

RESPONSE TO ASSESSMENT REPORT AND PUBLIC SUBMISSIONS THE STAR MODIFICATION 13 TO MP08_0098



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FINAL
PREPARED FOR THE STAR ENTERTAINMENT GROUP LIMITED



URBIS STAFF RESPONSIBLE FOR THIS REPORT WERE:

Director	Clare Brown
Senior Consultant	Chelsea Salagaras
Project Code	SA7273
Report Number	Final

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GLOSSARY AND ABBREVIATIONS

ADS	Architectural Design Statement
Council	City of Sydney
Department's AR	The Department's Assessment Report
IDA	The Independent Design Advice – being Appendix J to the Department's AR
EAR	Environmental Assessment Report
ECDP	Eastern City District Plan
EP&A Act 1979	Environmental Planning and Assessment Act 1979
EPA Transitional Regulation	Environmental Planning and Assessment (Saving, Transitional and Other Provisions) Regulation 2017
EP&A Regulation	Environmental Planning and Assessment Regulation 2000
DRP	Design Review Panel – being the Jury of the Design Competition
FTE	Full Time Equivalent
GSC	Greater Sydney Commission
HIA	Heritage Impact Assessment
IPC	Independent Planning Commission
ISEPP	State Environmental Planning Policy (Infrastructure) 2007
LGA	Local Government Area
m	metre
NIA	Noise Impact Assessment
NSW	New South Wales
OEH	Office of Environment and Heritage
OMP	Operational Management Plan
PPR	Preferred Project Report
Proponent's Urban Design Advice	Proponent's Urban Design Advice prepared by Russell Olsson
Proponent's VIA Advice	Proponent's Visual Impact Assessment Advice prepared by David Moir
RMS	NSW Roads and Maritime Services

RtS Report	Response to Submission Report
SDCP 2012	Sydney Development Control Plan 2012
SEARs	Secretary's Environmental Assessment Requirements
SEPP	State Environmental Planning Policy
SLEP 2012	Sydney Local Environmental Plan 2012
sqm	square metres
SREP 26	Sydney Regional Environmental Plan No 26-City West
TfNSW	Transport for New South Wales
the Department	The Department of Planning, Industry and Environment
the Proponent	The Star Entertainment Group Limited
the Proposal	A detailed description of the Proposal was provided in the Section 4.0 'The Proposed Development' of the Environmental Assessment Report lodged as part of Mod 13 and amendments detailed in Section 2.0 'Description of the Preferred Project' of the Response to Submissions Report.
the report	This report (forming the Response to the Department's Assessment Report and Public Submissions)
the Site	Lot 211 in Deposited Plan 870336, Lot 500 in Deposited Plan 1161507, Lot 301 and 302 in Deposited Plan 873212, Lot 1 in Deposited Plan 867854 and Lot 201 in Deposited Plan 867855.
The Star	The Star Casino and Entertainment Complex Sydney
TIA	Traffic Impact Assessment
UCR	Urban Context Report
Urbis	Urbis Pty Ltd
VIA	Visual Impact Assessment

EXECUTIVE SUMMARY

This report provides a response to the issues raised in the Department of Planning, Industry and Environment (**the Department**) Assessment Report and recommendation (**the Department's AR**), following the assessment of Modification Application 13 to Major Project Approval MP08_0098 (**Mod 13**).

Mod 13 was submitted on behalf of The Star Entertainment Group Limited (**the Proponent**) to the Department on 13 August 2018. The extent of works sought in Mod 13 (**the Proposal**) is detailed in the Proponent's Response to Submissions Report (**RtS Report**) (Section 2.0 *Description of Preferred Project*).

Mod 13 sought approval to modify the Part 3A Major Project Approval MP08_0098 for The Star Casino and Entertainment Complex Sydney (**The Star**) under section 75W of the *Environmental Planning and Assessment Act 1979* (**EP&A Act 1979**).

Mod 13 was publicly exhibited between 22 August 2018 and 18 September 2018 and 144¹ submissions were received. The Proponent provided a RtS Report, amended Architectural Drawings and addendum reports to the Department in November 2018, in response to the issues raised in the submissions.

The Independent Planning Commission (**IPC**) is the consent authority, as the Minister's delegate in determining the Mod 13 application, as more than 25 public submissions and an objection by the City of Sydney (**Council**) were received by the Department in response to the exhibition of Mod 13.

The Department's AR and recommendation were released on 25 July 2019 which identified the key assessment issues as:

- strategic context;
- built form (including visual impacts and impacts on the amenity of the surrounding area);
- design excellence; and
- public benefits, contributions and the public interest.

The Department's AR was supported by Independent Design Advice (IDA), which appears to have informed the recommendation to the IPC that the Mod 13 application be refused.

The IPC has undertaken briefing meetings with the Department, Council and the Proponent (14 and 15 August 2019), and a Site walk on 20 August 2019. Mod 13 was the subject of an IPC public meeting on 27 August 2019. A total of 21 people from the community, public interest groups, government agencies, Council, the Department and the Proponent, presented at the meeting with ten speakers in objection and 11 in support.

A number of key themes have emerged on review of the briefing meeting transcripts by the Department and in the public meeting presentations. This report provides clarification and a response to the issues raised in the Department's AR and recommendation, and provides clarification of matters where there are misstatements or errors in the Department's AR and submissions to the IPC. A brief response is also provided to matters raised in the public meeting by other speakers and references provided to documentation where further Proponent response was required.

¹ The Department's account of final number and position of submissions received during notification have been adopted for the purpose of this report.

CLARIFICATIONS

On review of the briefing meeting transcripts and the Department's AR, as well as attendance at the public meeting, it is evident that clarification is required on a number of key points which have been broadly misinterpreted. The following clarifications are provided:

- **The approval pathway is valid.** This clarification is provided to address statements made in the public submissions and by the Council. The Department agrees with the Proponent on this fact (Department's AR, section 4.1). Part 3A of the EP&A Act 1979 has been repealed. As part of the repeal process, Schedule 6A of the EP&A Act 1979 was enacted to allow the application of the repealed Part 3A provisions to certain projects that had been approved or were in the process of environmental assessment under Part 3A. These projects are known as 'Transitional Part 3A Projects' and such projects may continue to be modified under section 75W of the EP&A Act 1979. Major Project MP08_0098 is a 'Transitional Part 3A Project'. Schedule 6A of the EP&A Act 1979 has since been transferred to Schedule 2 of the *Environmental Planning and Assessment (Saving, Transitional and Other Provisions) Regulation 2017*, and section 75W remains in force by operation of clause 3BA in that schedule. The application was made under section 75W.

RESPONSE: *This point has been clarified in the Proponent's EAR and RtS and is a statement of fact.*

- **The Proposal is considered 'State significant'** It is acknowledged that the Site is not identified as a 'State significant precinct'. The existing Star Casino and Entertainment Complex is a development of State significance. The Star City redevelopment was declared a Major Project in 2008 under section 75B(2)(a) (of Part 3A) of the EP&A Act 1979. Relevantly, a development that is declared under section 75B(2)(a) is one that, *in the opinion of the Minister, is of State or regional environmental planning significance*. The existing development (incorporating 13 approved modifications to Major Project MP08_0098) and the current Mod 13 application constitute development of State significance. The Department's AR relies on the position that, as the Site is not a declared State significant precinct under *State Environmental Planning Policy (State Significant Precincts) 2005*, the existing development and the Mod 13 proposal cannot be considered development of State significance. This is inconsistent with the intent and structure of Part 3A of the EP&A Act which enabled the Minister to either declare a site under section 75B(1)(a) *to be a project to which this Part applies by a State environmental planning policy*, or under section 75B(1)(b) *by order in the Government Gazette*. A declaration made by order under section 75B(1)(b) is separate to but has the same intent as a declaration made under 75B(1)(a). The Department's AR relies on the site not being an identified site of State significance as a basis to assume that the Proposal is not justified strategically, follows:

It is noted Barangaroo, Darling Harbour and the Bays are each designated as 'identified sites' within the State and Regional Development SEPP, given the significance of their development to the State. Whereas, the Star site is not located within an identified precinct or an area specifically designated for significant future growth (additional height and floor space) in any adopted or emerging planning policy (Department's AR, section 6.2.1, page 37).

