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TRANSCRIPT OF PROCEEDINGS

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INDEPENDENT PLANNING COMMISSION

**HARBOURSIDE SHOPPING CENTRE
REDEVELOPMENT (SSD 7874)**

MEETING WITH COUNCIL

No. P-12346-14

IPC PANEL:

DIANE LEESON (Chair)

WENDY LEWIN

OFFICE OF THE IPC:

LINDSAY BLECHER

KATE MOORE

KANE WINWOOD

SAMMY HAMILTON

CITY OF SYDNEY COUNCIL:

COUNCILLOR PROFESSOR PHILIP THALIS

ANDREW REES

REINAH URQUEZA

SYDNEY

3.09 PM, TUESDAY, 20 APRIL 2021

MS LEESON: Good afternoon and welcome. Before we begin, I would like to acknowledge the traditional owners of the land on which we meet, the Gadigal People of the Eora Nation, today and pay my respects to their Elders past, present and emerging.

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Welcome to the meeting today between the IPC and the City of Sydney Council to discuss the Harbourside Shopping Centre Redevelopment Project, SSD7874. The Harbourside Shopping Centre is located towards the north-western corner of the Darling Harbour precinct, on the south-western foreshore of Darling Harbour, Cockle Bay. Consent is sought for a concept proposal for a residential and commercial building envelope and stage 1 early works for the demolition of the existing Harbourside Shopping Centre buildings and structures.

15 My name is Dianne Leeson. I'm the chair of this Commission panel. I'm joined by my fellow Commissioner, Wendy Lewin. We're also joined by Lindsay Blecher and Kate Moore from the Office of the Independent Planning Commission and Kane Winwood and Sammy Hamilton, consultants assisting the Commission. In the interests of openness and transparency and to ensure full capture of information, today's meeting is being recorded and a complete transcript will be produced and made available on the Commission's website.

25 This meeting is one part of the Commission's consideration on this matter and will form one of several sources of information upon which the Commission will base its determination. It is important for Commissioners to ask questions of attendees and to clarify issues whenever it is considered appropriate. If you are asked a question and not in a position to answer, please feel free to take the question on notice and provide any additional information in writing, which we will then put up on our website. I request that all members here today introduce themselves before speaking for the first time and for all members to ensure they do not speak over the top of each other to ensure accuracy of the transcript. We will now begin.

30 So thank you for coming along this afternoon. We did send out an agenda which was a reasonably standard agenda that we've been through with the Department and the applicant today but we would very much welcome Council's consideration. We have your submission. Thank you. We very much welcome Council's consideration of the Department's assessment report and recommended conditions and, in particular, drawing out any issues of concern to the Department and any recommended changes to the draft conditions should we determine the proposal in a positive manner. So can I ask the Council to make some remarks?

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CR THALIS: Yes. Could I, perhaps, introduce it because I might have to leave early and Andrew has a lot more detail than I propose to go through. So if I could just introduce the city's position and then there's a very detailed series of submissions, including to amended plans.

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MS LEESON: Philip, just let me check and see if the recording can hear? You can hear? Okay. Thank you.

MS LEWIN: So this is Councillor Philip Thalís.

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CR THALIS: Yes. So I'm a Councillor of the City of Sydney and an architect and urban designer. You've just heard from Richard Francis-Jones. Richard Francis-Jones and I, our first job on graduating in 1985 was on Darling Harbour, what was then called The New Darling Harbour. I think I'm one of the few people in the state who saw the exhibition of the Darling Harbour Plan which was for two weeks over Christmas/New Year in the foyer of Parliament House, hence why not many people will have seen it. I did read the New Darling Harbour Act at the time, as it was called. It was then amended to the Darling Harbour Act. And I guess, like Richard and others, we didn't last very long at the Darling Harbour Authority because we had significant concerns about what it was as an urban project.

In retrospect, looking back at Darling Harbour over the intervening decades, what was very clear was that it was a public project making public facilities for the benefit of Sydneysiders and it was actually made in a spirit of publicness and so there were a number of major public buildings – the Aquarium, obviously, particularly the Maritime Museum, the Exhibition buildings, the Chinese Gardens and the like, and then that was complemented by some commercial buildings, principally the Harbourside Markets. Actually, with Richard, I also went to Baltimore to see what Darling Harbour was copied on, which is the Baltimore Foreshore as delivered partly by the Rouse Corporation, but it also had an aquarium and the like. It was a type of urban project that was discussed a lot at that period, as has been seen as a model.

What Darling Harbour never had was a clear conception of its public space and its relationship to the city, either for pedestrians, for cycles, for car leave and for public transport, and so you will recall that it had the ill-fated monorail, which the only good thing to have come out of the monorail is in fact the retention, ironically, of Pyrmont Bridge, which is our last of the monorail, but that was the only reason the Pyrmont Bridge was actually retained was a substructure to the monorail and to allow its visual intrusion – what would have otherwise been visual intrusion across the bay.

I look more kindly now back on the Darling Harbour of the bicentenary when I see what has happened to it over the intervening three decades and the phenomenal waste of public resources, the demolition – needless demolition of the Convention Centre and Exhibition building, the commercialisation of this precinct due to the way that the changes have been procured, but not only the Exhibition Centre and right down to Darling Square, the demolition of the Entertainment Centre in substitution for actually a much smaller public venue, but also the private sites, which, of course, are leasehold, which are now being redeveloped on both sides of the bay and that they feature massive commercial bases – retail bases, whereas the existing buildings actually look fairly diminutive and less harmful to, I think, the whole urban scene than what is proposed on both sides of the bay.

And, of course, on both sides of the bay, the massive commercial bases are topped with sort of a green fudge on top of questionable public access and utility, and then massive towers which will crowd what is actually a very small foreshore basin and, as the Council planners will show, shade also the very limited public domain which
5 is only in the order of 20 metres when, really, in other parts of the harbour, 30 metres has been seen as a reasonable minimum. And, also, it's a big vague from the plans because the building actually sets forward from the existing building the extent of commercial occupation of that foreshore, and also the loss of a sight line along the foreshore with the intrusion of this central part.

