e. no impact on East and North East views greater than that caused by the existing Harbourside building).

### **General Submissions**

Our client notes that what is being sought is approval for Stage 1 demolition and a building envelope. As identified above (and in our client's previous submissions) the use of an exemplar building in the view impact assessment and public domain assessment has the potential to create a misleading impression as to the actual impact of a development that fits within the building envelope. Specifically, the exemplar building depicted is thinner and shorter than the building envelope the subject of this application. This is particularly evident in the depiction of the NE edge of the residential tower and in the depiction of the pedestrian walkway connecting One Darling Harbour with the Harbourside development (**Walkway**). Care must be taken in the drafting of the design requirements for any future DA to ensure that private view impacts and public domain amenity are consistent with the exemplar building.



Our client also requests that in the scheduling of any demolition works consideration be given to preserving the connection of the Walkway to Pyrmont Bridge for as long as possible to minimise the disruption to residents associated with the redevelopment works.

Yours faithfully  
**Beatty Legal**



Andrew Beatty/Ballanda Sack  
Director/Special Counsel  
Beatty Legal Pty Limited  
ABN 44 273 924 764

Attachment:  
Report of Dr Richard Lamb dated 7 November 2020

Our Ref: ARB:BES:277  
Your Ref: SSD 7874

11 May 2020

BY EMAIL

Anthea Sargeant  
Executive Director Compliance, Industry and Key Sites  
Department of Planning, Industry and Environment

David Glasgow  
Principal Planning Officer

Dear Ms Sargeant and Mr Glasgow

**Re: Submission on behalf of One Darling Harbour \_ Harbourside Shopping Centre Redevelopment\_SSD7874**

This submission is made on behalf of the owners of Strata Plan 49259 which comprises the major residential development known as One Darling Harbour. One Darling Harbour is located at 50 Murray Street, Sydney and is home to approximately 750 residents.

It is our client's submission that the application for concept approval for the redevelopment of the Harbourside Shopping Centre (SSD 16\_7874) ought not be approved in its current form.

Our client in principle supports a sympathetic redevelopment of the Harbourside Shopping Centre which accords with the view sharing principles articulated and applied by the Land and Environment Court and the public purpose designation of the land under the applicable planning controls.

Our client objects to the building envelope proposed in the concept application on the basis that the "northern" commercial podium is too high and it is too close to the heritage listed Pymont Bridge.

The proposal is also inconsistent with the planning principles established by the Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (**SREP**).

The height and scale of the podium proposed in the concept application:

- Will have significant adverse view impacts for the majority of the residents of One Darling Harbour;
- Provides for a scale of commercial use which is **inconsistent** with the planning objectives for the site;
- Will detract from public domain views and amenity; and
- Will overshadow and detracts from the values of State heritage listed Pymont Bridge.

The concept proposal introduces large scale commercial and residential land uses into what is essentially a tourism precinct. The cumulative impacts of the proposal also remain unassessed.



The submission and assessment of this development proposal is premature in the absence of detailed planning controls prepared in consultation with the community. We note that work is apparently substantially progressed on a Place Strategy (and Masterplan) specific for the Pyrmont Precinct (including the site) and that one of the 10 core directions for that Strategy is a commitment to a unified planning framework for the area. Development in this area must proceed in an orderly fashion in accordance with a precinct plan supported by community.

Our client reiterates the concerns expressed in its submissions on a previous iteration of this proposal regarding the inconsistent and potentially misleading descriptions in the exhibited materials of the extent and impact of the building envelope proposed.

Our client also notes that the way in which information was published on the Department's website made it unnecessarily difficult to identify documents relevant to the amended proposal on exhibition.

Our client's detailed submissions are set out below. Attached to this submission (**Attachment A**) is an expert visual assessment report prepared by Richard Lamb & Associates. Our client also obtained expert planning advice from Neil Ingham at Ingham Planning in respect of the original proposal. Much of this advice remains applicable to the current amended proposal and we have referred to Mr Ingham's submission (dated February 2017) where applicable.

We note that many of the residents of One Darling Harbour have separately made individual submissions.

#### 1. **The Northern Podium is too high and has excessive impacts on views from One Darling Harbour**

One Darling Harbour is home to approximately 750 residents in 210 apartments. The majority of its residents enjoy iconic and panoramic views over Darling Harbour. All of the 104 apartments with views to the East (over Darling Harbour and Pyrmont Bridge) and/or to the South East over Darling Harbour will have those views adversely impacted by the proposed development envelope (the proposed tower and its podium and for the mid to lower levels the northern podium).

The assessment of view impacts for the residents of One Darling Harbour provided by the proponent is inadequate both in the coverage of the views and reliability of the images generated and in the quality of the analysis.

In our view the quality of the assessment has not improved substantively since the original proposal was exhibited, despite express requirements by the Independent Urban Design Taskforce and the Department that his deficiency be addressed in any amended proposal. The conclusion expressed by Neil Ingham in our client's submissions in response to the original proposal remains valid (emphasis added):

*"... the EIS makes very generalized statements or comments about the loss of views. Nowhere is it acknowledged that the existing residential views from One Darling Harbour are of icons with water views and are panoramic views. **The EIS does not identify how many properties and to what extent views are affected or lost from One Darling Harbour, except from a few selected units.**"*

*This is a glaring gap in the application as One Darling Harbour has many units adversely affected by the proposal, with many on the lower residential levels losing all or the predominant part of their iconic view. **These residents have a right to know how their properties are proposed to be affected and what the degree of that affectation is.** The proponent has a responsibility to advise them in the application.”<sup>1</sup>*

To enable our client to assess and consider the potential view impact of the building envelope proposed, our client engaged Dr Richard Lamb of Richard Lamb & Associates to undertake a review of the view impact assessments undertaken by the proponent for this amended proposal. We note that Dr Lamb also prepared a view impact assessment of the original proposal for our client. A copy of Dr Lamb’s report in response to the current proposal is **attached (Attachment A)**.