RESPONSE: *It is factually incorrect to suggest the Proposal is not a development of State significance.*

- **Sydney Local Environmental Plan 2012 (SLEP 2012) does not apply to the Proposal.** SLEP 2012 and other environmental planning instruments (EPI) excluding State environmental planning policies do not apply to the Major Project Approval MP08_0098 (section 75R of the EP&A Act 1979).

RESPONSE: *To this point, the Department agrees (Department's AR, section 4.2 page 16).*

- **Sydney Regional Environmental Plan No 26-City West (SREP 26) does not apply to the Proposal.** The Proposal is not subject to the provisions of SREP 26 due to the application of SLEP 2012 to the Site, (refer clause 2, SREP 26). With regard to the area that is covered by SREP 26, Clause 2, states: *'However, this plan does not apply to land to which Sydney Local Environmental Plan 2012 applies'*.

RESPONSE: *This is a statement of fact.*

- **Sydney Harbour Catchment Regional Environmental Plan 2005** The Site is identified under *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005* (SREP Sydney Harbour Catchment) as being located within the Foreshore and Waterways Area of that policy.

The Proposal:

- incorporates stormwater infrastructure upgrades which will improve the urban environment around the Site and reduce impacts of localised flooding and ponding of water due to road geometry;
- does not propose works in the harbour nor in waterway land adjacent to the harbour and as such will not alter or impact the role of the harbour as a working harbour and will not alter accessibility to and along the foreshores of Sydney Harbour;
- will deliver a high quality and ecologically sustainable urban environment within and surrounding the Site and is a development that exhibits design excellence as determined by the design excellence panel; and
- will deliver a world class Integrated tourist and entertainment facility and high-quality residential accommodation that will be a culturally rich and vibrant place for people to work in, visit and to live.

RESPONSE: *This is a statement of fact.*

- **The Proposal does not include any increase to gaming gross floor area (GFA)** The proposed development does not include or seek approval for any increase or change in the GFA currently permitted for the purposes of a night club or gaming activities.

RESPONSE: *This clarification is provided to address statements made by presenters at the IPC public meeting.*

- **The Proposal is not reliant on a future Metro West at Pyrmont.** The modelling and conclusions drawn in the Traffic Impact Statement (**TIA**) (RtS, Appendix J), do not rely on the provision of Metro West. The TIA demonstrates that the additional car parking provides sufficient car parking on Site to account for the Proposal, introduces a new driveway access to Pyrmont Street which will reallocate vehicle movements around the Site, relocates the external taxi rank onto the Site to address the Community's concerns regarding traffic noise and vehicle headlight-spill, and creates a more permeable access to the existing Light Rail platform. The Proposal is considered in the TIA to improve the traffic, access and car parking arrangements in and around the Site.

RESPONSE: *Where the Department has suggested that Mod 13 relies on Metro West to proceed, this is not correct and is not suggested in the EAR, RtS Report or the Amended TIA (RtS, Appendix J).*

- **The revised Proposal (which forms the exhibited Proposal) has a maximum height* of RL 237.000 as represented in the Architectural Drawings and Design Statement and a maximum building height** of 234.300m.** The height of the tower has been inconsistently referenced by the Department.

*The maximum height RL's noted are measured to the upper most tip of roof feature, inclusive of all plant.

**The maximum building height is determined by subtracting the lowest ground floor RL from the maximum height RL. The lowest ground floor level occurs along Pirrama Road and is RL 2.7m. Thus, the maximum building height is 234.30m.

RESPONSE: *The Department's verbal submission in the IPC briefing suggested that the Proposal was 'very, very similar in height' to the Crown Casino Building which has a maximum height of 271 metres (The Department's briefing to the IPC, line 19, page 27). This statement is factually incorrect. The difference in height is 34m, nearly 11 storeys.*

- **The future context of the Site is identified in Strategic Planning documents.** The Site is identified in the Greater Sydney Commission's (**GSC**) Eastern City District Plan (**ECDP**) as being within the Innovation Corridor and the Harbour CBD (ECDP, page 63). The ECDP makes the following statements in relation to the future context of the Site:
 - *'the Harbour CBD underpins Greater Sydney's global and national economic strength, and its growth must be enabled for the region to remain competitive.'* (ECDP, page 57).

- The competitive advantages of the Harbour CBD as including ‘*entertainment, cultural, tourist and conference assets*’ (ECDP, page 57).
- acknowledges Darling Harbour as a ‘*major entertainment precinct*’ and states ‘*Cultural, entertainment, arts and leisure activities must continue to be provided to build a more diverse and competitive offering in these sectors*’ (ECDP, page 59).
- Acknowledges the role of high-rise residential living in a global city as ‘*important attractors for investment, especially for international relocation choice*’ and the nature of high-rise living which ‘*is developed within high amenity precincts*’ (Eastern City District Plan, 2018, page 59).
- The character of Pyrmont and the Harbour CBD is described as ‘*the city high-rise areas of Pyrmont and Sydney CBD*’ (Eastern City District Plan, 2018, page 46).

RESPONSE: The Site is strategically located to support the Proposal. The Department’s AR is incorrect to suggest that the proposed tower is inconsistent with the ‘strategic planning direction for this part of Sydney’.

- **The ‘Global Waterfront Precinct’ was a term established by the Proponent** for consistency, ease of reference and to provide clarity. It was identified in the Urban Context Report (RtS, Appendix N) as a term was needed to refer to the emerging character of the waterfront land in the Harbour CBD. The term ‘Darling Harbour’ is used inconsistently in Council and Government planning policy across different documents and over time. This includes the use of ‘Darling Harbour’ as referring to:
 - The Darling Harbour waterbody;
 - The land once managed by the Darling Harbour Authority; and
 - The Darling Harbour Precinct as identified in the current Eastern City District Plan as prepared by the GSC.

RESPONSE: For clarity, at no time did the material submitted in support of Mod 13 claim that the term was referenced in any strategic policy document nor that it formed the subject of any community consultation.

- **The Neighbourhood Centre will be available for community use through to 2093.** The length of tenure was increased from 30 years to the term of the current Site lease in a letter to the IPC dated 22 August 2019 (**Appendix A**). The letter is publicly available on the IPC website. The Proponent has made a commitment to construct, fit out, manage and fund the operation of the Neighbourhood Centre until the end of the lease held by the Proponent.

RESPONSE: The Proponent highlights that the resultant public benefit of the Proposal has increased since lodgement by 113 percent, equating to approximately \$80M in today’s value to the community (excluding construction and fit out). Further, when benchmarked against similar projects (section 2.7) the Proposal demonstrates genuine long-term public benefit.

- **Veloshin v Randwick Council [2007] NSWLEC 428 (Veloshin) cannot be relied upon for a Part 3A Project** It appears that the Department has misunderstood the nature and context of the *Veloshin* principles. It is important to note that the *Veloshin* principles do not apply to a Part 3A Project. *Veloshin* concerned a development that was subject to a local environmental plan and various development control plans. In that case, the relevant Council opposed the development the subject of a development application on the basis that ‘excessive floor space, height, bulk and scale of the proposed development are unsuitable for the subject site’.

The principles established in *Veloshin* do not contemplate a situation where local environmental controls existed but had been rendered inapplicable by the operation of Part 3A of the EP&A Act 1979. Once it is appreciated that this situation is not what the words ‘*there is an absence of planning controls*’ in the fourth *Veloshin* principle are intended to capture, it becomes clear that the fourth *Veloshin* Principle question of ‘[d]oes the proposal look appropriate in its context’ does not arise for consideration for a Part 3A Project. Supporting this view is the fact that there is no case law considering the *Veloshin* principles in the context of Part 3A of the EP&A Act 1979.

In any event, even if the *Veloshin* principles do not strictly apply but the IPC chooses to have regard to the fourth *Veloshin* principle as part of its general merits assessment, it is quite clear from Urban Context

Report (RtS, Appendix N) that the answer to this question is 'yes' and that the proposed tower is appropriate in the context of the site and the Darling Harbour Precinct.

RESPONSE: The Department has incorrectly applied weight to the planning principles established in Veloshin.

KEY ISSUES RAISED

As summarised in the Department's AR Executive Summary; *'The key assessment issues for the proposed development are strategic context, built form (including visual impacts and impacts on the amenity of the surrounding area), design excellence, public benefits, contributions and the public interest'* (page iv). For each, the general position of the Department and the Proponent's response to the assessment is set out in the following discussion.

