

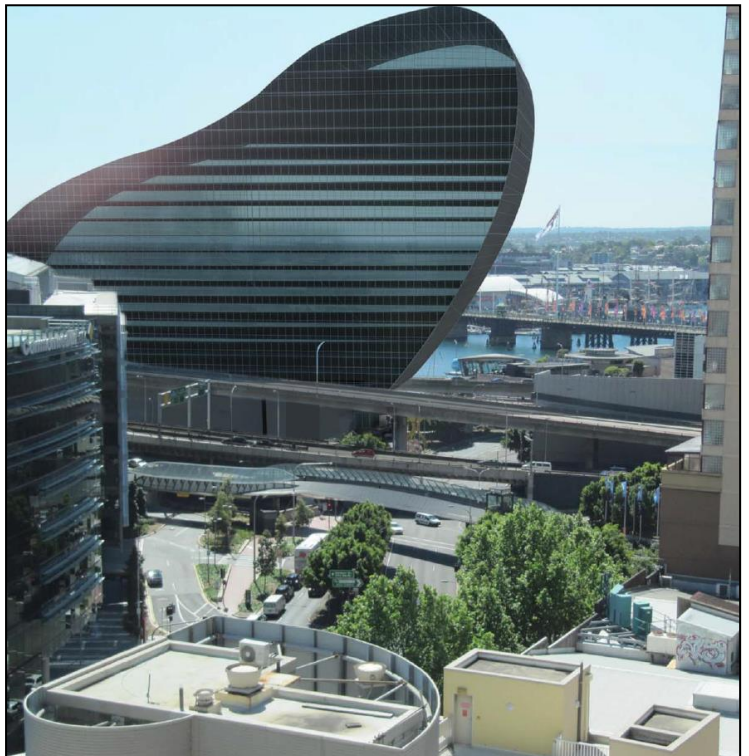
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Ribbon Development

1 Wheat Rd
Darling Harbour
SSD-5397

Submission to
Department of Planning
& Infrastructure

October 2013



INTRODUCTION

This report has been prepared by Kass-Hermes, Planning + Development, on behalf of Anson City Developments Pty Ltd which has a substantial financial interest in a mixed use retail/residential building at 339 Sussex St Sydney.

Grocon (Darling Harbour Ltd) is proposing to redevelop the IMAX site at Darling Harbour with a 20 storey (90.6m high) office, retail and entertainment building. An application has been submitted to the Department of Planning & Infrastructure as a State Significant Development (SSD-5379).

The proposed development at 1 Wheat Rd Darling Harbour, the Ribbon Development, will give rise to a significant view loss to Darling Harbour and the Pyrmont Bridge for occupants of the upper residential floors at 339 Sussex St; amongst other impacts. The following report provides an assessment of the Environmental Impact Statement submitted with the application.

REPORT SUMMARY

Grocon (Darling Harbour Ltd) is proposing to redevelop the IMAX site with a new IMAX cinema, retail and entertainment uses, carparking and a commercial office component. The site is within Darling Harbour and has a capital investment value stated to be approx \$700 million dollars and thus in excess of \$10 million which classifies the development as State Significant Development. The Darling Harbour site has no FSR or Height controls.

The proposed development is considered to be deficient in its documentation and insufficiently comprehensive in terms of its assessment of environmental impacts; as summarised below:

A. DOCUMENTATION OF THE APPLICATION

(i) IDENTIFICATION OF CANTILEVERED STRUCTURE IN THE DESCRIPTION OF THE DEVELOPMENT, SITE DETAILS AND ARCHITECTURAL PLANS

Neither in the description of the development (in the application form or within the EIS) nor in the description of the site nor in the 35 detailed architectural plans ([Appendix A](#) of the EIS) is one of most prominent features of the development adequately identified; namely an 18.5m long and 90.6m high cantilevered office building over Harbour St. It is found in the EIS at [Appendix Y](#); entitled "RMS Clearance Diagrams";

(ii) PLANS NOT ADEQUATELY DIMENSIONED

The plans are not sufficiently dimensioned nor are the site boundaries shown on the majority of the plans such as would allow satisfactory assessment of the development;

(iii) NO ADEQUATE COMPARISON OF THE EXISTING AND PROPOSED FOOTPRINT AND HEIGHT OF THE DEVELOPMENT

There are no plans which compare the existing and proposed footprint and building height as required by the DGRs. There is an aerial photo in the View Impact Assessment which shows the existing and proposed footprint. However, properly scaled and dimensioned plans would be more useful in assessing the comparative scale of the development in plan and elevation; together with the site boundaries;

(iv) URBAN DESIGN REPORT DOES NOT ASSESS OR JUSTIFY THE CANTILEVERED ASPECT OF THE PREFERRED DESIGN

The Urban Design Report and the EIS analyse 7 design options, all but one sit totally within the site boundaries (ie the draft lease area). The preferred design Option 7 projects beyond the eastern boundary and cantilevers 18.5m over Harbour St. No mention is made or justification provided for the necessity or the public benefits, if any, for projection of the development over a public roadway.

B. ENVIRONMENTAL AND ECONOMIC IMPACTS

(i) CONTEXTUAL COMPATIBILITY / SCALE AND BULK

The scale of the development at an FSR of 14.67:1, a height of 90.6m and length of approximately 130m (which cantilevers 18.5m over one of the City's main arterial roads) represents a gross overdevelopment of the site in comparison to development on adjacent land within the City of Sydney where a similar development would be limited to a maximum FSR of 7.5:1 and a height of 45m.

(ii) URBAN DESIGN REPORT DOES NOT IDENTIFY OR ASSESS CANTILEVERED STRUCTURE IN AND OVER THE PUBLIC DOMAIN

The Urban Design report contains no assessment of the cantilevered structure over Harbour Street which one would have assumed was a significant element in and over the public domain; nor, as noted above, does it identify or justify the necessity to construct the development beyond its site boundary.

(iii) LOSS OF VIEWS TO DARLING HARBOUR AND PYRMONT BRIDGE

The Visual Impacts Assessment has not provided an analysis of the visual impacts on occupants of residential buildings. The residents at 339 Sussex St Sydney and

surrounding residential developments will suffer a devastating loss of views to Darling Harbour and the Pyrmont bridge as a consequence of the scale of the subject development and, in particular, the 18.5m long and 90.6m high cantilevered portion of the development over Harbour St. Such a view loss would also have consequential detrimental economic impacts in terms of the decreased value of the affected properties.

