

APPENDIX A: STATUTORY ASSESSMENT & SUMMARY

Objects of the Environmental Planning and Assessment Act 1979 (EP&A Act)

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The objects provide an overarching framework that informs the purpose and intent of the legislation and gives guidance to its operation. The Minister's consideration and determination of a project application under Part 3A must be informed by the relevant provisions of the Act, consistent with the objects of the Act.

The objects of the Act in section 5 are as follows:

- (a) *To encourage:*
 - (i) *the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,*
 - (ii) *the promotion and co-ordination of the orderly and economic use and development of land,*
 - (iii) *the protection, provision and co-ordination of communication and utility services,*
 - (iv) *the provision of land for public purposes,*
 - (v) *the provision and co-ordination of community services and facilities,*
 - (vi) *the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats,*
 - (vii) *ecologically sustainable development,*
 - (viii) *the provision and maintenance of affordable housing,*
- (b) *To promote the sharing of the responsibility for environmental planning between the different levels of government in the State, and*
- (c) *To provide increased opportunity for public involvement and participation in environmental planning and assessment.*

It is considered that on balance, with consideration of the benefits provided for in the proposal such as improved public domain, pedestrian connections and additional open space. Overall the project application promotes the co-ordination of the orderly and economic use and development of land and provides a better built form and a positive amenity environment.

With respect to ESD, the EP&A Act adopts the definition in the *Protection of the Environment Administration Act 1991* including the precautionary principle, the principle of inter-generational equity, the principle of conservation of biological diversity and ecological integrity, and the principle of improved valuation, pricing and incentive mechanisms.

The Department has considered the Objects of the Act, including the encouragement of ESD in the assessment of the Project Application. The balancing of the application in relation to the Objects is provided in Section 5.

Statement of Compliance

Under Section 751 of the EP&A Act 1979 and Clause 8B of the EP&A Regulation 2000, the Director General's report is required to include a statement relating to compliance with environmental assessment requirements with respect to the project.

The Department is satisfied that the environmental requirements have been complied with.

Ecological Sustainable Development Principles

There are five accepted ESD principles:

- (a) decision-making processes should effectively integrate both long-term and short-term economic, environmental, social and equitable considerations (the integration principle);
- (b) if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation (the precautionary principle);
- (c) the principle of inter-generational equity - that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations (the inter-generational principle);
- (d) the conservation of biological diversity and ecological integrity should be a fundamental consideration in decision-making (the biodiversity principle); and
- (e) improved valuation, pricing and incentive mechanisms should be promoted (the valuation principle).

The Department has considered the proposed development in relation to the ESD principles and has made the following conclusions:

- **Integration Principle** - The social, environmental and economic impacts of the proposal are positive and the development would provide a positive reuse of the site for employment, commercial and retail use. The environmental impacts of the development are appropriately mitigated as discussed in this report. The Department's assessment has duly considered all issues raised by the community and public authorities. The proposal as recommended for approval will not compromise benefits or opportunities to others. The development will also improve landscaping on and surrounding the site and assist in creating a benchmark for further revitalisation of the locality.
- **Precautionary Principle** – The EA is supported by technical and environmental reports which conclude that the proposal's impacts can be successfully mitigated. No irreversible or serious environmental impacts have been identified. The site has a low level of environmental sensitivity and does not contain any threatened or vulnerable species, populations, communities or significant habitats. The proponent has demonstrated that the development design and appropriate mitigation measures will be implemented to prevent any detrimental environmental impacts. Mitigation measures are outlined in the proponent's Statement of Commitments and/or the recommended conditions of approval. No significant climate change risks are identified as a result of this proposal.
- **Inter-Generational Principle** – The site's redevelopment for commercial, hotel and retail uses incorporating ecologically sustainable design principles and implementation of environmental management practices to be employed during construction of the new development, will ensure that the environment is protected for future generations.
- **Biodiversity Principle** – There is no threat of serious or irreversible environmental damage as a result of this proposal. The proposal does not impact upon biological diversity or ecological diversity. The site is in the centre of the North Sydney CBD and is currently being used for retail purposes.
- **Valuation Principle** – The proposal seeks to promote new commercial, hotel and retail development within an existing urban/CBD area by maximising reliance on existing infrastructure, and enabling residents to live near work, leisure and other opportunities. The proposal will provide additional commercial office space within an existing CBD (Global Sydney). The project will deliver a significantly improved environment that will have greater economic, ecological and community value than the current and previous incarnations of the site.

The proponent is committed to ESD principles and has reinforced this through the Statement of Commitments and the Environmental Assessment which explores key ESD opportunities, including but not limited to a black water treatment plant, use of high performance glazing with external shading, use of energy efficient air-conditioning system, energy and water sub metering,

a high proportion of employees utilising public transport to and from work, the commercial tower will be a 5-star Green Star rating and 5-star NABERS office Energy rating building. Contributions are also to be paid to assist Council in providing long term services to the community. Consequently, the Department is satisfied that the proposal is consistent with the principles of ESD.

