

18 March 2014

Ms. Amy Watson  
Major Projects Assessment Unit  
Department of Planning and Infrastructure  
23-33 Bridge Street,  
Sydney NSW 2000

Dear Amy,

**RE: RIBBON DEVELOPMENT SSD-5397 – CLARIFICATION OF RESPONSE TO SUBMISSIONS**

Kass-Hermes have been engaged by Anson City Developments Pty Ltd (Anson), which has a majority interest in the Emporio Building at 339 Sussex St Sydney, to act on their behalf in relation to the above development.

Anson submitted comments on the proposed development as part of the public consultation process. The applicant has subsequently prepared a response to submissions.

I have read the response to our comments and wish to make representations on 2 aspects; namely:

- 1. That no response was provided on the lack of identification of the use of Harbour Street as part of the site in the Application Form; consistent with the requirements of Sections 50 1(a) (How must a Development Application be made; requirement to provide information detailed in Schedule 1) and Section 1 (1)(c) of Schedule 1 of the Environmental Assessment Act Regulation 2000;**

**Comment:**

The original indicative development scheme (dated **23 July 2012**), was submitted with a letter from GROCON (dated **23 July 2012**) to the Director General of the Department of Planning requesting the issue of Director General's Requirements (DGRs) and providing the following information on the proposed indicative development:

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

The site was described as follows:

The site is located at Wheat Road, Darling Harbour and is set between the elevated roadways of the Western Distributor. It is legally described as **Lots 401, 402, 403, 404 and 405 in DP 862501**.

The registered owner of the freehold is the Sydney Harbour Foreshore Authority (SHFA). The registered owner of the head lease is Markham Property Fund No.2 Pty Limited.

**The indicative development was designed to be totally within the site (leased areas) boundaries.** It did not project over Harbour St at any point.

Subsequent to the issue of the DGRs (on 22<sup>nd</sup> August 2012), a modified proposal was submitted on, or about, 19 September 2013. The design differed substantially from the indicative design upon which DGRs were issued. **The new "Ribbon" development extends beyond the lease area by up to 30.815m including a cantilevered tower building extending over Harbour St by 18.5m.**

The application form (dated **19/9/13**) identified the land on which it was proposed to develop as follows:

2. Identify the land you propose to develop		
Fill out the relevant fields or attach a schedule of lands and a detailed map of the land.		
Site Name (Enter the common name for the site e.g. Liverpool Hospital, Drayton South Coal Mine etc.)		
The Ribbon		
Street or Property Description		
31 Wheat Road		
Suburb, town or locality	Postcode	Local government area
Sydney	2000	Sydney
Lot/DP or Lot/Section/DP or Lot/Strata no.		
Please ensure that you put a slash ( / ) between lot, section, DP and strata numbers. If you have more than one piece of land, you will need to separate them with a comma eg 123/579, 162/2.		
Lots 401, 402, 403, 404 and 405 in DP 862501		

**Notwithstanding that the development projected 30.15m beyond the site (leased areas) boundaries, including a projection over Harbour St by 18.5m, the site description was identified as the same site as that of the original indicative design, submitted on 23 July 2012, which did not project beyond Harbour St.**

**It is submitted that the application has not adequately identified the land proposed to be developed and has been made in contravention of:**

- **Sections 77(a) and 78A(9) the Environmental Planning and Assessment Act 1979, as amended; reproduced below:**
  - **"77 Application of Division**  
This Division:
    - (a) applies to development that may not be carried out except with development consent"; and
  - **"78A Application (for Development)**  
(9) The regulations may specify other things that are required to be submitted with a development application".
- and**
- **Sections 50 1(a) (How must a Development Application be made; requirement to provide information detailed in Schedule 1) and Sections 1 (1)(c) and 2 (1)(a) of Schedule 1 of the Environmental Assessment Act Regulation 2000; reproduced below:**
  - 1(1)(c) "the address, and formal particulars of title, of the land on which the development is to be carried out"
  - 2(1) "A development application must be accompanied by the following documents:
    - (a) a site plan of the land".