Strategic Justification

Strategic Context

The Department's AR details that the Department does not accept the position of the Proponent regarding the strategic context and justification. The Department considers:

- the Proposal does not *'respond to the local character of Pyrmont'* (page 79);
- *'a more reasonable built form context for the Site is one defined by the established area of Pyrmont'* (page 80);
- the Site is *'separate to the strategically identified precincts of Barangaroo, the CBD and Darling Harbour'* (page iv); and
- that *'Pyrmont is not specifically identified in any strategic planning policy to accommodate future growth in the form of very tall buildings or significantly increased density'* (page iv).

The Proponent provides greater clarity on the strategic justification for the Proposal, having reference to the items raised in the Department's AR.

The Proponent has provided a 100-page Urban Context Report (RtS, Appendix N) which undertakes a thorough investigation and analysis of place and character. This assessment considers four scales of context, three timescales and six themes and is generally consistent with the elements identified in the *Local Character Wheel* within the *Local Character and Place Guideline* prepared by the NSW Department of Planning and Environment published in February 2019.

The urban context analysis considers both the localities of Pyrmont and Darling Harbour and identifies that across the scales, timeframes and themes the characteristics of the Site are consistent with the characteristics of Sites and development in the Darling Harbour locality and are markedly different to the characteristics of the residential areas of the Pyrmont locality. Relevant aspects of the urban context include the following:

- The Site was once partially part of the Darling Harbour waterbody confirming its waterfront location and therefore relationship to the harbour front;
- The Site's physical topography denotes a transition point from the clearly defined waterfront and peninsula ridgeline as defined by the sandstone cliffs to the north. The roundabout at the intersection of Pirrama and Jones Bay Road provides a gradual transition into the heart of Pyrmont (Harris Street) or transition down to the waterfront and continue along the frontage of the Star to the waterfront (Darling Harbour);
- The Site's history and past industrial use was part of a working harbour that was the commercial port of Sydney (now Darling Harbour) as documented in various historical planning documents;
- Current land use reflects the concentration of established tourism, leisure and entertainment uses on the waterfront in Darling Harbour; and

- The urban grain, lot size and existing built form reflect the previous industrial scale of the Site and are consistent with other large Sites within the Darling Harbour context.

No evidence has been provided by the Department to demonstrate that the Pyrmont locality is a more appropriate context. The Site is identified as being located in the Darling Harbour Precinct in strategic planning policy (Eastern City District Plan, page 63).

Global Waterfront Precinct

The Department does not accept the Proponent's *'term 'Global waterfront precinct'* as it does not agree that the concept can *'be relied upon as it does not have any planning weight* (Department's AR, page 39) and further; *'The term 'Global waterfront precinct' has not been subject to community consultation as part of any strategic planning process and is not part of any current or proposed Council or Government planning policy* (Department's AR, page 39).

The Proponent's use of the term 'Global Waterfront Precinct' was for **consistency, ease of reference and to provide clarity**. It was identified in the Urban Context Report (RtS, Appendix N) to describe the emerging character of the waterfront land enclosing the Darling Harbour waterbody in the Harbour CBD. This was to avoid confusion due to the inconsistent use of *'Darling Harbour'* in planning documentation. It was not used to justify the proposed tower in this location.

The justification for the tower is provided in the Urban Context Report (RtS, Appendix N), which considers both the Pyrmont context and that of the waterfront land around the Darling Harbour waterbody. It provides a comprehensive evidence of the consistencies of the Site's characteristics with that of Darling Harbour and inconsistencies with that of Pyrmont.

The use of the term 'Global' was identified as consistent with the strategic directions for this land due to the use of the terms 'international' and 'global' to describe Darling Harbour, existing facilities around the harbour and the Harbour CBD in the Eastern City District Plan.

The proponent has not suggested the term has been subject to community consultation as part of any strategic planning process and is not part of any current or proposed Council or Government planning policy.

Reliance on matters which have not been committed to

The Department's AR states that; *'Proposal is reliant on matters which have not been committed to'*:

- Metro West at Pyrmont; and
- Future tall towers within Bays Precinct (at Pyrmont).

The Proposal is not reliant on uncommitted matters. The Urban Context Report acknowledges existing studies and strategic planning documents which consider the potential for a Metro West station at Pyrmont as well as future development of the Bays Precinct. We note that the City of Sydney draft Local Strategic Planning Statement (**LSPS**) released in July 2019 acknowledges the consideration of potential future Metro West station at Pyrmont (page 21). **Section 2.4** of this report also confirms that the Proposal is not reliant on a future Metro Station.

Built Form

The Department's assessment of the built form identified that:

- the proposed height of the tower is *'unacceptable'*;
- the tower is *'inconsistent with surrounding buildings in height and form'*; and
- the tower *'would not contribute positively to the skyline'* (Department's AR, page iv).

The following section summarises the key environmental impacts of the built form, including visual, overshadowing and wind, as identified by the Department and the IDA as informing the above conclusions.

This section echoes the conclusions of the EAR, that the Proposal will result in limited environmental impacts beyond those already assessed for the Approved Project MP08_0098.

Visual Impact

The Department's AR and the IDA on which the report relies to assess the visual impacts of the Proposal:

- do not include any discussion on visual impact methodology relating to public domain views, nor do they critique the methodology applied in the submitted VIA; and
- use emotive language such as '*undue prominence*', '*oppressive from many viewpoints*' and '*loom over the environment*'. These are terms which have no place in a visual impact assessment. A visual impact assessment is a technical assessment based on objectivity and fact.

The submitted VIA and Addendum (RtS Report, Appendix Q) were the subject of a peer review by Dr Richard Lamb. In the opinion of Dr Lamb, the Proponents '*VIA far exceeds what is required by the SEARs, in comprehensiveness of the coverage of potential view locations, the range of viewing places considered and the variety of viewing opportunities for both public and private viewers*' (EAR, Appendix ZZ, page 6).

Following receipt of the Department's AR, the Proponent sought peer review of the IDA. The peer review undertaken by David Moir (the Proponent's VIA Advice in **Appendix B**) found;

'without an explicit and logical methodology and a process of quantitative assessment, conclusions on the extent of [visual] impacts are purely subjective and valueless in communicating the potential extents of the visual impact of a Proposal'.

the IDA '...is very brief and subjective. The IDA does not provide a clear explanation on why the proposal is considered to be 'overly dominant', why the impacts upon the character of Pymont are 'adverse' or how and why the introduction of this tower into the existing Sydney landscape would be 'detrimental' to public views. Being visible or prominent alone are not detrimental visual impacts'.

'the justifications for refusal on the basis of visual impact are tenuous at best and are not based upon appropriate assessment methodology. For a development of this significance a methodology of assessment, such as the one clearly outlined in the SEARS, should form the basis of any justification for refusal for reasons of adverse visual impact'.

The peer review undertaken by Russell Olsson (the Proponent's Urban Design Advice in **Appendix F**) states:

'A comprehensive visual impact assessment has been provided by [the Proponent] and peer-reviewed by leading experts. The assessment is robust. By contrast, the Department has not provided a report critiquing the proponent's assessment.' (Olsson, 2019, page 65)

Amenity impacts (overshadowing, view loss, and wind)

Overshadowing

In regard to shadow impacts to adjacent residential properties, the Department's AR concluded that:

'The Department has carefully considered the potential overshadowing impact on nearby affected properties and considers, on balance, the proposal to be acceptable' (The Department, page 60)

The Department's AR considers the potential overshadowing impact on nearby affected properties and on balance, notes the Proposal is '*acceptable*' for the following reasons:

- Non-compliance with the ADG guidelines is restricted to three individual properties;
- At 49-51 Mount Street the impact is confined to one of two street-facing second storey windows, with sun access to the other street facing window, living room and balcony all remaining compliant with the ADG guidelines.
- At 102 Miller Street the impact is confined to single bedroom windows within two flats, with the balcony living room and master bedrooms at each flat maintaining in excess of 2 hours sun access during mid-winter.

'The Department considers that despite the Proposal creating reductions below the ADG guidelines for some individual windows, the impact to the affected properties as a whole would be negligible [sic] as all other

rooms maintain compliance with the ADG guidelines [sic]. *The Department notes further [sic] that overshadowing is confined to the peak day (21 June) with any impacts reducing thereafter. Due to the fast moving nature of the proposed shadow, the impact to these properties is considered [sic] to be acceptable [sic].* (Department's AR, page 58 - 59)

The Department's AR concurs with the Proponent's analysis that the solar impact of the tower upon private residences is negligible.