Section 75I(2) of the Act

Section 75I(2) of the Environmental Planning and Assessment Act 1979 and clause 8B of the Environmental Planning and Assessment Regulation 2000 provides that the Director general's Report is to address a number of requirements. These matters and the Departments response are set out as follow:

<i>Section 75I(2) criteria</i>	<i>Response</i>
Copy of the proponent's environmental assessment and any preferred project report;	The Proponent's EA and response to submissions (PPR) are located at Appendix C and D of this report.
Any advice provided by public authorities on the project;	All advice provided by public authorities on the project for the Minister's consideration is set out in Section 6 of this report.
Copy of any report of a panel constituted under Section 75G in respect of the project;	No statutory independent hearing and assessment panel was undertaken in respect of this project.
Copy of or reference to the provisions of any State Environmental Planning Policy that substantially govern the carrying out of the project;	Each relevant SEPP that substantially governs the carrying out of the project is identified, including an assessment of the impact of the SEPPs on the development proposal.
Except in the case of a critical infrastructure project – a copy of or reference to the provisions of any environmental planning instrument that would (but for this Part) substantially govern the carrying out of the project and that have been taken into consideration in the environmental assessment of the project under this Division,	An assessment of the development relative to the prevailing environmental planning instrument is provided in Appendix A of this report.
Any environmental assessment undertaken by the Director General or other matter the Director General considers appropriate;	The environmental assessment of the project application is this report in its entirety.
A statement relating to compliance with the environmental assessment requirements under this Division with respect to the project.	The environmental assessment of the project application is this report in its entirety. The proposal adequately complies with the DGRs.
<i>Clause 8B criteria</i>	<i>Response</i>
An assessment of the environmental impact of the project	An assessment of the environmental impact of the proposal is discussed in Sections 5 and 6 of this report.
Any aspect of the public interest that the Director-General considers relevant to the project	The public interest is discussed in Section 9 of this report.
The suitability of the site for the project	The project represents a redevelopment of an underutilised site within an established urban area for commercial activity suitable for the locality.
Copies of submissions received by the Director-General in connection with public consultation under section 75H or a summary of the issues raised in those submissions.	A summary of the issues raised in the submissions is provided in Appendix D , Appendix G and in Section 6 of this report.

Environmental Planning Instruments (EPI's)

APPLICATION OF EPI'S TO PART 3A PROJECTS

To satisfy the requirements of section 75I(2)(d) and (e) of the Act, this report includes references to the provisions of the environmental planning instruments that govern the carrying out of the project and have been taken into consideration in the environmental assessment of the project

application. An assessment of compliance with the relevant EPI's is provided immediately below which concludes that the proposal complies with these documents.

The primary controls guiding the assessment of the proposal are:

- State Environmental Planning Policy 55 – Contaminated Land (SEPP55)
- State Environmental Planning Policy 65 – Design Quality of Residential Flat Buildings
- State Environmental Planning Policy (Infrastructure) 2007
- State Environmental Planning Policy (Major Development) 2005
- North Sydney Local Environmental Plan 1989 (LEP 1989) (applies to 77-81 Berry Street only)
- North Sydney Local Environmental Plan 2001 (LEP 2001) (Applies to 88 Walker Street only)
- Draft North Sydney Local Environmental Plan 2001 Amendment No 28 (Draft LEP no. 28) (applies to entire site)

The provisions, including development standards of local environmental plans are not required to be strictly applied in the assessment and determination of major projects under Section 75R(1) in Part 3A of the Act. Notwithstanding, these standards and provisions are relevant considerations for this application as the DGRs and Section 75I(2)(e) of the Environmental Planning and Assessment Act, 1979 require the proponent to address such standards and provisions and the Department to duly consider them. Accordingly the objectives of a number of EPIs and the development standards therein and other plans and policies that govern the carrying out of the project are appropriate for consideration in this assessment as follows.

COMPLIANCE WITH PRIMARY CONTROLS

State Environmental Planning Policy 55 – Contaminated Land

Clause 7(1)A of SEPP 55 states that a consent authority must ascertain whether the site is contaminated and requires remediation prior to issuing consent. The proponent has undertaken Phase 1 Assessment of the site (refer to Appendix W of the EA) and this determined that it is unlikely that there is any contamination at the site.

State Environmental Planning Policy 65 – Design Quality of Residential Flat Buildings

Clause 11 of the SEPP 'Principle 3 Built Form' discusses good built form design principles. The proposal does not need to conform to this as it is not a residential building. However, the proposal offers a separation of 24 metres between the commercial tower at 77-81 Berry Street and the Beau Monde Tower to ensure some views, vistas and amenity is maintained for the residents of the Beau Monde Tower.

State Environmental Planning Policy (Infrastructure) 2007

As the proposal is a traffic generating development, clause 104 of the above mentioned SEPP needs to be complied with. Consequently the Department had to refer the subject application to the RTA as part of the notification process. Refer to **Section 6.1.4** for RTAs comments. The department will also have to notify the RTA of its determination of the subject proposal.

State Environmental Planning Policy (Major Development) 2005

Under Schedule 1, Group 5 of the MD SEPP, residential Commercial or retail projects with a capital investment value (CIV) of more than \$50 million that the minister determines are important in achieving State and regional planning objectives may be declared a Major Project under Part 3A of the EP&A Act 1979. The project proposes Commercial and Hotel uses with a CIV of \$291 million and will provide up to 3500 full time employment opportunities.

