

Our Ref: ARB:LFW:277
Your Ref: SSD-49295711

20 March 2023

Anthea Sargeant
Executive Director - Key Sites and Regional Assessments
NSW Department of Planning and Environment
4 Parramatta Square, 12 Darcy Street
Parramatta NSW 2150

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Copy: Marcus Jennejohn, Senior Planning Officer: Marcus.Jennejohn@planning.nsw.gov.au

Dear Ms Sargeant

Re: Harbourside Shopping Centre Redevelopment - Podium and Tower (SSD-49295711) (Podium and Tower DA)_ Submission on Behalf of the Owners of Strata Plan 49259 (One Darling Harbour)

We act for the owners of Strata Plan 49249 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.

Our client objects to the Podium and Tower DA. It is our client's submission that the application ought not be approved and is in fact incapable of being approved.

The residents of One Darling Harbour have separately made their submissions. This letter provides our client's legal submissions and attaches the submissions of its acoustic and visual experts. Our client has also separately lodged submissions objecting to Modification 3 SSD-7874-Mod-3 (**MOD 3**) seeking to modify the terms of SSD 7874 (**Concept Approval**).

Our client's key concerns are as follows:

- a. The assessment materials fail to properly identify the impacts of the proposed development.
- b. The future impacts of the proposed SSDA3 for the public domain will effectively be determined by the development proposed in this application and accordingly this application cannot be determined until a detailed design for the public domain areas is prepared and exhibited.

- c. The development as proposed will have significant implications for residents of One Darling Harbour. Some of these impacts have been considered acceptable by the Independent Planning Commission (**IPC**) and are consistent with the Concept Approval. However, other aspects of the development are contingent upon approval of MOD3 and will create significant impacts for neighbouring developments (including One Darling Harbour).
- d. The development will remove public space from the waterfront.
- e. The acoustic impact of the construction of the development is unreasonable and must be strictly conditioned and the cumulative acoustic implications of the development have not been considered.

Our client is disappointed that the proponent has not initiated any consultation with One Darling Harbour (being its most significant and closest residential neighbour) regarding the public domain aspects of the development (including the required upgrade to the North Bridge). It is also disappointed that it was not provided with notice of the Harbourside Bulk Excavation Works DA recently determined by the Department and apparently exhibited 22 July 2022 – 18 August 2022.

Annexed to this submission are the following documents:

- i. One Darling Harbour Legal submission to the IPC dated 5 May 2023 (**Attachment A**);
- ii. One Darling Harbour Legal submission on MOD 3 dated 20 March 2023 (**Attachment B**);
- iii. Report of Dr Richard Lamb dated 5 May 2021 and its annexures being the reports of Dr Richard Lamb dated 10 November 2020 and April 2021. Due to the extent of development proposed to exceed that permitted by the Concept Approval, the analysis of Dr Lamb remains relevant (**Attachment C**); and
- iv. Letter from Acoustic Dynamics dated 20 March 2022 (**Attachment D**).
- v. Table providing images from the Mirvac assessment documents referred to in this letter (**Attachment E**)

Introduction

- 1. The harbourside development is on public land, on a strategic site and on land where the planning controls require that development must be for the public good. The planning controls and site context are described out in our 5 May 2021 letter (**Attachment A**).
- 2. The development is required to be consistent with the Concept Approval (s4.24, *Environmental Planning and Assessment Act* 1979 (**Act**)) and must be assessed in accordance with the usual criteria for assessment in s4.15 of the Act.
- 3. The proponent has deferred consideration of the public domain elements of the harbourside development to a future development application (SSDA3). This is

inappropriate and makes it impossible to undertake an assessment of this application as required by the Act.

- The structural elements of the public domain, i.e. the scale of the Bunn St Connection, the location of the “event stairs”, the size of the northern podium and the finished floor (deck) level of the Waterfront Park will be fixed by this development application; and
- The proponent has not provided an assessment of the impacts of these public domain elements (being visual, acoustic and amenity impacts that will be unavoidable if the development proposed in this application is approved).

View Impacts improperly assessed and not acceptable

4. The visual and view impact analysis (**VIVA**) is fundamentally flawed and cannot be used as evidence of the likely impact of the Tower and Podium development on public and private views.
 - a. The precise view impact of the northern podium is not known and is contingent on a development to be described in proposed SSDA3. The images provided in the CGI are at best a representation of a possible development.
 - b. It is not clear if the possible development depicted is consistent with MOD3 (if approved).
 - c. The development depicted in the VIVA is not the development for which consent has been sought.
 - d. The VIVA provides CGI images of the “building envelope” (being the plans referred to in condition A2 of the Concept Approval) rather than providing a representation of a development consistent with the terms of the Concept Approval. This is inappropriate and misleading and does not assist in comparing the view impacts of the proposed development against the view impact authorised by the Concept Approval. Paragraphs 12 – 27 of our submission on MOD3 (at Attachment B) sets out why the “building envelope” is not an accurate gauge of the view impacts of the northern podium authorised by the Concept Approval.

It is also disappointing that the CGI images used depict in the original image a temporary jetty (since removed) that obscure part of the visible waterfront. This jetty is then removed in the after-development images to create the impression of more water views.

5. The assessment of this application cannot progress unless and until a reliable VIVA is prepared and placed on public exhibition.
6. The Tower and Podium development will have significant view impacts for residents of One Darling Harbour. All east facing residences will be impacted and all will lose views to the southeast due to the central podium or tower. Dr Lamb has assessed the SE view impacts

as “severe” or “moderate/severe” for the overwhelming majority of the One Darling Harbour apartments (with views) (see Table 1 in letter dated 7 November 2020 at Attachment C). These SE view impacts are (except for the roof of the central podium) consistent with the Concept Approval and accordingly, our clients’ objections will not be rehearsed. Nevertheless, in assessing this application it is important to bear in mind that our clients will suffer significant view loss even where the proposal is consistent with the Concept Approval (absent MOD3).

7. The Tower and Podium DA assumes that MOD3 will be approved and accordingly, it (as is relevant to the view impacts from One Darling Harbour):
 - provides a northern podium with a FFL of 12.5m RL on the roof – ensuring that all landscaping (hard and soft) will sit above 12.5m RL. We note that the Concept Approval as determined by the IPC requires that soil and hard landscaping sit within the structure (below 12.5m RL); and
 - depicts a central podium with trees extending above the building envelope.
8. The landscape treatment of the roof of the northern podium will substantially affect views from One Darling Harbour. The letter of Dr Lamb dated 7 November 2020 specifically outlines the severe impact on views should development (including landscaping (hard or soft)) fill the building envelope above the northern podium) (see Attachment C)¹. The development proposed in this application makes inevitable that soil mounds will sit above 12.5m RL. We note that the Department’s guidelines prescribe a minimum 150 cubic metres of soil at a minimum depth of 1.2 metres for significant trees. Due to the angle of view from our client’s building, placement of soil mounds on the eastern side of the northern podium could significantly encroach on views of Pyrmont Bridge and the Harbour.
9. The VIVA makes assertions as to the extent of view impact from One Darling Harbour. Some of these assertions are made by way of comparison. To the extent that the VIVA seeks to compare the “hypothetical” extent of view impact of the northern podium (noting that SSDA3 is not available, and the impact is not known) against the view impact should the entire “building envelope be filled”, this comparison is invalid and irrelevant and must be ignored. If the VIVA is seeking to compare the hypothetical landscape treatment of the northern podium against the view impact of the now demolished harbourside shopping centre, then the assessment appears in some instances to be factually incorrect. See, for example, the view impact assessment provided of Apartment 201 at One Darling Harbour – extracted in Attachment E.
10. In relation to the surface treatment of the northern podium (we note that detail of this treatment is deferred until SSDA3), the Concept Approval provides in condition A16 an absolute criterion and not a comparative criteria. It mandates that soft landscaping may

¹ We note that the building envelope assessed in the 7 November 2020 letter is, so far as the view impacts for One Darling Harbour is concerned, virtually identical with that annexed to the Concept Approval.

only exceed the building envelope where it has a “minimal detrimental impact on views from neighbouring properties to the Pyrmont Bridge and the Harbour.”