**Consequently, as the site has not been adequately identified in the Application Form or in the Description of the Development, it is considered that the application is deficient and any**

consent issued would be procedurally invalid. This is able to be remedied by readvertising the development prior to the determination of the application, showing the full extent of the site; including all land projecting beyond the leased area and land projecting over Harbour Street in order to provide the general public with a more accurate description of the extent of the development over a public road.

2. That the View Impact Assessment does not identify or adequately assess the implications of constructing a 90.6m high building cantilevering 18.5m over Harbour St; a public road.

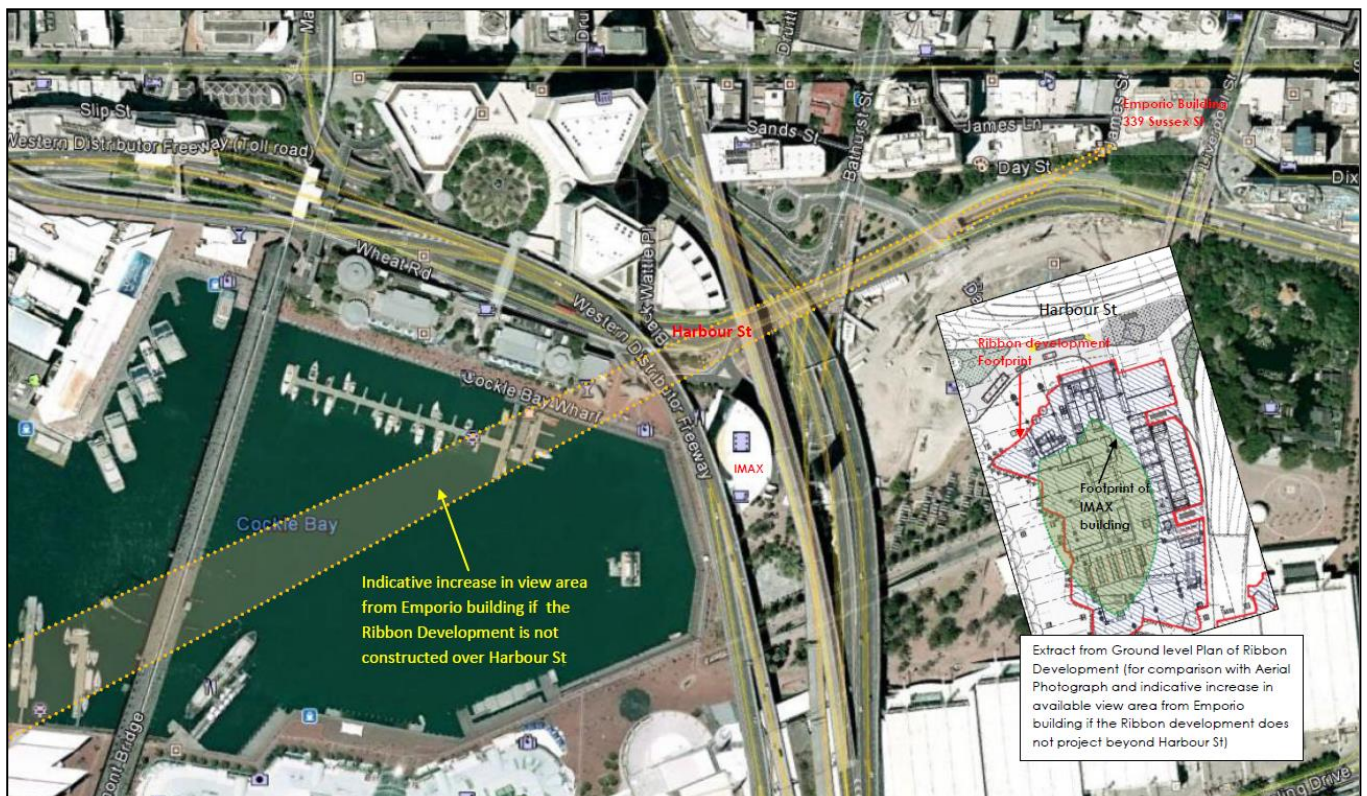
Reproduced below is an extract from the summary of the response to view impacts on the Emporio Building, contained in the report of JBA Planning, together with comments as follows:

*"GMU analysed 8 units and a total of 24 views for the Emporio Apartments - In general, the views ranged from low to medium to high significance - The views of medium to high significance were generally from upper level terraces with open views to the Cookie Bay. However, due to the existing distance from this development to Cockle Bay and due to the level of existing development framing the view, none of the views are considered to be of high significance. The level of impact for a reduced number of the units was found to range between minor to moderate. The majority of the impacts were significant, but no impacts were found to be severe or devastating. Therefore the acceptability of the impact is considered to be reasonable due to the following factors:*

1. *"There is a lower expectation of view retention for development located a distance away from the water's edge where developable land exists between the residential development and the water's edge."*

**Comment:**

The distance of the most affected apartments from the water's edge is approximately 320m. The **view area affected the projection of Ribbon development over Harbour St** lies directly along the axis of Harbour St (**Figure 1**) and **is not affected by any developable land**. The impact of the loss of view from the most affected apartments is significant.



**Figure 1-** Aerial photograph of Cockle Bay illustrating the indicative increase in view area from the Emporio building if the Ribbon Development is not constructed over Harbour St.



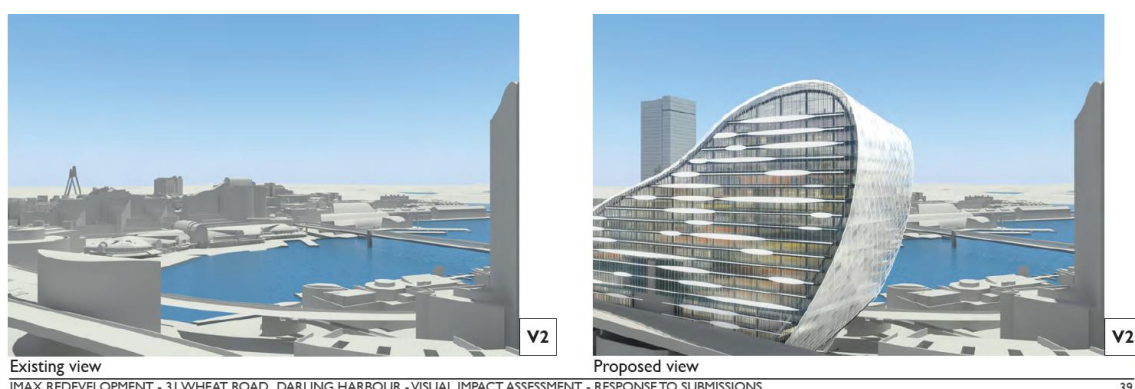
In general throughout the City of Sydney there is no expectation of retention of views for commercial or residential developments; particularly in Central Sydney. There is a notice placed on all relevant s149 Certificates to that effect. This is considered to be a valid approach to development within an urban environment. However, view sharing is encouraged where possible.

The Land and Environment Court, through *Tenacity Consulting v Warringah* [2004] NSWLEC 140, established four steps for assessing view impacts and view sharing; in summary they are:

- i. The assessment of the significance of views that the proposal will affect;

**Comment:** The applicant's View Impact Assessment identifies the view from Level 20 of the Emporio Building as follows:

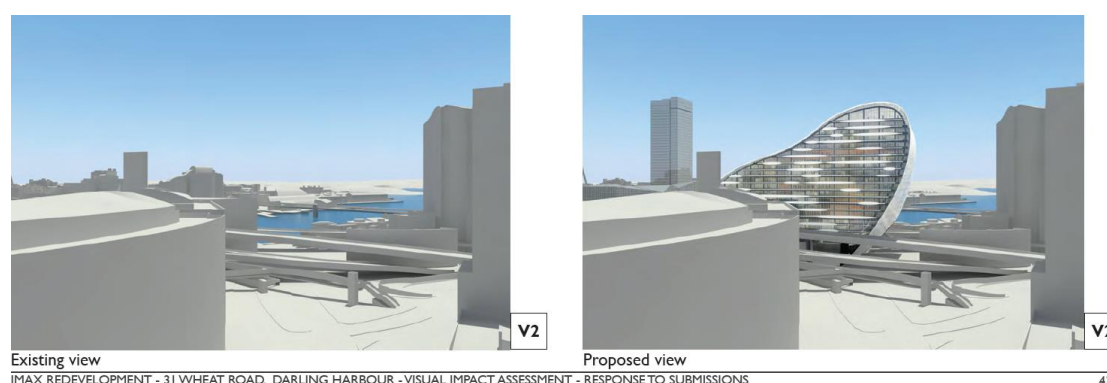
*"The view is broad and characterised by water views of Cockle Bay and associated land-water interfaces, the skyline of Pyrmont and distant horizon views to the north west. Night time views are animated by the lights of Cockle Bay and Pyrmont. Visible elements of interest include the Anzac Bridge concrete pylons, the Maritime Museum, Pyrmont Bridge and the wharves of Pyrmont Bay. Alternative views to the west are available to Tumbalong Park from the balcony and bedrooms. **This view is considered to be of high significance**"*



**Figure 2** – Extract from GMU Report: View Impact from Level 20 of Emporio Building

Views from Level 13 are assessed by the applicant's consultant as follows:

*"The view presents water views of Cockle Bay and Darling Harbour and associated land-water interfaces. Visible elements of interest include Pyrmont Bridge and the Maritime Museum. This view if considered to be of **medium-high significance**"*



**Figure 3** – Extract from GMU View Assessment Report - View Impact from Level 13 of Emporio Building

ii. Consideration of how reasonable it is to expect to retain the views:

**Comment:**

The applicant's View Impact Assessment on the views from the upper level (Level 20) of the Emporio Building states:

*"Although the impact is considered to be severe, it is considered to be acceptable as the precinct is undergoing a change in the scale of the built form and there should not be expectation of the retention of views for properties immediately behind development sites facing Darling Harbour".*

Notwithstanding that there may be no expectation of view retention in general within the City, **there is a strong expectation that the existing views along Harbour Street to Cockle Bay would not be affected as there are no developable sites between the Emporio Building at its north-western corner and Cockle Bay along the axis of Harbour St (Figure1).**

The author is not aware of any development in the City of Sydney or elsewhere in the State where a private commercial development is constructed over 18.5m of a 20m wide public roadway (and to a height of 90.6m). **It is considered that approval of such a development would establish an undesirable precedent.**

**It is therefore submitted that it is absolutely reasonable to expect that the uninterrupted views across a Harbour St to Cockle Bay, as illustrated in Figure 1, would be retained.**

iii. Assessment of the extent of the impact:

**Comment:**

The impact of the proposed developments on the affected units within the Emporio building will be severe. The views to the primary point of interest, namely Cockle Bay and the Pyrmont Bridge (an item of State Heritage Significance), will in some instances be lost or severely diminished. Moreover the view will be dominated by the 90.6m high building form of the Ribbon Development.

iv. Assessment of the reasonableness of the proposal that is causing the impact

**Comment:**

It is considered reasonable that the applicant should be able to develop the leased area (identified as the site in the application form) to the extent that it does not give rise to unacceptable environmental impacts.

Notwithstanding that it is considered that the height and bulk of the development are excessive and that these will give rise to unwarranted view-share loss, these issues will be matters for the Department of Planning to determine as part of its merit assessment of the development.