North Sydney Local Environmental Plan 1989 (Applies to 77-81 Berry Street only)

The Berry Street site is located within the North Sydney LGA and is zoned 3(a) Commercial "A." The Commercial zone permits commercial and ancillary uses.

North Sydney LEP 1989			
Provisions	Permitted	Proposed	Compliance
Aims and Objectives	(a) to maintain the role of the Central Business District of North Sydney as the focus of commercial development (d) to encourage residential development on land within the zone especially in North Sydney and St Leonards (f) to limit commercial and retail gross floor area by means of specific controls, having regard to the traffic and carparking capacity of the road system especially within the commercial areas (i) to encourage vehicular access for commercial development away from major arterial roads	The proposed development generally complies with the aims and objectives of the zone. However, objective (d) is not satisfied as there is no residential component within the development, notwithstanding, it is consistent with current objectives for the Commercial zone and is deemed acceptable.	YES
Zoning 3(a) Commercial 'A' (Clause 8)	Commercial, retail and hotel uses	Commercial & retail uses	YES
FSR (Clause 20)	3.28:1	18.81:1	NO
Height	No height control	105 - 143.7m	N/A

The proposed commercial building proposed at the Berry Street site complies with the zoning and objectives of the NSLEP 1989, however FSR is exceeded.

North Sydney Local Environmental Plan 2001 (Applies to 88 Walker Street only)

The Walker Street site is located within the North Sydney LGA and is zoned "Commercial". The Commercial zone permits hotel and ancillary uses.

North Sydney LEP 2001			
Provisions	Permitted	Proposed	Compliance
Aims and Objectives of the Commercial zone	(a) to prevent the loss of commercial floor space to residential use (b) to encourage a diverse range of employment opportunities (c) to minimise adverse effects of development on residents and occupiers of existing and new development	The proposed development generally complies with the aims and objectives of the zone.	YES
Commercial Zoning	Commercial, retail and hotel uses	Hotel uses	YES
FSR	No FSR control	21.4:1 (changed PPR)	N/A

Height (Clause 28D(1b))	Max RL195 m AHD	RL 170 m (112m above ground level)	YES
Overshadowing (Clause 28D (1c))	No net increase in overshadowing outside of the composite area or of residential dwellings outside of the CBD between 9-3pm.	There will be overshadowing on dwellings at Whaling Road between 2.50-3pm in mid-winter	NO

Draft North Sydney Local Environmental Plan 2001 - Amendment No 28 as now incorporated into Draft North Sydney Comprehensive LEP 2009

Draft LEP applies to the Berry and Walker Street sites.

Draft LEP			
Provisions	Permitted	Proposed	Compliance
Aims and Objectives	To ensure a high quality of building design, energy efficiency and urban design for all building development <i>*Other objectives same as NSLEP 2001</i>	A high quality Commercial office tower and hotel building that is well integrated into the surrounding environment.	YES
Zoning Commercial	Commercial, retail and hotel uses	Commercial, retail and hotel uses	YES
FSR #FSR controls removed from Draft Comprehensive LEP 2009	77-81 Berry Street: 23:1 88 Walker street: 25:1	77-81 Berry Street:19.3:1 88 Walker street: 21.4:1	YES YES
Height	<u>77-81 Berry Street</u> - North part = 94 m (RL 155m) - South part = 111m (RL 170m) <u>88 Walker street</u> 112 m (RL 170m)	105 m (+11.0 m) 143.7 m (+32.7 m) 112 m (RL 170m)	NO NO YES

APPENDIX B: DIRECTOR-GENERAL'S ENVIRONMENTAL ASSESSMENT REQUIREMENTS

Director-General's Requirements

Section 75F of the *Environmental Planning and Assessment Act 1979*

Application number	MP 08_0238
Project	Project application for construction of a commercial office and hotel tower development
Location	88 Walker Street and 77-81 Berry Street, North Sydney
Proponent	JBA Planning Consultants on behalf of Eastmark Holdings Pty Ltd
Date issued	27 January 2009
Expiry date	If the Environmental Assessment (EA) is not exhibited within 2 years after this date, the applicant must consult further with the Director-General in relation to the preparation of the environmental assessment.
Key issues	The Environmental Assessment must address the following key issues: 1. Relevant EPI's policies and Guidelines to be Addressed Planning provisions applying to the site, including permissibility and the provisions of all plans and policies including: • SEPP 55, SEPP 65, Draft SEPP 66, SEPP (Infrastructure) 2007, BASIX 2004; • Inner North Subregional Metropolitan Strategy (Draft); • North Sydney LEP 1989, North Sydney LEP 2001 and North Sydney DCP 2002; • Draft North Sydney LEP 2001 (Amendment No. 28); • NSW State Plan, Urban Transport Statement; • Nature and extent of any non-compliance with relevant environmental planning instruments, plans and guidelines and justification for any non-compliance. 2. Architectural, Building and Urban Design Impacts The EA shall address the visual impact of the project in the context of adjoining development, in particular the erection of any skywalks over public roads, and, the impact on any adjacent heritage item (on-site, adjoining and adjacent the site) and its setting and building mass as viewed from public areas. 3. Built Form The EA shall address the appropriateness of the height, bulk and scale of the proposed development within the context of the surrounding development and mitigate potential impacts relating to loss of sunlight, privacy and views at neighbouring properties and the public domain. The EA shall provide the following documents: • Comparable height study to demonstrate how the proposed height relates to the height of the existing development surrounding the subject site; • View analysis to and from the site from key vantage points; and • Options for building massing and articulation. 4. Public Domain The EA shall consider; • Potential improvements to the existing public domain including local streets, footpaths and shared - zones and identify any proposed road closures and re-alignments. • Interface of proposed development and public domain (where applicable); • Relationship to and impact upon existing public domain; Provision of linkages with and between other public domain spaces including access rights, openness to the sky, legibility and "safer by design" (CPTED) issues