It is considered that no person purchasing an apartment within 339 Sussex St or similarly affected buildings in the vicinity could have reasonably anticipated that their views of Darling Harbour and the Pyrmont Bridge would have been virtually extinguished by a 90 m structure being built over a public roadway.

(iv) ALIENATION OF PUBLIC AIRSPACE WITHOUT JUSTIFICATION

The proponent of the development has elected to enhance its site by alienating the airspace above a public roadway without justification or any apparent public benefit sufficient to warrant the public loss.

(v) VISUAL DISTRACTION TO DRIVERS IN HARBOUR ST AND WESTERN DISTRIBUTOR

There is no assessment in the Visual Impact Assessment or Transport report of the visual distraction on northbound and southbound drivers along Harbour Street as they drive towards, and pass under, the 90.6m cantilevered portion of the development.

Nor is there any assessment of the visual distraction on eastbound and westbound drivers travelling on the Western Distributor by the façade of the development being only 2m from the freeway structure along the 130m (approx.) length of the development; inviting viewing into the building;

IMPACT OF CRASH ON WESTERN DISTRIBUTOR

Because the building façade is only 2m from the Western Distributor and only 750mm from localised projections, it is considered that the visual distraction on eastbound and westbound drivers will be significantly greater than on other equivalent freeways.

It is therefore considered that the risk of an accident in the vicinity of the building will be proportionately higher. The clearance distances are therefore considered inadequate to provide a satisfactory separation in the event of fire associated with a collision into the expressway structure by one of the many heavy vehicles travelling through the city often carrying highly inflammable fluids.

(vi) IMPACT OF FIRE AND/OR EXPLOSION OF SUBSTATION & LONG TERM IMPACTS OF ELECTROMAGNETIC RADIATION ON CANTILEVERED DEVELOPMENT

It is considered unlikely that the designers of the City Central Zone Substation (No: 4990) would have anticipated a multi-storey commercial development being built over Harbour Street in proximity to the substation facility. There is no assessment of the impact of the long term Electromagnetic Field Radiation and potential impact of fire and/or explosion of Central Zone Substation (No: 4990) on the adjacent cantilevered portion of the development and its occupants;

(vii) THE SUITABILITY OF THE SITE FOR THE DEVELOPMENT

The floorspace which is proposed to be constructed on the subject site necessitates the northern and southern façades to be constructed only 2m from the eastern distributor for a length of approx 130m; reducing at the northern and southern ends to a separation of only 750mm. The separation is considered inadequate to avoid a visual distraction as drivers on the Western Distributor pass by the approx 130m of offices in the building façade. It is considered that the visual distraction to eastbound and westbound drivers will be significantly greater than on other equivalent freeways; proportionately increasing the risk of collisions in the vicinity of the building. There are numerous other detrimental impacts arising from the bulk of the development detailed in this report.

In addition, a significant portion of the office component of the development will be constructed outside the site boundary; 18.5m over harbour St to a height of 90.6m. No

justification has been provided to warrant its projection over the public way, no assessment has been made of its urban design impacts over the public way or the public benefits; if any.

It is therefore considered that the floorspace which is being imposed on the site has given rise to numerous unsatisfactory environmental impacts; and therefore the site is considered unsuitable for the development in its current form.

(viii) THE PUBLIC INTEREST

The subject development proposal is considered to be inadequately documented such that a reasonable person would not easily be able to understand the nature of the development; specifically in terms of the footprint of the development cantilevering over its site boundary by 18.5m over Harbour St to a height of 90.6m.

The development is considered to be an overdevelopment of the site with detrimental environmental and economic impacts detailed above.

The use of public roadway for the purpose accommodating a 90.6 m high component of a private development warrants an assessment of what public benefit, if any, is derived from such a proposal, yet none is provided in this application.

Even if the building was setback to sit entirely within its site boundary, it is still considered that the scale and bulk of the development is excessive and inconsistent with development permitted in adjacent land by the City of Sydney under its new Local Environmental Plan gazetted in December 2012. The maximum height for an equivalent development would be 45m with a maximum FSR of 7.5:1.

No public benefit has been argued by the proponent of this development which would validate a private commercial development being constructed over a public roadway and no such public benefit, sufficient to justify the public loss, is apparent such as would warrant the alienation of public airspace for private financial gain.

It is therefore considered that approval of the subject development is not in the public interest.

CONCLUSION

Having regard to the matters raised in the above submission, it is considered that the documentation submitted with the application for development does not adequately permit a reasonable person to comprehend the extent of the footprint of the development over the public roadway of Harbour St or the consequential environmental impacts.

No public benefit has been argued by the proponent of this development which would validate a private commercial development being constructed over the public roadway and no such public benefit, sufficient to justify the public loss, is apparent such as would warrant the alienation of public airspace for private financial gain.

The specific documents include the following:

- The description of the site and the development in both the application form and the Environmental Impact Statement;
- The detailed architectural plans in Appendix A of the EIS;
- The Urban Design Report;
- The Visual Impact Assessment; and
- The Transport Impact Assessment.

It is therefore submitted that:

- (i) the development proposal should be withdrawn and resubmitted with:
 - a. a more appropriately sized development within its own site boundaries;
 - b. a revised EIS which clearly documents all significant aspects of the development in the description of the development and revised detailed architectural plans; and
 - c. any new reports that the Department of Planning and Infrastructure might require; and
 - (ii) the modified development and EIS should be re-exhibited for public comment; or
 - (iii) failing any significant rescaling and repositioning of the development within its own site, the application should be refused.
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1. BACKGROUND

Grocon (Darling Harbour Ltd) is proposing to redevelop the IMAX site at Darling Harbour with a 20 storey (90.6m high) office, retail and entertainment building.

On 23 July 2012, Grocon wrote to the Director General of the Department of Planning & Infrastructure advising him that it was proposing to redevelop the IMAX site with a new IMAX cinema, retail and entertainment uses, carparking and a commercial office component. The site is within Darling Harbour and has a capital investment value was stated to be approx \$700 million dollars and thus in excess of \$10 million which classifies the development as State Significant Development.

Grocon also requested the Director General to issue Director General's Requirements (DGR's) for the preparation of an Environmental Impact Statement (EIS) for the proposed development.

In support of the request the following information was provided:

- o A description of the site and its local and regional context.
- o A summary of the proposal including key parameters of the development, land uses and staging.
- o Summary of the strategic plans and key environmental planning instruments that apply to the development
- o An overview of the expected environmental impacts associated with the development.
- o A justification for the proposal, including the benefits of the project.
- o Proposed consultation to be undertaken for the proposal.
- o The estimated capital investment value.

An indicative scheme was submitted with the request for DGRs. The northern elevation of that scheme is reproduced in Figure 1.