10 I do understand the plans have been pulled back to give a better relationship to Pyrmont Bridge, which is welcome, but I think that, overall, this presents as a massive monolithic building. I mentioned overshadowing. I think the other thing which I didn't agree with at the time of the New Darling Harbour Act was the
15 moratorium on residential. I now, having worked with the City planners carefully, I now much better understand, like at Sydney Olympic Park in the key precinct, this is one of the parts in Sydney where you really want to be able to hold the major events 24 hour occupation of the space and the like, and what we find painfully on the City of Sydney is that the residential complaints are growing where there seem to be
20 certainly very vocal people who think that they can have all the rights of living in the city, including the suburban right to quietude at 9 o'clock.

So we are faced with that sort of challenge, I'm sure the staff, on a daily basis. As Councillors, we see it almost every meeting. We see that tension. So I think the
25 introduction of residential, the gaming of the numbers so that it's, what, 48 per cent residential and 52 per cent commercial – we will play with numbers when we do applications. We're used to – this is the area in which we work but, nonetheless, you can't help thinking that the base is a Trojan Horse for a residential – another
30 residential tower which will have, you know, questionable occupancy, if you look at the buildings, say, along East Circular Quay, you look at the number of lights on at night, actually a very low resident population. It won't add vitality. It will add complaint. So it's not going to help activate the area either.

And, of course, there's a question of affordability and Council, in their submission –
35 affordable housing is one of the issues that comes up. This housing will not be affordable, as with all the other towers around the foreshore. That's probably to give a different, more personal perspective to the more rational and informed and detailed submission that you will have from the city planners, but since I won't be able to stay, I am happy to answer questions. I will have to leave at about 3.30.

40 MS LEESON: That's all right. That's fine, Philip. If you've got any specific questions for Philip now, we can ask them or please stay as long as you feel able to.

CR THALIS: I will.

45 MS LEESON: And, perhaps, as we hear from Andrew and Reinah, we can ask questions and, if you feel a need or a wish to step in, do. Please do.

CR THALIS: I may, as Andrew painfully knows.

MS LEWIN: So, Philip, we have addressed the issue that we have identified in going through all the documents where the lot boundary is defined on the drawings
5 in the hatched, or broken line and the DA boundary is all of the site to the foreshore and to the back of the street.

CR THALIS: Okay.

10 MS LEWIN: And there are encroachments proposed in the built form of the podium and the lower level of the tower, which is part of the transition of the podium to the tower, encroachments over the lot boundary. Now, the site appears to be an amalgamation of many lots. We have asked the Department and the applicant today to clarify what the site boundary is that we're being asked to work with for this
15 application and we're aware of the encroachments that you have referred into the public – the current public space. We are asking for clarification. There is another issue that we would raise with you all. Before you go, you're more than likely aware that, perhaps not so much detail but the intent on exhibition of the Design and Place SEPP.

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CR THALIS: Yes. I'm very aware of that.

MS LEWIN: So it would be good to have – for us to have your views on whether you consider – whether Council considers it to be a relevant document for us to be
25 mindful of, perhaps, for this development.

CR THALIS: Could I maybe – so I have to declare an interest in that our practice prepared a background paper to the Government Architect on Design and Place and the paper was on – focused on public space and the need to actually – as the city
30 becomes denser, there's a need for more public space, and one of the difficulties is, under the existing planning system, that public space is basically absent from the Planning Act – EP&A Act – and so there's – as we know with the LEP, there's almost no way of creating new public space even though the City has actually been very skilled in the sense that you can't rely on the Act, the City has created other
35 mechanisms. And so, unfortunately, I think Design and Place definitely talks about public space and so some of the things from our work is the pedestrian connectivity. I worry that this was really a commercial arcade and it's really to funnel people into the shopping centre rather than being of an outright independent public utility. I think this one is a little bit more unclear to me but not quite across the detail. So I
40 think the need for more public space, that is in the paper that's out – the EIE that is out on Design and Place definitely.

I think the other thing is obviously just the type of events. There have been – just by way of background, there was a very unfortunate drowning here a number of years
45 ago. There was an inquest in that drowning and one of the proposals has been to fence the water all the way around, and obviously one of the issues – the safety response, but just the sheer dimension of the public space is a key thing in major

events, that it needs to be, I would have thought, one of the – the correct interpretation to that case is that we actually need more public space, not less than what we have currently, particularly with this public intensification. Of course, this is also an intensification. This is also an intensification.

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MS LEWIN: Okay. Thank you. The proposed – the scope of the document on exhibition deals with two areas, one is the urban design matters that you have certainly covered, the other relates to residential development and referencing residential towers and floor plates, solar access, separation of buildings and so on. Has that been – has that formed part of your discussions at all, or not?

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MR REES: With respect to this development?

MS LEWIN: With respect to this.

15

MR REES: No.

MS LEWIN: Given that it's in the ether.

20

MR REES: Yes. Sure.

CR THALIS: So the draft EIE does have a limitation of 700 square metres of floor space per level. I'm unaware of the footprint.

25

MS LEESON: Above - - -

MS LEWIN: Above nine - - -

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MS LEESON: Residential buildings above nine storeys. They're proposing a 700 square metre floor plate.

CR THALIS: Yes.

MS LEESON: Maximum.

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CR THALIS: We advocated for a smaller floor plate.

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MS LEWIN: Limiting – putting a maximum number of units on a floor and increasing the number of solar hours for apartments and the deletion of single orientation apartments for cross-ventilation and so on. So these are the things that now will be – because it's on exhibition as an intent, we would be interested to understand - - -

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MR REES: Well, we would welcome that, Wendy.

MS LEWIN: - - - whether Council has considered any of these matters.