In relation to the photomontage report Dr Lamb concludes: *“The coverage provided by the photomontage report ... which contains no views between Levels 5 and 13, is of virtually no use to the consent authority as the basis on which to analyse the effect of the proposal on view sharing from the private domain in One Darling Harbour”. ... [T] the coverage provided of levels and apartments in different parts of one Darling Harbour that would experience view loss is inadequate and unrepresentative of the likely location and extent of impacts. ... The photomontage report under-represents view locations that would be affected, under-represents the extent of view to be lost as a result and is of minimal value to determining an appropriate height and massing for the podium in relation to view sharing”.*

A similar view is expressed in respect of the “view sharing analysis report”. This report *“contains no assessment of the nature, extent or significance of impacts on the computer generated images that are depicted, nor any reference to the planning principle for view sharing in Tenacity. The report is simply a series of images, not an analysis, and it is of no value with regard to the determination of impacts on view sharing”. ... the places modelled [in the CGIs in the private view sharing analysis report] are not representative of the parts of the building that would experience the greatest impact on view sharing”. Nevertheless, “[t]he CGI confirms that view loss extends far above the height in One Darling Harbour that is identified in the Design Report as experiencing significant view loss”. ... In summary, in relation to this [view sharing analysis] report, there is no useful information provided that could assist the consent authority in understanding or assessing the locations affected by impacts on view sharing in One Darling Harbour, the extent of the effect on the views, or the extent of the effect on the building as a whole.*

In relation to the “view impact assessment” for One Darling Harbour provided in section 5.1.4 of the “Visual and View Impact Analysis” (VVIA), Dr Lamb states the following:

- *“The VVIA by Ethos Urban does not adopt an analysis or an assessment based on any of these relevant principles [being the principles articulated in Tenacity, Pafburn, or Davies] and uses a subjective scale of the severity of impact that is unexplained, in assessing impacts on views from One Darling Harbour”. “[T]he analysis and assessment of impacts on views from low to medium-rise apartments is inadequate”.*
- *“The height proposed in the modified application, even of the part that is now proposed to be at RL 25, causes significant view loss in excess of what is caused by*

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<sup>1</sup> Paragraphs 10 and 11 Ingham Planning submission February 2017



*the existing shopping centre, as shown in the analyses of the photomontage and view sharing reports ... and is unnecessary and unreasonable*".

- The argument used to justify the view impacts for One Darling Harbour is "without foundation":

*"The VVIA is dismissive of visual impacts and view loss, basing this on the premises that impacts are unavoidable and no worse than other permissible proposals. Neither of these premises [s] tenable".*

- The benchmark for assessment of the northern podium provided by Dr Webber, ie that there should be "no additional impact on the views from One Darling Harbour in excess of what is caused by the existing Harbourside building" is appropriate and "a reasonable one to achieve".
- *"In my opinion the height and the east-west depth of the northern section of the podium causes significant view loss that has not been acknowledged and should be reconsidered, if the overall strategy for redevelopment, with a podium-tower building is accepted. These features of the proposal do not achieve a reasonable view sharing outcome."*

While the analysis of impacts is inadequate, the coverage of the assessment and the photomontages insufficient and the accuracy of the images is questionable, it is nevertheless evident that "apartments in One Darling Harbour over a significant part of the building will experience significant view loss caused by the height and the massing of the podium". Specifically, Dr Lamb is of the view that:

*"[T]he bulk of the envelope, no matter what the articulation may be when subject to later DAs, will cause severe to devastating view loss to lower levels of One Darling Harbour (Levels 1-6 and possibly higher). View loss as a result of the depth of the podium envelope and its maximum height at the south adjacent to the tower will not be confined to these levels. View loss will extend to at least Level 9, as the proposed envelope would block all or most of the view of water in Cockle Bay, in views from some apartments. ... The southern section of the podium north of the base of the tower will cause significant view loss impacts up to Level 9."*

We note that there are thirty six apartments with affected views between levels 1 to 6 and a further twenty one view affected apartments between levels 7 to 9<sup>2</sup>.

We also note the uncertainty created by the proposal to include landscape planting on the rooftop of the northern podium. This would add extra height which would add to view loss impacts. This additional view loss has not been assessed.

Our client reiterates and concurs with the opinion expressed by Professor Webber (Independent Urban Design Review) that "the height of the northern part of the podium [is] of critical concern". Specifically, Professor Webber stated that:

*"The negative impact on views from the lower level apartment[s] in 50 Murray Street caused by the two top floors at the northern end of the podium is not acceptable: such impact should not exceed those due to the existing building"*.

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<sup>2</sup> We note that apartments on Level 1 currently enjoy City Views that would be blocked by this proposal

The VVIA seeks to assert that as there are no built form planning controls any “reasonable” redevelopment proposal would necessarily involve an impact on views from One Darling Harbour comparable to that proposed. This statement is patently untrue and unjustified. The site is subject to planning controls that emphasise the necessity for any development of the site to be for the public good, enhance the foreshore **for the public** and recognise and conserve its heritage values. In instances where urban planners independent of a development proposal have sought to define built form requirements for the area, for example in the draft Darling Harbour Urban Form Strategy 2016 or the Independent Urban Design Review, low rise buildings (at or below the height of the current structure) have been specified for the area in front of One Darling Harbour. As stated by Dr Lamb: *“There are no clear public benefits in there being a residential tower in the proposal and there is no justification for the additional impact on views caused by the height or massing of the podium.”*

The SEARs and the comments provided by the Department in the Response to Submissions oblige the proponent to undertake a proper analysis of the impact of the proposal on the views from One Darling Harbour. This has not been done. Dr Lamb states: *“In my opinion, the visual analysis model provided is inadequate to compare the existing shopping centre with the proposed building in views from One Darling Harbour ... The .. modelling, particularly of the podium, of views from One Darling Harbour, is inadequate, selective, dismissive of the significance of impacts and inconsistent in itself.”*

Dr Lamb concludes:

*Currently there is no adequate assessment of view sharing in the documentation assessed in this report. The height and modelling of the podium cannot be left to the DA stage to be resolved, as the impacts on One Darling Harbour have not been adequately assessed and at this stage the height and modelling of the podium cannot be justified.*

In summary:

- A thorough and reliable assessment of the impact of the proposed envelope on private views from One Darling Harbour is required;
- The assessment provided to date is demonstrably inadequate;
- The view sharing principles in *Tenacity Consulting v Warringah*<sup>3</sup> and the specific recommendations of the Independent Urban Design Review mandate that significant view loss for private residents of One Darling Harbour be avoided; and
- Despite the inadequacy of the proponent’s assessment, it is evident that the bulk and scale of the northern podium will have significant view loss impacts for close to sixty residential apartments and all 104 east/south east facing apartments will suffer view impacts due to the proposed residential tower.

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<sup>3</sup> [2004] NSWLEC 140



Accordingly, there is inadequate information for a decision maker to determine the view impact for the residents of One Darling Harbour and the limited information available makes it clear that the northern podium will cause significant, unreasonable and unjustified view loss contrary to the requirements of the *Tenacity* principle and those expressed by the Independent Urban Design Review.

## 2. The proposal's height and proximity detracts from the values associated with the State heritage listed Pyrmont Bridge

Pyrmont Bridge is an item of State heritage significance for its aesthetic, historical and scientific cultural values<sup>4</sup>. The Bridge also establishes the setting for Darling Harbour Cockle bay and forms an essential connection between the City and Pyrmont.

The SEARs require the applicant to address impacts on *“the heritage significance of the site and adjacent area, including built and landscape heritage items, conservation areas, views or settings, and in particular the impact on the State heritage listed Pyrmont Bridge”*.

The planning principles for the area in clause 15 of the SREP also specify:

*“(a) Sydney Harbour and its islands and foreshores should be recognised and protected as places of exceptional heritage significance”*

*“(b) the heritage significance of particular heritage items in and around Sydney Harbour should be recognised and conserved”; ...*

*“(d) the natural, scenic, environmental and cultural qualities of the Foreshores and Waterways Area should be protected”*.