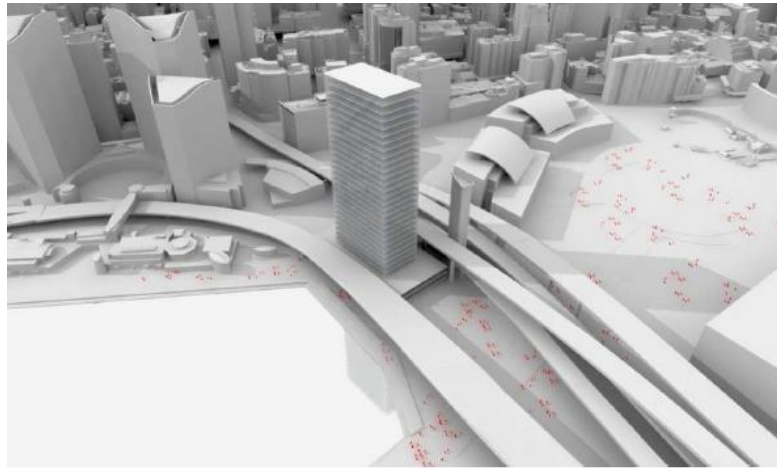
However, **it is considered totally unreasonable that any views, significant views in this case, should be lost as the result of a commercial building being built 18.5m across and 90.6m high over Harbour St; a public roadway.**

It is further submitted that the view loss arising from the construction of a 90.6m high building over a public road is unreasonable as it is not in the public interest; for the following reasons:

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

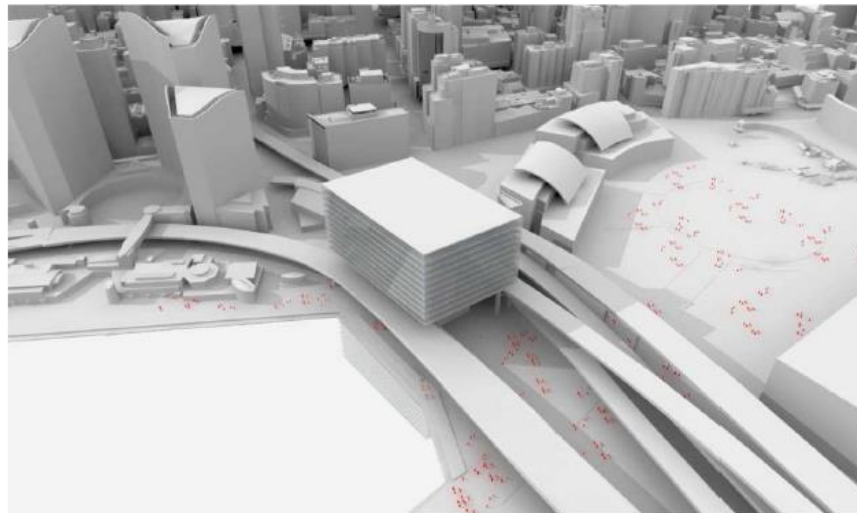
- b. The Darling Harbour Area has no Floor Space Ratio or Height controls; a very rare advantage for any developer. However, despite such an apparent benefit, the applicant has found it necessary to propose building beyond the lease area and over a public roadway in order to increase floorspace and height.

It is significant that in reviewing design options, the EIS for the proposal states that Option 3 (building a tall single tower on a large footprint) would create issues of pedestrian connections and movements to public domain areas as well as significant overshadowing to the public domain areas.