MR REES: Not formally, Wendy, for this particular proposal. I guess when we made comment upon this – just for the purpose of the recording, this is Andrew Rees
- - -

5 MS LEWIN: Thank you.

MR REES: - - - Area Planning Manager – obviously the timing didn't line up when we made comment on all of these applications, but it's all, yes, a work in progress, but we hear what you're talking about, the improvements which would come out of
10 that. Having said that, I think what we will probably outline in a minute is that we're just opposed to the residential. That's probably our biggest point here. So we're not so much about the actual amenity of the apartments or their design and how they would respond to a draft SEPP such as that. It's just the actual nature of that, that sensitivity of that use in this location.

15 MS LEWIN: I think what we're really considering is the envelope – consequential result on form envelope, distance and so on.

MS LEESON: So should we determine the project to go ahead, then our interest is
20 in appropriate building envelope for the tower. We've, as Wendy said, had some reference point to the Pyrmont Place Planning Strategy which is calling – that's calling up some issues for us, but also the proposed Design and Place SEPP. So it is a timing issue. There is a floor plate proposed at the moment. There's a building envelope proposed at the moment and an ability to work to sort of 80 per cent within
25 that. That still gives quite a large floor plate, certainly significantly less than when it was proposed as a commercial tower but, still, nonetheless quite a large tower.

MS LEWIN: And a floor space ratio of roughly 4.2 to 1.

30 MS LEESON: Across the precinct.

MS LEWIN: Where it's currently one to one.

MS LEESON: So perhaps we can ask Council to outline your concerns to us and we
35 can pick up any other questions along the way.

MS LEWIN: Yes.

MR REES: Sure. Certainly. Good afternoon. My name is Andrew Rees and I'm
40 employed at the City of Sydney as an area planning manager. I'm presently involved in the review of state-significant referrals from the Department of Planning, Industry and Environment as well as coordinate the assessment of DAs within major urban renewal precincts throughout the local government area of the City of Sydney. I've been involved in the review of the Stage 1 SSD, including several meetings with the
45 proponent Mirvac.

The City of Sydney has a substantial and good working relationship with Mirvac, including the recently completed redevelopment of Harold Park in Glebe, the new complete redevelopment of South Eveleigh and the ongoing assessment of the over-station development associated with the Waterloo Metro station, to name a few. Our
5 experience with this development firm is generally positive and there is no question as to their commitment and ability to produce quality development across a broad range of residential and non-residential typologies. As you would have noted, the City's formal submissions to the Department raised objection to the proposal. Our
10 primary concern is that of the nature of the land use, namely, the residential tower component in this specific location and its detrimental impact to the public domain by way of overshadowing, and building mass and sense of enclosure.

In regards to land use, the city strongly disagrees with the proponent's assertion that the residential tower would not prejudice the 24-hour operation of the precinct as it is
15 located a significant distance aboveground. Tourism and entertainment land uses, in our experience, generate substantial noise and they're at odds with the acoustic privacy requirements of a residential development. The site is also located within close proximity to the Western Distributor. The existing noise environment is not
20 compatible for residential use and would diminish the enjoyment of the foreshore and Darling Harbour precinct as a public asset for leisure, recreation, entertainment, culture, education and commerce.

Francesca Morrison's Sydney: A Recent Guide to Architecture provides a salutary
25 note on the inception of Darling Harbour.

Early in the 1980s –

she states –

30 *the energetic American landscape architect Lawrence Halprin conducted a weekend workshop in an old wool store on this site. He persuaded a large group of eminent architects to walk through it blindfolded to get its feel and later to dance or act out their impressions and ideas for use.*

35 Perhaps this theatrical approach was prophetic. The following year, the Labor-run City Council's hopes for housing and parkland on this site were dashed when the State Premier announced that Darling Harbour would be developed as a people's place, a huge 24-hour open air pedestrianised entertainment area for residents of
40 Sydney and its increasing numbers of tourists.

According to Place Management New South Wales' website, Darling Harbour is uniquely positioned around Cockle Bay and on the western interface of the Sydney
45 CBD. It is a destination in its own right. It is well-known as a place to celebrate major events, such as New Year's Eve and Sydney's winter festival, Vivid. Darling Harbour also hosts unique high-quality events, including the Sydney International Boat Show and the Dragon Boat Festival as part of Chinese New Year as well as many cultural and community festivals throughout the year. Darling Harbour is

well-connected to Sydney's public transport network and attracts more than 26 million pedestrian movements per year. It provides significant public space, including a broad waterfront promenade, Boulevard and Tumbalong Park. Its success is as much about its public spaces and events calendar as the calibre of facilities and services available to visitors. Darling Harbour is popular with families and home to Sydney's best attractions, including SEA LIFE, Sydney Aquarium and WILD LIFE.

We have read the Department's assessment report for the proposal and note that it relies heavily on the now-adopted Pymont Peninsula Place Strategy dated December 2020. The site falls within the Tumbalong Park sub-precinct, a place of attraction and interaction. The primary priority for this precinct is to create space for jobs in tourism and entertainment, and supporting services such as shops, restaurants, cafés and bars. We acknowledge that the Tumbalong Park place priorities does site the provision of residential development, including affordable housing. However, this is only where it can be clearly demonstrated that such a use does not compromise the attractiveness of Tumbalong Park for tourism, visitor and 24-hour economy and entertainment uses.

At section 6.2.6 of the Department's report on page 32, they assert the residential use would be confined to the tower and is located 24 metres above and set back 14 metres from the podium, providing physical separation from noise-generating sources within the waterfront public domain. This statement, in our opinion, is not backed up by any technical advice from a qualified acoustician. The only supporting documentation on acoustics is the Stage 1 DA acoustic report prepared by Renzo Tonin & Associates dated 14 November 2016. All this nine-page report does is simply outline the general approach for acoustic assessment of the Stage 2 DA. The report does not provide any actual noise measurements, including the noise generated by events such as Vivid and fireworks displays, etcetera. It certainly provides no specific discussion on the effect of locating the residential apartments above and away from the promenade below.