The SREP specifically provides at Clause 59 (emphasis added)

*(1) Before granting development consent to development in the vicinity of a heritage item, the consent authority **must** assess the impact of the proposed development on the heritage significance of the heritage item.*

*(2) This clause extends to development—*

*(a) that may have an impact on the setting of a heritage item, for example, by affecting a significant view to or from the item or by overshadowing, or*

*(b) that may undermine or otherwise cause physical damage to a heritage item, or*

*(c) that will otherwise have any adverse impact on the heritage significance of a heritage item.*

The proposed northern podium envelope will adjoin Pyrmont Bridge and due to its height and proximity, will visually overshadow the bridge and its setting. The extent of the impact is difficult to discern from the information provided by the proponent due to

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<sup>4</sup> See Statement of significance for Pyrmont Bridge:  
<https://www.environment.nsw.gov.au/heritageapp/ViewHeritageItemDetails.aspx?ID=5053337>



inconsistencies within the information provided by the proponent and due to a failure to appropriately document and assess the impact on the bridge setting.

There are inconsistencies in the images provided of the proposal's interaction with Pyrmont Bridge. The building envelope plans, the "indicative floor plans" and the "artistic impressions" all depict *different spatial relationships* between the bridge and the proposed northern retail/commercial podium. Approval is being sought for the building envelope plans. In general, the artistic impressions of the proposal suggest a much lower and more spatially separated podium structure than that depicted in the building envelope plans.

**Attachment B** provides (and contrasts) a selection of images from the building envelope plans with the artistic impressions. We note that no 3D building envelope is provided that clearly depicts the proposed relationship between the building envelope and Pyrmont Bridge.

From the building envelope plans (which depict what the proponent is actually seeking approval for):

- The proposed building envelope will almost touch the envelope of the pedestrian walkway of Pyrmont Bridge;
- The relative height of the bridge is not specified. However, it appears that the pedestrian walkway of Pyrmont bridge is between 11.5m RL- 13.m RL and the railings are at between 12.5m-14m RL<sup>5</sup>.
- The northern podium will be primarily at 25m RL. The podium will be approximately 7m distant from the bridge at this height. The "lower" triangular segments of the podium (which sit closer to the bridge) are to be 16.5m RL (on the harbourside) and 17.5m west of the bridge buttresses. The height of the proposed podium sliver most directly adjacent to the bridge is not specified.

The podium areas closest to the bridge are actually **higher** in this proposal than in the original proposal. In the original proposal the majority of the northern podium was to be 23.8m RL.

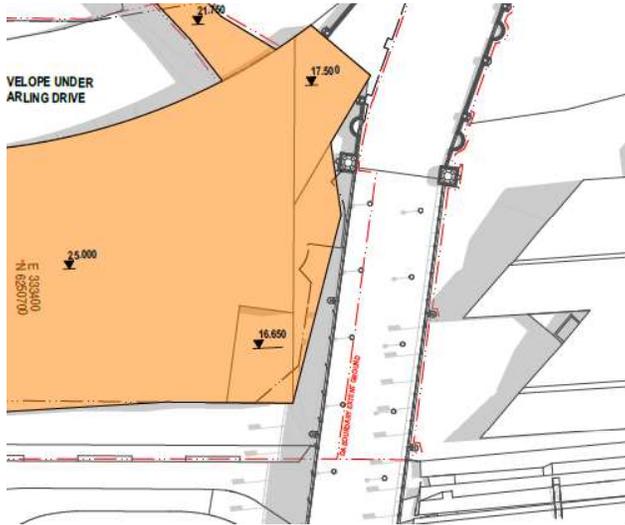
An extract from the "Envelope Plan – Podium" dated 11/2/20 is provided below<sup>6</sup>:

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<sup>5</sup> We note that the plans for the Cockle Bay Wharf Redevelopment identify Pyrmont Bridge at 11.8m RL.

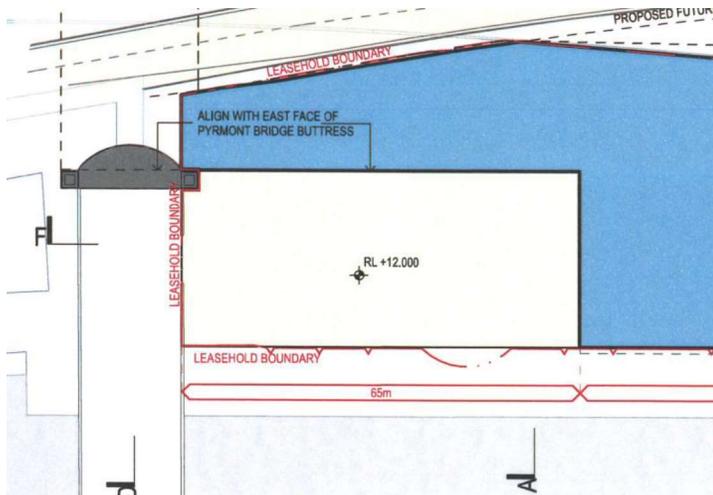
<sup>6</sup> We have assumed that this plan is at 1:500 (not 1:100 as specified)





We contrast this proposal with the building envelope approved for the Cockle Bay Wharf Redevelopment (SSD 7684) on the eastern side of Pyrmont Bridge. In that instance, the project application initially sought approval for a building envelope including a tower close to Pyrmont Bridge. In the amended (and subsequently approved application) the tower envelope and podium area was moved, *inter alia*, to provide a more appropriate relationship with Pyrmont Bridge. Relevantly, the approved podium envelope is restricted in height to 12m RL on the western (water) side of the bridge buttresses and 19m RL east of the bridge buttresses. The 12m RL height restriction extends for 65m along the western edge before the envelopes steps up to 29m RL for the tower podium.

A copy of an extract for the approved Cockle Bay plans is below:



Clause 55(5)(a) of the SREP specifically requires an assessment of the impact of the proposal on the heritage significance of the item and its setting.

However, the setting of the bridge and the impact of the proposal on public domain views of and from the bridge is still not appropriately documented or assessed in the Harbourside Proposal (see section 3 below).

