

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
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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 Pyrmont 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 Pyrmont 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.”¹*

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*

¹ 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 i[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 9².

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".

² 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*³ 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.

³ [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 values⁴. 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

⁴ 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):

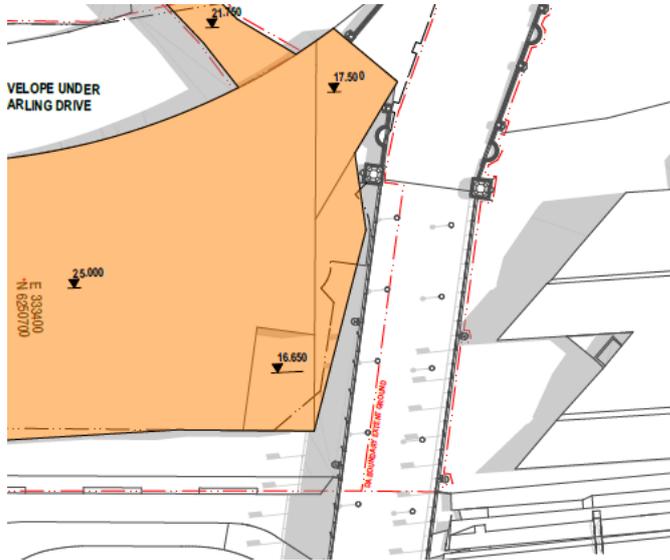
- The proposed building envelope will almost touch the envelope of the pedestrian walkway of Pyrmont Bridge;
- The relative height of the bridge is not specified. However, it appears that the pedestrian walkway of Pyrmont bridge is between 11.5m RL- 13.m RL and the railings are at between 12.5m-14m RL⁵.
- 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 below⁶:

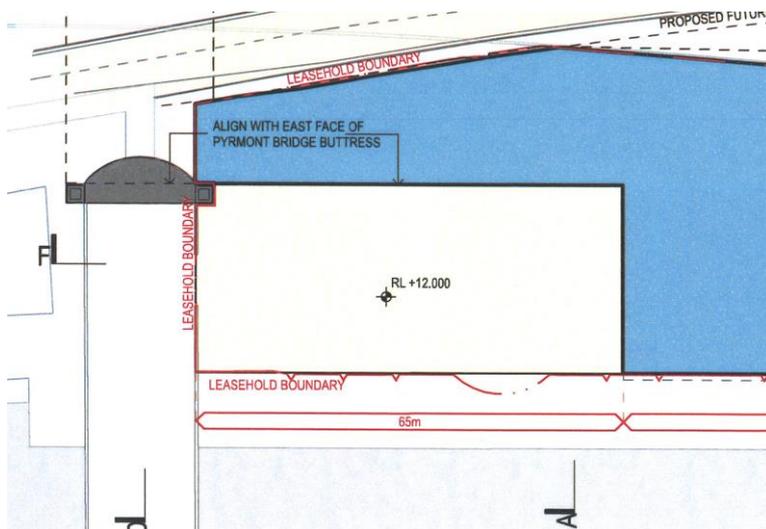
⁵ We note that the plans for the Cockle Bay Wharf Redevelopment identify Pyrmont Bridge at 11.8m RL.

⁶ 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,

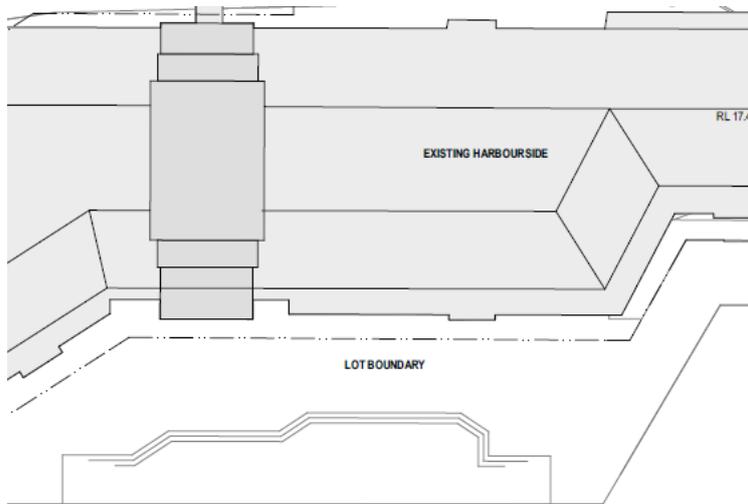
(c) the cumulative impact of development on views should be minimised.