	5. Transport and Accessibility (Construction and Operational) The EA shall address the following matters: • Provide a Transport & Accessibility Impact Study prepared in accordance with the RTA's <i>Guide to Traffic Generating Developments</i>, considering traffic generation, any required road / intersection upgrades, access, loading dock(s), car parking arrangements, measures to promote public transport usage and pedestrian and bicycle linkages. • Provide an assessment of the implications of the proposed development for non-car travel modes (including public transport, walking and cycling). • Identify measures to mitigate potential impacts for pedestrians and cyclists during the construction stage of the project. 6. Noise and Lighting Impacts Demonstrate that the proposal will be designed, constructed, operated and maintained so that there is no unacceptable level of noise impacts (including traffic noise) on amenity in the locality. 7. Construction Impacts Address measures to ameliorate potential impacts arising from the construction of the proposed development, and provide a Construction Management Plan. 8. Ecologically Sustainable Development (ESD) • The proposal is to be designed to incorporate ESD principles in the design, construction and ongoing operation phases; and • Provide an assessment of the new commercial tower development and separately, the new hotel building against industry best standards sustainability initiatives (i.e. the Department of Environment and Climate Change's <i>NABERS Energy and Water Rating for Hotels</i>). 9. Drainage/Flooding The EA shall address drainage/flooding issues associated with the development/site, including: stormwater, the potential effects of climate change, sea level rise and an increase in rainfall intensity, drainage infrastructure and incorporation of Water Sensitive Urban Design measures. 10. Contributions The EA shall address provision of public benefit, services and infrastructure having regard to the Council's Section 94/94A Contribution Plan and the /or details of any Voluntary Planning Agreement (VPA). The EA shall include a Developer Commitment Deed prepared and executed in accordance with the Railway Commitment Deed as required by North Sydney Council to ensure the increased demand generated by the development is addressed satisfactorily. 11. Utilities In consultation with relevant agencies, address the existing capacity and requirements of the development for the provision of utilities including staging of infrastructure works. 12. Staging The EA must include details regarding the staging of the proposed development (if proposed). 13. Consultation Undertake an appropriate and justified level of consultation in accordance with the Department's <i>Major Project Community Consultation Guidelines October 2007</i>.
Deemed refusal period	60 days

Plans and Documents to accompany the Application

General	The Environmental Assessment (EA) must include: 1. An executive summary; 2. A thorough site analysis including site plans, aerial photographs and a description of the existing and surrounding environment; 3. A thorough description of the proposed development; 4. An assessment of the key issues specified above and a table outlining how these key issues have been addressed; 5. An assessment of the potential impacts of the project and a draft Statement of Commitments, outlining environmental management, mitigation and monitoring measures to be implemented to minimise any potential impacts of the project; 6. A Transport and Accessibility Impact Study prepared in accordance with the RTA's <i>Guide to Traffic Generating Developments</i>. 7. The plans and documents outlined below; 8. A signed statement from the author of the Environmental Assessment certifying that the information contained in the report is neither false nor misleading; 9. A Quantity Surveyor's Certificate of Cost to verify the capital investment value of the project (in accordance with the definition contained in the Major Projects SEPP; and 10. A conclusion justifying the project, taking into consideration the environmental impacts of the proposal, the suitability of the site, and whether or not the project is in the public interest.
Plans and Documents	The following plans, architectural drawings, diagrams and relevant documentation shall be submitted; 1. An existing site survey plan drawn at an appropriate scale illustrating: • the location of the land, boundary measurements, area (sqm) and north point; • the existing levels of the land in relation to buildings and roads; • location and height of existing structures on the site; • location and height of adjacent buildings and private open space; and • all levels to be to Australian Height Datum. 2. A Site Analysis Plan must be provided which identifies existing natural elements of the site (including all hazards and constraints), existing vegetation, footpath crossing levels and alignments, existing pedestrian and vehicular access points and other facilities, slope and topography, utility services, boundaries, orientation, view corridors and all structures on neighbouring properties where relevant to the application (including windows, driveways, private open space etc). 3. A locality/context plan drawn at an appropriate scale should be submitted indicating: • significant local features such as parks, community facilities, open space and heritage items; • the location and uses of existing buildings, shopping and employment areas; • traffic and road patterns, pedestrian routes and public transport nodes; and • including photographs of existing buildings and streetscapes, and any significant views and vistas. 4. Architectural drawings at an appropriate scale illustrating: • the location proposed building envelopes and/or structures on the land in relation to the boundaries of the land and any development on adjoining land; • the height (AHD) of the proposed development in relation to the land; • the level of the lowest floor, the level of any unbuilt area and the level of the ground; • any changes that will be made to the level of the land by excavation, filling or otherwise.