The proponent's heritage assessment report is substantially focussed on the impact of the relocation of the proposed tower envelope to the south away from the bridge. In relation to the northern podium the Report states:

*The reduction in height of the retail podium envelope adjacent to Pyrmont Bridge, the increase in the setback of the retail complex from the current c.4.7m, to c.10m, and the improvement of public domain works and general interface zone between the new retail podium and Pyrmont Bridge will present a positive visual impact on the relationship between the retail complex, and the heritage listed Pyrmont Bridge.*

We have the following comments on this statement:

- It is unclear what part of the podium envelope the author considers will have 10m separation from the bridge. Analysis of the proponent's podium envelope plans suggest that the northern podium envelope will touch the bridge envelope and is at widest only approximately 4m from the bridge. Perhaps the author has had regard to the artist's impressions (eg Figure 2.1 in the report) when assessing this impact.
- Merely because this proposal is potentially an improvement on the previous proposal or that the existing development has unsympathetic elements does not mean that the envelope now proposed avoids compromising heritage values of the bridge and its setting.
- The impact assessment appears to be largely derived from review of images artistically generated from drone footage, rather than by reference to the building envelope proposed. Additionally, regard should be had to views from the public domain (in human scale) rather than artificial views from a drone perspective.
- The northern podium is largely proposed as a commercial office space – it is not a retail podium (only 1 of the proposed 5 floors are intended to be retail).

We note the comments made by Professor Webber regarding the appropriate spatial relationship between the bridge and the proposed northern podium: *"Any new adjacent development should be discreet in its character and not intrusive in relation to the bridge"* (Feb 2018)

We also note the comments of the SHFA Design and Development panel: *"Pyrmont Bridge is one of the few heritage items in Darling Harbour, and needs to be **reinforced, not diminished**, so it reads as a strong, **independent** historic structure"*.

The concept application seeks approval for a retail/commercial podium which will be intrusive and which will substantially and unjustifiably detract from the heritage values and setting of Pyrmont Bridge.

### **3. The height, bulk and scale of the northern podium is inconsistent with planning objectives for the site)**

While the site is not yet subject to detailed building controls, clauses 2, 14 and 15 of the SREP establish aims for the Sydney Harbour Catchment (including Darling Harbour)

and specific planning principles to guide development in the Sydney Harbour Catchment generally (clause 13) and specifically in the Foreshore and Waterways Area (of which the site forms part) (clause 14).

These aims and principles establish three clear themes:

- a) Development in the area must be for the public good. See for example, clause 2(2)(a) *“Sydney Harbour is to be recognised as a public resource, owned by the public, to be protected for the public good”* and (b) *“the public good has precedence over the private good whenever and whatever change is proposed for Sydney Harbour or its foreshores”*; and
- b) The area has aesthetic values of national public significance to be protected and enhanced for the public. See for example, clause 2(1)(a) establishes the aim of ensuring *“that the catchment, foreshores, waterways and islands of Sydney Harbour are recognised, protected, enhanced and maintained— (i) as an outstanding natural asset, and (ii) as a public asset of national and heritage significance”*, clause 2(2)(c) provides: *“protection of the natural assets of Sydney Harbour has precedence over all other interests”*, clause 13(f) states: *“development that is visible from the waterways or foreshores is to maintain, protect and enhance the unique visual qualities of Sydney Harbour”*, clause 14(d) provides: (a) *development should protect, maintain and enhance the natural assets and unique environmental qualities of Sydney Harbour and its islands and foreshore* and clause 26(b) *development should minimise any adverse impacts on views and vistas to and from public places, landmarks and heritage items*;
- c) The heritage values of the area contribute to its significance and must be conserved. For example, clause 15(a): *“Sydney Harbour and its islands and foreshores should be recognised and protected as places of exceptional heritage significance”*, clause 15(b): *“the heritage significance of particular heritage items in and around Sydney Harbour should be recognised and conserved”* and 53(1)(b) which provides that the an objective of the SREP in relation to heritage is to *“conserve the heritage significance of existing significant fabric, relics, settings and views associated with the heritage significance of heritage items”*.

In our opinion, the proposal (and particularly the proposed northern podium) is entirely inconsistent with the aims of the SREP (clause 2(1)), the principles of the SREP specifically applicable to the Foreshore and Waterways Area (clause 2(2)) and relevant planning principles in clauses 13,14 and 15 and specific requirements of the SREP relating to foreshore and waterway scenic qualities (clause 25), maintenance, enhancement and protection of views (clause 26) and heritage Conservation (clauses 53 and 59).

#### Not for the Public Good

As stated by Mr Ingham in his February 2017 submission (paragraph 31):

*“[T]he proposed shopping centre and residential tower is not being put forward for the “public good”. It is a private development being put forward to enhance the*

*coffers of the proponent. The residential tower, in particular, must be seen as creating no public benefit whatsoever. It is simply there for profit.”*

The revised concept proposal seeks approval for a maximum Gross Floor Area (GFA) of 87,000 sqm, of which 49,000sqm is to be mixed uses (retail/commercial). The allocation between these uses is not specified and the indicative figures provided on page 43 appear incorrect. We have assumed that the indicative figures intend to state 15,000 sqm retail and 34,000 sqm commercial is proposed. The existing GFA of the Harbourside building is approximately 20,000 sqm of retail space. If our assumption regarding the indicative allocation is correct, the proposal will add 38,000 sqm of residential GFA and 34,000 sqm of commercial GFA and will reduce the available retail space in the complex (from 20,000sqm to 15,000sqm).

The retail/commercial component represents more than a **doubling** of the existing (approximately 20,000 sqm) retail GFA. This large increase in the GFA and the exaggerated floor to ceiling heights of these proposed retail/commercial spaces are what drive the excessive height of the northern podium.

We note the comments of Mr Ingham at paragraphs 71-73 of his February 2017 submission regarding the original proposal:

*“The Concept Proposal embraces 52,000sqm of retail and associated space. This more than doubles the amount of retail space on the site and the extent of this floor space is not justified, other than by a wish list of retail types. ... Darling Harbour is a tourist precinct and retail uses within the area should reflect this intention and promote tourism. Under no circumstances should the development include retail goods which are provided more fully in the Sydney CBD such as those suggested above. ... The Concept Proposal also includes a provision which significantly increases the floor to ceiling heights of the retail outlets. ... This significantly increases the bulk of the podium building.”*

Similarly, there is no “public good” justification provided for the proposed 49,000sqm of retail/commercial space: there is no basis on which commercial office space could be seen to enhance or contribute to the public domain or enhance views for the public (as required by the SREP). Additionally, the proposal will reduce the area of retail space available to the public.

We note that the permitted land use under the existing 99 year lease for the site (entered into in 1988) provides context and clarification of the “public good” and appropriate uses of the site consistent with its planning controls. Under clause 6.1 of the lease the permitted use is limited to “*a harbourside festival market (which shall include) a retail, restaurant, tavern, entertainment and refreshment complex ...*”

In essence the proposal is for a significant change of use from a public retail restaurant/entertainment space (20,000sqm) to a large scale private residential/commercial space (72,000sqm) with a smaller retail/restaurant component (15,000sqm). In these circumstances, the SREP requires careful scrutiny of the impacts of the proposal to both identify and give real weight to the public good. The northern podium has an excessive commercial component, an excessive GFA and, due to its height, will generate adverse impacts on heritage, public views and private views. These impacts are not justified nor do they serve the public good.