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 Pyrmont Bridge:

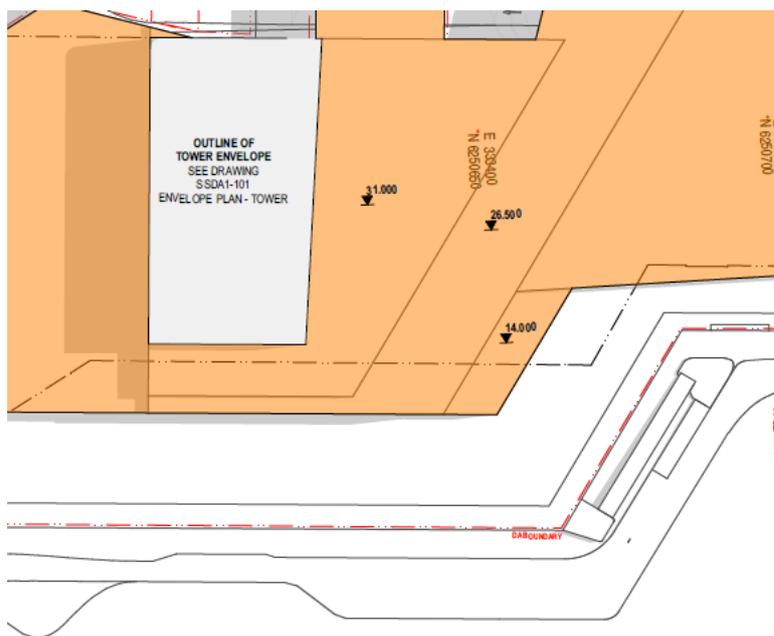
- As identified by Dr Lamb in his assessment of the initial proposal: *“Location 6 is a view from Cockle Bay East to the subject site, however the field of view does not include the western side of Pyrmont Bridge and its close relationship to the proposed building envelope. In our opinion this is a highly 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 Pyrmont Bridge) suggests that there will be a significant public domain view impact on water views from Pyrmont 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 Pyrmont 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*”⁷.

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 promenade⁸. 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”*⁹

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

⁷ Ingham Planning submission 2017 paragraph 90(h)

⁸ See Public Domain report at pages 21 and 29.

⁹ 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*¹⁰ 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.

¹⁰ 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 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