11. In relation to the impacts of hard landscaping, there is no basis for the development to exceed 12.5m RL. If the proponent has elected to reconfigure its floor plan to reduce the available space on the roof of the northern podium from circa 4,600sqm to only 3,500sqm, then it is incumbent on it to fit within that floor plan spaces for deeper soil planting to allow soft landscaping of Waterfront Park. See image at Attachment E.
12. The treatment of the northern podium will also affect views from the public domain. We note the IPC was specifically concerned to ensure the development provided for views from the western approach to Pyrmont Bridge across to the eastern side of Cockle Bay. It is unclear what information was used in the VIVA to depict the impact of the development on views as no development application has been prepared for Waterfront Park. For example, it is unclear whether deep soil mounds were included in the modelling, how deep the mounds are and where they are placed. We note that MOD3 suggests that 40% of the northern podium is to be covered with shade trees. If this is the case then, from a view impact perspective, the floor height of the park will be increased to at least 14m RL to accommodate for the soil mounds.
13. It is also unclear what facilities will be required on top of the northern podium. The architectural plans depict a lift rise on the northern podium. It does not appear that public amenities for the Waterfront Park are provided within the Tower and Podium DA. It is noted that structures are specifically excluded from the calculation of 3,500sqm open space and that approval of the Tower and Podium DA will mandate that these structures sit on top of the podium and within the public open space. These issues need to be resolved before this application can be determined.
14. The landscape treatment of the private pool park on the roof of the central podium will impact views from neighbouring properties to the west. The roof of the central podium is at between 24.3 m and 26.3m RL. This provides between 4-6m of landscaping to fit within the building envelope. The landscape plans identify a number of tall trees/shrubs to be planted including 3 x *Angophora Costata* (height 15-25m, spread 6-12m) and Banksias and melaleucas with heights between 2-16m. It is assumed that in the order of 2m deep soil mounds have been provided for the taller trees. A depiction of the west elevation of the pool park is provided in the architectural plans. On those plans the trees are depicted as approximately 4m high. See images provided at Attachment E.
15. The VIVA CGI images do not depict the wall of vegetation proposed for the western boundary of the pool park and accordingly, the true impact of the landscaping on views from the west is not assessed in the VIVA.
16. The proposed landscape treatment on the central podium is inconsistent with the Concept Approval. The lack of view impact assessment is non-compliant with condition A16 of the Concept Approval (even if it were amended as requested in MOD3) and there is no basis

to assert that the trees will have minimal detrimental impacts on views from neighbouring properties. It is unacceptable that existing neighbouring residential properties are proposed to be exposed to additional view impacts in order to privilege the rooftop outdoor recreational space of an apartment block.

17. Absent detail on the treatment of the roof of the northern podium, the impacts of approving a development that mandates all landscaping treatment and the facilities required to support a public park in this location sit above 12.5m RL is unknown. The impact of the central podium on views is unacceptable and inconsistent with the Concept Approval.

Acoustic impacts on neighbours improperly assessed and not acceptable

18. The proponent has provided separate assessments of acoustic impacts of the construction of the development and its operation. At Attachment D is a report prepared by Richard Haydon of Acoustic Dynamics.

19. Construction noise impacts will be significant and will exceed relevant guidelines. Despite the assertion in the EIS, there is no basis for concluding that the construction noise impacts for residents approximately 40m from the construction site will be minimised. Construction will occur over a 3 year period and long construction hours (07:00 – 19:00 Mondays – Fridays, 07:00 – 18:00 Saturday) are proposed. This is on top of the 18+ months of demolition/excavation already approved and underway. The letter prepared by Acoustic Dynamics at Attachment D identifies that:

- a. The identified construction noise impacts are likely to be an underestimate of worst case scenarios (such as when most of the noise making activities/heavy equipment) is closets to residential receivers) as they present merely a snapshot in time with possible locations of noise generating equipment; and
- b. The demolition/excavation and construction noise to be experienced over the 5 year period by One Darling Harbour residents will be significant conditions necessary to ameliorate this unacceptable impact; and
- c. Any conditions of consent should limit of construction hours and construction activities and durations (as per Sydney Council's document "Construction Hours / Noise within the Central Business District" and the EPA's Interim Construction Noise Guideline.

20. The operational noise impacts have not been properly assessed.

- a. The proposed private rooftop pool for the 1,000 plus future residents of the tower, has the potential to create amenity impacts for neighbours. These have not been considered. Given the scale of the use proposed this cannot be dismissed as regular urban noise. This use provides no public benefit.
- b. The operational noise assessment models the acoustic impact of the retail operations on the ground floor. The acoustic impacts of the use of the public

domain areas is excluded as this has been deferred to the future SSDA3. A preliminary review of the operational acoustic assessment suggests that the event stairs will provide a conduit for noise on the Harbour towards One Darling Harbour. It may be the case that cumulative impacts including the public domain noise are not excessive given the context of the site. However, we note that:

- i. the relocation of the event stairs sought to be approved in this application has the potential to create impacts for our client – which have not been identified or assessed;
- ii. the proponent's consultant has concluded that the new residential tower will require acoustic treatment (glazing and seals) as a consequence of the anticipated operational noise;
- iii. it would seem likely that our clients will suffer equivalent cumulative noise once the public domain impacts are added and accordingly, it might be appropriate that the proponent offer a similar benefit for our clients;
- iv. under the plans submitted for the Concept Approval the buildings provided a visual and acoustic barrier between the Event Stairs and One Darling Harbour; and
- v. the relocation of the Event Stairs and closing of the Bunn St connection provides an acoustic shield for the prospective residents of the tower at the expense of greater impacts on existing residents in One Darling Harbour.

This is further explained in the Acoustic Dynamics letter attached.

21. The application proposes retail operations from 6:00 to 23:00, 365 days of the year. These operating hours are plainly inappropriate for retail activity on the northern podium. It is unclear if the operational noise assessment has included retail noise from restaurant/cafes on the northern podium in its assessment. Our client requests that a condition be imposed requiring retail activity on or directly accessible from the northern podium to be confined to 7:00 - 18:00.
22. It is unclear if the proponent, in assessing and proposing mitigation measures for the operational noise of the restaurants/bars/cafes, has had regard to the City of Sydney Council criteria the Office of Liquor and Gaming criteria. It is also unclear how the proposed event management noise criteria can be met, given it appears that operational noise will already exceed this criteria (even before the acoustic impacts of activities in the public domain are assessed).

Impacts on the public domain not assessed and not acceptable

23. Through the Concept Approval the proponent has been granted a right to construct a mixed use (primarily residential and commercial) building with 87,000sqm GFA on public land (in

place of approximately 20,000 sqm of retail space). Improved and positive public domain spaces was a critical element of Mirvac's proposal.

24. The Tower and Podium DA will define the location, size and context of the public domain. Relevantly, if MOD 3 is approved, the Tower and Podium DA proposes that:

- The Bunn St connection will no longer be of civic quality and open to the sky – instead it will be more of a retail tunnel;
- The Event Stairs will no longer be positioned in an open space capable of hosting events, instead they will be placed at the pedestrian pinch point and have more of the character of a pedestrian access point to Waterfront Park.

See images in Attachment E.

25. In MOD3, the proponent sought approval for awnings to protrude beyond the building envelope on the ground floor. The Tower and Podium DA seeks consent for 5m wide fixed awnings, with restaurant seating under, protruding into the waterfront boulevard. The issue of appropriation of public space at the waterfront for private retail seating has been a matter of concern since the redevelopment was first proposed in 2016. Our client's town planner, Mr Neil Ingham in his February 2017 submission to the Department identified that:

The public promenade area is narrow and needs expansion rather than contraction. The SHFA principles put forward 20m as an appropriate promenade width. The City Council suggests 30m. ... The public space adjacent to the Harbour should not be encroached upon for any private use.

26. Any awnings will encroach on the pedestrian boulevard. If the awnings are used to provide tables and seating for restaurants/cafes impeding pedestrian flow, this will substantially and significantly adversely affect the public domain features of the development. This impact has not been assessed. See images in Attachment E.

27. Given the importance of the development's contribution to the public domain (due to its premier location on public land), the implications on the public domain of this application is a matter of public interest and must be assessed.

North Bridge

28. The resolution of the "north bridge" being the existing (now closed) pedestrian bridge between One Darling Harbour and Pyrmont Bridge has been deferred to the future SSDA3. Mirvac has not engaged in consultation regarding this bridge and we note that the current demolition consent (within the Concept Approval) and the Excavation Consent do not authorise works on the north bridge. We note that the oversized building envelope of the North Bridge and the Bunn St Connection assist the proponent in meeting its 80% volumetric targets.

It is our client's submission that the Tower and Podium cannot be approved and is in fact incapable of being approved. Our client requests that the proponent be required to prepare and exhibit its proposed public domain development application before any further consideration is given to amending the Concept Approval or determining the structure of the underlying podium (as requested in this application).

Yours faithfully



Andrew Beatty
Director



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5 MAY 2021

HARBOURSIDE SHOPPING CENTRE REDEVELOPMENT, DARLING HARBOUR (SSD 7874)

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

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

This submission addresses the following:

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

Annexed to this submission are the following documents:

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

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

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



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

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

Planning Controls

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



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



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

Public Domain

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



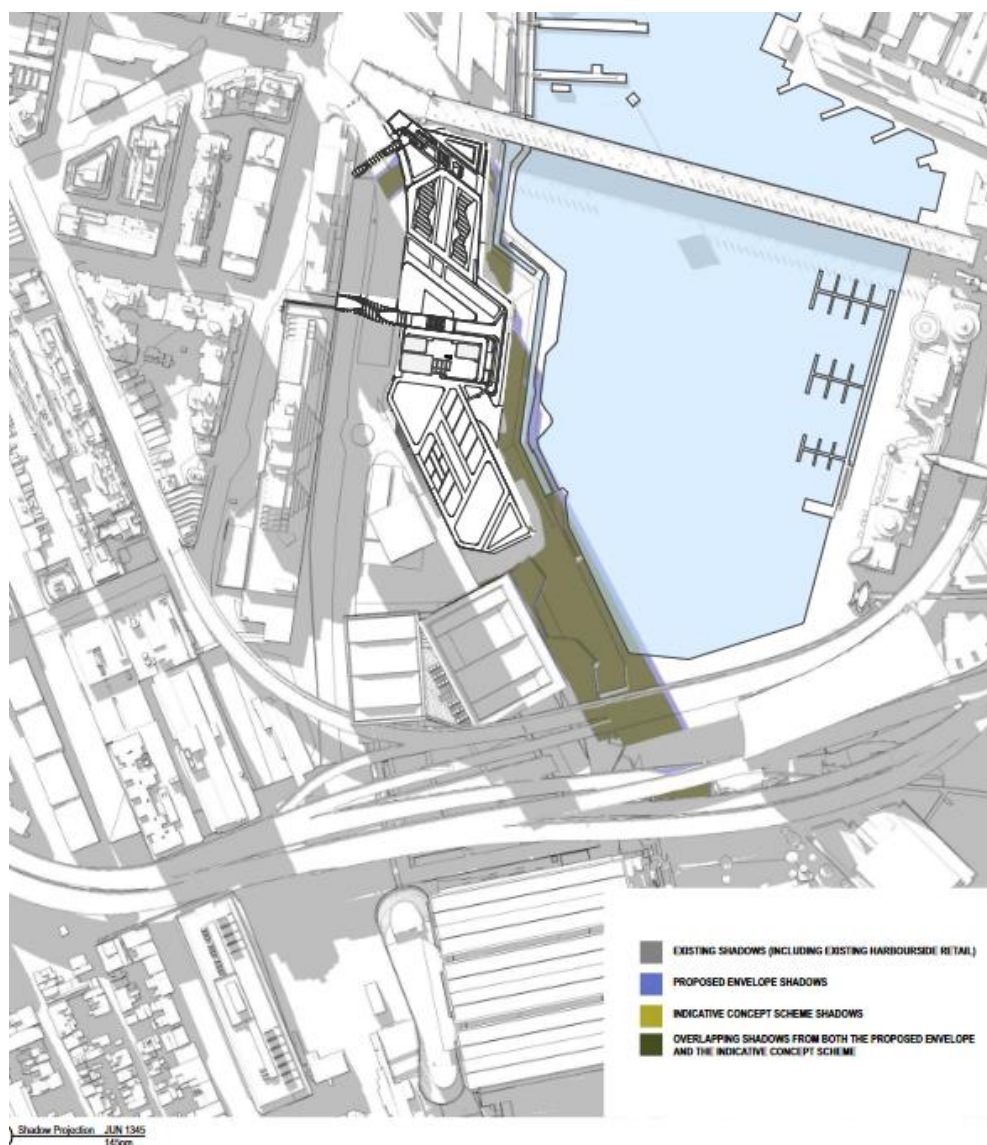
hours a day 7 days a week. This proposed public space will adjoin the 1,000 or so residents in the new proposed residential tower as well as the existing residents of Pyrmont (including the 750 residents of ODH). The privacy and acoustic impacts of public use of this space will not be shielded from residential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

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

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



technical documents underpinning the Strategy¹ clarify that this is specified to mean that the Darling Harbour foreshore along the development is required to have protection from 10-2pm in the winter solstice. This development shades the entire Darling Harbour foreshore at 2pm in the Winter solstice. The Department's report identifies that the proposal restricts significant overshadowing to after 1pm.



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

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

¹ See Pyrmont Place Strategy: Urban Design Strategic Framework page 27

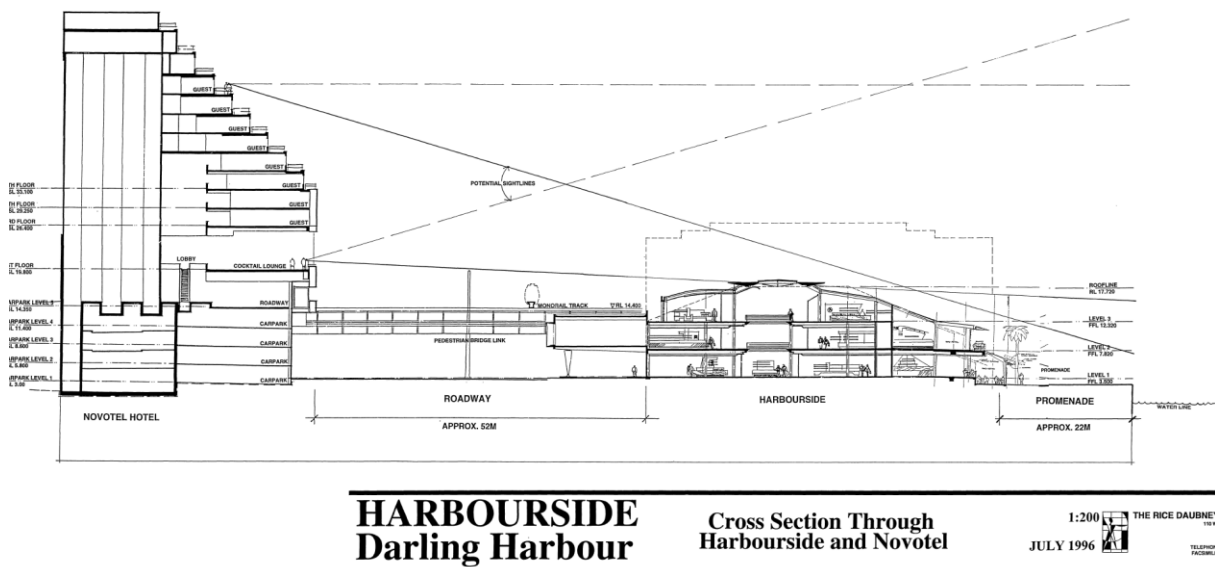
openness and space at the waterfront – the term “bowl” is often used. The 2016 Draft Strategy provided specific guidelines for the Harbourside site and also mandated only low rise development at the waterfront to accentuate the valley form and maximise “*the sense of openness and sunlight access to the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

View Impacts

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



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



Draft Conditions

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

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

- a. Identifies that the assessment underestimates the severity of the noise impacts of the development as it has modelled the proposed equipment individually – not operating simultaneously (on a cumulative basis); and
- b. Suggests amendments to the Department's draft conditions to ensure better outcomes for the many residents of Pyrmont that will be affected by the approximately 18mths of demolition works at the site.

15. The demolition works will have substantial dust impacts for neighbouring developments and specifically ODH. It is standard practice to require that a developer undertaking such significant works be required to pay for the cost of soft washing the façade of adjoining affected buildings. We request that such a condition be included in any consent for the demolition.

16. We have set out in paragraph 10(c) inconsistencies within the draft conditions regarding the height of the northern podium and the nature and requirement for significant additional structures within the Proposed Elevated Podium Public Space to provide for public safety, amenity and function. These inconsistencies are also examined in more detail in Dr Lamb's 5 May 2021 letter (Annexure A).

Conclusion

17. In assessing this proposal the IPC is required under section 4.15 of the EP&A Act to consider the public interest. This is public land which has been reserved for tourism purposes and public use for which the planning controls mandate that pursuit of the public good overrides private interests.

18. This concept plan is fundamentally about the private interests of the developer. The private gain of the developer cannot be a reason for allowing unacceptable impact on residents of ODH and by reason of the overshadowing at the waterfront, the public at large.

Beatty Legal

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

Ballanda Sack
Special Counsel



Our Ref: ARB:LFW:277
Your Ref: SSD-7874-Mod-3

20 March 2023

Anthea Sargeant
Executive Director - Key Sites and Regional Assessments
NSW Department of Planning and Environment
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Parramatta NSW 2150

By email: anthea.sargeant@planning.nsw.gov.au
Copy: Marcus Jennejohn, Senior Planning Officer: Marcus.Jennejohn@planning.nsw.gov.au

Dear Ms Sargeant

Re: Harbourside Shopping Centre Redevelopment Modification 3 Amend the Tower Height and Podium - SSD-7874-Mod-3 (MOD 3) - Submission on Behalf of the Owners of Strata Plan 49259 (One Darling Harbour)

We act for the owners of Strata Plan 49249 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 MOD 3 application for a further modification of the concept approval for the redevelopment of the Harbourside Shopping Centre ought not be approved and is in fact incapable of being approved.

The residents of One Darling Harbour have separately made their submissions and experts in town planning and visual impact have also made submissions on our client's behalf. This letter provides our client's legal submissions.

Our client's key concerns are as follows:

- a. The assessment materials fail to identify the impacts of the proposed modification;
- b. The potential impacts of the amendments sought in MOD 3 on private views from One Darling Harbour are severe; and
- c. The amendments sought will remove public space from the waterfront and have the potential to significantly alter the development's contribution to the public domain and tourism/entertainment characteristics of the area.

Our client is further disappointed that the proponent appears to be seeking to avoid or defer assessment of the critical public domain impacts of the proposal until all the structural constraints of the public domain are pre-determined (rendering any consultation or assessment irrelevant).

Annexed to this submission are the following documents:

- i. Report of Dr Richard Lamb dated 5 May 2021 and its annexures being the reports of Dr Richard Lamb dated 10 November 2020 and April 2021. Due to the nature of the modifications proposed, the analysis of Dr Lamb remains relevant (**Attachment A**); and
- ii. Letter from Acoustic Dynamics dated 20 March 2022 (**Attachment B**).