### Adverse impacts on the Public Domain and Public Domain Views

Darling Harbour is recognised and promoted nationally and internationally as a tourism destination and a cultural asset of national importance. The SREP identifies and requires protection and enhancement of its unique visual, environmental and heritage values.

The SREP specifically recognises the importance of public domain views. Clause 26 provides:

*“(a) development should maintain, protect and enhance views (including night views) to and from Sydney Harbour,*

*(b) development should minimise any adverse impacts on views and vistas to and from public places, landmarks and heritage items,*

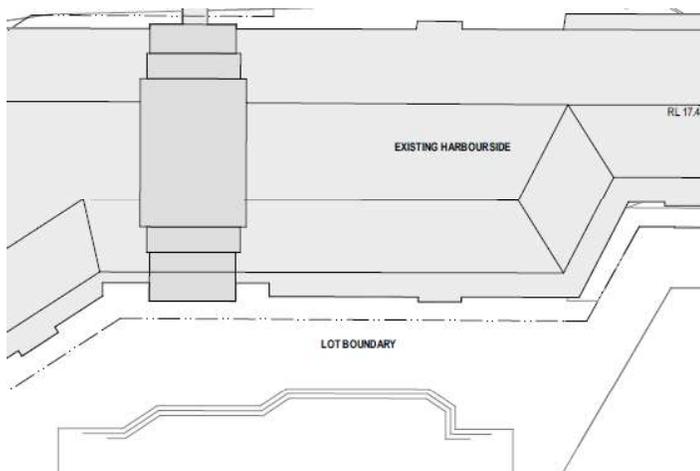
*(c) the cumulative impact of development on views should be minimised.*

The impact of the proposal on these public domain views is still inadequately assessed. For example, in relation to the relationship between the proposal and Pymont Bridge:

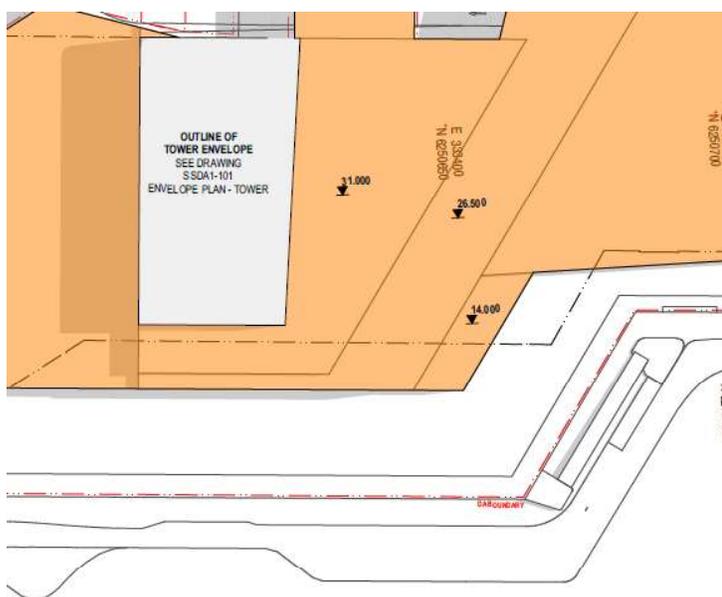
- As identified by Dr Lamb in his assessment of the initial proposal: *“Location 6 is a view from Cockle Bay East to the subject site, however the field of view does not include the western side of Pymont Bridge and its close relationship to the proposed building envelope. In our opinion this is a highly sensitive public view and requires further investigation and the application of the Rose Bay principles to the assessment of view loss.”* No further assessment of this important view is provided in the latest proposal.
- View 14 (Forecourt Area adjacent to Pymont Bridge) suggests that there will be a significant public domain view impact on water views from Pymont Bridge (west) approach. The importance of this view and the lack of assessment of it was also identified by Dr Lamb and is still not assessed in this application.
- The discussion at section 4.4 of the VVIA suggests that the podium element is of low to medium scale. The northern podium is the height of a 7+ storey residential building, over twice the height of Pymont Bridge.

The proposal also includes an appropriation of existing public land east of the current structure that is not assessed in the EIS. The proposed building envelope will encroach approximately 10m into Crown land not subject to the Harbourside lease and the concept plan seeks approval for the placement of retail terraces involving planters, roof canopies, decking, tables and chairs on the waterfront promenade.

Set out below are extracts from the “Existing Site Plan” and the “Building Envelope Plan”. The black hashed line is the boundary of Lot 1. Lot 1 is relevantly land leased by the proponents under a 99 year lease. The existing Harbourside building sits within the boundary of Lot 1. The orange form in the second image is the proposed building envelope which sits at least 10m east of the Lot boundary closest to the proposed tower. We note the proposed DA boundary is marked in red.



*Existing Site*



*Proposed Envelope*

We assume from these images that not only will it be necessary for the permitted use of the site under the existing 99 year lease to be amended but also, and more importantly, for the State government to gift a strip of “core” public waterfront land to the proponent.

As stated by Mr Ingham in his 2017 submission, “Public space, and particularly the public pedestrian promenade, should not be encroached upon for any purpose associated with the development”<sup>7</sup>.

In addition to the appropriation of waterfront land for the retail/commercial structure, the proposal also seeks approval for “retail spill out” spaces (also identified as “retail deck with outdoor dining” approximately 5m wide, potentially with a shade canopy) on a number of locations on the public waterfront promenade<sup>8</sup>. Planters appears to be proposed to separate this space from the land available for the public to walk on. We note the comments of Mr Ingham in respect of this seemingly unchanged aspect of the proposal:

*“The public space adjacent to the Harbour should not be encroached upon for any private use. With an area of over 2 hectares there is no reason why additional land should be required. The removal of these activities is a matter of appropriate design. All of the activities appropriate for the Harbourside site can be located on the Harbourside land”<sup>9</sup>*

The public domain impacts of this proposal are generally assessed by the proponent relative to the original (unmeritorious) proposal. This proposal must be considered not in the context of whether it is better than a previous (abandoned and plainly unsupported) proposal but whether this proposal (in all its aspects) makes a positive contribution to the public domain.

Under this proposal there is:

- substantial overshadowing (and reduced solar amenity) of the public domain;
- a “taking” of public waterfront space requiring an extension of the lease of Crown land (and Ministerial approval);
- use of the public waterfront promenade for “retail spill out”;
- significant and largely unassessed impacts on public domain views; and
- a lack of assessment of the cumulative impact of the significant redeveloped (undertaken, in progress and approved) on public amenity in the area (see section 4 below).

The Proposal is inconsistent with the requirements of the SREP and applicable planning policies and principles with respect to the bulk and scale of the northern podium, the height and location of the tower, the overshadowing impacts, the view loss impacts, the adverse impact on the scenic qualities of the Harbour and the heritage impacts of the proposal both on Pyrmont bridge and its harbour setting.