In regard to shadow impacts to public space, the Department's AR concluded that:

- *'The Department considers overshadowing impact on Pymont Bay Park is to be **minor** ...'* (Department's AR, page 56);
- *'The Department has carefully considered the submissions and the Proponent's solar analysis and considers the overshadowing to Pymont Bridge is **minor**...'* (Department's AR, page 57);
- *The Department considers the minor overshadowing to this short section of Clifftop Walk is **minor**...* (Department's AR, page 58); and
- *'Having carefully considered the Solar Study, together with Council's comments, the Department considers the impact of a tower on Union Square is **moderate**...'* (Department's AR, page 55)

Union Square currently achieves 92.8 percent direct solar access at mid-summer and 64.4 percent during mid-winter. The Proposal reduces the mid-winter figure by 4.6 percent while there is nil impact during summer. The impact on Union Square is limited to between 19 May and 24 July. The impact lessens as one moves away from mid-winter. The mid-winter impact occurs between 10.30am and 11.30am with any single point with the Square being impacted for approximately 30 minutes.

FJMT presented alternative height approaches with the DRP supporting the taller scheme which is considered to *'achieve more elegant proportions with negligible additional environmental impacts'* (Design Excellence Report, Appendix F to the EAR, page 11). It is noted that the reduced height proposal presented in this response would remove overshadowing to Union Square. In addition, this reduced height proposal would further reduce the minor shadow impacts to Pymont Bay Park, Pymont Bridge and the Clifftop Walk.

Private View Impacts

The Department's AR notes that *'View loss impacts to the most affected properties, being Astral Residences and Watermark Apartments range between moderate to severe. However, while acknowledging the negative impacts on views and outlook the Department notes that similar impacts would result from an LEP compliant scheme or a reduced height tower form. While some apartments are negatively impacted, they would retain some outlook.'* (Department's AR, page v). Further, *'the Department notes that these impacts would be the result of an unacceptable form of development'* (Department's AR, page 52).

The Department's AR considers *'the form and scale of the proposed changes to the podium, together with the introduction of the Ribbon Feature, to be acceptable, as these are sympathetic to the local Pymont context and enhance the visual appearance of the building'* (Department's AR page 47). The VIA has demonstrated that the view loss from private dwellings adjacent to the Site and from apartments within the Site is primarily as a result of the podium and ribbon feature. These are elements that the Department considers to be *'acceptable'* and *'sympathetic to the local Pymont context and enhance the visual appearance of the building'* (Department's AR, page 47).

At page 52, *'The Department notes that of the severely impacted views, the Proposal will generally only obstruct views of sky above an LEP compliant building envelope, and that an LEP compliant scheme at a height of 28 metres would also obstruct existing views of land, water and land-water interface....With regard to outlook, as opposed to views, the Department considers that an acceptable level of outlook is maintained from affected apartments ...The Department notes the key aspects of private views are retained in most circumstances. Whilst the severe view impacts to lower floor apartments within Astral Residences and 2 Jones Bay Road are acknowledged, the Department notes that an LEP compliant envelope would result in similar or greater view impacts to these properties at their lower levels'*.

In correspondence to the IPC on 22 August 2019, the Proponent confirmed that units 851 and 852 of the Astral Residences are under the ownership of the Proponent. The Proponent uses these units in the pool of apartments available for short-term rental. The Department's AR details that *'only two privately owned apartments (no. 851 and 852) are affected by the Proposal with the remaining impacted short stay*

apartments owned by SEGL' (Department's AR, page 127). The view loss impact of these units is no longer a relevant impact consideration in the assessment of Mod 13.

Wind

The Department accepts the findings of the Proponent's Pedestrian Wind Environment Assessment (Appendix FF of the EAR) and Amended Pedestrian Wind Environment Assessment (Appendix BB of the RtS Report). The Amended Pedestrian Wind Environment Assessment concluded:

"In consideration of all the above mentioned, The Star Mod 13 redevelopment as documented in this DA application will have a limited environmental impact on the ground plane from a wind perspective." (Appendix BB of the RtS Report, page 26)

At page 60 of the Department's AR the following statement is made:

'if it was determined that the project should proceed it is likely to have acceptable wind impacts for pedestrians within and around the development'.

The Proponent directs the IPC to draft conditions proposed by the Proponent (**Appendix C**) specifically, condition A3 (27) and B7 which condition the Proponent to adopt the findings of the Pedestrian Wind Environment Assessment. It is important to note that the recommended design mitigation measures were incorporated into the design of the Proposal in the Architectural Drawings submitted with the RtS Report (Appendix D).

Responding to Environmental Impact – Overshadowing and View Impact

The EAR, RtS and associated technical reports have identified that the Proposal will result in minimal additional environmental impact. The proposed tower form will result in some view loss and increase in overshadowing of public spaces but as demonstrated in the Architectural Design Statement (ADS) (RtS Report, Appendix Z), Visual Impact Assessment (EAR, Appendix H), Peer Review of the Visual Impact Assessment by Richard Lamb (EAR, Appendix ZZ) and Heritage Impact Assessment (EAR, Appendix P) the design of the tower has minimised the potential impacts. The tower will be able to be viewed in the round and is an appropriate built form response for the Site having regard to the current and future context of the Site. The Proposal will deliver significant economic and social benefits in the form of investment, construction jobs, training and employment in the hospitality industry, increased tourism and visitation to Sydney as a global destination and delivery, funding and operation of a community benefit in the form of a five level Neighbourhood Centre for the life of the lease held by The Star. On balance the Proposal is considered to be a suitable form of development for the Site resulting in minimal additional environmental impact beyond that of the presently approved development of the Site.

If the IPC considers that the overshadowing of Union Square and the intrusion of the tower into the view corridor of the GPO when viewed from within Martin Place are not appropriate, this impact can be addressed by the lowering of the tower height to RL 213 as detailed in **Figure 3** prepared by FJMT. The reduction in the tower height to RL 213 will remove overshadowing to Union Square. In addition, this reduced height Proposal would further reduce the minor shadow impacts to Pyrmont Bay Park, western approach to Pyrmont Bridge and the Clifftop Walk and will reduce the intrusion of the tower when viewed from Martin Place (refer **Figure 30**).

The Proponent would accept a condition of approval that would require the maximum height of the tower be limited to RL 213, if on balance the IPC considered this a better outcome than the tower form submitted with Mod 13.

Design Excellence

The Department endorsed the Design Excellence process, provided comment on the Design Excellence Brief (EAR, Appendix F) and confirmed that the '*process adequately addresses the Secretary Environmental Assessment Requirements*' (**SEARs**) in correspondence dated 26 October 2016 (**Appendix D**).

The Department was given a copy of the Brief on 26 April 2016 and its feedback sought (**Appendix E**).

As cited in the Department's AR page v: '*The proposed building represents the winning design of a design competition*'...'*The Department is satisfied that the alternative design process competition was carried out in accordance with the SEAR's and the competition brief*' and '*... the advice of the competition DRP [was] that the proposed building's architecture exhibits design excellence when considered in accordance with the brief*'.

The Proponent RtS **section 3.1.13.7** Design Excellence, confirms that the Design Review Panel (**DRP**) was reconvened and that the DRP concluded that the exhibited scheme remains faithful to the scheme selected as the winner of the design excellence competition – demonstrating that the architecture *exhibits design excellence*.

On page v of the Department's AR it is stated that:

'the overall assessment of design excellence is not only restricted to the architecture of the building, it also needs to consider the urban context, general character of the area and the visual impacts associated with such a tall building'

'The competition DRP also recommended the modification application clearly demonstrate how the project relates to planning for other nearby areas to the west of the CBD, including for example Darling Harbour and the Bays Precinct (Fish Market and White Bay, etc.).'

The Proponent considered the urban context and general character of the area and that of other nearby areas and the visual impacts of the Proposal in the EAR, RtS and the suite of technical assessments lodged. The Proponent maintains that the Proposal exhibits design excellence and is a good architectural and urban design outcome for the Site and locality when the visual impacts and context of the Site are considered.

Public Benefit, Contributions and the Public interest

The Department's AR and the IDA on which it relies suggest that the Proposal does *'Not result in public benefit near the order needed to offset and/or justify its negative impacts'* (IDA, page 139). The IDA states *'The application does include 'Neighbourhood Centre' facilities within the development at ground floor level. Their potential need and value to be assessed, but the cost to the developer would be very small in comparison with the very major financial gain from each of the large number of residential units, as well as the hotel'* (IDA, page 138).