	5. Other plans and documents (to be required where relevant): • Landscape concept plan - illustrating treatment of open space areas on the site, screen planting along common boundaries and tree protection measures both on and off the site. • Shadow diagrams showing solar access to the site and adjacent properties including open space areas (where appropriate) at summer solstice (Dec 21), winter solstice (June 21) and the equinox (March 21 and Sep 21) at 9.00 am, 12.00 midday and 3.00 pm. • Staging Plan – illustrate how the development will be staged for implementation. • Photomontages – detailing the proposal in the context of adjacent buildings, streetscapes and the North Sydney skyline. 6. A massing model of the proposed development for the entire site (i.e. Concept Plan).
Documents to be submitted	• 1 copy of the EA, plans and documentation for the Test of Adequacy (TOA); • 12 hard copies of the EA (once the EA has been determined adequate); • 12 sets of architectural and landscape plans to scale, including 1 set at A3 size (to scale); and • 1 copy of the EA and plans on CD-ROM (PDF format), in accordance with the Department's Web Site protocol.
Electronic Documents	Electronic documents presented to the NSW Department of Planning for publication via the Internet must satisfy the following criteria: • Adobe Acrobat PDF files and Microsoft Word documents must be no bigger than 1.5 Mb. Large files of more than 1.5 Mb will need to be broken down and supplied as different files; • File names will need to be logical so that the Department can publish them in the correct order. Avoid sending documents that are broken down in more than 10 files; • Image files should not be bigger than 2Mb. The file names will need to be clear and logical so the Department can publish them in the correct order; • Graphic images will need to be provided as [.gif] files; • Photographic images should be provided as [.jpg] files; • Large maps will need to be presented as individual files and will need to be calibrated to be no more than 2Mb each; and • Images inserted into the document will need to be calibrated to produce files smaller than 1.5Mb. Large images will need to be presented as individual files and will need to be calibrated to be no more than 2Mb each. The file names will need to be clear and logical so the Department can publish them in the correct order. Alternatively, these electronic documents may be placed on your own web site with a link to the Department of Planning's website.

APPENDIX C: ENVIRONMENTAL ASSESSMENT

Refer to attached CD

APPENDIX D: SUMMARY OF SUBMISSIONS

Refer to attached CD and Appendix G

APPENDIX E: PREFERRED PROJECT REPORT

Refer to attached CD

88 Walker Street – MP08-0238

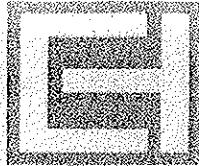
Revised Statement of Commitments

No.	Subject	Commitments	Timing
1.	Construction Management	The detailed Construction and Environmental Management Plan (CEMP) will be prepared by the relevant contractor for each stage of the development. The CEMP will include the following: - Noise and Vibration Management Plan - Soil and Water Management Plan - Air Quality Management Plan - Waste Management Plan - Traffic Management Plan - Occupational Health and Safety Management Plan	Prior to each stage of the works commencing
2.	Construction Management	A project manager will be appointed for the project that will be responsible for the implementation of the CEMP.	Ongoing
3.	Construction Management	A sign will be erected on the boundary of the development site which will contain the following information: - Project Managers name and contact details - Developers name and contact details: - A 24 hour emergency contact phone number - Approved hours of construction work	Ongoing
4.	Dilapidation Reports	Prior to works commencing, dilapidation reports will be prepared for the following buildings which adjoin the site: 77 Berry Street (Beau Monde); 100 Walker Street (Christie Building); and 86 Walker Street (Firehouse Hotel).	Prior to works commencing
5.	VPA	It is intended that a VPA will be executed between the Department of Planning and Eastmark Holdings. The VPA will be in accordance with the formal offer made by Eastmark Holdings dated 21 December 2009.	Prior to the issue of a Construction Certificate (CC).
6.	S94 contributions	Section 94 contributions will be paid in accordance with Council's Section 94 Contribution Plan.	Prior to the issue of an Occupation Certificate (OC)
7.	Sustainability	The proposed development will target the following ESD ratings: Commercial: 5 Star Green Star Rating– Office Design V3 5 Star NABERS (Commercial) Rating Hotel: 4 Star NABERS (Hotel) Rating	Ongoing
8.	Lighting	The lighting design for the development will be in accordance with Australian Standard - AS4282:1997 Control of the Obstructive Effects of Outdoors Lighting. Design details for the public domain are to be submitted to and approved by North Sydney Council.	Prior to a CC being issued for the public domain refurbishment works
9.	Reflectivity	Glazing used on the façade of each building will have a normal specular reflectivity of visible light of 20% or less.	Materials to be confirmed prior to issue of a CC being issued for the relevant stage of the project
10.	Acoustic Amenity	An acoustic engineer will inform the attenuation measures to be installed in the building and will ensure that the design complies with the external noise criteria established for the project.	Prior to an OC being issued
11.	Acoustic Amenity	The glazing for the commercial and hotel buildings will comply with the internal noise criteria established for the project.	Prior to a CC being issued for the relevant stage of the development