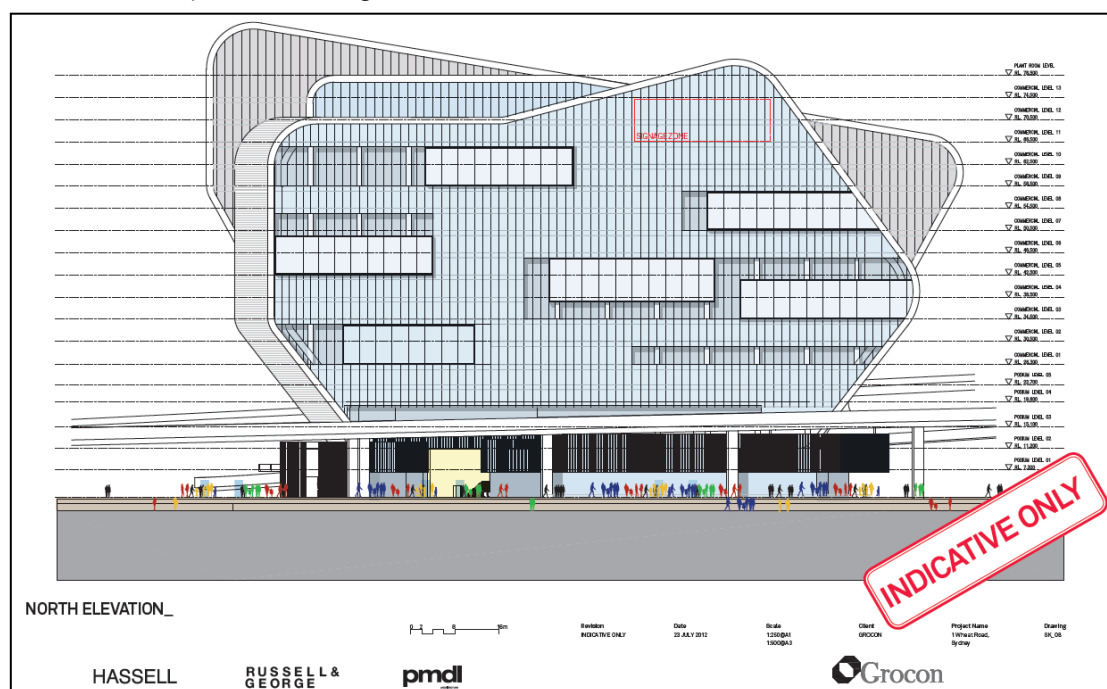


Figure 1- Northern Elevation of indicative design of the proposed development

Relevant to matters to be discussed later, the indicative scheme appears to be located totally within its site boundary.

The development was described as follows:

- o A total Gross Floor Area of approximately 70,000sqm for office, retail, function and entertainment purposes.
- o Approximately 49,000 sqm of GFA will be for office purposes, up to 14 storeys above the level of the Western Distributor.
- o The 'podium' level (below the Western Distributor) will comprise approximately 13,500m2 GFA for retail and entertainment uses and an IMAX cinema.
- o 80 -100 car parking spaces are proposed, to be located with the podium at approximately the level of the elevated freeways (approximately 6,500m2).
- o Upgrades to the public domain within the immediate areas adjoining the site.

The "Overview of Expected Environmental Impacts" is intended to identify not only the normal impacts already required to be assessed as part of an environmental assessment but also any matter that might be of an unusual/novel nature that might give rise to specific environmental impacts.

Grocon stated that "the key issues associated with the redevelopment of the site include:

- o Compliance with strategic and statutory plans;
- o Urban and architectural design;
- o Public domain interface;
- o Traffic and access;
- o Infrastructure and services;
- o Geotechnical conditions and engineering requirements;
- o Ecologically Sustainable Development;
- o Development staging; and
- o Consultation."

An overview was provided on the above. No issues arise from that overview as the development appears to be located within its site boundaries.

On the basis of the above submission, the Director General, on 22 August 2012, issued the Director General's Requirements for the proposed development. On or about the 1st September 2013, the application for the proposed development was submitted to the Department of Planning and Infrastructure.

On 11 September 2013, the proposed development (**Figure 2**) was placed on public exhibition.

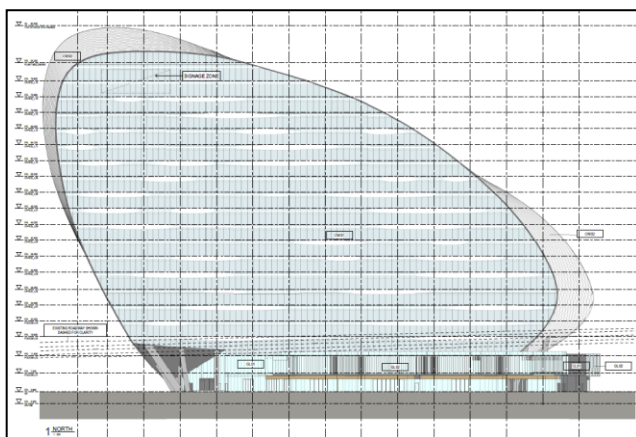


Figure 2 - Northern Elevation of the proposed development submitted with the EIS

The architectural design submitted with the application varies significantly from the indicative scheme in two respects:

- o The architectural design concept is different and arguably better than the indicative design. No issue is raised with this aspect of the application; however
- o The proposed building is not entirely contained within its site boundaries (the draft lease area). The tallest (90.6m) and most prominent part of the development cantilevers over Harbour Street by some 18.5m (**Figure 3**).

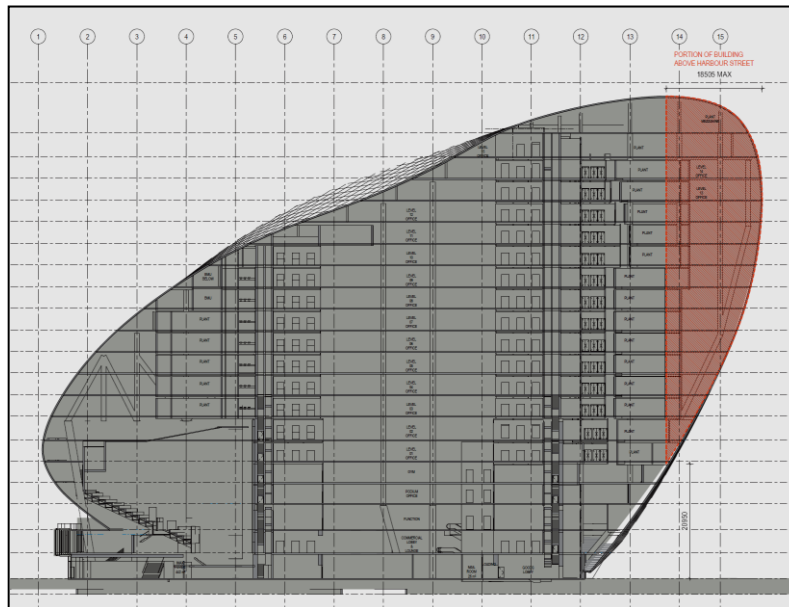


Figure 3 - Southern Elevation of the proposed development indicating a projection of 18.5m over Harbour Street. However the drawing does not specifically show the site boundary or the street alignment. It is therefore unclear whether the 18.5m cantilever includes the footpath width or just shows the extent of cantilever over the Harbour Street roadway.