This report demonstrates that there is a need for a Neighbourhood Centre, provides clarity on the value that this would contribute to the community over the life of the Neighbourhood Centre and also provides benchmarking analysis to detail how this Proposal compares to other recent projects of this scale.

The Proposal provides substantive public benefit because:

- Positive community benefit from the Neighbourhood Centre providing a range of high-quality places for interaction and social activities for the life of the lease remaining on the Site. The resultant public benefit equates to approximately \$80M in today's value to the community (excluding construction and fit out). Further, when benchmarked against similar projects (**section 2.7**) it demonstrates genuine public benefit;
- It will create local employment opportunities (754 incremental Full Time Equivalent (FTE) jobs through construction and operation in NSW);
- It will give rise to material and broad benefits for the NSW economy and tourism, through provision of accommodation in the Darling Harbour Precinct of the Harbour CBD;
- It will create \$800 million incremental increase in gross State product to NSW to FY2030;
- The Proposal includes the provision of approximately:
 - \$1.9 million in Affordable Housing Contributions; and
 - \$5.7 million in Section 7.11 Contributions.

In the absence of a quantitative analysis undertaken by the Department to determine a suitable extent of public benefit, the Proponent provides the following:

- The Proponent has undertaken a cost analysis which details that, for the life of the lease to 2093, the net community benefit equates to approximately \$80M in today's value to the community (excluding construction and fit out);
- The Neighbourhood Centre is to be available for community use and the Proponent's commitment to 2093 (for the remaining life of the lease) (**section 2.7.1**);
- Despite it being clear that there are five levels in the proposed Neighbourhood Centre the IDA appears to have misinterpreted the scale of the Centre, referring to it as a single storey facility (**section 2.7.2**);

- The potential *need* for the Neighbourhood Centre is confirmed in **section 2.7.3**;
- The IDA references the nearby Cockle Bay Site (SSD 7784), suggesting that it has ‘*worthwhile public benefit*’ due to the ‘*dedication of attractive public space*’ (IDA, page 138). On review of SSD 7684, it is clear that no dedication of public space is proposed, rather the embellishment of existing public space through landscape works is to be undertaken by the Proponent of SSD 7784. The net public benefit of these proposed landscape works should form the subject of further scrutiny if they form the benchmark of how to measure ‘*worthwhile public benefit*’ (IDA, page 138). A benchmarking analysis has been undertaken, as detailed in **section 2.7.4** to compare Mod 13 to other recently approved State significant developments; and
- Further, when determining whether a development is in the public interest it is important to take into account case law confirming that the public interest is a broad concept.
- Contrary to the assertions in the Department’s AR and IDA , the value of the public benefit of the Proposal is diminished neither by:
 - the size of the proponent’s financial gain (see IDA page 138); nor
 - the public benefits that a similar development could deliver (see Department’s AR, page 61).

The above needs to be considered in the IPC’s decision-making process, when determining the extent of public benefit arising from the Proposal, and whether it is sufficient to demonstrate that the Proposal is in the public interest.

Other Issues

The Department considered other issues including:

- special event and operational lighting;
- signage;
- noise;
- residential amenity;
- traffic and parking;
- landscaping and public domain;
- consolidation of existing consents; and
- demolition.

The Department’s AR concluded that the above items could be ‘*acceptable or capable of being acceptable subject to appropriate mitigation*’. It was also suggested ‘*that specific forms of mitigation have not been recommended*’ (Department’s AR, page vi).

Table 30, page 265 of the EAR provided the *Proposed Modifications to the Conditions of Approval for MP08_0098 (the Proponent’s Draft Conditions)*. The Proponent’s Draft Conditions were prepared following review of the recommended mitigation measures as detailed in the supporting technical assessments lodged with Mod 13 and a review of the existing Conditions for MP08_0098. Following public notification of Mod 13, the Proponent’s suggested Draft Conditions were re-issued to the Department with the Proponent’s RtS (section 8.0 RtS page 106) to address items raised in Agency and Community submissions. A final version of the Proponent’s suggested Draft Conditions were issued to the Department 8 March 2019 (**Appendix C**). The submission to the Department at Attachment D, references City of Sydney Consents that were proposed to be surrendered, these do not form part of the package in **Appendix C** to this report but can be provided to the IPC on request.

The Proponent accepts that these ‘*other items*’ are capable of being addressed via the issue of Conditions of Approval and it will continue to work with the Department to finalise these conditions to achieve ‘*appropriate mitigation*’ (Department’s AR, page vi). It is agreed that these ‘*other items*’ are ‘*acceptable or capable of being acceptable subject to appropriate mitigation*’ and as such, will not be discussed within the body of this report.

1. INTRODUCTION

1.1. BACKGROUND

The Star was originally known as 'The Star City Casino' and was granted approval on 2 December 1994 (DA33/94) by the Minister of Planning under section 91 of the EP&A Act 1979) and clause 6(1) of *State Environmental Planning Policy No 41 – Casino Entertainment Complex* for:

'a permanent casino and entertainment complex including a hotel, serviced apartments, theatres, restaurants, bars, car parking and associated facilities on the site'.

The Star began operation in November of 1997.

In 2008, over 10 years after The Star commenced operation, a declaration was sought under the provisions of the now repealed, Part 3A of the EP&A Act 1979 and *State Environmental Planning Policy (Major Projects) 2005* for upgrade and refurbishment works.

The Minister for Planning at the time issued a declaration on 27 May 2008 and the Director-General's Environmental Assessment Requirements were issued on 30 June 2008. The Major Project Application MP08_0098 was submitted on 12 September 2008 and approved by the Planning Assessment Commission on 27 January 2009.

Since the granting of the Major Project Approval in 2009, a total of 13 modification applications have been approved. The most recent being Modification 14 which was approved in October 2017.

Mod 13 was submitted to the Department on 13 August 2018 supported by an EAR. The EAR and associated plans and technical reports were placed on exhibition between 22 August 2018 and 18 September 2018. A total of 144 written submissions were made to the Department, comprising:

- Twelve submissions from government agencies and Council (one objecting and 11 providing comment);
- Fifteen submissions from special interest groups (three objecting and 12 providing comment); and
- One hundred and seventeen submissions from the public (88 objecting, two providing comment and 27 in support).

Of the 144 submissions received, 89 were received from residents of Pymont (68 objecting, two providing comment and 19 in support). When measured against the population Pymont population of 12,813 people², the 89 Pymont submissions account for 0.69 percent of Pymont's residents.

The Star undertook public consultation during the exhibition period through provision of an on-Site drop-in display to provide information to the public in both formal and informal information sessions. A total of 4,935 individuals visited the display during the exhibition period.

A RtS Report was prepared with reference to the now repealed section 75H(6) of the EP&A Act 1979. It included the following:

- a response to the submissions received in relation to the exhibition of the application;
- a preferred project report (PPR) which outlined proposed changes to the project in response to issues raised or arising from design development; and
- a revised statement of commitments.

The IPC is the consent authority for Mod 13, as more than 25 public submissions and an objection from Council were received by the Department in response to the exhibition of the Mod 13 application.

The Department made the RtS Report publicly available on its website and notified Council, relevant Government agencies and all previous submitters seeking feedback on the Proposal. The Proponent provided a subsequent response to the submissions following notification of the RtS Report. The Department

² Australian Bureau of Statistics – Census data, 2016, Pymont population

sought additional information from the Proponent including updated landscape plans (public and private domain), accessibility, flooding and stormwater and additional views and solar access details.

The Department's AR and recommendation were released on 25 July 2019 which identified the key assessment issues as:

- strategic context;
- built form (including visual impacts and impacts on the amenity of the surrounding area);
- design excellence; and
- public benefits, contributions and the public interest.

The Department's AR was supported by the IDA, which appears to have formed the basis for the recommendation to the IPC that the Mod 13 application be refused.

The IPC has undertaken briefing meetings with the Department, Council and the Proponent (14 and 15 August 2019), and a Site walk on 20 August 2019. Mod 13 was the subject of an IPC public meeting on 27 August 2019. A total of 21 people from the community, public interest groups, government agencies, Council, the Department and the Proponent, presented at the meeting with ten speakers in objection and 11 in support.