Accordingly, the Department's assertion on the location of the tower being an effective way of ameliorating noise intrusion is baseless. It's also worth noting that the Renzo Tonin report notes an alternative noise criteria to apply inside residential premises with windows and doors closed. In this regard, fixed glazing for apartments would negate natural crossflow ventilation for the apartments and contravene objective 4B-1 of the Apartment Design Guide associated with SEPP 65 which states that all habitable rooms are naturally ventilated. Keeping the windows and doors shut is hardly considered to demonstrate the high level of residential amenity as prescribed under the Department's recommended condition C17, which states:

Future development applications relating to residential use shall demonstrate a high level of residential amenity in accordance with the requirements of SEPP 65 and the Residential Apartment Development Guide.

It is common sense that, before agreeing to a sensitive type of land use such as residential in a well-recognised entertainment precinct, that a detailed and thorough noise and vibration assessment be done prior to determination of a stage 1 DA, not deferring it to a stage 2 DA. However, this is exactly what the Department has
5 recommended by way of condition C19. To emphasise the real tension that exists between sensitive residential land use in areas that are predominantly non-residential, I think it's important to share with you some of the real complaints that we receive using the Bennelong Apartments at Number 1 Macquarie Street in East Circular Quay as a case study, colloquially referred to as "The Toaster".

10 This is just a brief snapshot of some of the recorded complaints received and, to protect the privacy of the residents, I will omit their personal details. So I won't give you the full reference number, but this was a complaint on 30 May 2017:

15 *Noise complaint from Vivid speakers located outside Museum of Contemporary Art playing loud music from 6 to 11 pm for the next 21 days. Complainant would like the noise to be turned down. Advised that they would start a petition if the organiser did not cooperate. Advised that the Sydney Harbour Foreshore Rangers attended the complaint and took noise readings at the museum and*
20 *advised the music level was 84 decibels.*

Just to put this in context, major arterial roads such as Parramatta Road have an average noise level of 74 decibels, that's 10 decibels louder. Another complaint on
25 25 May 2017:

25 *Buskers are playing right out in front of the residential apartments at 1 Macquarie Street every day causing a nuisance.*

30 On 1 May 2017:

30 *Caller advised that there is very loud music coming from the Cruise Bar Overseas Passenger Terminal.*

35 On 19 June 2019:

35 *I would like to make a formal complaint about the new outdoor nightclub bar that has opened up on the rooftop across the road from my unit. The noise is unbearable and so loud. On Friday night they had a band up there and it was so loud that even we had to call the police but nothing was done about it until*
40 *11.30 pm. Then again on Sunday the music started in the afternoon and didn't stop till 10 pm.*

A complaint on 6 March 2019:

45 *Caller advised that there is a live band at the museum nearby her home. This is an open deck affair and is so loud they can hear it over their TV. She demands a ranger call her and do something for them immediately.*

It is evident from these real-life complaints that noise sources are not just confined to the immediate area of the apartment block but from the entire catchment of Circular Quay. This would be also more than likely here at Cockle Bay as the surrounding buildings form an amphitheatre of solid glass and concrete capturing and
5 reverberating the sound. Unlike Circular Quay with ferries occupying the water, the water of Cockle Bay is filled with noise-generating activities, such as outdoor cinema, light shows choreographed with amplified music, boat shows with bump-in and bump-out activities extending well into the early hours of the morning to avoid disruption to crowds. The DA consent for Vivid, for example, allows bump-in
10 activities from 6 am to midnight 21 days prior to the event and 12 days post the event. So it's not just confined to the month of May.

CR THALIS: I will have to leave at this point.

15 MS LEESON: Thanks, Philip.

CR THALIS: Thank you very much.

MR REES: It's noted that Place Management New South Wales have recommended
20 a covenant and/or restrictions to user on the title of the developments to ensure that any purchasers and occupiers of the residential apartments are made aware that the development is in a vibrant entertainment and recreation precinct that is subject to many cultural and community events that may result in significant noise, light emissions, vibration and temporary changes to access arrangements. In our
25 experience, this has never been used before and, even if it did, it is not legal and would not ultimately stop residents complaining about disturbances. I think I will pass it over to Reinah just to go a little bit more into detail about the covenant and some advice that we've had.

30 MS URQUEZA: Good afternoon. My name is Reinah Urqueza and I'm a specialist planner in Andrew's team involved in the review of state-significant development referrals from the Department of Planning, Industry and Environment. I assess development applications within urban renewal precincts throughout the Sydney LGA. I'm also part of the implementation working group for the Pyrmont Peninsula
35 Place Strategy working in collaboration with the Department, their external consultants and the City Strategic Planning and Urban Design Unit. We are currently working towards finalising the draft precinct master plans and the updated planning controls under the strategy.

40 To further expand on Andrew's discussion on land use and the tension between residential land uses in a predominantly non-residential area, I wish to provide an additional response to section 6.2.6 of the Department's assessment report regarding the assertion that residential development on the site will contribute towards the creation of a mixed use precinct. Specifically, the Department considers this to be a
45 desirable land use outcome where the post-development will take precedence from existing mixed use precincts of Darling Square and Barangaroo South where residential uses can co-exist with commercial, cultural, entertainment and

recreational uses in the precinct. Contrary to the Department's assertion that the proposed development would realise a truly mixed use precinct, it is the City's view that the very examples of Darling Square and Barangaroo South in fact demonstrate the incompatibility of residential land uses in a predominant non-residential area.

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Firstly, in relation to Darling Square. The precinct comprises of six development plots generally contained in ground floor retail with residential apartments above. The entire Darling Square precinct is located within the late-night management area under section 3.15 of the Sydney DCP 2012 which permits extended indoor hours – trading hours, up to 24 hours and extended outdoor hours up to 1 am. However, perusal of Council records of two plots confirm that all retail premises within these plots do not operate beyond midnight Monday to Sunday. Outdoor areas are generally restricted to 11 pm.