2. ISSUES WITH ENVIRONMENTAL IMPACT STATEMENT

a. APPLICATION FORM

i. The site

The site is described as Lots 401, 402, 403, 404 and 405 in DP 862501. There is no acknowledgement that the site also incorporates a cantilevered portion of the development over Harbour Street with a footprint in the order of 700-800 sqm. It is difficult to identify the precise extent of the area of the cantilevered footprint as the relevant plans are not dimensioned.

ii. Owner's Consent

The application form submitted with the EIS and placed on the Department's web site does not contain any signature of the owner. It is likely that there is a separate document containing the owner's signature but there is no reference to this in the application form.

b. ARCHITECTURAL DRAWINGS

i. Cantilevered Development over Harbour Street

There are 35 architectural plans submitted as Appendix A of the Environmental Impact Statement (EIS). It is noteworthy that none of the architectural drawings explicitly show the cantilevered portion of the building in a manner which would, to a reasonable person, allow an understanding that the eastern portion of the building, rising 90.6m in height, was to be cantilevered 18.5m over Harbour Street.

The only drawing which suggests the building is constructed over the roadway is the roof plan because of the proximity of the proposed building to the adjacent Energy Australia City Central Zone Substation (**Figure 11**) on the eastern side of Harbour St.

Indeed other than 3 drawings which show the site boundaries (ie the Proposed Leased Area: Dwg ARCH-HSL-DA-1060/A, the Lower Site Plan: Dwg ARCH-HSL-DA-1090/B and the Demolition Plan: ARCH-HSL-DA-1080/B), no other drawing shows the site boundaries.

Drawing No ARCH-HSL-DA-1077/A shown in **Figure 2** above, which clearly shows the proposed cantilever over Harbour Street, is not included in the Architectural Plans at Appendix A to the EIS. It is located in Appendix Y of the EIS and entitled "RMS Clearance Diagrams".

ii. Dimensioning Plans

It is considered that the majority of plans are insufficiently dimensioned to facilitate a comprehensive understanding of the scale of the development such as the length of the development and the width of its eastern and western elevations as well as its proximity to the adjacent Energy Australia Substation.

iii. Boundaries of the Site

It is considered that the majority of plans and elevations of the development do not satisfactorily show the relationship of the development to the site boundaries.

iv. Relationship of Development to adjacent buildings

The plans do not incorporate streetscapes showing the contextual relationship of the development with surrounding buildings along Harbour St and Bathurst St. A streetscape through the subject site and through Bathurst St would have highlighted the significant scale differences between the proposed development and existing buildings on the western side of Sussex St; as well as the visual impact of the cantilevered portion of the development in the vicinity of the site (see Sections 2d, 2e, 2h and 2i of this submission).

c. DESCRIPTION OF THE DEVELOPMENT IN EIS

The description of the development in the EIS is reproduced below. It describes key elements of the development including height, distribution of floorspace, details of carparking, signage, public domain works and the inclusion of a new playground.

There is no mention of the development cantilevering 18.5 metres across Harbour Street to a height of 90.6m which is considered to be one of, if not the most visually significant aspects of the development.

3.2 Development Description

This application seeks approval for the following development:

- Demolition of the existing IMAX building, tourist office and amenities block.
- Construction of a new 20 storey building for office, retail and entertainment purposes, and a separate 2 storey building with a combined total Gross Floor Area of approximately 74,233m².
- Approximately 62,427m² of GFA for office purposes, up to 15 storeys above the level of the Western Distributor.
- Approximately 11,100m² GFA for retail and entertainment uses, including and an IMAX cinema in the 'podium' levels (below the Western Distributor).
- 86 car parking spaces to be located within the podium levels and 332 bicycle parking spaces on ground level.
- Upgrades to the surrounding public domain including new playground area.
- Signage zones and display screen on the new building.

3.3 Numerical Overview

A numeric overview of the proposed development is detailed in Table 2.

Table 2 – Numerical overview of the proposed development

Component	Proposal
Site area	The site has a total lease area of 5,060m ² with a total 'zone of influence' area of 11,550m ² surrounding the proposed building.
Height	
▪ metres	Max RL 93.50 or approximately 90.6m above ground level.
▪ storeys	20 storeys
GFA (m ²)	
▪ Commercial office	62,427m ²
▪ Retail	4,232m ²
▪ Gym	1,973m ²
▪ Entertainment (cinema)	2,734m ²
▪ Function	2,161m ²
▪ SHFA offices/Public amenities	706m ²
Parking	
	86 car spaces
	332 bicycle spaces

Figure 4 – Extract from EIS which provides a description of the development together with a numeric overview.

However, Section 1.3 of the EIS entitled "Necessary Approvals and Licenses Required" states *"The development proposes to erect a structure over Harbour Street, which is a public road. Therefore an approval for the proposed works under Section 138 of the Roads Act 1993 is required"*.

There is no further description of the nature of the structure over Harbour St or how far over Harbour St the structure will be built.

The only other specific identification of the cantilevered element of the development within the EIS, able to be identified by the author of this submission, is in [Appendix Y](#) (entitled "RMS Clearance Diagrams) of the EIS and in Section 3.7 of the EIS entitled "New Buildings" where, in part, it is stated that:

"The above podium/ overpass element of the building that cantilevers over Harbour Street will provide a new commercial accommodation within a landmark building." The extent of the cantilever is not specified.

d. URBAN DESIGN AND BUILT FORM

The EIS contains 13 sections of the Urban Design Report. However none of these identifies the 18.5m cantilevered building, (90.6m high) over Harbour Street as an urban design issue nor does it identify or justify the necessity to construct the development beyond its site boundary.