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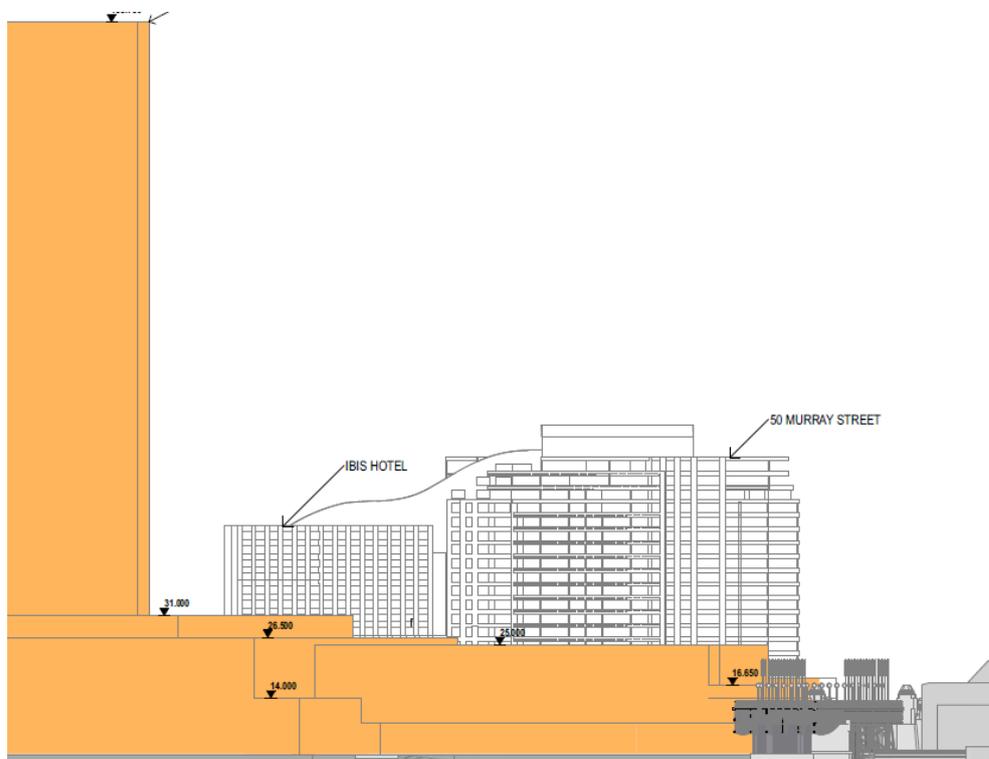
ATTACHMENT A_REPORT OF RICHARD LAMB & ASSOCIATES