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15 In having assessed multiple development applications and section 4.55 modification applications for extension of hours throughout the entire precinct, residents have almost always submitted objections to these applications raising concerns for noise, nuisance and sleep disturbance. Additionally, a review of Council records of the Anadara building in South Barangaroo confirm food and drink premises do not operate later than 11 pm. Based hours for outdoor areas are restricted to 8 pm, although premises are permitted to operate to 11 pm on a trial basis. The City has also recorded noise complaints made by residents residing above the building. City rangers have attended to these complaints, and to quote one specifically, for the boisterous patrons at the restaurants, and these complaints were generally received prior to 11 pm.

25

Having regard to the existing conditions of Darling Square and Barangaroo South, the City considers that these precincts do not demonstrate the compatibility of residential and non-residential land uses and these precincts cannot be used as precedents to demonstrate the successful co-existence of sensitive land uses within the city centre that would deliver a vibrant and integrated mixed use development as the Department states. The provision of residential land uses at this particular location along the Sydney foreshore and at the heart of Darling Harbour is at odds with the prevailing cultural, entertainment, tourism land uses and would diminish the vision of a 24-hour cultural and entertainment precinct proposed under the Place Strategy. Moreover, the Darling Harbour precinct has an emerging regional and international standing, having regard to the events Andrew mentioned and the prominent location of the International Convention Centre within the precincts of the harbour foreshore.

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To this effect, the City rebukes the Department's assessment in that the proposal prioritises employment-generating floorspace that will support the innovation corridor and the employment, entertainment and tourism function of the precinct that collectively aligns with current strategic planning policies, including the Regional Plan, District Plan and Place Strategy. The non-residential floorspace equates to 52 per cent of the overall FSR of the site and the four per cent difference between

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residential and non-residential floorspace is essentially equal and does not commensurate to prioritising employment-generating floorspace.

5 No genuine effort has been made to explore other non-residential land uses beyond
the typical uses, such as office floorspace, cafés, restaurants and other non-residential
land uses. The demonstration of these land uses associated with tourism and
entertainment are lacking and, as per the Place Strategy, to realise a 24-hour cultural
and entertainment destination, development must address the following actions. So
10 Action 5 is to investigate opportunities for new entertainment events and cultural
space on key sites, and Action 6, to enable a diversity of night-time experiences in
line with the city of Sydney as an open and creative city and the New South Wales
Government 24-Hour Economy Strategy. So the near equal percentage of residential
floorspace does not satisfy the direction for Tumbalong Park sub-precinct. The
development does not adequately demonstrate that an investigation for opportunities
15 of new entertainment events and cultural spaces are indicated in the concept proposal
that would enable a diverse of night-time experiences.

To further expand on Andrew's mention about the restriction in covenant, the
Department suggests that a FEAR be conducted for future DAs to manage any future
20 amenity impacts. Although it is acknowledged that future residential amenity can be
managed by environmental assessments on future DAs, assessments on the future
DAs will then determine the appropriateness of noise and outdoor mitigation
measures to install such as higher standards of noise mitigation measures to be
installed in future buildings and stronger conditions around these physical measures
25 to ensure the buildings are built to these standards. However, these do not present
certainty that future residents will not be impacted by the strategic uses in the
surrounding area.

It is important to be aware of the Protection of the Environment Operations Act 1997
30 which provides an avenue for residents facing future noise impacts, in particular in
instances that cannot be turned off by any restriction or any other method imposed on
future consents. Notably, this Act includes provisions relating to offensive noise
which is defined in the Act as being noise:

- 35 (a) *That by reason of its level, nature, character or quality, or the time at
which it is made or any other circumstance (i) is harmful to, or is likely to
be harmful to, a person who is outside the premises from which it is emitted
or (ii) interferes unreasonably with, or is likely to interfere unreasonably
with, the comfort or repose of a person who is outside the premises from
40 which it is emitted, or*
- (b) *That is a level, nature, character or quality prescribed by the regulations
that is made at the time or any other circumstances prescribed by the
regulations.*

45 So an occupier of any premises may apply to the Local Court for a noise abatement
order if their occupation of premises is affected by offensive noise. There is caselaw
to confirm that significant impacts may be imposed on the use of a premises as a

result of nearby residents experiencing offensive noise arising from those uses. The offensive noise provisions would not be ousted or impacted by the notification given to incoming occupiers. Business operators in the area will potentially be obliged to limit operations or install mitigation measures on existing buildings if incoming
5 residents can demonstrate that they are impacted by offensive noise even if it is pre-existing.

So under part 8.6 of that Act, Council may issue a noise control notice to prohibit noise from an activity or piece of equipment from being emitted above a specified
10 point. The notice must specify the acceptable noise level, measurement locations, days and times when noise levels apply and the activity or article that is to be controlled. A person who contravenes a noise control notice is guilty of an offence and Council may be put in a position where it is appropriate to issue such notices as a result of complaints from future residents in that there is no power under planning
15 legislation to prevent this, and this is not the outcome the City wants for this precinct.

MS LEESON: Thank you.

MR REES: So I might just talk a bit more about the integration of spaces, and I
20 think probably our main concern is that with Guardian Square. The main concern is that this is not a genuine public space, accessed directly at grade from the public waterfront boulevard. Not only is it lifted considerably above the ground, it is split into two areas that relate more to the internal retail levels within the development itself. The fact that it is up and out of the way and flanked by private retail uses, it is
25 questionable that it will be highly used by the general public. To get there will require walking into the podium interior or from the Pymont Bridge level, details of which are presently lacking as to whether this is a level connection, an important aspect to ensure equitable access.

30 The proposal prioritises the private domain over the public domain, lifting the building mass of the ground, diverting people off the street. The square will be also overlooked by the looming strata title residential tower. It will feel more like a sanitised outdoor food court of a suburban shopping centre more than a city street or genuine public square. It should also be noted the applicant is pushing for 88 per
35 cent fill of the podium while the Department are recommending 80 per cent fill. It is important that an 80 per cent maximum be maintained to ensure some permeability in connection to the surrounding street network. We would also like to point out that the lanes and squares are not contained within the envelope plan SSDA1/100. So there's no assurance that they will actually delivered. In terms of amenity impacts, I
40 might - - -

MS LEESON: So, sorry, on the – you mean in the connections, the proposed Bunn Street connection - - -

45 MR REES: Yes.

MS LEESON: - - - being part of the building envelope. Yes.