The essence of these sections of the Reports is summarised below:

1. [Appendix F.1 - Urban Design Report.pdf](#)
Appendix F1 provides an Executive Summary and contextual overview.
2. [Appendix F.2 - Urban Design Report.pdf](#)
Appendix F2 describes the planning framework for Darling Harbour and the Darling Harbour context.
3. [Appendix F.3 - Urban Design Report.pdf](#)
Appendix F3 describes the future of Darling Harbour and the existing and future scale of development.
4. [Appendix F.4 - Urban Design Report.pdf](#)
Appendix F4 provides a photomontage of the proposed development from Harbour Street. However, it does not clearly demonstrate the manner in which the proposal cantilevers over the roadway. The report also assesses massing options for the development.
5. [Appendix F.5 - Urban Design Report.pdf](#)
Appendix F5 continues to assess massing options.
6. [Appendix F.6 - Urban Design Report.pdf](#)
Appendix 6 finalises the assessment of massing options and details Design Principles.
7. [Appendix F.7 - Urban Design Report.pdf](#)
Appendix F7 explains the design principles of Scale & Massing of the development and the Public Domain
8. [Appendix F.8 - Urban Design Report.pdf](#)
Appendix F8 deals with design principles of access, pedestrian connectivity and solar access.
9. [Appendix F.9 - Urban Design Report.pdf](#)
Appendix 9 provides the design principles associated with the elevated freeways.
10. [Appendix F.10 - Urban Design Report.pdf](#)
Appendix F10 deals with Design Elements of the building
11. [Appendix F.11 - Urban Design Report.pdf](#)
Appendix 11 deals with design elements and building uses
12. [Appendix F.12 - Urban Design Report.pdf](#)
Appendix F12 continues with building uses.
13. [Appendix F.13 - Urban Design Report.pdf](#)
Appendix F13 contains a section Building Signage but refers the architectural drawings of building elevations to a separate signage package.

The EIS also addressed Urban Design and Built Form in Section 5.2 of that document but again no mention is made of what arguably is the most prominent feature of the development; namely that it cantilevers 18.5m over a major arterial road through the City to a height of 90.6m.

Such a significant feature of a development is considered to warrant considerable urban design analysis; primarily an analysis of the necessity and justification for building over a public roadway when the 6 other building options and the original indicative design were totally within the development site. The analysis should also address the manner in which the cantilevered structure relates to the public domain in the immediate vicinity together with its contextual relationship to other buildings in the immediate vicinity, the visual impact it might have on occupants of residential and commercial buildings and the likely visual distraction it might create for northbound and southbound drivers in the immediate vicinity of the site in Harbour St as well as eastbound and westbound drivers on the Western Distributor.



Figure 5 – Existing southbound view of Harbour St in the immediate vicinity of the IMAX site



Figure 6 – Existing northbound view of Harbour St in the immediate vicinity of the IMAX site

e. VIEW ANALYSIS

The Visual Impact Assessment submitted with the EIS limits itself to an assessment of the visual impact of the proposed development on views from the public domain; not from surrounding residential or commercial buildings.

The Director General's Requirement request, in part, a "*Justification and an assessment of the proposed height, view impacts and potential overshadowing of the public domain*". It is considered that the wording of the DGRs is sufficiently clear to reasonably expect an assessment of all view impacts, not just those from the public domain; as the alternative interpretation suggests that the view impacts on occupants of surrounding residential and commercial developments, significant as those impacts might be, do not warrant assessment.

The impact on views on commercial buildings and residential buildings in Central Sydney has generally not been a significant factor in the determination of development applications. View sharing is encouraged but there are no clear guidelines on how view sharing should be determined or when view sharing is a reasonable expectation.

The proposed redevelopment of the IMAX site comprises a building 90.6 m high and approx. 130m in length which will block significant views from the upper floors of the Emporio building at 339 Sussex Street (**Figure 8**), in which Anson City Developments has a substantial financial interest. The development will also give rise to similar views losses from surrounding residential and commercial buildings.

The view loss is caused in part by the building 90.6m height but more so by the building length (approximately 130m). The building not only extends to the easternmost part of the site but cantilevers over Harbour St and virtually extinguishes any significant views of Darling Harbour.

The Land and Environment Court has established four steps (in *Tenancy Consulting and Warringah (2004)*) that provide a basis for the assessment of impact on views. These rely on the assessment of the following:

1) THE ASSESSMENT OF VIEWS THAT THE PROPOSAL WILL AFFECT

This establishes a value system for assessing different kinds of views. Water views are valued more highly than land views; iconic views (eg of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, eg a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.

Comment:

The views lost as a consequence of the proposed development will be those iconic views of Darling Harbour and the heritage listed Pyrmont Bridge; together with Pyrmont beyond (**Figures 7 and 8**).



Figure 7 – Existing view from living area of apartment B1301 on Level 13 of Emporio building at 339 Sussex Street Sydney

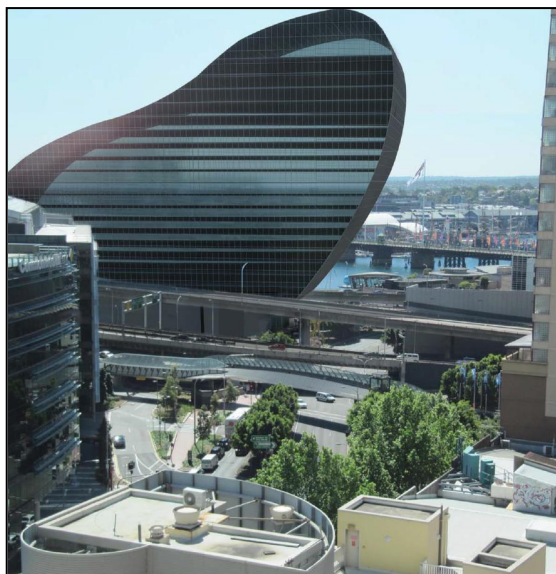


Figure 8 – Photomontage showing view from living area of apartment B1301 on Level 13 of Emporio building at 339 Sussex Street Sydney together with the proposed development

2) THE ASSESSMENT OF WHETHER IT IS REASONABLE TO EXPECT TO RETAIN THE VIEWS

The protection of views across side boundaries, for example, is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position is also relevant.

Comment:

The view lost from apartments in 339 Sussex St will be from their primary living areas. And whilst it might be generally reasonable to anticipate some loss of views as a consequence of development complying with the maximum permissible height and FSR stipulated in the relevant planning controls for the site, the Darling Harbour area has no planning controls relating to height or FSR.