#### **4. Cumulative Impacts not assessed**

The Darling Harbour area (including Cockle Bay Wharf and Darling Park) has recently been the subject of a substantial number of large scale developments both in construction, approved and completed. Due to the lack of a planning framework for the

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<sup>7</sup> Ingham Planning submission 2017 paragraph 90(h)

<sup>8</sup> See Public Domain report at pages 21 and 29.

<sup>9</sup> Ingham paragraph 89



area the development proposals do not form a cohesive and integrated whole. These developments have added and will add huge volumes of new (and presumably competing) hotel, commercial and retail spaces along with vehicular traffic. They have also added substantial residential apartment space which will also contribute to the load on existing (and constrained) public transport, traffic congestion and lack of parking infrastructure.

This application provides no serious assessment of cumulative impacts (as required by the SEARs) and the SREP. Specifically, the SREP requires:

- *decisions with respect to the development of land are to take account of the cumulative environmental impact of development within the catchment (13(c)),*
- *the cumulative impact of development on views should be minimised (26(c))*

Existing road, pedestrian pathways, public transport and parking infrastructure is unable to accommodate existing residents, visitors and tourists at times when the area is hosting major events. The traffic and parking impacts of potentially several thousand new residents and office works has not been properly assessed.

The concept application proposes the following car parking allowances:

- Residential: 306 spaces provided for the 357 apartments proposed (this new parking will be exclusive for the residential apartments); and
- Retail and Commercial: no new parking proposed even though the retail/commercial floor space is to increase from approximately 20,000 sqm to 49,000 sqm – *“Users of the shopping centre/commercial space are to be accommodated in the existing Novotel car park”*.

In relation to the commercial/retail parking arrangements proposed, our client advises that the existing Novotel parking is already over capacity as it also provides parking for the nearby Sofitel hotel (which was constructed without any car space provision). We note that residents of our client’s premises are required to pass through the Novotel parking area in order to access their own designated parking area and significant queuing and access delays are already an issue.

Our client, based on the personal knowledge of its residents, is concerned that the car parking allowance for the residential components is also inadequate and will place pressure on the existing (and inadequate infrastructure). We note that the visitor car parking allowance appears to be close to 30 spaces short of the visitor parking allowance recommended for metropolitan (CBD) areas by the applicable “Guide to traffic Generating Development (2002)”. We acknowledge that the residential parking allowance has been calculated using the specifications category B land under the Sydney Local Environmental Plan 2012. However, this LEP does not apply to the site and more importantly, it is plainly inadequate in the view of existing local apartment residents in the area.

It is also unclear whether the cumulative urban heat impacts of the recently constructed and/or approved glass tower blocks (for example, the Sofitel, the Ribbon development under construction and the approved Cockle Bay tower) have been considered or will be considered in respect of any development planned within the proposed concept envelope.

The lack of cumulative impact assessment is especially critical because there is no overarching master plan for the area which allows for its orderly development in accordance with specific, consistent and community accepted guidelines.

To date the only non-proponent driven urban design planning undertaken for the area was that undertaken by the Sydney Harbour Foreshore Authority. In 2016 a draft *Darling Harbour Urban Form Strategy 2016*<sup>10</sup> was released which provided specific guidelines for the Harbourside site and also mandated only low rise development at the waterfront to accentuate the valley form and maximise “*the sense of openness and sunlight access to the central open spaces on the valley floor*”. The evolution and accepted urban planning foundations of the approach in the draft strategy is detailed in Mr Ingham’s February 2017 submission.

We note that work is apparently substantially progressed on a Place Strategy (and master plan) specific for the Pyrmont Precinct (including the site) and that one of the 10 core directions for that Strategy is a commitment to a unified planning framework for the area. It is necessary and appropriate that development in this area proceed in an orderly fashion in accordance with a precinct plan supported by community.

The inappropriateness of assuming that a proponent could or should drive the master plan for a development of this scale (on Crown land) and in such a prominent and important location is evident in the attempts within the EIS to justify the scale and height of the podium and residential tower. It is hard to conceive that an appropriately developed Pyrmont Precinct Master Plan would identify the following features of a development in this area as being necessary or desirable from an urban design perspective:

- The proposal “*will continue the transformation occurring on the western side of Darling Harbour by bringing significant new building height close to the water’s edge*”;
- The proposal will provide “*a visual focal /reference point in the otherwise existing low and medium scale backdrop of the western side of Darling Harbour*”;
- The proposal will reflect “*a similar premise at Barangaroo in terms of taller towers increasing in height northwards*”. We note that to the extent there is an urban design imperative regarding tower height in this area, it would support a gradual stepping of height moving westward from the waterfront.

In circumstances where there are not yet detailed planning controls in place but the government is in the process of preparing a masterplan for the area, assessment of this development proposal is obviously premature.

A proposal of this size and scale at such a strategically important site which is likely to create a precedent for other developments in the area can only be fairly assessed by reference to a clear planning framework developed and implemented in response to community expectations.

In the absence of that framework, as here, not only has the community been deprived of a basic right to be heard, the consent authority is itself hamstrung as a decision maker.

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<sup>10</sup> A copy of the draft Darling Harbour Urban Form Strategy April 2016 was annexed to our February 2017 submission in response to the original proposal



The public interest cannot therefore be served conformably with the very objects of the planning legislation.

The approval of a “concept plan” like the present scheme will have long term adverse consequences for the precinct and will leave the State and its agencies open to claims of neglect.

**5. The consent authority has inadequate information on which to make a decision and information provided by the applicant is inconsistent and has the capacity to mislead**

In important respects, the information provided in the amended proposal is still is incomplete, superficial or inaccurate and fails to address the clear requirements of the Department’s SEARs.

Even in the limited time available to it, our client and its expert have identified numerous inadequacies in the material provided and many of our client’s planning expert’s core submissions made in 2017 remain valid.

In our submission, once proper planning controls are in place, the proponent should be obliged to prepare and publicly display a scale model of the proposed building envelope as located within the Darling Harbour area to allow our client’s experts and the wider community to properly assess the impacts of the proposal.

The deficiencies in the private view impact assessment are set out in section 2 above and in Dr Lamb’s report at Attachment A.

We have already detailed above (in section 4) the inconsistencies in the various depictions of the relationship between the northern podium and Pyrmont Bridge. Some of these images are reproduced in Attachment B. Dr Lamb (in Attachment A) has identified further issues with the distortion of images provided by Virtual Ideas and used in the VVIA and other reports and their lack of relevance and credibility for the assessment of private view impacts and/or impacts on public domain views. We further note, for example, that figures 22 and 23 in the Urbis report provide different impressions of the proposed use of the rooftop of the northern podium (which would directly affect the view impact for our client).

It is extremely difficult to identify, assess and understand predicted public domain impacts of the concept proposal when there are such differences between the building envelope the subject of the application and the “artist’s impressions” / “indicative plans” provided. Additionally, the extensive use of computer generated images from an artificial drone perspective makes it hard for anyone (including the consent authority) to understand public domain impacts. Furthermore, the reliance on January 2016 images of public views has the potential to mislead. For example, View 8 includes a dockside pavilion (temporary structure) creating the mistaken impression that the proposal enhances water views from this location.