88 Walker Street – MP08-0238

Revised Statement of Commitments

No.	Subject	Commitments	Timing
12.	Equitable Access	The proposal will provide equitable access to all public spaces within the development in accordance with AS1428.1, and where achievable will also meet AS1428.2.	Ongoing
13.	BCA	The proposed buildings will comply with the relevant provisions of the Building Code of Australia and Relevant Australian Standards.	Prior to a Construction Certificate being issued for each stage of the development
14.	Public Art	A contribution will be made for the placement of public art in the new public domain areas. A Public Art Strategy will be submitted to and approved by North Sydney Council prior to the installation of the art.	Prior to the issue of an Occupation Certificate
15.	Hazardous Materials	A hazardous materials management plan will be prepared and implemented prior to the removal of hazardous materials from the site. Once the hazardous materials have been removed a Clearance Certificate will be issued by a suitably qualified Occupation Hygienist.	Prior to demolition works commencing
16.	Contamination	Soil testing will be undertaken to confirm the soil quality.	Prior to the exportation of soils off the site
17.	Work Place Travel	Work Place Travel Plans will be prepared for the commercial and hotel buildings which will have an objective of reducing private car travel and outlining sustainable modes of transport available from and to the development	Prior to the issue of an Occupation Certificate
18.	Geotechnical	A geotechnical report will be prepared by a suitably qualified professional	Prior to bulk excavation works commencing



21st of December 2009

NSW Department of Planning
22-33 Bridge Street
Sydney NSW 2000
For attention of Mr. Andrew Smith

Dear Sir,

RE: MP08_0238, 88 WALKER ST & 77-81 BERRY ST NORTH SYDNEY

Eastmark Holdings Pty Ltd ("EMH"), the proponent for the Part 3A application (MP08_0238) for proposed commercial tower and hotel building at 77-81 Berry Street and 88 Walker Street North Sydney, offers to enter into a voluntary planning agreement ("VPA") with NSW Department of Planning ("DOP"). The VPA will set the terms and conditions for payment of the following development contributions:

- Payment of a \$10,000 contribution to the RTA for the upgrade of surrounding intersections; and
- Payment of the railway infrastructure contribution as indicated in LEP 2001, North Sydney.

EMH offers to endeavour finalising and executing the above VPA with DOP prior to the issue of any construction certificate.

We trust that this offer for VPA is satisfactory.

Yours faithfully,

J. H. Park
Director

APPENDIX G: SUMMARY TABLES OF SUBMISSIONS - NORTH SYDNEY COUNCIL, PUBLIC SUBMISSIONS & BEAU MONDE RESIDENTS ACTION GROUP

Summary of Council submission to the EA

Council's objection	LEP controls	Department's response
Fails to comply with the FSR controls in NSLEP 1989	FSR = 3.28:1	The 1989 control does not reflect the needs of a growing commercial precinct within North Sydney CBD. Draft LEP 2001 Amt: 28 aims to increase the FSR on the site to 23:1 to encourage viable commercial development and to reflect the desired future character of building heights/envelopes as also proposed by the Draft LEP.
The proposal fails to comply with the aims and objectives of the NSLEP 2001 (cl. 3(c) (ii), 3 (f) (iii)).	<u>cl. 3 (c) (ii)</u> Ensure that non-residential development does not adversely affect the amenity of residential properties and public places.	The proposal presents a commercial and hotel development that supports urban design principles and is of a suitable scale for a development of its type. The surrounding road network will be modified to support the proposal.
	<u>3 (f) (iii).</u> Ensure the social and economic effects of development are appropriate.	The proposal will provide significant job opportunities for North Sydney 70,000m ² of commercial, hotel and retail floor space which will contribute to targets outlined in the Draft Inner North Subregional Strategy. The proposal will provide an additional 1,100m ² of public open space on site together with other public domain improvements.
The proposal fails to comply with objectives in LEP 2001(cl.28B (j), (l), (m), (o) and (p)).	<u>28 B</u> (j) encourage reuse of existing buildings, (l) promote high quality urban environments, (m) to provide significant public benefits, (m) to protect the amenity of residential zones and existing open space within & nearby the NS Centre, (p) to prevent any net increase in overshadowing	(j) The reuse or recycling of the existing buildings is not feasible due to the size, design and layout of building. (l) Complies with this objective as it provide an additional 1,100m ² of public open space enhancing the surrounding public domain and improving pedestrian access around and through the sites. (m) Complies as stated above. (p)The overshadowing of areas outside the CBD is not significant and is outweighed by the benefits the proposal will bring to North Sydney.

The proposal fails to comply with specific building heights and massing objectives (cl. 28D of LEP 2001/Am 28)	<u>LEP 2001 28D</u> (a) achieve a transition of building heights generally from 100 Miller St. and 79-81 Berry St. (b) promote a height and massing that has no adverse impact on public open space zone, special areas or on heritage items, (c) minimise overshadowing of residential and public open space zones or special areas (d) to protect the privacy of residents within and around the NS Centre, (e) to promote scale and massing that provides for pedestrian comfort, (f) to encourage consolidation of sites. <u>Draft LEP 2001 Am:28</u> (a) achieve a transition of building heights generally from 100 Miller Street and 79-81 Berry Street stepping down towards the boundaries of the CBD (b) promote a height and massing that has no adverse impact on public open space, special areas or on heritage items, (ba) promote height and massing that has no adverse impact on residential land that adjoins the CBD (c) minimise overshadowing of and loss of solar access to land in the residential or public open space zone or special areas	The proposed building height and massing will have no adverse impact on public open space, heritage items or special areas or on residential land adjoining the CBD. The proposal is consistent with the "bell-curve" effect described in the LEP and the height and massing of the proposal involves consideration of pedestrian comfort in regards to wind, solar access, overshadowing and visual dominance.
	<u>28D (2) (a)</u> Max. height RL 195	Building envelopes permissible under LEP 2001 along Mount and Walker Streets for 100 Mount street and along Walker Street will have an existing impact on the views to the east and south from Beau Monde. The additional height and bulk is compensated by additional building setbacks (including to the Beau Monde building) and provision of additional public domain areas.
	<u>28D (2) (b) (c) (d)</u> No net increase in overshadowing: • 9am-3pm (21 June outside NS centre) • 10am-2pm (anytime in public	Properties at the western end of Whaling Road are only affected for a max. of 8 minutes on June 21.