The proposed development has a height of 90.6m, length of approx. 130m and an FSR of 14.67:1. The scale and bulk of the development is considered inappropriate and inconsistent with adjacent development in the City of Sydney which for a similar development would be limited to an FSR of 7.5:1 and a height of 45 to 50m (**Figure 10**).

Moreover, as previously detailed, the development, at its highest point, projects beyond the site boundary and cantilevers 18.5m over Harbour St and virtually extinguishes any significant view of Darling Harbour, the Pyrmont Bridge and Pyrmont. **It is considered that no person purchasing an apartment within 339 Sussex St or similarly affected buildings in the vicinity could have reasonably anticipated that their views of Darling Harbour would have been extinguished by a 90 m structure being built over a public roadway.**

It is therefore considered unreasonable for a development of such an incompatible scale and bulk to deny view sharing to such a degree to occupants of the many residential buildings who currently enjoy those views.

It is considered totally unreasonable to expect any loss of view arising from any structure built over a public roadway; let alone one which is

90.6m high and cantilevers 18.5m over Harbour St, the width of which is only 23m (approx.).

3) THE ASSESSMENT OF THE EXTENT OF THE VISUAL IMPACT

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

Comment:

It is considered that the loss of view to occupants of the upper floors of the Emporio building at 339 Sussex St, as well similarly located occupants in surrounding residential & commercial buildings, arising from the subject development in its current form, would be devastating.

Should the cantilevered section be removed by relocating the development, at its current scale, totally within its own site, it is considered that the view loss would still be severe.

4) THE ASSESSMENT REASONABLENESS OF THE PROPOSAL THAT IS CAUSING THE IMPACT

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

Comment:

As noted above, the Darling Harbour area has no FSR or Height development controls. In the absence of development controls, it would be reasonable to establish a built form having regard to the planning controls in the adjacent sites; particularly those of the City of Sydney.

Under the provisions of the Sydney LEP 2012, the FSR and Height in Harbour St opposite the subject site is a maximum of 7.5:1 for a commercial development and a maximum height of 45m (**Figure 10**); not 14.67:1 and 90.6m as proposed.

It is therefore considered that the scale, massing and location (ie cantilevering over Harbour St) of the development is inappropriate and unsatisfactory with consequent unreasonable & detrimental view impacts.

f. COMPARATIVE ANALYSIS OF THE EXISTING AND PROPOSED FOOTPRINT AND BUILDING HEIGHT.

There are no plans which compare the existing and proposed footprint and building height as required by the DGRs. There is an aerial photo in the View Impact Assessment which shows the existing and proposed footprint. However, a properly scaled and dimensioned plan would be more useful in assessing the comparative scale of the developments in plan and elevation.

g. JUSTIFICATION OF PREFERRED DESIGN

The Urban Design Report and the EIS analyse 7 design options, all but one sit totally within the site boundaries (ie the draft lease area). The preferred design Option 7 (**Figure 2**) projects beyond the eastern boundary and cantilevers 18.5m over Harbour St.

The essence of the justification for the preferred design is reproduced below:
"After an analysis of the feasible alternatives, it was identified that the proposed development (being Option 7) will produce the best possible outcome for the site. This development will contribute a landmark built form and will reduce the bulk of the development by breaking up the volume of the building and creating a fluid built form. The development will also provide new retail, entertainment and office floor space as well as delivering a revitalised public domain which will strengthen connections to Darling Quarter, Tumbalong Park, the exhibition, convention and entertainment precinct and the CBD."

No mention is made or justification provided for the necessity or the public benefits, if any, for projection of the development over a public roadway.

h. VISUAL IMPACT- DISTRACTION TO TRAFFIC IN HARBOUR ST

The Transport Impact Assessment does not assess the likely visual distraction to northbound and southbound drivers in the immediate vicinity of the site created by the 90m cantilevered development over Harbour St with signage at the building's peak (see **Figures 5 and 6**).

In addition, there has been no assessment of the visual distraction on eastbound and westbound drivers travelling on the Western Distributor by the façade of the development being only 2m from the freeway structure along the 130m (approx.) length of the development; inviting viewing into the building. At the eastern and western corners of the development the clearance to the freeway structure is reduced to 750mm.



Figure 9 (a) Photomontage of proposed development and proximity to the Western Distributor.

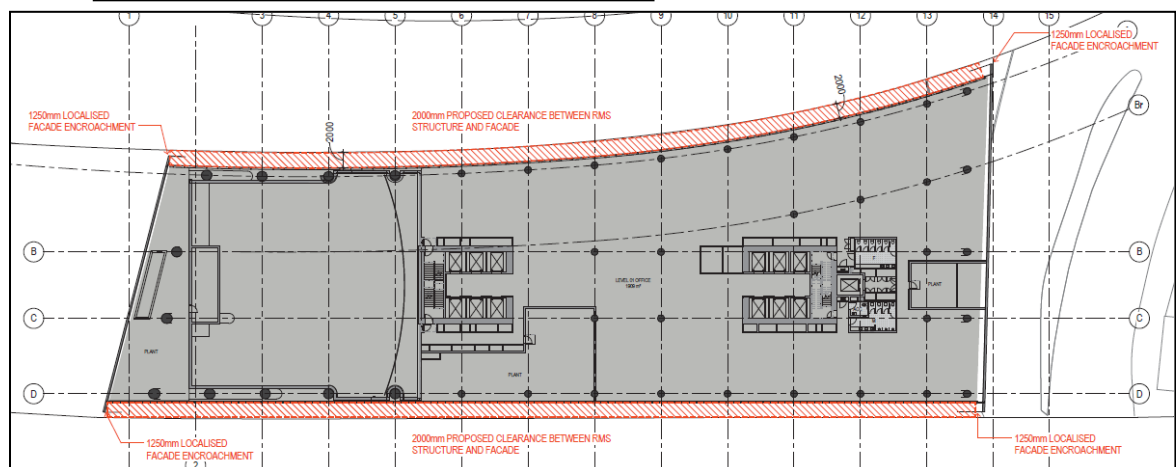


Figure 9 (b) Plan showing 2m separation between façade of the development and the Western Distributor with localised encroachments of 1250mm; thus reducing the separation to 750mm

i. IMPACT OF CRASH ON WESTERN DISTRIBUTOR

Because the building façade is only 2m from the Western Distributor and only 750mm from localised projections, it is considered that the visual distraction to eastbound and westbound drivers will be significantly greater than on other equivalent freeways.