A number of key themes have emerged on review of the briefing meeting transcripts and in the public meeting presentations. This report provides clarification and a response to the issues raised in the Department's AR and recommendation and provides clarification of matters where there are misstatements or errors in the Department's AR and submissions.

1.2. THE PROPOSAL

The Proposal is outlined in detail in section 2.0 of the RtS Report *Description of the Preferred Project Report (PPR)*. The amended FJMT Architectural Drawings were provided at Appendix D of the RtS Report and the DWP Architectural Drawings and Urbis Landscape Drawings at Attachment B and C respectively of the *Proponent's Review of Conditions of Approval*³ (**Appendix C**) dated 8 March 2019.

A brief description of the Proposal is as follows:

- A Ritz-Carlton Hotel and residential tower, inclusive of:
 - a building height of 237m RL (including Neighbourhood Centre to top of plant);
 - 220 hotel rooms; and
 - 204 apartments.
- Neighbourhood Centre (cafe, library, learning hub, function centre);
- A 'ribbon' element comprising hotel and public amenities;
- Repurposing of existing retail, new food and beverage facilities and upgrades to existing;
- Infrastructure and transport interchange work to improve permeability to light rail;
- Access upgrades and relocation of existing external taxi rank, into the Site;
- New and upgraded signage;
- Site-wide cumulative noise controls and management;
- Internal and external upgrades to landscaping and the public realm;
- Special lighting events;

³ It is noted that the *Proponent's Review of Conditions of Approval* and associated amended plans have not been uploaded to the Department's Major Projects website.

- Stratum subdivision to create five allotments;
- Plant, stormwater and flooding infrastructure upgrades; and
- Surrender of historic development consents.

1.3. THE SITE

The Star is located at 20-80 Pyrmont Street, Pyrmont and is bound by Pirrama Road to the north-east, Jones Bay Road to the north-west, Pyrmont Road to the south-west, Union Street to the south and Edward Street to the east (refer to **Figure 1**).

The Site (excluding Lot 1 in DP 867854 and Lot 201 in DP 867855 to the north), has a developable area of 39,206m². In the context of the overall Site, the proposed Mod 13 Ritz-Carlton hotel and residential tower, and podium will be located on a small proportion of the Site equating to 3,409m² or 8.7 percent of the overall site area.

Figure 1 – The Site



Source: maps.six.nsw.gov.au

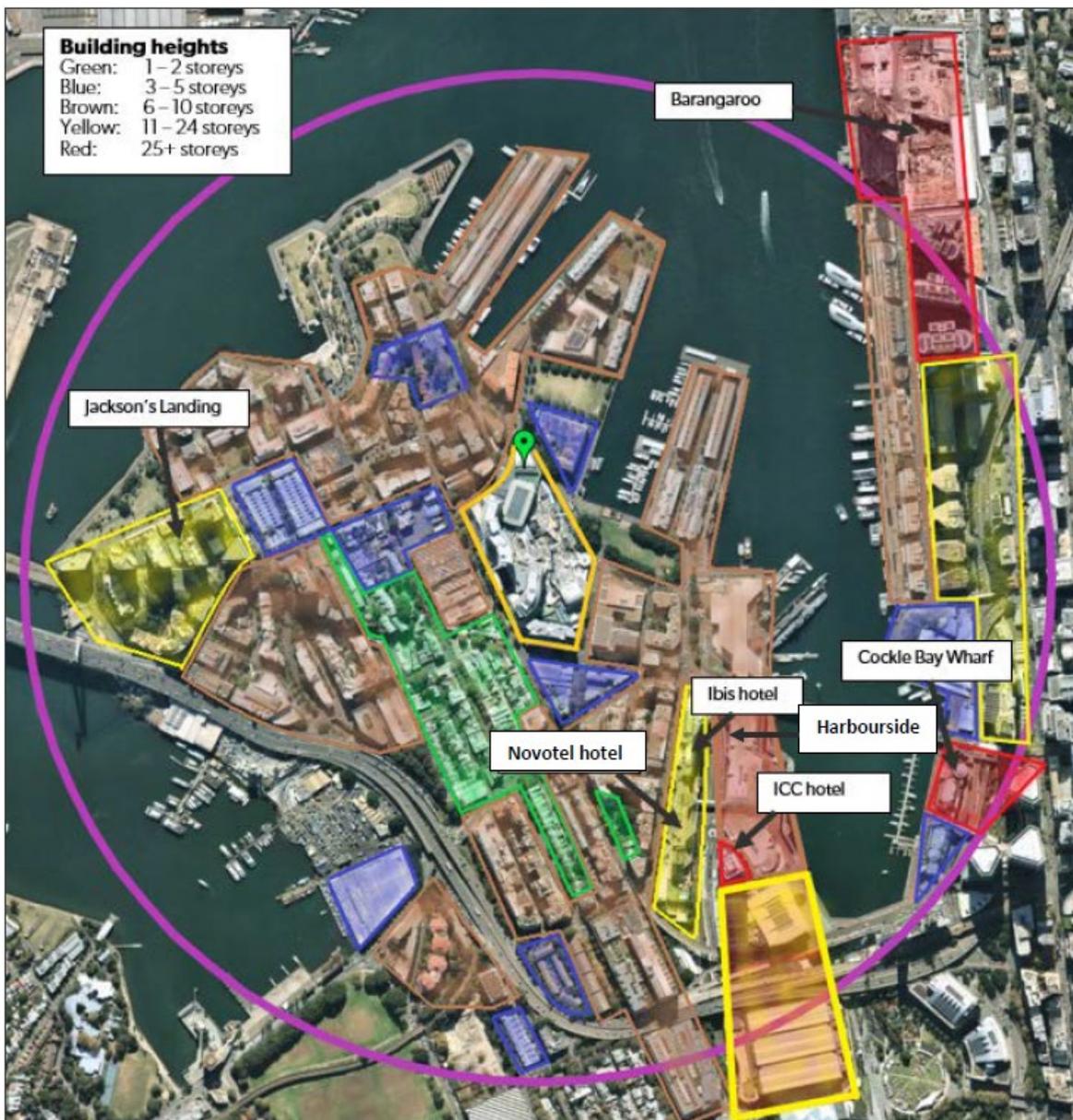
1.4. THE SITE IN ITS SURROUNDS

As referenced in **Figure 2** from the Department's AR (page 36), the Site is located on the western side of Darling Harbour. The locality is diverse in both built form, scale of land holdings and age of building stock. The Site's area draws comparisons to other large-scale Sites of Darling Harbour.

The building heights detailed by the Department, represent the existing and future character of the Site in its surrounds. A direct link between low scale built form and aged building stock exists (as demonstrated in green, blue and brown) compared to that of a more contemporary building forms such as those at Jacksons Landing, the Ibis Hotel and Novotel (yellow) and that of the emerging high-rise character of Darling Harbour at Cockle Bay Wharf, the ICC hotel and Barangaroo (red).

The Site is unique not only in form and scale; it also contains a broad mix of established uses which distinguishes it from the residential character to the west, and connect it to the established mixed use tourism and entertainment precinct of Darling Harbour. The Site's diverse range of uses including The Star, Astral Residences and Hotel, the Darling Hotel, the range of food and beverage (F&B) options, the cultural and tourist draw cards of the Lyric Theatre and Multi Use Entertainment Facility (MUEF) that undoubtedly differentiate the Site from the residential character of Pyrmont.

Figure 2 – The Character of the Area



Source: The Department's AR, page 36

1.5. PURPOSE AND STRUCTURE OF THIS REPORT

The purpose of this report is to respond to the issues raised in the Department's AR and recommendation and to clarify items that have been misinterpreted by the Department. In some instances, this report responds to issues raised in the public meeting by way of reference to material that has previously been submitted as part of Mod 13. This report is structured as follows:

- **Section 2: Clarification.** This section provides clarification on issues raised by the Department in written and verbal submissions;
- **Section 3: Response to the Department's Assessment.** This section provides a response to the key issues raised in the Department's AR, directs the IPC to information already provided in the Mod 13 application and provides an alternative view on subjective matters drawing on the suite of technical reports and analysis undertaken by the Proponent's consultant team;
- **Section 4: Brief response to items raised by speakers in the public meeting.** The Proponent's RtS provides a thorough response to the matters raised in the written submissions. No additional items were raised in the public meeting which had not already formed the subject of the RtS. A brief response to matters raised is provided in this section to direct speakers to the relevant detail (as required); and
- **Section 5: Response to the Department's Recommendation.** This section directly responds to the Department's five key reasons for recommending refusal offering an alternative view based on the assessments and conclusions detailed in the EAR and RtS Report and associated technical reports.