Introduction

1. The harbourside development is on public land, on a strategic site and on land where the planning controls require that development must be for the public good.
2. Under SSD 7874 (**Concept Approval**), the proponent obtained consent to replace 20,000 sqm of retail space (primarily cafes, waterfront dining, shops) with 42,000 sqm residential, and 45,000 sqm mixed use (now intended to be primarily 33,500 sqm commercial office space with a mere 10,000 sqm retail/cafe). The trade-off for this more than a fourfold increase in building density (and 50% reduction in retail space) in the premier tourist precinct in Sydney was that the development must:
 - provide enhanced public domain and event spaces (primarily on the waterfront) and ensure solar access to the public areas;
 - be compatible with the heritage and civic qualities of Pyrmont bridge; and
 - on the northern podium, not unreasonably impact views from the west.
3. Through the terms of the Concept Approval, the Independent Planning Commission indicated that 3,500sqm of level contiguous open space on the northern podium at a maximum height of 12m RL would provide acceptable impacts on public and private views and solar access to the waterfront.
4. MOD3 seeks to fundamentally change the public domain space and the extent of permitted view impacts for residents of One Darling Harbour.
5. However, as public consultation on the public domain and the details of the public domain spaces have been deferred by Mirvac to a further future development application, details of the extent of the impacts are not available and the assessment provided in the Mod 3 Modification Report dated 2 February (**Mirvac Mod Report**) is fundamentally flawed.

Assessment Materials do not identify the likely impacts

6. Section 4.55(3) of the *Environmental Planning and Assessment Act 1979 (EP&A Act)* requires a consent authority when determining an application for modification of a consent to “take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified”. Relevant matters for consideration in s4.15(1) include: the likely impacts of the development (as modified), including environmental impacts on both the natural and built environments, and social and economic impacts in the locality and the public interest.
7. MOD 3 seeks consent for six changes to the Concept Approval:
 - a. Reduce the minimum area of the northern podium required to be at a maximum height of 12.5m RL from 3,500 sqm to possibly half that (proposed amendment of condition A13), thereby allowing development on the northern podium with only 1,751sqm at RL 12.5m with the remainder required to fit within the largely 25m RL building envelope;
 - b. Allow hard landscaping of unspecified dimensions to exceed height controls on each of the southern podium, northern podium and central podium (proposed amendment of conditions C13 and C15);
 - c. Allow soft landscaping to exceed the building envelope across all podiums (not just in the public areas of the northern podium and central podium) where it can be demonstrated that this causes minimal view impact;
 - d. Allow “awnings” of unspecified dimensions to protrude outside the building envelope on the ground floor (i.e. into the public domain/ Waterfront Boulevard) and level 6 (proposed amendment of condition A11);
 - e. Allow the event and gathering space required to adjoin the main pedestrian link between Pyrmont and the waterfront to be moved to a different location, such as the entry steps to the park on the northern podium, by allowing the Bunn St connection to be a retail tunnel (with commercial office space over) rather than open to the sky and separating the “Event Steps” from the Bunn St connection (proposed amendment of conditions A15 and C4); and
 - f. Increase the height of the tower by three levels to 170m RL.
8. The majority of the amendments proposed seek approval to exceed the building envelope in a largely unspecified way. Given the lack of detail as to the extent or location of the exceedance requested it is then impossible to identify, let alone assess, the impact of the modification sought. Specifically:

- In relation to the requests to exceed the building envelopes identified in paragraph 6(a), (b), (c) and (d) above, no dimensions for the proposed exceedances are provided.
 - In relation to the request to close the roof of Bunn St connection and relocate the event space on the foreshore (paragraph 6(e) above), a new location of the event and gathering space is not proscribed.
9. The Mirvac Mod Report provides details and images of a scenario that might comply with the Concept Approval if it were amended as requested. This is of limited assistance in understanding the scope of the amendments specifically requested in MOD3. Except in the case of the request to increase the permissible height of the residential tower, the Mirvac Mod Report does not, and in fact cannot provide an assessment of the impacts of the modification if approved.
10. The Mirvac Mod Report provides no assessment of the consequences to the public realm and to neighbours of separating the event stairs and Bunn St connection nor does it identify the impact on the waterfront promenade of the proposed fixed awnings. Re-arranging this fundamental component of the proposal is simply not assessed at all in the Mirvac Mod Report.
11. The Mirvac Mod report does not provide an assessment of the likely impacts of modifying the Concept Approval as requested and accordingly, does not provide a basis upon which MOD 3 could be approved.

View impacts

12. Due to the public nature of the site and its tourism/entertainment mandate, the Independent Planning Commission in its consideration of the proposal gave detailed consideration to the impact of the development on public views, solar access to the public domain and impacts on private views. In relation to the northern podium adjoining Pyrmont Bridge the Concept Approval requires that 3,500 sqm of level open space be provided at a maximum deck (ie finished floor level) of 12.5m RL and deep soil planting be provided within the podium. A special permission for large trees to exceed the building envelope was provided only for northern podium and only where the trees improves the amenity of the public open space above the podium and the projection “*above the building envelope will have minimal detrimental impact on views from neighbouring properties to the Pyrmont Bridge and harbour*”.
13. The visual and view impact analysis (**VIVA**) suggests that the “Extent of impact (approved Concept Proposal)” is the building envelope depicted in plans referred to in condition A2 of the Concept Approval. This is incorrect. The limitations on development described in paragraph 12 provide the “base case” against which the impact of the modifications sought in MOD3 must be considered.
14. The VIVA provided in the Mirvac Mod Report is inadequate and fundamentally flawed.

- It does not depict the “base case”, being a development that is consistent with the Concept Approval. Instead, it provides gratuitous CGI images of the building envelope absent the constraints of the terms of the Concept Approval.
 - It does not provide a reliable depiction of the potentially compliant development after the modification:
 - It cannot depict changes to the impacts of the podiums as it has not been provided with reliable dimensions of the extent of the proposed changes; and
 - In instances where those changes have been provided, these are not depicted.
 - It regurgitates the conclusions of a view impact assessment that was comprehensively discredited by our client’s expert, Dr Richard Lamb.
15. The implausibility of the VIVA is evident in its conclusion that view impacts from One Darling Harbour would be “significantly improved” by a modification that permits “soil mounds” of unspecified dimensions to sit on top of all podiums and for trees to exceed the building envelopes across all podiums.
16. Soft and hard landscaping on rooftops can have profound impacts on views. This was recognised by the Independent Planning Commission and clearly articulated in the submission of Dr Lamb (Attachment A, 5 May 2021, page 3) extracted below:
- While approval for the height of the northern podium is sought in the SSDA, approval for the height of extra items that are permissible above the height of the envelope is not. Future DAs can propose to have various items that exceed the height of the envelope, with no indications of what those heights might be, or indeed what the structures or vegetation that are permitted to pierce the envelope would be likely to be or how, if at all, their heights would be controlled. As a result, despite the level of detail provided to analyse view sharing during assessment of the SSDA over a considerable period, the likely height of future additions to the podium is unknown. In my opinion it is totally inappropriate for the impacts on view sharing of a potential wall of vegetation and facilities on the northern podium to be ignored at this most critical stage of strategic planning for the site.*
- The extra public open space now proposed, is described in Schedule 2 of the Draft Development Consent at A15 as the Northern Podium Articulation Zone. The terminology is the same as for a similar zone, but a much lower podium, approved in the Cockle Bay development. The items projecting through the Development Consent envelope, for which consent would be granted would be granted later, would occur through individual and later Development Applications. Such items on the Northern Podium Articulation Zone are likely to conflict with view sharing with One Darling Harbour.*
17. The Department’s Apartment Design Guide, July 2015 prescribes a minimum soil volume of 150 cubic metres, to a minimum depth of 1.2m over an area of 10m x10m or equivalent for trees 12-18m high. It may be the case that an ecologist would require greater soil depths for wind exposed trees on the podium. The proposed amendment to condition A13, C13 and C15 would allow 49.99% of the northern podium to be covered in soil mounds (potentially 1.2m+ deep) and all of the central and southern podiums to also be covered in

“soil mounds”. The location and depth of any soil mounds on the northern and central podium could have substantial impacts for views from ODH. The extent of the impact will depend on the location and depth of the mound (information that has not been provided by the proponent).

18. The assessment of public views in the VIVA provides no images or assessment of the impact of the modification sought. The images provided are merely depictions of the building envelope (absent the modifications sought). The Harbourside promenade looking south (Camera Position 16) does not depict the proposed awnings. The forecourt area adjacent to Pyrmont Bridge (camera Position 14) does not depict the impact of the proposed soil mounds. We note that soil mounds on the northern podium could impact public views from the western approach to Pyrmont Bridge across to the eastern foreshore of Cockle Bay.
19. Construction of the central podium and residential tower will substantially adversely affect significant views from One Darling Harbour. Strict adherence to the building envelope on the central podium is essential to preserve views. It is unreasonable, and contrary to view sharing principles, to prioritise the amenity of future residents from an outdoor recreational space over the existing views of our clients from their homes. Any landscaping on the central podium must remain within the building envelope.
20. The assessment of the extent of view impact in the VIVA is made further unreliable by its continued reliance on an impact assessment thoroughly discredited by our client’s expert Dr Richard Lamb. The analysis of the “*Extent of Impact (approved Concept Proposal)*” (being an analysis of the impact of the building envelope without regard to the terms of Concept Approval), is a reproduction of the analysis undertaken for the development as submitted to the IPC for approval (not the development as approved). Dr Lamb in his 7 November 2020 letter (at Attachment A) detailed his disagreement with the that impact assessment, concluding:

I do not agree with the overall levels of view impacts that are summarised in Section 5.3.2 of the VVIA and therefore many of the individual assessments that are tabulated in Table 12. ... I also disagree fundamentally with the justification for the reasonableness of impacts on views. On my assessment, many levels and apartments are affected by severe impacts.