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

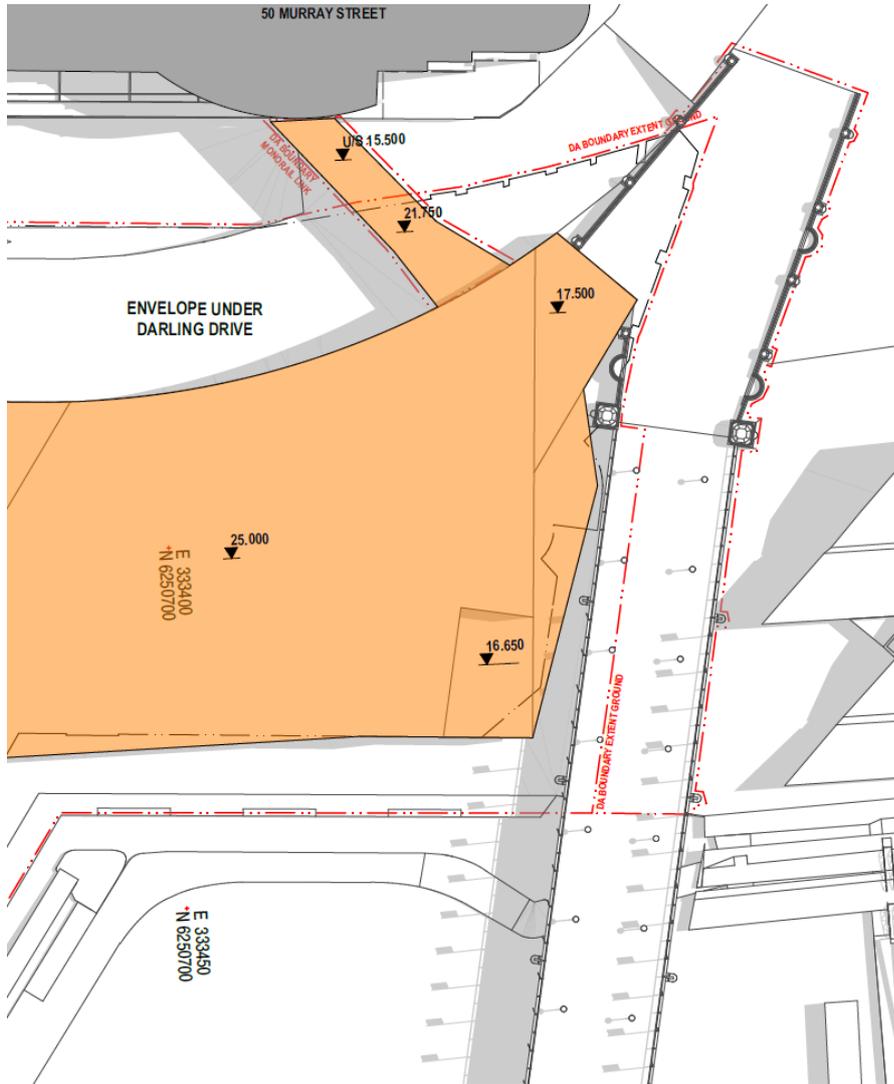
ATTACHMENT B – COMPARISON OF IMAGES: INTERFACE WITH PYRMONT BRIDGE



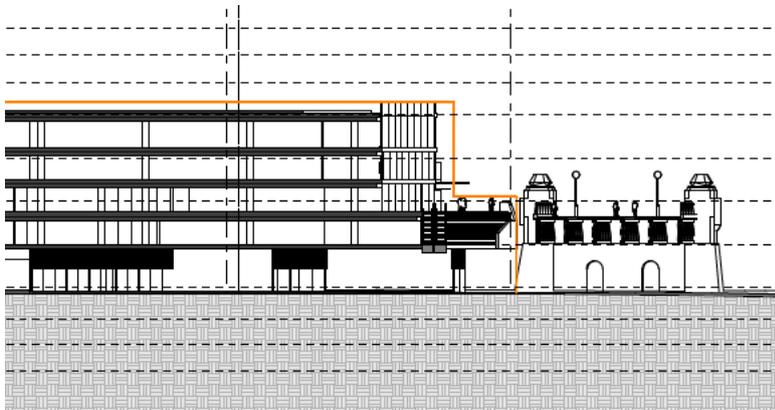
“Figure 2.1: Amended proposal northern setback and interface between retail podium envelope and Pyrmont Bridge. ... N.B. indicative design only. Future design development in stage 2 DA (Source: Virtual Ideas, 2020)”



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

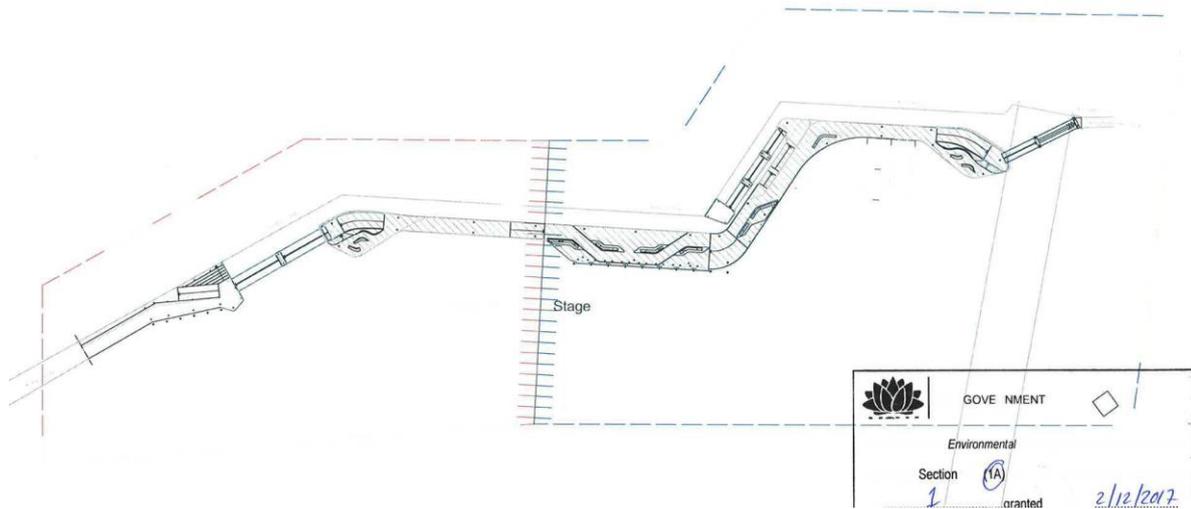


Image taken from approved pontoon plans (SSD 6611)