It is therefore considered that the risk of an accident in the vicinity of the building will be proportionately higher. The clearance distances are therefore considered inadequate to provide a satisfactory separation in the event of fire associated with a collision into the expressway structure by one of the many heavy vehicles travelling through the city often carrying highly inflammable fluids.

j. SCALE OF THE DEVELOPMENT/ HEIGHT AND LENGTH

Compatibility with City Edge

As previously mentioned, the Darling Harbour area has no FSR or Height controls. The proposed development has a maximum height of 90.6 m and an FSR of 14.67:1

The maximum FSR for development in the immediate vicinity of the subject development under the provisions of the Sydney LEP 2012 the maximum FSR for commercial development is 7.5:1.

The Sydney LEP 2012 LEP maximum Height in the vicinity of the subject site varies from 45m (Area X), 50m (Area Y) in Harbour St to the immediate south and rising with the rising landform to 80m (Area AB1) in Sussex St to the east (**Figure 10**).

Comment:

It is considered that the proposed development with an FSR of 14.67:1, a height of 90.6m and a length of approx 130 m on the harbour edge is contextually inconsistent and inappropriate in terms of bulk and scale with adjacent development in the City of Sydney which is limited to an FSR of 7.5:1 for commercial development and a height of 45 to 50m.

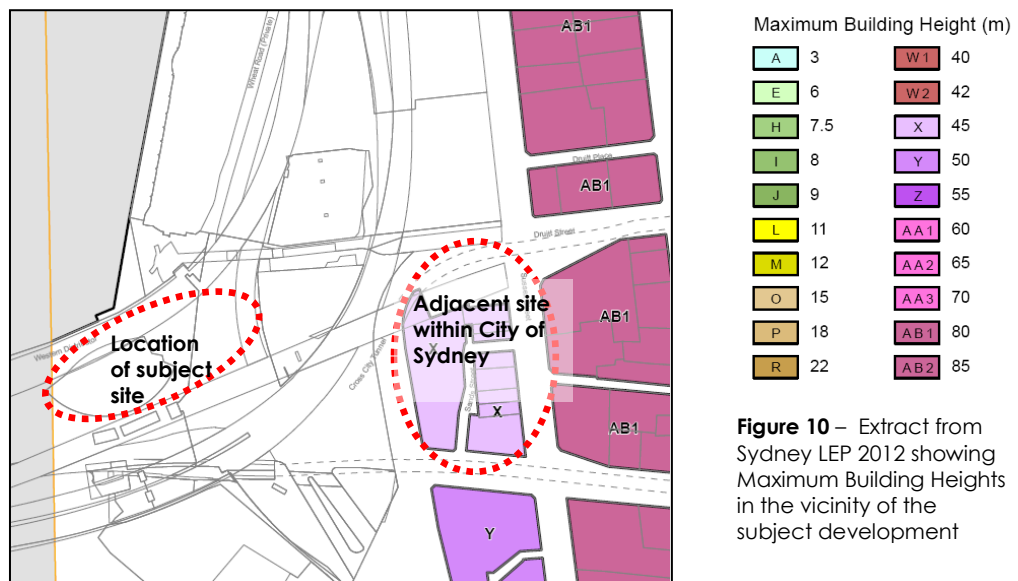
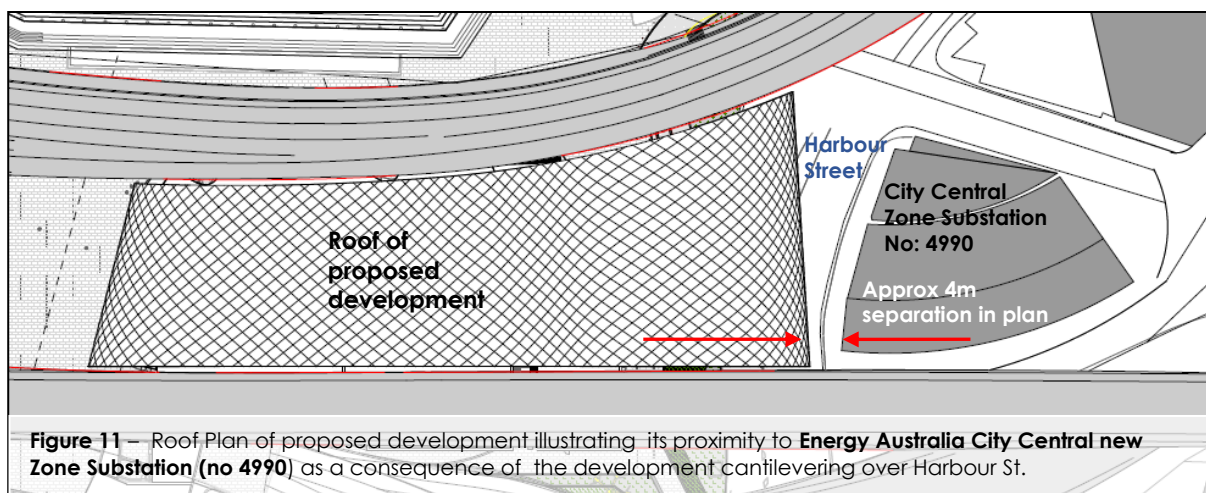


Figure 10 – Extract from Sydney LEP 2012 showing Maximum Building Heights in the vicinity of the subject development

k. ENERGY AUSTRALIA - CITY CENTRAL ZONE SUBSTATION (NO 4990) / ELECTROMAGNETIC FIELD RADIATION/POTENTIAL IMPACT OF FIRE AND/OR EXPLOSION

It is considered unlikely that the designers of the City Central Zone Substation (No: 4990) would have anticipated a multi-storey commercial development being built over Harbour Street in proximity to the substation facility.



The EIS has not assessed the potential long term impact of Electromagnetic Field radiation on the workers and visitors within the adjacent projecting portion of the subject development. Nor is there an assessment of the potential impact of a fire and/or explosion within the adjacent City Central Zone Substation on the cantilevered portion of the proposed development and its occupants.