	open space within NS Centre	
	28D (2) (e) Site ≥ 1000m ²	The proposal provides floor plates greater than 1000m ² in the commercial tower.
The non-compliance with Council's building height controls (both existing and proposed) will result in unacceptable impacts on the public domain, increase overshadowing of public open space within North Sydney CBD, view loss for "Beau Monde" residents.	<u>LEP 2001 cl.28D(5)</u> <u>Building design and public benefits</u> The consent authority must consider: (a) the impact of the proposed development in terms of scale, form & massing within the context & (c) whether the proposed development preserves important view lines and vistas, and (d) whether the proposed development enhances the streetscape.	The proposal is consistent with the built form and massing of the CBD whilst providing public benefit through a new pedestrian Plaza at Denison Street and through - site road and enhancing the streetscape and public domain surrounding the site. The proposal will not impact upon any public views or vistas. The permissible LEP 2001 building envelopes on Walker St and Mount St already have an impact upon views from the beau Monde Tower. There are no aims or objectives in the LEP protecting the views of residential properties; in fact, the LEP prohibits residential development in the commercial core. However, the proposal provides an additional 6 metres setback to a maximum of 24m between the commercial tower and Beau Monde allowing a larger view corridor to be retained and it ensures the amenity of the south facing units.
The proposed public benefits are inadequate	28D (5) (b) whether the proposed development provides public benefit such as open space, through-site linkages & community facilities	The proposed public benefits are adequately addressed in the report.
Insufficient information has been submitted re: geotechnical matters	-	Included in revised statement of commitments.
Insufficient information re: wind impacts	-	A revised Wind Report submitted with PPR that adequately addressed wind impacts.
The proposal not in the public interest		The proposal is in the public interest as it will provide additional commercial floor space; improve the surrounding public domain without producing any unacceptable environmental impacts.

Summary of Public submissions to the EA

Issue	% *	Department's Comment
Traffic	80	Concerns were raised regarding traffic generation rates not being substantiated by Halcrow MWT. The revised Traffic Report submitted with the PPR has adequately addressed this matter.
Overshadowing	77	Concerns were raised regarding a loss of light and overshadowing associated with the development. While there is a small amount of increased overshadowing of residential properties in Whaling Road, Neutral bay, this will be reduced with the recommended reduction in height of the proposal. There will be additional overshadowing of some areas within the CBD, however, this additional shadowing is restricted to the period of 10.00AM - 12.00NOON in mid-winter. There is no shadowing impact on Beau Monde.
Height	67	The hotel building at 88 Walker Street complies with NS LEP 2001 height controls. The commercial tower does exceed the draft LEP height controls and it has been recommended that the height be reduced to comply with the exception of the 2 plant room levels.
Privacy	66	The proposed development provides a 24m setback between the Berry Street site and the adjoining residential Beau Monde Tower, compared with the required 18 metres under SEPP 65.
View loss	63	There will be a significant impact on existing views from Beau Monde, although apartments with a south-eastely and south-westerly oreientation will not be as significantly affected as the single-aspect south-facing units. However, there has to be an expectation of some impact due to the location of this residential building in the centre of the North Sydney commercial core, where residential development is now prohibited. The relevant Council planning strategies for the North Sydney CBD contemplate significant development potential on this site as prescribed by the relevant Draft LEP height controls since July 2005.
Noise Impacts	63	Conditions of consent can address the potential acoustic impacts upon the Beau Monde residential tower.
Parking	61	The parking rates as proposed are deemed adequate.
Pedestrian Traffic and safety	61	The increase setbacks at ground level have enabled a widening of the footpaths to ensure better pedestrian safety than that which currently exists.
Lack of Community Consultation	60	Community consultation was adequate. Proponent engaged surrounding residents prior to submitting the EA. The EA was exhibited for the statutory 30