We have set out in **Attachment C** two contrasting images of the proposal. Figure 31 from the Urbis Report providing a drone public domain image and an equivalent photograph taken by our client from Pyrmont Bridge. We note Figure 31 appears to significantly over- represent the public domain area east of the development, and suggests an articulation of the setback of the tower podium at the ground floor and a separation of podium elements not provided in the building envelope plans and provides

an inaccurate depiction of the existing (or even the proposed) harbourside floating walkway. For completeness, an image of the approved pontoon walkway plans is also provided in Attachment C.

The Urbis report contains numerous statements regarding the benefit of the significantly “widened” waterfront promenade. While it is true that the proposed 20m wide promenade is wider than proposed in the original proposal it is actually narrower than the current (approximately 30m wide) promenade east of the Harbourside building and the proposed building envelope extends outside the land the subject of the Harbourside lease.

It is also not evident without close examination of the Public Domain report that up to 5m of this 20m width is proposed to be occupied by outdoor restaurant/bar seating bordered by plantings and a canopy roof.

## 6. Conclusion

One Darling Harbour objects to the proposal on the following grounds:

1. The Northern Podium is too high and has unreasonable and unjustified impacts on views from One Darling Harbour.
2. The height and proximity of the northern podium in the concept envelope to the State heritage listed Pyrmont Bridge detracts from its heritage values.
3. The proposal (and specifically the northern podium) is inconsistent with the aims and principles expressed in the SREP.
4. The cumulative impacts of a building of the scale proposed in the concept plan application (particularly in relation to traffic) and public domain views remain unassessed.
5. The information provided is inadequate and has the potential to mislead.
6. Assessment of the Concept Proposal is premature pending development of the Master Plan for the Pyrmont Precinct.

In our submission, no consent authority acting lawfully could grant any form of approval for the northern podium element of the proposed concept because it is so manifestly inappropriate for this site.

Yours faithfully

**Beatty Legal**



Andrew Beatty  
Director  
Beatty Legal Pty Limited  
ABN 44 273 924 764

**ATTACHMENT A\_REPORT OF RICHARD LAMB & ASSOCIATES**

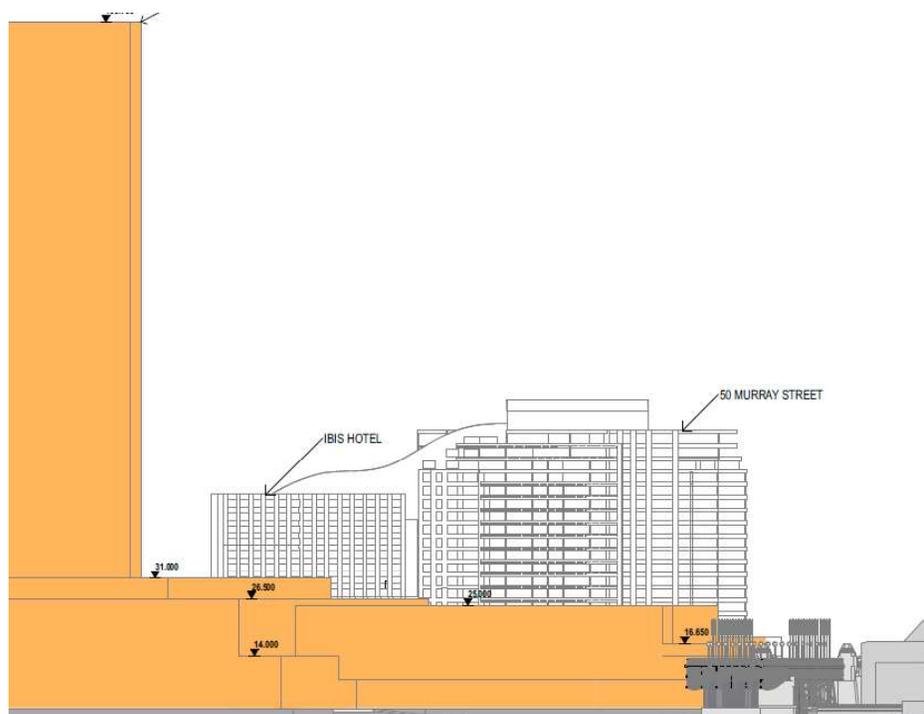
*[Report dated 8 May 2020 and comprising 15 pages is attached on the following page]*