Dr Lamb included in his November 2020 submission a table which identifies the extent of impact for each of the affected One Darling Harbour apartments of adherence to the building envelope (being identical in all relevant respects to the plans referred to in condition A2 of the Concept Approval). Specifically, he was of the view that 49 apartments would have an extent of view impact of either moderate - severe or severe.

21. Dr Lamb’s submissions (and his table) demonstrate that development (including a wall of vegetation) that fills the “building envelope” will have devastating impacts on views from One Darling Harbour. In response to his (and other submissions) the IPC included in the

Concept Approval conditions specifically limiting the floor height of the northern podium, requiring soil for planting to be accommodated within the podiums and only permitting an envelope exceedance for large trees required for amenity on the northern podium where they could be demonstrated to have minimal detrimental impact on views.

22. The proposed modification of the Concept Approval will make possible a development with significant adverse public and private views impacts. These potential adverse view impacts were considered to be unacceptable by the IPC. The proponent has provided no justification for increasing the view impacts other than its desire to maximise its usable floor space and improve amenity for its future residents (at the further expense of the public and neighbouring properties).

Public Domain Impacts

23. The overriding objective of the planning context for this site is to maximise usable space for the public at the waterfront and to enhance the public (and visitor) enjoyment of the harbour.

24. The Department in its assessment of the proposal stressed the public domain requirements for the waterfront:

“The podium setback along the waterfront results in an overall increase of 474m² of waterfront public domain, removes pedestrian pinch points and provides improved space for events and public gatherings.”

25. The proposed modification will, if approved, allow a reduction (potentially well in excess of 500m²) of the waterfront public domain, reinstate pedestrian pinch points and provide a diminished space for events and public gatherings.

26. MOD 3 seeks approval to install awnings (of unspecified dimensions) on the ground floor. The issue of appropriation of public space at the waterfront for private retail seating has been a matter of concern since the redevelopment was first proposed in 2016. Our client's town planner, Mr Neil Ingham in his February 2017 submission to the Department identified that:

The public promenade area is narrow and needs expansion rather than contraction. The SHFA principles put forward 20m as an appropriate promenade width. The City Council suggests 30m. ... The public space adjacent to the Harbour should not be encroached upon for any private use.

27. Any awnings will encroach on the pedestrian boulevard. If the awnings are used to provide tables and seating for restaurants/cafes impeding pedestrian flow, this will substantially and significantly adversely affect the public domain features of the development.

28. MOD3 seeks to allow the separation of the Bunn St Connection (the central link to Pyrmont) and the Event Stairs (a place for events and gatherings). The Concept Approval required these to be adjacent in order:

- to enhance the civic and open sky qualities of the link between Pyrmont and the Harbour; and
- to provide an event space on the foreshore at a wide point of the boulevard to allow for events and gatherings (and an appropriate focal place on the promenade to stage such events).

29. MOD3 effectively dismantles this concept of a wide and welcoming events space connecting Pyrmont and the Harbour. No consideration has been provided of the impacts of MOD3 on the public domain. Nor have the implications to our client's amenity of potentially moving the event stairs to the northern podium been considered.

30. At Attachment B is a submission by Acoustic Dynamics, on behalf of One Darling Harbour on the potential for MOD3 to create acoustic consequences for neighbouring residents. These impacts need to be identified and assessed.

It is our client's submission that the MOD3 ought not be approved and is in fact incapable of being approved. Our client requests that the proponent be required to prepare and exhibit its proposed public domain development application before any further consideration is given to amending the Concept Approval.

Yours faithfully



Andrew Beatty
Director



Ballanda Sack
Special Counsel

Beatty, Hughes & Associates
ABN 44 273 924 764



Our ref: 107016

5 May 2021

Owners of Strata Plan 49249
One Darling Harbour
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Sydney NSW 2000

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

Dear Sirs,

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

View sharing impacts of proposed further amended application

1.0 Background

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

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

2.0 Purpose of Report

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



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

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

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

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

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

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

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

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

3.0 The Latest Amendments to the Proposed Modified Development

The amendments of concern to One Darling Harbour are the proposal (euphemistically described as an 'offer') to increase the public domain contribution of the proposal by 2000m², using the top of the northern podium, formerly intended to be a passive, green roof, as public open space. This more than doubles the inadequate public open space contribution of the proposal.

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

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

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

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

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

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

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

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

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

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

3. Condition A11 states:

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

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

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

C15(b) requires maximum urban tree canopy

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

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

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

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

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

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

4.0 What the over-height podium does to the views

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

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

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

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

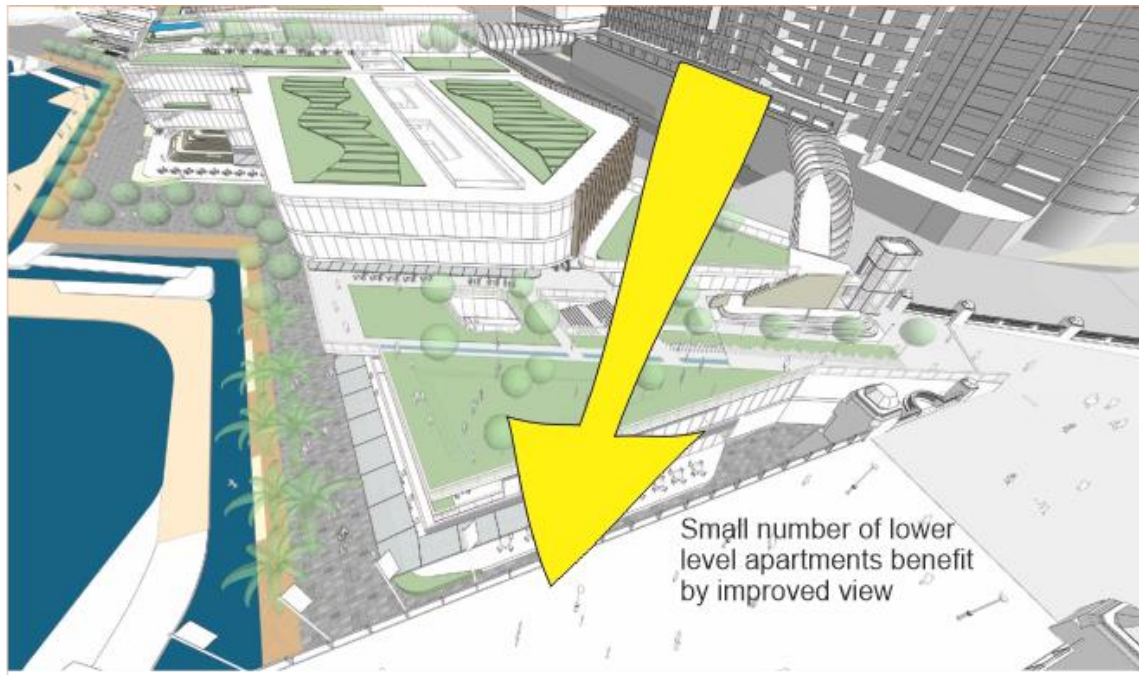


Image 31 Illustrative Scheme: Guardian Square

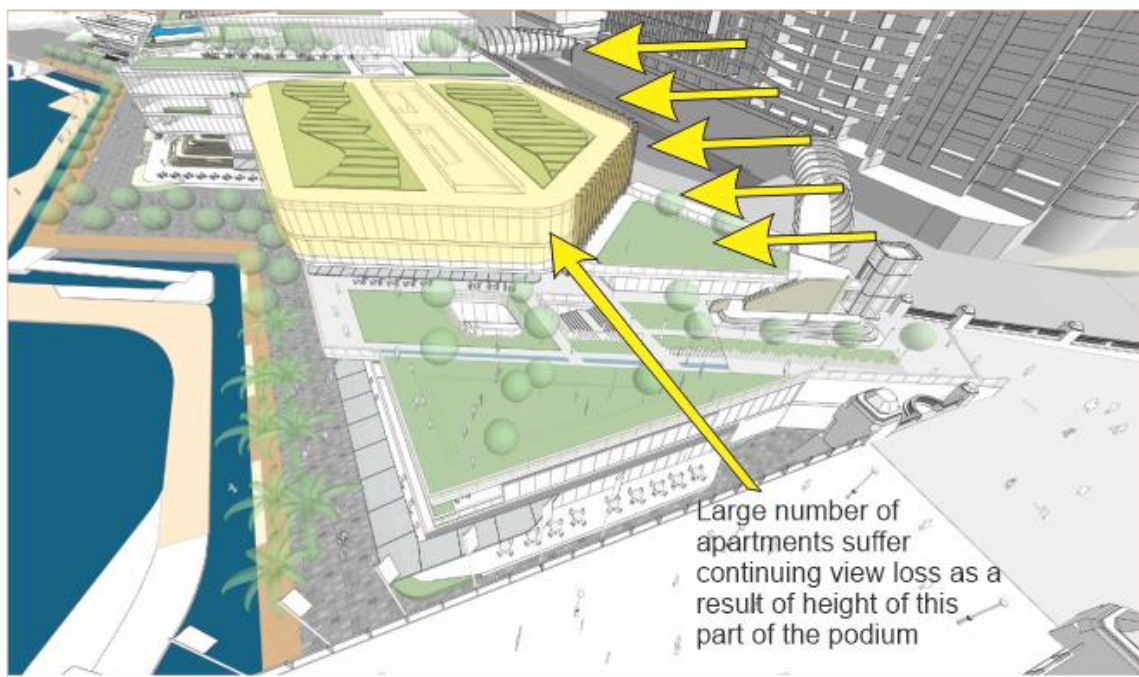


Image 31 Illustrative Scheme: Guardian Square

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

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

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

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

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

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

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

Yours sincerely

A handwritten signature in black ink, appearing to read 'Richard Lamb', with a stylized flourish at the end.