		days and late submissions were accepted from the public.
Non compliance with FSR	60	The proposed commercial tower at 77-81 Berry Street does not comply with the NSLEP 1989 FSR control of 3.28:1. The proposal complies with the FSR controls pursuant to Amendment 28 (which are proposed to be removed from Draft LEP 2009).
Wind Impacts	58	There are concerns that tree planting in the public domain is the only measure to alleviate wind impacts. A revised wind report was submitted with the PPR and adequately addresses the concerns raised.
Structural Impacts on Beau Monde	55	Excavation, vibration and noise impacts from construction can be addressed by appropriate conditions to minimise impacts. Dilapidation surveys of adjacent buildings will be required by condition.
Bulk/Scale	53	The bulk and scale of the proposed development is considered acceptable within the context of North Sydney CBD.
Proposal should not be assessed under Part 3A	48	The \$240 million CIV for the proposal exceeds the \$50 million threshold in Major Development SEPP at the time of lodgement and the current \$100 million threshold.
Non-compliance with LEP Amendment 28	48	The LEP Amendments provisions have now been incorporated into the Draft Comprehensive LEP 2009, but generally remain unchanged. 88 Walker Street is permissible under the Draft LEP and complies with the height controls. 77-81 Berry Street is permissible under Draft LEP, but presents a 3 and 7 storey non-compliance with the Draft height controls. This matter has been addressed in the Department's assessment.
Glare Impacts	48	The PPR has adequately addressed this matter.
No Geo-Tech Report	45	A revised statement of commitment submitted with the PPR addresses this matter.
Requires independent assessment by PAC	14	It is proposed to refer the proposal to the PAC for review.

* A percentage representing the number of times the issue was raised in individual submissions

Submission to the EA by Ingham Planning on behalf of Beau Monde Concerned Residents Group

Main concerns raised by the Ingham Planning submission (on behalf of owners corporation Beau Monde)	Departmental Response
Proposal does not constitute a development of State or regional planning significance	• The \$240 million construction budget for the proposal far exceeds the \$50 million threshold referred to in the SEPP (Major Projects) at the time of lodgment. • The Minister for Planning has determined that the development is of State/regional importance.
Failure to comply with Director General's Requirements	• The Department considered the DGRs and found the EA adequately addressed them prior to exhibition.
Incorrect definition of the subject site	• The proposal involves Council owned land. • The description of the site includes reference to the adjacent road reserves of Denison Street, Spring Street and Little Spring Street.
Non-compliance with North Sydney LEP 1989	• North Sydney LEP 1989 only applies to the 77-81 Berry Street portion of the proposed development. • The proposed development is permissible under North Sydney LEP 1989 but exceeds the FSR controls.
Non-compliance with North Sydney LEP 2001	• North Sydney LEP 2001 only applies to the 88 Walker Street portion of the proposed development. • The proposed development is permissible under the North Sydney LEP 2001 and complies with FSR and height controls.
Non-compliance with the controls of draft North Sydney LEP 2001 Amendment 28	• Draft North Sydney LEP 2001 (Am: 28) applies to 77-81 Berry Street and 88 Walker Street. <u>77-81 Berry Street</u> • The proposed development at 77-81 Berry Street is permissible under Draft North Sydney LEP 2001 (Am: 28). The development complies with FSR but exceeds draft height controls. <u>88 Walker Street</u> • The proposed development at 88 Walker Street is permissible under Draft North Sydney LEP 2001 (Am: 28) but exceeds the height controls by 5.6 metres.
'Triple-dipping' of FSR on the Berry Street site	• Council advised on 20 July 2009, that approximately 4,000m² of potential floor space was transferred to No.73 Mount Street in 1987 and that the FSR for 77-81 Berry Street was limited to 3.28:1 by way of amendment to LEP 1989. • In October 1997, the Beau Monde building was approved by Council on the northern portion of the site at an FSR of approximately 7.1:1 (DA1466/96). The approved commercial FSR for the overall site is 3.28:1. • The current proposal exceeds the 3.28:1 FSR limit contained

	in LEP 1989; however, the 1989 control does not reflect the needs of a growing commercial precinct within North Sydney CBD. Draft LEP 2001 Amt: 28 aims to increase the FSR on the site to 23:1 to encourage viable commercial development and to reflect the desired future character of building heights/envelopes as also proposed by the Draft LEP.
View loss for "Beau Monde" residents	• There are 241 residential units in the Beau Monde building; of these 83 units have a south, east, west, south-east or south west aspect. • View loss will result to units within the Beau Monde building which currently enjoy views to the south-east and south.
Loss of light and privacy for "Beau Monde" residents	• The proposed development provides a 24m minimum setback (between the Berry Street site and the adjoining residential building "Beau Monde") compared to the 18m required under the provisions of SEPP 65. • There will be a degree of loss of privacy and light associated with the development, but will be slightly less than could reasonably be expected in a high density CBD.
Acoustic impacts from the roof terrace of the proposed commercial development at 77-81 Berry Street	• It is unclear from the submission what roof terrace is referred to. • Conditions of consent will address any proposed acoustic impacts on the "Beau Monde" residential tower.
Wind impacts on the balconies of Beau Monde	• The submission is concerned that the planting of trees within the public domain is the only measure to mitigate wind impacts. • The PPR has adequately addressed this matter.
Reflectivity impacts on the residential units within "Beau Monde"	• The submission raises concern with the northern elevation of the proposal as it shows extensive use of glazing that potentially could impact on the residents of "Beau Monde". • The PPR has adequately addressed this matter.
Traffic and parking impacts surrounding the subject site	• The Traffic Report raised concern regarding traffic generation rates not substantiated by Halcrow MWT. • A revised Traffic Report was submitted with the PPR and has adequately addressed this matter.
Structural/geotechnical impacts on "Beau Monde"	• Noise, vibration and structural impacts are matters commonly raised in relation to redevelopment projects and can be resolved by way of appropriate conditions.