2. CLARIFICATION

A number of key themes have emerged on a review of the IPC briefing meeting transcripts and in the public meeting presentation by the Department. The following discussion provides clarification of issues which have been misinterpreted or inaccurately reported. This section also provides a summary of the reasons why the Department incorrectly applies weight to the IDA and why the IDA should not be relied upon to inform the assessment and determination of Mod 13.

2.1. APPROVAL PATHWAY

The approval pathway is valid.

The Star was granted Major Project Approval for 'Alterations and Additional to Casino Complex and Hotel Development on the Switching Station Site' (MP08_0098) on 27 January 2009.

Part 3A of the EP&A Act 1979 has been repealed by the NSW Government. As part of the repeal process, Schedule 6A of the EP&A Act 1979 was enacted to allow the application of the repealed Part 3A provisions to certain projects that had been approved or were in the process of environmental assessment under Part 3A. These projects are known as 'Transitional Part 3A Projects' and such projects may continue to be modified under the modification framework set out in the repealed section 75W of the EP&A Act 1979. Major Project Approval MP08_0098 is a 'Transitional Part 3A Project'.

On 23 November 2017, the Environmental Planning and Assessment Amendment Bill 2017 was assented to. The *Environmental Planning and Assessment Amendment Act 2017* commenced by proclamation on 1 March 2018, with the effect of transferring the transitional arrangements for Part 3A from the EP&A Act 1979 into a new regulation, the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017 (EPA Transitional Regulation)*.

Section 75W remains in force by operation of clause 3BA of Schedule 2 of the EPA Transitional Regulation. Accordingly, modification of Major Project Approval MP08_0098 is sought under section 75W of the EP&A Act 1979.

Under the transitional arrangements, Proponents had until 28 February 2018 to lodge any final requests to modify an approval under the Part 3A pathway. Proponents that lodged requests by that date had until 1 September 2018 to lodge their environmental impact assessment documentation.

The environmental impact documentation associated with Mod 13 was submitted on 13 August 2018.

Section 75W of the EP&A Act 1979 provides a mechanism by which the Proponent of a Part 3A Project Approval may request the modification of, and by which the Minister may modify, that project. Section 75W(2) of the EP&A Act 1979 sets out the right of a Proponent to request a modification:

'The Proponent may request the Minister to modify the Minister's approval for a project. The Minister's approval for a modification is not required if the project as modified will be consistent with the existing approval under this Part.'

Section 75W(4) of the EP&A Act 1979 then provides the Minister with the power to '*modify the approval (with or without conditions) or disapprove of the modification.*'

The Minister has the power to make the proposed modifications to Major Project Approval MP08_0098 requested under Mod 13 because section 75W(4) confers upon the Minister a broad power to modify a Major Project approval. Under the defined terms in section 75W(1), modifying an approval can include '**changing the terms of**' an approval. The EP&A Act 1979 does not set out any express statutory limitation upon the nature or extent of the change that is permitted to be made under section 75W.

As demonstrated in the exhibited EAR, the proposed works under Mod 13 limited additional environmental impacts beyond those already assessed for the approved project. It is open to the Minister and the IPC as the Minister's delegate to modify the approved project under the provisions of the EP&A Act 1979 and associated regulations that preserve the application of section 75W, so as to authorise the Proposal as described in the PPR (RtS, Section 2.0).

2.2. STATE SIGNIFICANCE

It is incorrect to suggest the Proposal is not a development of State significance.

The Proposal is considered to be development of State significance, under Part 3A of the EP&A Act 1979. The Department relies on the Site not being an 'identified Site' of State significance as a basis to assume that the Proposal is not justified strategically (Department's AR, section 6.2.1 page 37).

It is acknowledged that the Site is not identified as a 'State significant precinct'. The existing Star Casino and Entertainment Complex is however a development of State significance. The Star City redevelopment was declared a Major Project in 2008 under section 75B(2)(a) (of Part 3A) of the EP&A Act 1979. Relevantly, a development that is declared under section 75B(2)(a) is one that, in the opinion of the Minister, '*is of State or regional environmental planning significance*'. The existing development, subsequent 13 approved modification applications and the current Mod 13 application constitute development of State significance.

The Department's AR appears to rely on the position that as the site is not a declared State significant precinct under *State Environmental Planning Policy (State Significant Precincts) 2005*, the existing development and the Proposal cannot be considered development of State significance. This is inconsistent with the intent and structure of Part 3A of the EP&A Act which enabled the Minister to either declare a site under section 75B(1)(a) to be a project to which this Part applies by a State environmental planning policy, or under section 75B(1)(b) by order in the *Government Gazette*. A declaration made by order under section 75B(1)(b) is separate to, but has the same intent as, a declaration made under 75B(1)(a).

The Department's AR relies on the Site not being an identified Site of State significance as a basis to assume that the Proposal is not justified strategically, as set out in the following discussion:

'It is noted Barangaroo, Darling Harbour and the Bays are each designated as 'identified Sites' within the State and Regional Development SEPP, given the significance of their development to the State. Whereas, the Star Site is not located within an identified precinct or an area specifically designated for significant future growth (additional height and floor space) in any adopted or emerging planning policy'. (Department's AR, section 6.2.1, page 37).

The Department's AR provides no basis for distinguishing the Site from other development of State significance. The Department's AR lists Barangaroo and the ICC Hotel as being distinct from the Proposal. This position ignores the circumstances where the Proposal is a transitional project under Part 3A, and thus a project of State significance. The Star as established and proposed to be modified is development of State significance. This fact is clear on review of:

the history of the planning approvals for the Site;

- the establishment of The Star under State Environmental Planning Policy No 41-Casino Entertainment Complex; and
- the implications of a Part 3A declaration for otherwise applicable planning instruments.

2.3. SYDNEY LOCAL ENVIRONMENTAL PLAN 2012

SLEP 2012 does not apply to the Proposal.

The Site is located on land zoned B3 Commercial Core under Sydney Local Environmental Plan 2012 (SLEP 2012). Section 75R of the EP&A Act provides that environmental planning instruments (EPIs), such as the SLEP 2012, do not apply to or in respect of an 'approved project' under Part 3A. This is qualified by section 75J(3) of the EP&A Act 1979 which provides that the Minister (or delegate) has a discretion to consider EPIs (which would otherwise not be required to be considered and applied because of section 75R) when deciding whether or not to approve the carrying out of a project, but the regulations may preclude approval for the carrying out of a class of project that such an instrument would otherwise prohibit.

Clause 80(1)(b) of Schedule 4 of the EPA Transitional Regulation provides that, for the purposes of section 75J(3), *approval* for the carrying out of a Part 3A project cannot be given if the project (or any part of it) would be prohibited by an EPI that does not (because of section 75R) apply. However, neither sections 75J and 75R of the EP&A Act 1979, nor clause 80 of the EP&A Regulation, applies to the *modification* of Part 3A projects. Instead, the Minister's power to modify Part 3A approvals is a standalone power, identified solely by reference to the provisions of section 75W.

Operating in this different context, section 75W affords the Minister (and the Minister's delegate) a broad discretion to approve or disapprove of a request to modify a Part 3A approval and, as explained in the judgement in *Barrick Australia Ltd v Williams* (2009) 74 NSWLR 733, the decision of whether a proposed alteration to an existing approval is properly considered a "modification", and within the bounds of section 75W, is one to be made by the Minister that is reasonably open in the circumstances.

Unlike the modification of a Part 4 approval under section 4.55 (formerly section 96) of the EP&A Act 1979, a modification under section 75W is not required to result in 'substantially the same development'. Instead, the constraints on the Minister's discretion are only those expressed, or properly inferred, in the words of section 75W itself.

This position has not been altered by the recent decision in *Billinudgel Property Pty Ltd v Minister for Planning* [2016] NSWLEC 139, (2016) 221 LGERA 1 (*Billinudgel*). The facts in that case are distinguishable from Mod 13 on two grounds. Firstly, *Billinudgel* involved a Concept Plan Approval, whereas Mod 13 relates to a Project Approval. Secondly, in *Billinudgel*, the proposed modification involved the removal of a condition that was at the very heart of the purpose of the Concept Plan Approval.