MR REES: Yes. In terms of building height, bulk, scale and density, the Department's assessment report notes that the introduction of a tower on this site is consistent with the prevailing and emerging character within this part of Darling Harbour. To quote:

5

...provides a tower close to the foreshore framing the public realm along the edge of Cockle Bay consistent with Cockle Bay Park, the Ribbon and Sofitel Hotel developments.

10 What this will mean for the pedestrian at the street level is an overwhelming sense of enclosure, as Councillor Thalys pointed out. There is a total discord here with the urban design objectives contained within the recently-adopted Pymont Peninsula Place Strategy. At page 53, the Tumbalong Park Place priorities state:

15 *Transition building heights from higher areas to the waterfront and open space so taller buildings are located to respect privacy in public space such as the waterfront promenade.*

20 Interestingly, this document, the Place Managements Framework for Landowners Consideration of State-Significant Development, identifies Darling Harbour as standing out as a cultural place of celebration for major events, sunsets and open water against the backdrop of places variously dominated by green open spaces, trees and cultural heritage where significant spaces are not overwhelmed by surrounding development. It's lower density contributes to the perception of Darling Harbour as
25 a place of respite and escape from the hustle and bustle of the city. What is fast becoming apparent is that Cockle Bay will be totally the opposite to this character statement.

30 It appears that this state-significant proposal has had to be incorporated into the Pymont Peninsula Place Strategy strategic document and usurps the noble objective of transitioning building height down to the water's edge. There will be no sense of openness and escape from the city in Cockle Bay if this proposal proceeds. There will be no sunsets to be appreciated by the public at the water promenade level. That
35 will only be appreciated by the select few that reside in the strata title apartment tower. Figure 14 of the Department's report is deceptive. It captures the best available view corridor where the tower's eastern elevation is perpendicular to the water's edge. Move slightly to the south towards the Ribbon development and the view of the sky will be highly constrained between the Sofitel and the proposal.

40 In terms of impacts, perhaps the most detrimental impact will be the tower's excessive casting of shadows during the months of May, June, July and August when the promenade would be totally overshadowed by 1 pm. The Department's report at page 50 notes that although overshadowing of the waterfront promenade is undesirable, particularly during lunchtime hours, the Department notes that:

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Given the location and orientation of the site, any tower which seeks to minimise the tower height as envisaged within the PPPS would likely have some overshadowing impacts on the public domain before 2 pm mid-winter.

5 This demonstrate and ad hoc approach to strategic planning. The SSD is driving the strategic document rather than the other way around. To forgive this undesirable outcome, the Department states that it's offset by the significant new enhanced public domain, namely, Guardian Square, that will benefit from full solar access year-round. This is only true until the last Cox-designed building of the National
10 Maritime Museum is flattened and a new tower similar to this proposal rises from the rubble. As previously discussed, the city do not agree that Guardian Square will be a genuine public square. What the Department are agreeing to here is a total diversion of the public at a great waterfront promenade to a privatised semi-public space that is out of sight and, in our opinion, not going to be readily used.

15 The PPPS contrasts with the City of Sydney Central Sydney Planning Strategy that firmly protects solar access to key public spaces such as Pitt Street Mall, Martin Place and Hyde Park. Our strategy envisages taller buildings but enshrines some access plans into a statutory LEP ensuring protection of solar access between 12 to 2
20 pm, not 1 pm. The negative aspects of modernism that began to grip the CBD in the late sixties are sadly being repeated here. The dignity of the street, the city's genuine outdoor rooms play second fiddle to the quest for a tall tower that will benefit the select few that can afford to live in an exclusive strata titled high unit, high above the street. The street level public realm is diminished in order that the sky level private
25 realm is enriched.

In regards to overshadowing of private buildings, we note that the Goldsborough Mort building will be affected but the overshadowing assessment conducted by the Department finds that the level of shadows is relatively minor and will still allow
30 these apartments to receive two hours during the winter solstice period. However, we note that this is only – demonstrated in plan form only and it's not in elevation. So without an elevational plan, we don't know what the true extent of solar penetration is into this adaptively reused wool store and, as you would note, that this building is already compromised by severe traffic noise of elevated motorways of the
35 Western Distributor and the residents will face further degradation of their amenity.

And finally, in regards to wind, we note that updated wind report dated 16 September 2020 notes that on Guardian Square, it is only deemed suitable for pedestrian standing, not pedestrian sitting. The report recommends that mitigation measures
40 will be required. Landscape design and vegetation can be employed to mitigate adverse wind conditions but the architectural sections provided indicates soil depths are suitable for ground covers only such as rooftop landscaping – or, sorry, rooftop landscaping requires soil depths to be between 450 millimetres to 1,000 millimetres to allow trees and shrubs with sufficient canopy cover to grow and ameliorate wind
45 impacts. This is not the case at this stage.

MS URQUEZA: I will go on to speak about the issues of parking. So as stated throughout our submissions, the development should seek to encourage sustainable and active transport in a manner that aligns with the targets and objectives set out in Sustainable Sydney 2030. Further, the development should also align with other
5 strategies, including the City Cycling Strategy and Action Plan, Walking Strategy and Action Plan, Connecting with our Transport Strategies and Actions and the Sydney City Centre Access Strategy.

10 With respect to bicycle parking, the development, we've recommended, must demonstrate commitment to the provisions of bicycle parking and end of trip facilities with rates in accordance with Sydney DCP 2012 and, as such, the city accepts the recommended condition of consent recommended by the Department for bicycle parking and end of trip facilities to be designed in accordance with the DCP and in the future stage 2 application.