Dr Richard Lamb



Our ref: 107016

7 November 2020

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

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

Dear Sirs,

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

1.0 Background

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

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

2.0 Purpose of Report

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

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

3.0 Proposed Modified Development

The further modified application for a SSDA1 envelope results in a similar podium/tower envelope increasing in height to a top level of RL166.95. The tower element is proposed to be located in essentially the same location. A portion of the podium at the north adjacent to Pyrmont Bridge formerly proposed to be at RL30.50 is proposed to be reduced in height to RL13.75. A recess is also proposed on the west podium adjacent to Bunn Street. The overall GFA of the proposal is unchanged. In effect, the GFA 'lost' by reducing part of the height of the podium to produce a publicly accessible space, referred to as Guardian Square, and the recess in the west podium has been relocated to the tower. There no change to the development potential of the site although the residential GFA has increased by 400m2. The increased height sought for the tower in the further amended proposal does not cause further view loss for One Darling Harbour.

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

3.1 Effects of massing on views from One Darling Harbour

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

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

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

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

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

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

5.0 Visual and view impact analysis (Ethos Urban)

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

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

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

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

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

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

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

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

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

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

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

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

6 Ethos Urban response to RLA 50 Murray Street submission

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

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

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

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

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

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

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

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

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

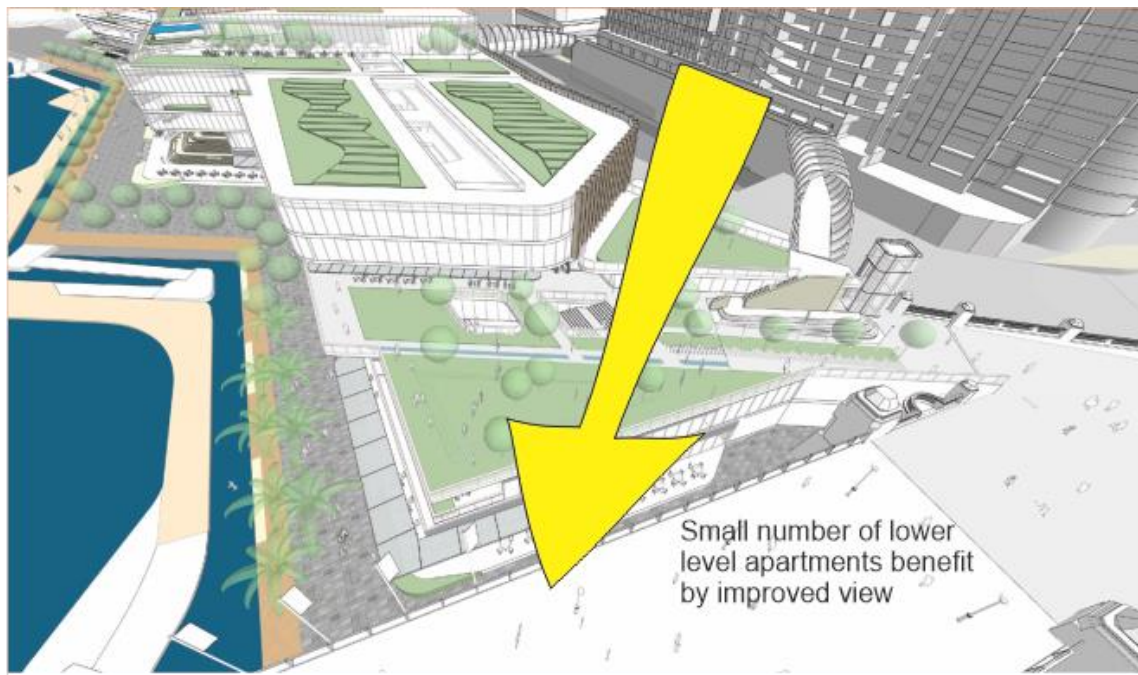


Image 31 Illustrative Scheme: Guardian Square

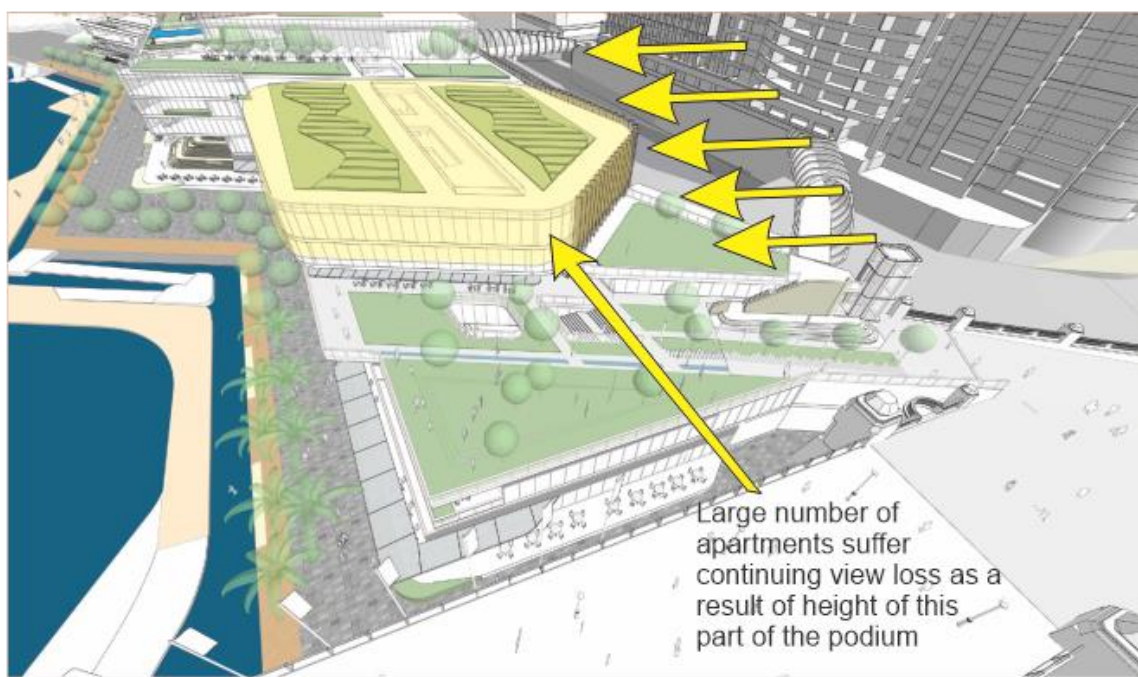


Image 31 Illustrative Scheme: Guardian Square

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

6 Principles for reasonable view sharing

6.1 Independent Urban Design Review

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

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

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

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

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

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

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

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

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



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

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

7 Conclusions

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

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

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

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

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

Yours sincerely

A handwritten signature in black ink, appearing to read 'Richard Lamb', with a stylized flourish at the end.

Dr Richard Lamb

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

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

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

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

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

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

Project 4150
30 March 2023

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

Email: ballanda@beattylegal.com
Mb: 0429 077 639

Dear Ms Sack

ONE DARLING HARBOUR RESIDENTS – HARBOURSIDE SHOPPING CENTRE
PODIUM AND TOWER CONSTRUCTION AND OPERATION DA

1. Acoustic Dynamics is engaged by **Beatty Legal Pty Ltd** on behalf of the Owners Corporation for SP 49259 to conduct a brief review of, and provide comment on, the Harbourside Shopping Centre Redevelopment – Podium and Tower Construction and Operation DA (SSD-49295711).
2. Note is made that the Public Domain is excluded from the DA, although noise emission from its use has the potential to significantly impact the acoustic environment of nearby sensitive receivers including the residential receivers located within One Darling Harbour, at 50 Murray Street, Sydney.
3. Within the acoustic assessments for bulk exaction and construction, greater consideration should be given to the requirements of the City of Sydney Council's document "Construction Hours / Noise within the Central Business District" and the EPA's Interim Construction Noise Guideline, including limitation of construction hours and construction activities and durations.
4. Given the size of the development and the duration of the demolition (2 years), bulk exaction and construction activities (3 years), likely being greater than 5 years, the acoustic impact upon adjacent sensitive receivers will be significant with regard to both loudness and duration of exposure.
5. The acoustic assessments undertaken by the applicant represent a snapshot in time, with demolition, excavation and construction activities occurring at general (average) locations, and hence, will not be representative of the worst-case scenario noise impacts associated with the project.
6. Given the duration and intensity of the proposed works, the cumulative acoustic impact of the prevailing noise environment, coupled with the demolition, excavation and construction activities is likely to be significant.