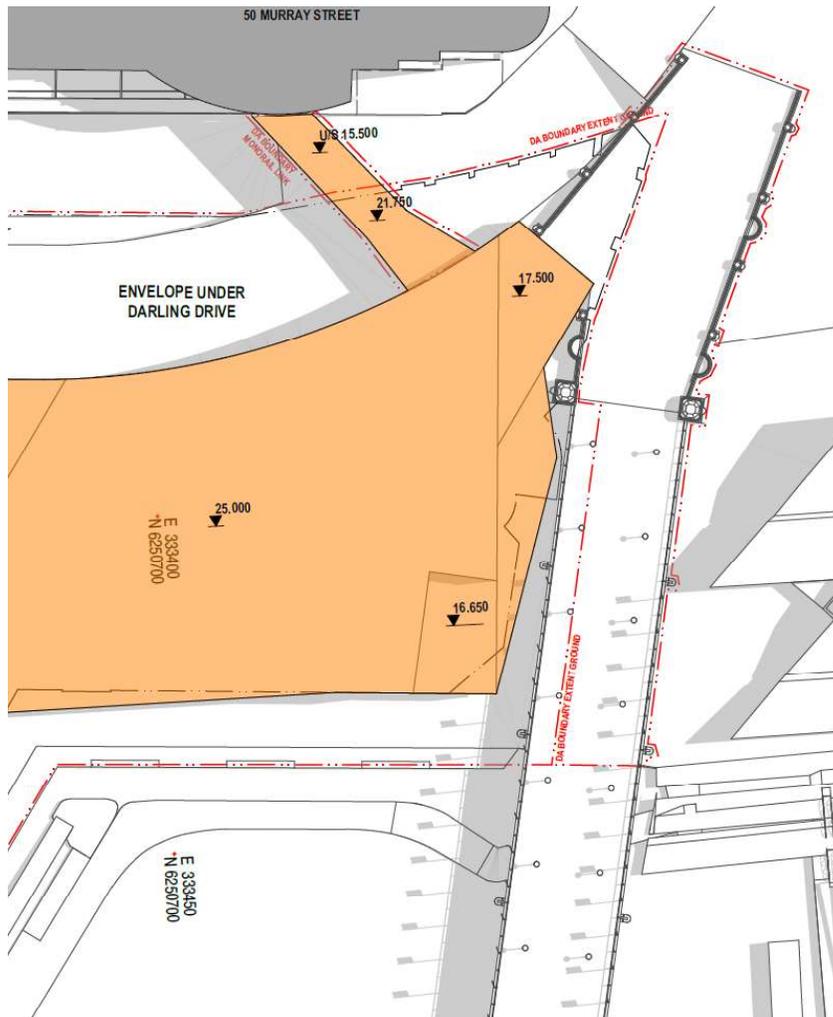
**ATTACHMENT B – COMPARISON OF IMAGES: INTERFACE WITH PYRMONT BRIDGE**



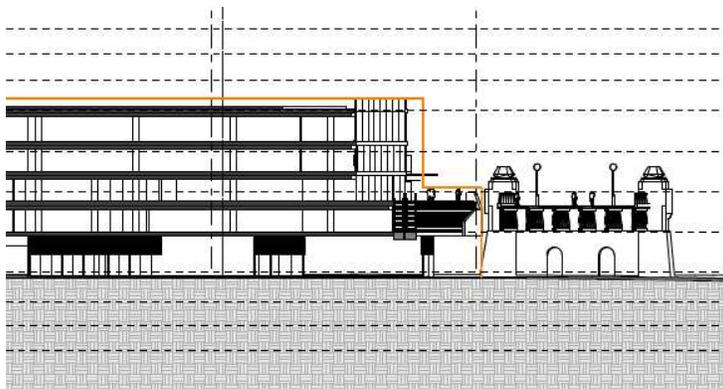
“Figure 2.1: Amended proposal northern setback and interface between retail podium envelope and Pyrmont Bridge. ... N.B. indicative design only. Future design development in stage 2 DA (Source: Virtual Ideas, 2020)”



Extract from Plans: “Envelope East Elevation”



*Extract from Plans : "Envelope Plan Podium"*



*Extract from "Indicative Only Section (23.1)"*



*Image taken from Page 38 of the Public Domain Report*

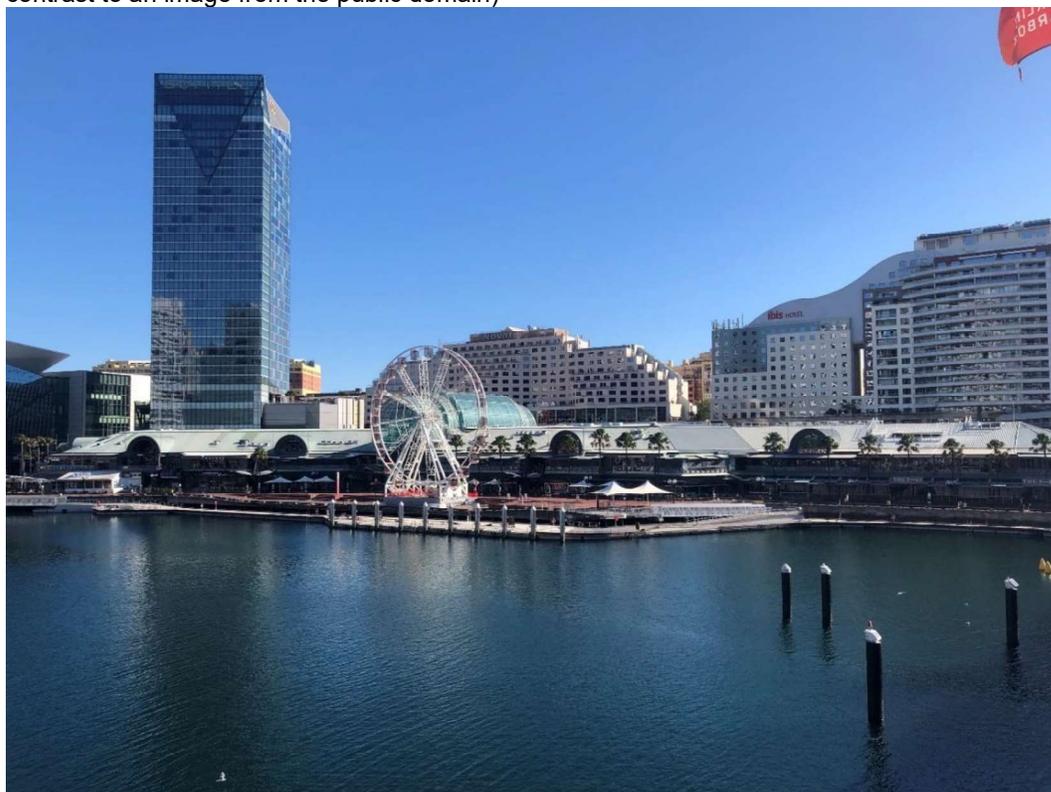
(Note the depiction of the stair/conveyer element sitting below Pyrmont Bridge. In the building envelope proposed this area will have an envelope at least 4m above the bridge. Additionally, note the height at which the commercial office block will sit above the bridge.)

## ATTACHMENT C\_ PUBLIC DOMAIN VIEWS



*Figure 31 (Urbis Report)*

(Note the depicted depth of the proposed promenade and the configuration of the pontoon promenade. Also note the different relative sense of height and bulk provided by an aerial image in contrast to an image from the public domain)



*Photograph of existing view taken by client on 23 April 2020*

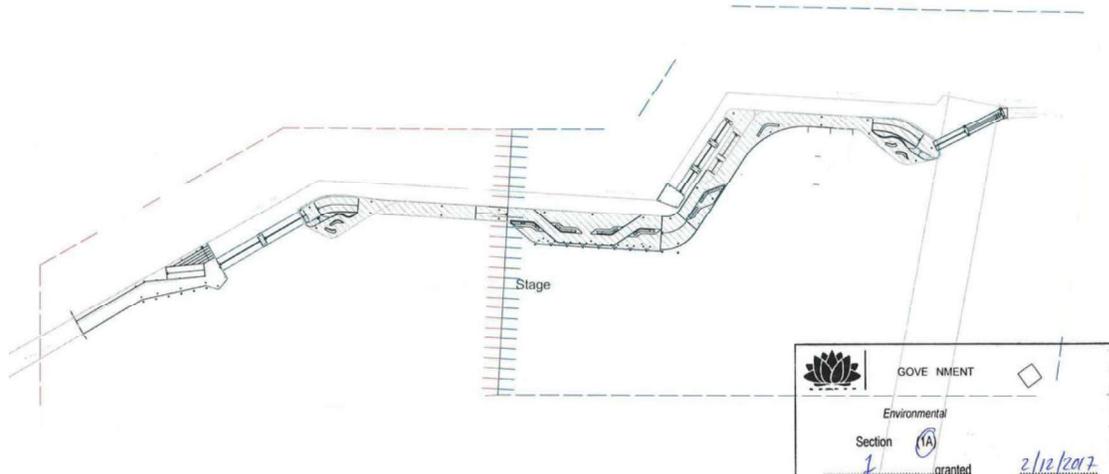


Image taken from approved pontoon plans (SSD 6611)