15 However, in relation to car parking, the City considers that the provision of car parking must be constrained. The proposal involves the provision of approximately 308 car parking spaces allocated exclusively for the residential land uses. The quantum of car parking is calculated in accordance with the maximum car parking
20 rates under the Sydney LEP 2012, and whilst it is noted that the development will not provide additional car parking for non-residential land uses, the proposal seeks to utilise existing leased 255 car parking spaces for the Harbourside Shopping Centre which is located below the Novotel Hotel. So, overall, this is approximately 563 car parking spaces provided for the development with most of these spaces being
25 additional and allocated for private use.

30 So the city has raised significant concern for the increase of parking throughout our submissions. The parking supply for the development must be constrained to encourage sustainable transport and active transport. A realistic consideration of the impact of parking and the traffic generation from the site on the surrounding central city road network has not been made. The excessive parking numbers will result in cumulative traffic and amenity impacts.

35 The Department's assessment on traffic generation is light on and merely specifies that the proposal would result in reduced vehicle trips and will not have any material impact on the operation of key intersections and it is recommended that a FEAR be imposed for a detailed traffic and transport impact assessment to be submitted with the stage 2 application. However, it is the City's view that limited modelling has been undertaken to date and relates to a few intersections that, overall, do not
40 consider the impact on road space as well as impacts on pedestrian safety and amenity. Further, no information has been provided on the impact of the development on the public domain and the road network during peak events adjacent to the facility, such as Darling Harbour and the ICC.

45 With respect to accessing and servicing, it is acknowledged that the Department's assessment report considers that the details provided for servicing is adequate given that it is a concept of application in essence and as such the Department has

recommended a FEAR addressing transport for New South Wales requirement for a submission of a servicing analysis with future DAs to ensure adequate servicing and loading provisions. However, the proposal is required to provide 27 servicing bays for the indicative proposal in accordance with the rates of the Sydney DCP.

5 However, the applicant considers the proposed 17 loading bays to be sufficient based on their experience of managing similar developments.

10 So we maintain the view throughout our submissions that servicing capacity must be in accordance with the rate stipulated under the DCP and must be accommodated onsite. Consideration to access and loading is significantly pertinent for this development having regard to the site's constrained nature and the shared reliance of Darling Drive to provide access and servicing arrangements not only for this development but adjoining developments as well. So careful consideration of traffic-related impacts must be made at the concept stage to reduce the cumulative impacts and traffic generation that the proposal would have to the local road network and should not be left to the Stage 2 application.

20 With respect to sustainability, we note that there is an inclusion of the Development Design Guidelines which are intended to inform the design competition process and the detailed design of the development. So the City reiterates the comments made throughout our submissions in that the development must demonstrate best practice sustainable building principles, showcase environmental performance including energy and water-efficient design and technology, use of renewable energy and best practice waste management. The ESD strategies used for the entire building must be considered holistically and as a whole and not in isolation as to what the Department has assessed to ensure ESD targets are achieved for the entire building.

30 So, overall, the proposed development presents a significant opportunity to maximise efficiency, reduce waste and display innovative ways of ESD and this should be mandated in any future design competition for the Stage 2 application. The requirement for neighbours' energy commitment agreements for office and retail components should be formalised with the New South Wales Office of Environment and Heritage and demonstrate an onsite renewable energy commitment reflecting the New South Wales Government's net zero emissions by a 2050 target. So it is the City's expectation that development of this scale that is proposed to provide significant public benefit would exceed and strive for excellence in sustainability and environmental performance.

40 MS LEESON: Thank you. That was - - -

MR REES: That's our formal submission.

45 MS LEESON: That was very comprehensive. Thank you. Do you have any follow-up questions?

MS LEWIN: Just one in relation to the issue – in your acoustic presentation, on the impacts of residential in mixed – yes, the impacts of the residential occupants in

established harbourside mixed use areas. Have you had any – has Council had any complaints similar to the ones that you have cited as examples around Sydney Cove, any complaints from the residents in the Murray Street area in relation to long-time existing mixed use and public tourist events, Cockle Bay, Darling Harbour?

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MS URQUEZA: Admittedly, I haven't looked specifically within the Cockle Bay area, but Andrew has stated around Circular Quay. There has been some in Barangaroo. There has been some complaints received on the foreshore. But I haven't specially looked.

10

MS LEWIN: So that we're not projecting something that is not of this locale – I mean, the reason why I'm asking that question is that it's quite often that you can cite examples of impact such as you have that are shared in locations throughout Darling Harbour and Cockle Bay but this hasn't been looked at in this specific area of Cockle Bay, Darling Harbour and there are perimeter residential developments where residents have been in place for a very long time. So it would be interesting to understand whether there are any similar causes for concern.

15

MR REES: We haven't got the complaints coming from the Sofitel Hotel about the events, and I think that's kind of where we are pointing towards. In terms of the land use of this, it really, in our opinion, should be a hotel as well which would work consistently with the objectives of the Tumbalong Park precinct as identified in the Pyrmont Peninsula Place Strategy and an envelope that respects the solar access to the waterfront promenade to at least 2 pm. I think those two things is probably the main thing. And Mirvac have demonstrated their ability to change land uses. Just recently, the northern precinct of the Waterloo Station over-station development, it was a residential tower proposed under the Stage 1 envelope but now it's going to be a commercial, so from the residential to the commercial. So it's not like they can't do it. It's just that, in this case, they've elected to use, I guess, the highest and best uses of a strata titled apartment building and - - -

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MS LEESON: Well, they were looking at commercial - - -

MR REES: Initially.

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MS LEESON: - - - initially on this and had a couple of years looking at commercial, and we asked them about that today and they – I think it was 2016/17, or maybe to a bit later, they decided to swap to residential because the commercial market wasn't there for them and they thought they would put a more slender tower in, being residential, which clearly it is a more slender tower than their original commercial proposal.

40

MS LEWIN: It's also leasehold.

