

BEATTY LEGAL

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Dear Ms Sargeant

Re: Cockle Bay Wharf SSD 16_7684

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 occupied by approximately 750 residents.

It is our client's submission that the application for concept approval for the redevelopment of the Cockle Bay Wharf SSD 16_7684 not only ought not be approved but in fact is incapable of approval.

This submission is founded on the legal matters set out below and the town planning issues set out in the submission of Ingham Planning (made on behalf of our client) (**attached**). The issues raised by us and by Mr Ingham are to a large extent also applicable to the proposed redevelopment of the Harbourside Shopping Centre (SSD 16_7874) and our client will make more fulsome submissions in relation to these issues in its submission on that proposal. We request that the Department and the Minister (or his delegate) in assessing this proposal also have regard to the submissions made on behalf of our client in respect of the Harbourside Shopping Centre proposal (to the extent they are also relevant to this proposal).

1. Project cannot be assessed until proper planning controls are established

The Darling Harbour area is of State and Regional significance and is a designated tourism and entertainment precinct.

Development in this location and of this scale requires assessment against planning controls (LEP/Master Plan) which have been developed in consultation with the local community.

Uniquely for an area of such significance to the State, the site is positioned within a **development control vacuum**. It has no prescriptive planning controls. Despite being within a strategic foreshore area, it is not required to have a masterplan under the Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (**SREP**) (unless the Minister so directs).

The Darling Harbour area is undergoing significant change as evidenced by the number of development applications made (and recently approved in the area). It is notable that a matter of this re-development is being permitted to be undertaken in the absence of any overarching strategic vision or plan for the precinct.

It is entirely at odds with the objectives of the *Environmental Planning and Assessment Act 1979* (**EP&A Act**) that development of this scale in this significant (and strategically important) location proposed by a private proponent, solely for its commercial gain, may be considered by a consent authority without the benefit of detailed planning controls developed in consultation with the community.

Section 5 of the EP&A Act provides:

The objects of this Act are:

...

(c) to provide increased opportunity for public involvement and participation in environmental planning and assessment.

Government cannot delegate responsibility for identifying and developing a strategic vision for this area to private proponents. The idea that a private proponent through a concept plan and subsequent master plan (subordinate to that concept plan) can be delegated authority to plan and develop a site considered by the State to be of strategic significance without any detailed specific planning criteria is an open invitation for ambit development claims.

The Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (**SREP**) mandates that this strategic site (owned by the State) is to be developed for the benefit of the public¹.

¹ SREP clause 2(2):

(2) For the purpose of enabling these aims to be achieved in relation to the Foreshores and Waterways Area, this plan adopts the following principles:

(a) Sydney Harbour is to be recognised as a public resource, owned by the public, to be protected for the public good,

(b) the public good has precedence over the private good whenever and whatever change is proposed for Sydney Harbour or its foreshores,

(c) protection of the natural assets of Sydney Harbour has precedence over all other interests.

See also *Addenbrooke Pty Ltd v Woollahra Municipal Council (No 2)* [2009] NSWLEC 134 per Biscoe J at [40]: “The Harbour REP places an extraordinary emphasis on the environment of Sydney Harbour and the priority of the public good over the private good”.

Unless and until a master planning process with legitimate opportunities for public consultation and with the clear objective of ensuring that development is in the public interest is undertaken, no consent authority (or Court on review) could be satisfied that the aims of the SREP have been met.

2. The height, bulk and scale of the development and the proximity of the tower to the waterfront is inconsistent with the SREP and accepted principles of urban design

These issues with the development are outlined in Mr Neil Ingham's submission.

In addition to the requirements of the SREP and other policies and guidelines referenced in the SEARs, other policy documents prepared by or on behalf of the Sydney Harbour Foreshore Authority (**SHFA**) ought be taken into account in the assessment of this project.

We note that before it was "consolidated" with Property NSW on 1 July 2016, the Sydney Harbour Foreshore Authority (SHFA) prepared and promulgated a Draft Darling Harbour Urban Form Strategy dated April 2016. This strategy document drew on prior urban design assessment specific to Darling Harbour undertaken for the SHFA by Tony Caro Architects and City Plan Services (Building Height Study 2006), Johnson Pilton Walker (Urban Design Report October 2010) and Woods Bagot (Western Harbour Precinct Design Guidelines 2014).

The proposal outlined in the EIS fails to address or respond to the guidelines outlined in these documents on all criteria relating to building height, bulk and scale and setback from the waterfront.

In circumstances where, as here, there are no detailed planning controls, where the responsible agency has prepared and provided for public consultation documents which seek to establish detailed urban design criteria (including height and setbacks) and where the criteria established are consistent with generally accepted design principles and prior studies undertaken by the authority, these criteria ought be given proper weight in the assessment of the proposal. Such an approach is consistent with the well known principles established by the Land and Environment Court in *Stockland Development Pty Ltd v Manly Council* [2004] NSWLEC 472 (3 August 2004).

Conclusion

Before examining the merits of this application (which we submit are extremely deficient), to adequately assess a proposal of this size and scale at this strategic site the consent authority must do so by reference to a clear planning framework, developed in response to community expectations.

In the absence of that framework, as here, not only has the community been deprived of a basic right to be heard, the consent authority is itself hamstrung as a decision maker.

The approval of a “concept plan” like the present scheme will have long term adverse consequences for the precinct and will leave the State and its agencies open to claims of neglect or worse.

Yours faithfully



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