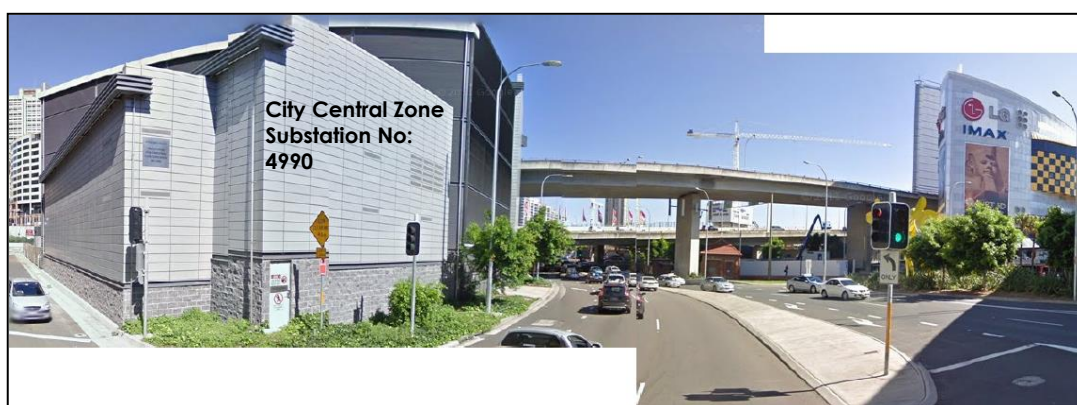


Figure 12 – View of existing IMAX building and Energy Australia Zone Substation; looking south on Harbour Street.

I. SUITABILITY OF THE SITE FOR THE DEVELOPMENT

The architectural design concept and land-uses proposed for the subject development proposal are considered satisfactory. However, the bulk and scale of the development, at an FSR of 14.76:1, is considered to be excessive and incompatible with development that would be permitted on an adjacent site in the City of Sydney LGA; at a maximum FSR of 7.5:1. This is further demonstrated by the northern and southern façades of the development which are to be constructed only 2m from the eastern distributor for a length of approx 130m; reducing at the eastern and western ends to a separation of only 750mm.

It is considered that the clearance distances to the development are inadequate, to avoid a visual distraction as drivers pass by the approximately 130m of offices suites in the northern and southern building façades; with likely increased risk of traffic accidents in the vicinity of the building.

Moreover, a significant portion of the office component of the eastern portion of the development will be constructed outside the site boundary; 18.5m over Harbour St to a height of 90.6m.

The large cantilevered structure is also considered to give rise to a visual distraction to northbound and southbound drivers in the immediate vicinity of the site along

Harbour St; together with the numerous other environmental impacts associated with the bulk of this development.

For the above reasons it is considered that the quantum of floorspace which is being imposed on the site has given rise to unsatisfactory building bulk together with unsatisfactory environmental impacts. It is therefore considered the site is unsuitable for the subject development in its current form.

m. THE PUBLIC INTEREST

The subject development is a 90.6m tall and approx. 130m long mixed use building comprised of 74,233 sqm (FSR 14.67:1) office, retail and entertainment uses with associated car and bicycle parking and public domain works.

The architectural design concept is considered to be well crafted and elegant. However, it is considered that documentation of the development do not adequately address or highlight one of the most prominent aspects of the development; namely that the proposed development does not sit entirely within its site boundaries but cantilevers over one of the City's major arterial roads by 18.5m.

The use of public roadway for the purpose accommodating 90.6 m high component of a private development warrants an assessment of what public benefit, if any, is derived from such a proposal, yet none is provided in this application.

Moreover, the cantilevered projection together with the scale and bulk of the residual portion of the building impose substantial view losses on occupants of residential buildings to the south of the development. In addition, it is considered that the cantilevered building will create a visual distraction to northbound and southbound drivers on Harbour Street in the immediate vicinity of the site as they drive towards and under the building; as well as to eastbound and westbound drivers on the Western Distributor Freeway; amongst other detrimental environmental impacts detailed in the above submission.

Even if the building was setback to site entirely within its site boundary, it is still considered that the scale and bulk of the development is excessive and inconsistent with development permitted in adjacent land by the City of Sydney under its new Local Environmental Plan gazetted in December 2012. The maximum height for an equivalent development would be 45m with a maximum FSR of 7.5:1.

No public benefit has been argued by the proponent of this development which would justify a private commercial development to be constructed over a public roadway and no such public benefit is apparent such as would warrant the alienation of public airspace for private financial gain.

It is therefore considered that approval of the subject development is not in the public interest.

CONCLUSION

Grocon (Darling Harbour Ltd) is proposing to redevelop the IMAX site with a new IMAX cinema, retail and entertainment uses, carparking and a commercial office component. The site is within Darling Harbour and has a capital investment value was stated to be approx \$700 million dollars and thus in excess of \$10 million which classifies the development as State Significant Development. The Darling Harbour site has no FSR or Height controls.

The proposed development is considered to be deficient in its documentation and insufficiently comprehensive in terms of its assessment of environmental impacts; as summarised below:

- 1) **Documentation of the application**
 - (i) Identification of cantilevered structure not in the description of the development, site details and architectural plan site details;
 - (ii) Plans not adequately dimensioned;

- (iii) No adequate comparison of the existing and proposed footprint and height of the development as required in DGRs; and
 - (iv) Urban design report does not assess or justify the cantilevered aspect of the preferred design.
- 2) **Environmental Impacts**
- (i) Contextually Incompatible development / Excessive scale and bulk;
 - (ii) Urban design report does not identify or assess impact of cantilevered structure in and over the public domain;
 - (iii) Loss of significant views to Darling harbour and Pyrmont Bridge;
 - (iv) Alienation of public airspace without justification;
 - (v) No assessment of visual distraction to drivers in Harbour St and Western Distributor with consequential likely increase in traffic accidents in the vicinity of the building; and
 - (vi) No assessment of likely impact of fire and/or explosion of substation & long term impacts of electromagnetic radiation on cantilevered development;
- In addition, it is considered that:
- (i) The site is not suitable for the development in its current form; and
 - (ii) The development is not in the public interest.

Having regard to the matters raised in the above submission, it is considered that the documentation submitted with the application for development does not adequately permit a reasonable person to comprehend the extent of the footprint of the development over the public roadway of Harbour St or the consequential environmental impacts.

No public benefit has been argued by the proponent of this development which would validate a private commercial development being constructed over the public roadway and no such public benefit, sufficient to justify the public loss, is apparent such as would warrant the alienation of public airspace for private financial gain.

The specific documents include the following:

- The description of the site and the development in both the application form and the Environmental Impact Statement;
- The detailed architectural plans in Appendix A of the EIS;
- The Urban Design Report;
- The Visual Impact Assessment; and
- The Transport Impact Assessment.

It is therefore submitted that:

- (i) the development proposal should be withdrawn and resubmitted with:
 - a. a more appropriately sized development within its own site boundaries;
 - b. a revised EIS which clearly documents all significant aspects of the development in the description of the development and revised detailed architectural plans; and
 - c. any new reports that the Department of Planning and Infrastructure might require; and
- (ii) the modified development and EIS should be re-exhibited for public comment; or
- (iii) failing any significant rescaling and repositioning of the development within its own site, the application should be refused.

John Kass
Director