7. Note is made that within the SSDA report, the Applicant's acoustic consultant has performed noise modelling and calculations of noise emission likely to be experienced by occupants within the residential tower and, on the basis of this, has recommended ***“upgraded glazing with full perimeter seals”***.
8. In consideration of noise emission from the public spaces within the precinct, the consultant also states:

“To achieve recommended internal noise level requirements, and maintain the acoustic performance for recommended façade treatments, external windows and doors would need to be closed”,

and

“As such, it is reasonable to provide an alternative source of ventilation to noise affected apartments in the event they choose to have windows or doors closed”,

and

“The internal noise criteria presented above have been addressed through attenuation treatment via glazing upgrades”.

9. If such mitigation treatments/packages are required to protect the occupants within the residential tower of the development, surely similar treatments/packages would be required to protect sensitive receivers within buildings and similar and sometimes closer offsets to the public spaces, such as receivers located within One Darling Harbour, at 50 Murray Street, Sydney.
10. Noise emission resulting from the use of the public domain and rooftop swimming pool appears to have been excluded from the Applicant's SSDA acoustic assessment. Given the close offset between this public domain and rooftop swimming pool, the potential for these to cause adverse acoustic impact to the sensitive receivers located within One Darling Harbour should be assessed and adequately addressed. Note is made that within the concept plans, the pool was located in front of the residential tower, more distant from One Darling Harbour, at 50 Murray Street, Sydney.
11. It is understood the Applicant seeks approval for the operation of a restaurant/cafe on the rooftop garden (public domain). Any such application, or any application for any form of retail or entertainment premise, must be accompanied by a suitably detailed acoustic assessment demonstrating that noise emission will comply with all applicable and corrected identified and established noise emission criteria. Note is made that the applicable criteria for acoustic assessment include the City of Sydney Council criteria (which are octave band criteria), and if licenced, it must also comply Liquor and Gaming NSW's criteria which for is daytime hours limits noise emission to Background plus 5 dB in octave bands.

12. The hours of any such restaurant/cafe, if approved, should be limited to 7am to 6pm Monday to Saturday and 8am to 6pm on Sundays and public holidays.

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


Kind Regards

ACOUSTIC DYNAMICS



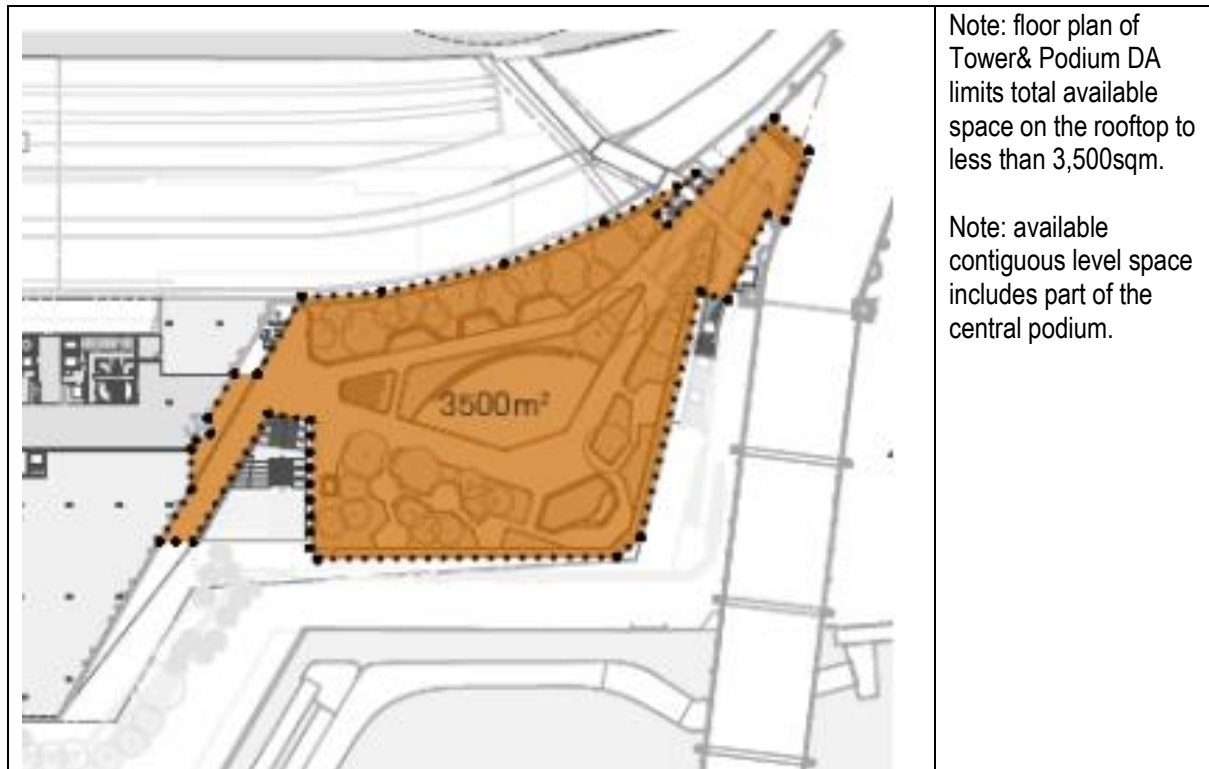

RICHARD HAYDON

Principal, BE(Mech), MIEAust, MAAS, MASA, AAAC Executive (Chair)

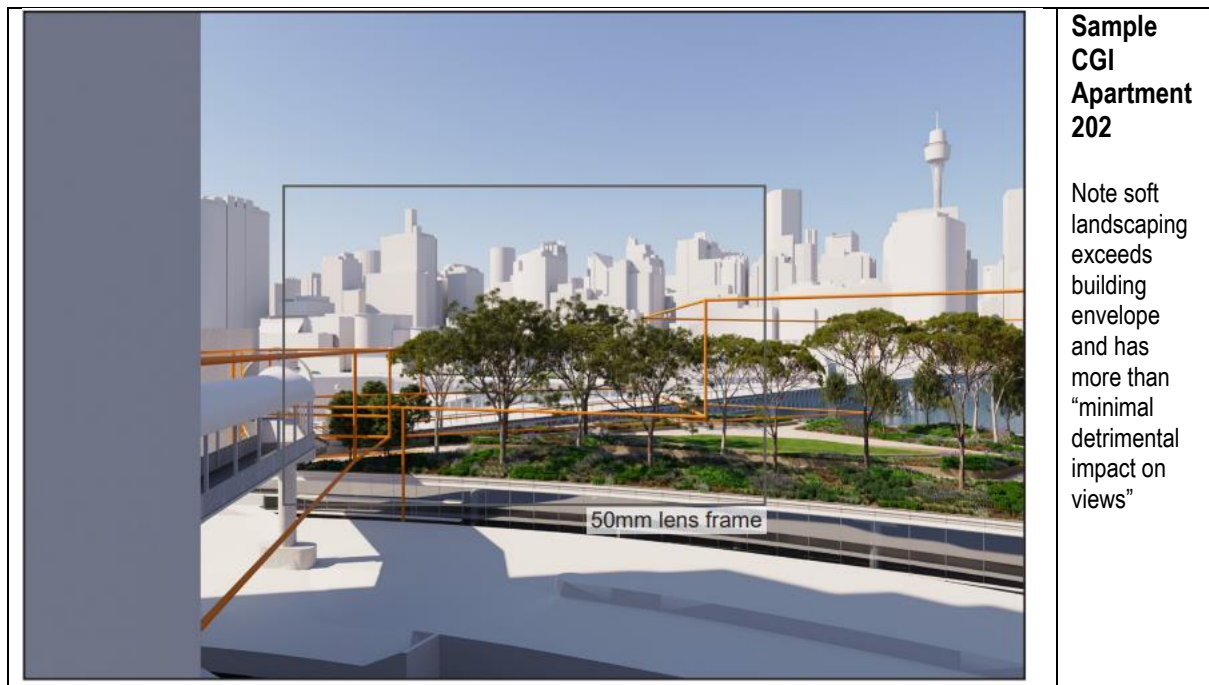
Document	Rev	Date	Prepared	Reviewed	Authorised	Approved
4150L004.RH.230320	0	20 March 2023	RH	JC	RH	

ATTACHMENT E - FIGURES



Available space on the northern podium (paragraph 11)



Private view impacts of northern podium (paragraph 9)