45

MR REES: Yes, 99 year lease. Okay. Another – just a couple – just to context as well, above the Sofitel there's a proposal for a helipad. Yes. So the Cs were issued – well, reissued again in August 2020, so they will be for another year. So that's the

owners' proposal to put a helipad on top. We also, out the front of the Harbourside Shopping Centre, presently have a development application before us – and Reinah can show – for a even larger - - -

5 MS LEESON: Another Ferris wheel?

MR REES: An even bigger Ferris wheel.

MS LEWIN: We were going to ask you about that.

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MS LEESON: We've been looking at this notion of a Ferris wheel and where it sits in relation to the site and we had heard that there was a proposal for a larger one which we thought was with Place Management New South Wales but it's obviously with - - -

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MR REES: It's with us because the cost of works is less than 10 million.

MS LEESON: So it's for Council to determine?

20 MR REES: That's correct. Yes. And the same would happen with this designated development should it proceed to be lodged as a DA.

MS LEESON: That will be an interesting - - -

25 MR REES: You can keep that as well if you like.

MS LEESON: I've got enough on my plate, thanks, without looking at helipads. But this Ferris wheel is an interesting issue for us because clearly, you know, with the changing – or the proposed change in public domain layout and arrangement, if there's an even bigger helicopter - - -

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MR REES: Sorry. I've put that in your mind.

MS LEESON: Sorry.

35

MR REES: Sorry, Dianne.

MS LEESON: Ferris wheel proposal there, it will impact on some of the pedestrian movements potentially, and we've talked with Mirvac earlier today around the extent of licensed areas, if you like, along the building line which might be café and seating, so licensed areas there that diminish the area of public domain coupled with a Ferris wheel. So we have been interested to understand what pedestrian modelling might have been done in that area. How long has this been with Council? When are you likely to determine this application?

45

MS URQUEZA: I'm just awaiting on additional information at the moment regarding lighting. I've requested they submit a lighting report.

MS LEESON: Okay.

MS URQUEZA: Otherwise, they will be submitting that actually to me later this week. So once I receive that and get our internal referrals to review it, it would be
5 quite soon that it will be determined.

MR REES: Maybe within the next month.

MS URQUEZA: Yes.
10

MS LEESON: Okay. Determined after that. And I assume, correct me if I'm wrong, that Place Management New South Wales has given owner's consent for a lodgement of that application?

MS URQUEZA: Yes.
15

MR REES: They have.

MS LEESON: All right. You've raised some very interesting issues. Can I just –
20 in the scheme of things it's perhaps not one of the big issues, but it is around the parking. I just wanted to understand a little more your analysis of parking that says it's essentially 500 spaces. I mean the way it's presented to us, they're saying 305, '6 or '7 new spaces to support the residential development in the tower, that the existing parking that supports Harbourside commercial retail is provided under lease
25 arrangement with the Novotel in existing parking. So my question, I think, is are you double-counting the traffic analysis there by including the parking in the Novotel, which could be used for anything, like it's pre-approved, pre-existing parking arrangement, agnostic of who uses it, I think. So I'm just asking whether you think there might be a double count in your concern around the traffic – around the
30 parking? I will leave that with you to think about anyway.

MR REES: Yes.

MS URQUEZA: Yes.
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MS LEESON: And servicing, I mean we have noted that the concept proposal is certainly suggesting a little less or somewhat less than Council's DCP provides.

MR REES: Yes.
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MS LEESON: You also referred to a few things about FEARs, future environmental assessment requirements, in subsequent DAs should this be approved. Are there any things, I mean, that immediately – that come to mind that you think could not wait for a Stage 2 assessment and must be resolved at this point? You've
45 alluded to a couple but I'm not quite sure how strongly you felt around those. So you've talked about - - -

MR REES: I think the acoustics is probably the – to outline – to defer that to the Stage 2 is really contrary. I mean, under our Local Environmental Plan Stage 1 considerations outline in our LEP, very much it's about the nature of the land use. So we would be asking right up front, if we were the Department, to say, "We want
5 an acoustic report. What are we actually dealing with here?" It seems that, I guess, 84 decibels, something that was quoted from a resident, or a ranger, but we don't know what we're dealing with here but I would say it would be up there.

MS LEESON: And that, if I understood correctly, was at source, the 84 decibels,
10 not necessarily at the receiver.

MR REES: That's correct.

MS LEESON: Yes. No, just so that I understand.
15

MR REES: I would say that that would be the primary, yes, from FEAR. We would like to be upfront.

MS LEESON: Okay. No. That makes sense. Council's earlier submission
20 referenced setting the – or making the volume of the tower smaller so that it would be – I think it's currently proposed in the envelope as 53-metre depth and Council's submission called out 40 metres as a more appropriate depth should be the building be approved. Do you want to elaborate on that reasoning any more?

MR REES: It's to do with, I guess, looking at the maximum depth outlined under the Apartment Design Guideline to ensure that there's enough, well, light internally for the apartments. That was our main thing. And also, I guess, its impact on the actual overshadowing as well. Yes.

MS LEESON: All right. Thank you. We probably have other questions that are not coming to us right at this moment after three sets of meetings today on this matter, but if we do have any further questions, do you mind if we come back with a follow up?

MR REES: Yes. You know where to find us. Kate can find us.

MS LEESON: Thank you. I shouldn't have jumped to that conclusion straightaway. Wendy, have you got any further questions for Council?

MS LEWIN: No further questions. I think we've covered most of the territory.

MR REES: Okay. Thank you for that time.

MS LEESON: Quite a lot of territory that has been covered.
45

MR REES: Thank you for your time.

MS LEWIN: Thank you.

MS LEESON: Thank you.

5 MS URQUEZA: Thank you.

MS LEESON: It's very much appreciated.

10 MS LEWIN: And when you see him, thank Philip.

MR REES: I will do. Yes.

MS LEWIN: Thank you.

15 MS URQUEZA: Thank you.

MS LEESON: Lovely. Thank you. So we will close the meeting.

20 MR REES: Okay.

MS LEESON: Thanks.

MS URQUEZA: Thank you.

25 **MATTER ADJOURNED at 4.10 pm**