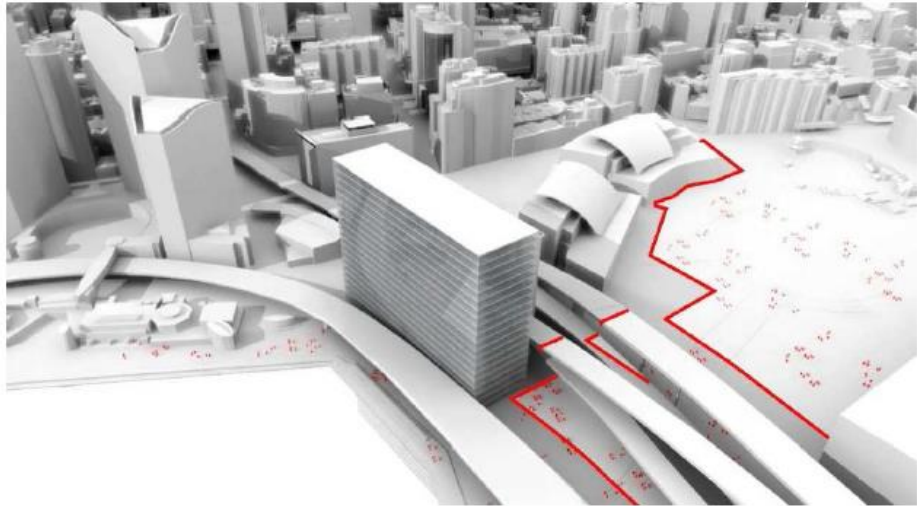


**Figure 4 - Option 3:** Building with large ground floor base and single tower

Option 5 (building partly over the expressway) was perceived as top-heavy as well as creating significant overshadowing over the public domain. Option 4 (Two thin Towers) had similar overshadowing issues.



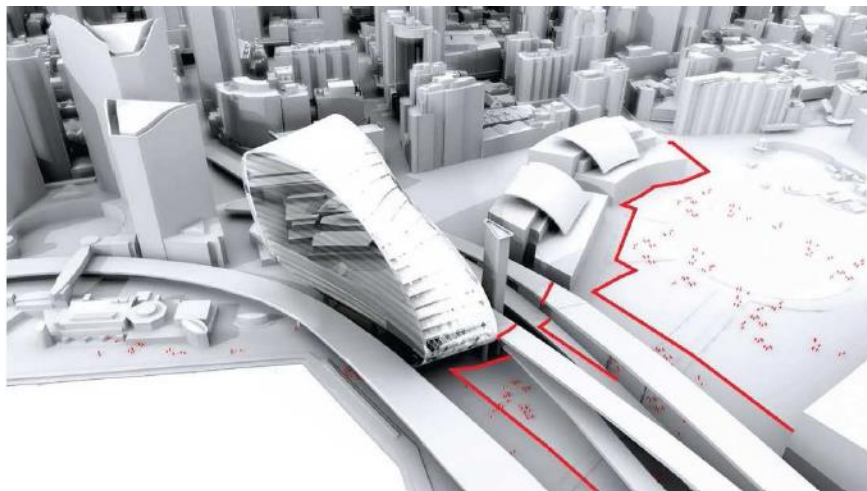
**Figure 5 - Option 5:** Building with wider built form cantilevering over expressways



**Figure 6 - Option 6:** Building with a thinner built form matching the height of surrounding buildings

Option 6 (a thinner mass with height comparable to neighbouring buildings) was perceived as more pleasing visual outcome but resulted in overshadowing of the children's playground; even though children's playgrounds are generally now provided with shading structures as preventative measure against skin cancer.

As a consequence, Option 7 (the subject development) was selected as the preferred design.



**Figure 7 - Option 7:** Building over Harbour St

**It is submitted that notwithstanding that any number of the above design options could have been made to work, Option 7 was selected.**

**It is considered that a more skilful design, with an organic style that proved to be so influential in Option 7, could have provided the applicant with the same development potential and amenity and reduce the impact on the views of nearby residents within the City of Sydney.**

**The current design protects the amenity of the Darling Harbour Authority Area at the expense of the loss of views of residents and workers within the neighbouring areas of the City of Sydney; views, across Harbour St, that**

**could not reasonably have been expected to have been lost by the construction of a 90.5m building over a public road.**

- c. The 18.5m wide and 90.6m high encroachment over Harbour St provides a significant benefit to the developer in terms of increasing the floorspace within their development and securing uninterrupted views of Darling Harbour at the expense of others within the City of Sydney who had reasonable expectations that their views across Harbour St to Cockle Bay would be protected.
- d. **Finally, as noted above, no public benefit has been argued by the proponent of this development which would validate a private commercial development being constructed over a public roadway and no such public benefit, sufficient to justify the public loss, particularly in terms of visual amenity, is apparent such as would warrant the alienation of public airspace for private financial gain.**

**It is therefore considered that the reasonableness of the loss of views has not been established and therefore approval of the subject development, in its current form, is not in the public interest and the application should be modified to delete any projection over the public roadway. Alternatively the application should be refused.**

Should you have any queries regarding any matter raised above, please do not hesitate to contact me.

Yours sincerely,



John Kass  
Director