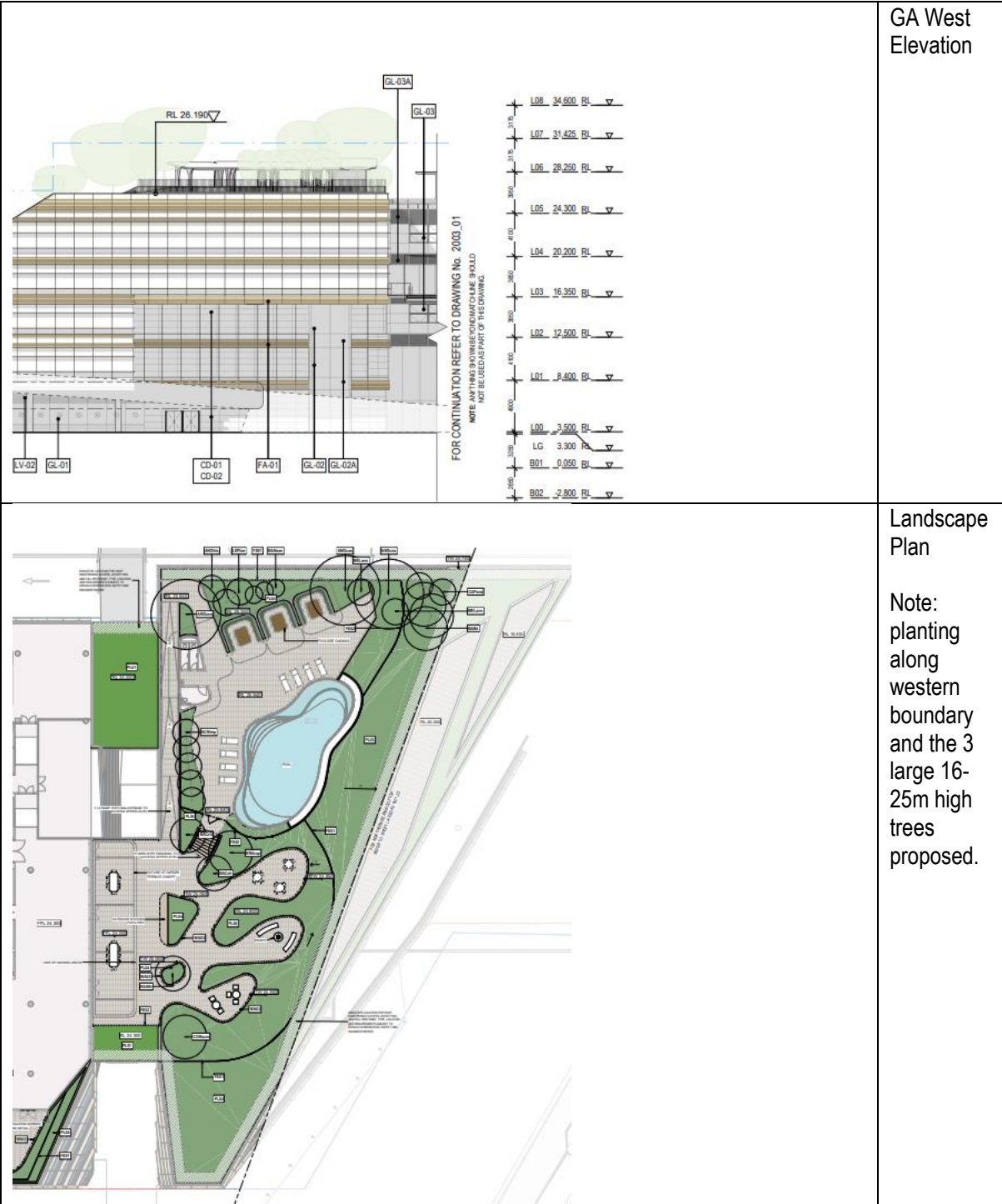


ATTACHMENT E - FIGURES




 <p>A photograph taken from a high vantage point, likely a balcony or window of Apartment 201. The view shows a wide highway with several large trucks. In the background, a dense urban skyline is visible under a cloudy sky. A white rectangular box is superimposed on the image, labeled "50mm lens frame".</p>	<p>Sample CGI and view impact analysis – apartment 201</p> <p>“Original view” Note: extent of view of Pyrmont Bridge</p>
 <p>A photograph similar to the one above, but with a digital overlay. A grey rectangular area is added to the left side of the image, partially obscuring the skyline. A white rectangular box is superimposed on the image, labeled "50mm lens frame".</p>	<p>Sample CGI – Apartment 201</p> <p>Hypothetical view</p> <p>VIVA states: “Expanded Pyrmont Bridge Views”</p>

ATTACHMENT E - FIGURES

Depictions of the central tower private rooftop park (paragraph 14-16)



ATTACHMENT E - FIGURES

 <p>A computer-generated image (CGI) showing a modern building complex with a prominent glass facade and a landscaped area with trees. A white rectangular frame labeled "50mm lens frame" is overlaid on the image, indicating the field of view for a specific camera angle.</p>		<p>Sample CGI from VIVA</p> <p>Note: trees in SW corner and along west boundary not depicted.</p>
 <p>A computer-generated image (CGI) showing a modern building complex with a prominent glass facade and a landscaped area with trees. A white rectangular frame labeled "50mm lens frame" is overlaid on the image, indicating the field of view for a specific camera angle.</p>		<p>Sample CGI from VIVA</p> <p>Note: trees in SW corner and along west boundary not depicted and trees at circa 3m high</p>
 <p>A computer-generated image (CGI) showing a modern building complex with a prominent glass facade and a landscaped area with trees. A white rectangular frame labeled "50mm lens frame" is overlaid on the image, indicating the field of view for a specific camera angle.</p>		<p>Sample CGI from VIVA</p> <p>Note: extent of exceedance of building envelope</p>

ATTACHMENT E - FIGURES

Public Domain Impacts – paragraph 24

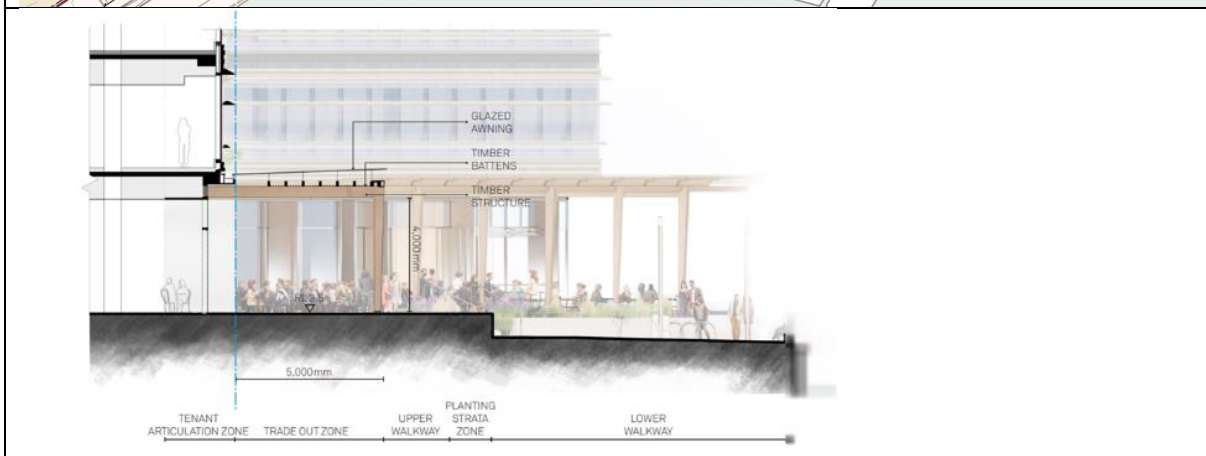
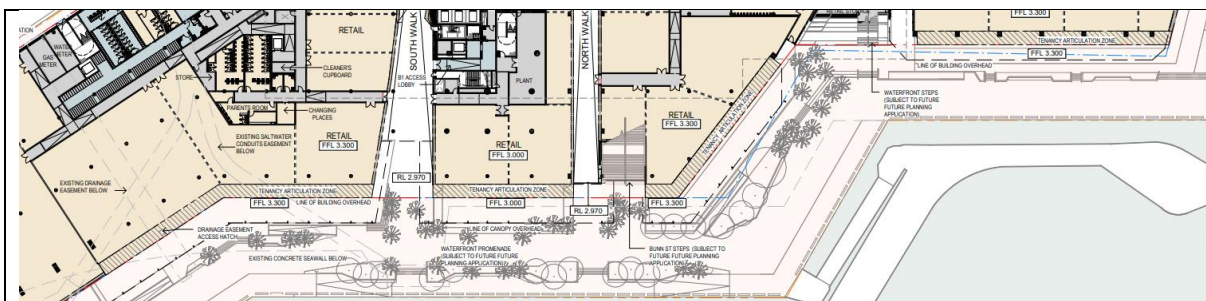
	<p>Drawing of Bunn St stairwell and Event stairs in Tower and podium DA.</p> <p>Note reduction functionality of Event Stairs for events and gatherings</p>
	<p>Image of possible configuration of public domain in Tower and Podium DA</p>
<p>Figure 29 Indicative waterfront boulevard treatment (Source: Applicant's EFRIS)</p>	<p>Proposal as submitted for concept approval. Note wide waterfront promenade (including potential for markets)</p>

ATTACHMENT E - FIGURES



Depiction of Awnings / Promenade (Paragraph 25-26)

(Note narrowing of space available for the public and pedestrian movement and creation of “private retail spaces” in the public domain by steps/height change and planting).



ATTACHMENT E - FIGURES

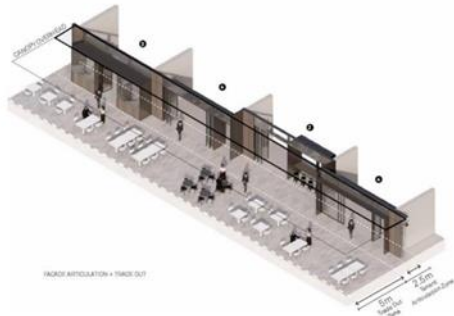


Figure 26 'Kit of parts' facade options and resultant facade articulation - Waterfront Promenade
Source: Snøhetta and Hassell

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Figure 46 Integration of retail tenancies with public domain

Source: Snøhetta and Hassell