Although Mod 13 proposes changes to the character and extent of the Approved Project, it does not involve anything that proposes to alter the heart of the purpose of the Approved Project. It is considered that neither the height of the proposed new tower nor the inclusion of residential apartments in the tower, within a mixed-use development, are changes to the Approved Project that are outside the matters that the Minister (or delegate) could reasonably consider to be a modification of an existing Part 3A Project Approval.

Accordingly, it is reasonably open to the Minister (or the IPC as delegate) to approve Mod 13 to Project Approval MP08_0098 under section 75W of the EP&A Act 1979.

2.4. NO RELIANCE ON METRO WEST AT PYRMONT

The Proposal is not reliant on construction of Metro West at Pyrmont.

During the IPC's public meeting, on 27 August 2019, David McNamara, the Department's Director of Key Sites Assessment, stated inter alia that Mod 13 was reliant on the delivery of a Metro West in Pyrmont. The submission emphasised that no government decision had been made on the future alignment or the location of stops through Pyrmont.

Mod 13 is **not** dependent on the provision of Metro West. The modelling and conclusions presented in the Traffic Impact Statement (TIA) (RtS Report, Appendix J), do not rely on the provision of a Metro West in Pyrmont. The discussion about Metro West was to provide context of current and future public transport options. Metro West was simply identified as a future opportunity and was never presented as a strategy required to support Mod 13.

The TIA demonstrates that the Proposal provides sufficient car parking on Site to account for the additional residential and hotel uses, introduces a new driveway access to Pyrmont Street to change traffic flows in the local road network, relocates the external taxi rank into the Site to address the Community's concerns regarding traffic noise, vehicle headlight-spill and the proposed works creates a more permeable access to the existing Light Rail platform. The Proposal is considered in the TIA to improve the traffic, access and car parking arrangements in and around the Site (refer **section 2.6** below). It is also relevant to note that Transport for NSW raised no objection to the Proposal and provided conditions of approval.

2.5. SYDNEY HARBOUR REGIONAL ENVIRONMENTAL PLAN (SYDNEY HARBOUR CATCHMENT) 2005

The Site is identified under *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005* (SREP Sydney Harbour Catchment) as being located within the Foreshore and Waterways Area of that policy. The aims of SREP Sydney Harbour Catchment relevant to the Proposal include inter alia:

- (b) *to ensure a healthy, sustainable environment on land and water,*
- (c) *to achieve a high quality and ecologically sustainable urban environment,*
- (d) *to ensure a prosperous working harbour and an effective transport corridor,*
- (e) *to encourage a culturally rich and vibrant place for people,*

(f) to ensure accessibility to and along Sydney Harbour and its foreshores

The Proposal:

- incorporates stormwater infrastructure upgrades which will improve the urban environment around the Site and reduce impacts of localised flooding and ponding of water due to road geometry;
- does not propose works in the harbour nor in waterway land adjacent to the harbour and as such will not alter or impact the role of the harbour as a working harbour and will not alter accessibility to and along the foreshores of Sydney Harbour;
- will deliver a high quality and ecologically sustainable urban environment within and surrounding the Site and is a development that exhibits design excellence as determined by the design excellence panel; and
- will deliver a world class Integrated tourist and entertainment facility and high-quality residential accommodation that will be a culturally rich and vibrant place for people to work in, visit and to live.

The physical context of the Proposal is that it is to be located on a Site developed as an existing Casino and Integrated Tourist Resort where the Site is located within the Darling Harbour Precinct of the Innovation Corridor of the Eastern City Harbour CBD. The Proposal achieves the Principles nominated in clause (2) (a) and (b) of the Sydney Harbour SREP Harbour Catchments 2005.

- While the Proposal introduces a new tower form to the Site that tower form does not physically impact nor encroach upon Sydney Harbour which is a public resource and the harbour is not relied upon by the Proponent to derive any private benefit;
- The Proposal will introduce a new built form to the Darling Harbour Precinct which is part of the Sydney Harbour catchment. The tower form will change to views of the precinct when viewed from within and adjacent to the Harbour. This change in view from the Harbour in and of itself is not a negative impact. The proposed tower form has been designed to exhibit design excellence, will be compatible with the urban character of the Darling Harbour Precinct which is characterised by lower level podiums and tower forms above and will integrate with the existing architecture of The Star. The Department has previously supported a height and prominence of a tower built-form as the appropriate marker of the northern end of the Darling Harbour Precinct (ICC Hotel as stated on page 38 of the Assessment Report). However, it should be noted that the Star forms the northern extent of the Darling Harbour Precinct as identified in the Eastern City District Plan.
- While there will be limited view loss from private residences this is not of iconic views within the Harbour and an outlook from the dwellings will still be maintained;
- While the Proposal will result in overshadowing of public and private spaces, the majority of the shadow is cast across the Site and does not adversely impact Sydney Harbour or its foreshores. The minor overshadowing of public spaces can be mitigated by the reduction of the overall height of the tower form to RL 213; and
- The Proposal delivers significant public benefit in the form of a Neighbourhood Centre for operated and maintained by the Proponent until 2093 at a cost in present day value of \$80M (excluding fit out and construction). This public benefit is an integral part of the Proposal and sits in balance with the overall development proposed under Mod 13.

2.6. TRAFFIC, PARKING AND ACCESS MATTERS

Traffic, access and parking related matters are considered to be resolved.

Traffic related issues were the number one concern of the Community submissions, referenced in 50.8 percent of them. The Proponent thought it pertinent to summarise traffic, car parking and access matters raised in the Department's AR and provide the Proponent's response for the consideration of the IPC.

The Department's AR concluded as follows:

- *'The Department considers that the increases in traffic resulting from the Proposal could be accommodated within the local road network without significant adverse impacts on surrounding intersections and therefore concludes the minor traffic impact would be acceptable'* (section 6.6.1, page 62)

- *TfNSW recommended a Condition requiring submission of a service road, taxi and car stacker management plan to mitigate any impacts associated with the competing needs of the car stacker with the other functions of the service road. Subject to this condition, the Department considers the proposed parking on site to be acceptable.* (section 6.6.2, page 64)
- *The Department notes that TfNSW did not raise concerns regarding the capacity of the light rail to service the development and considers that as the majority increase in future trip is predicted to occur outside of peak times when there is sufficient capacity on the light rail, and the spare capacity of alternative public transport to the site, including bus ferry and heavy rail, the impact on public transport services would be acceptable if it was determined that the project should proceed.* (Section 6.6.3, page 64)
- *...the Department concludes the proposed bicycle parking facilities would be acceptable and could be secured via condition if it was determined that the project should proceed.* (Section 6.6.4, page 64)
- *The Department considers that subject to TfNSW's recommended conditions that the proposed taxi and coach parking arrangements would be acceptable if it was determined that the project should proceed.* (Section 6.6.5, page 65)
- *The Department considers that subject to the TfNSW recommended conditions that the access and servicing arrangements for the proposal would be acceptable if it was determined that the project should proceed.* (Section 6.6.6, page 65)

The traffic, parking and access matters of the Proposal were considered acceptable by TfNSW and the Department as identified above and in the Department's AR. This is supported in the Department's AR where it considers the benefits of the Proposal to include *'no negative environmental impacts with respect to wind, traffic or ESD principles'* (Department AR, P61). For this reason, the Proponent considers the traffic, access and parking related matters have been answered.

2.7. THE MAXIMUM HEIGHT OF BUILDINGS

The exhibited Proposal has a maximum of RL 237 and a maximum building height of 234.3m. At RL 237 the Proposal is 34m shorter (nearly 11 storeys) than the Crown Casino Building. Further, if the reduced tower height of RL 213 is considered, the Proposal would be 58m shorter than the Crown Casino Building, a difference of around 18 storeys.

The Department's verbal submission in its IPC briefing suggested that the Proposal was *'very, very similar in height'* to the Crown Casino Building which has a maximum height of 271 metres (The Department's Briefing to the IPC, line 19, page 27). This statement is factually incorrect. The following clarification is provided:

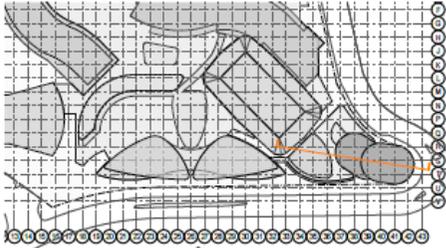
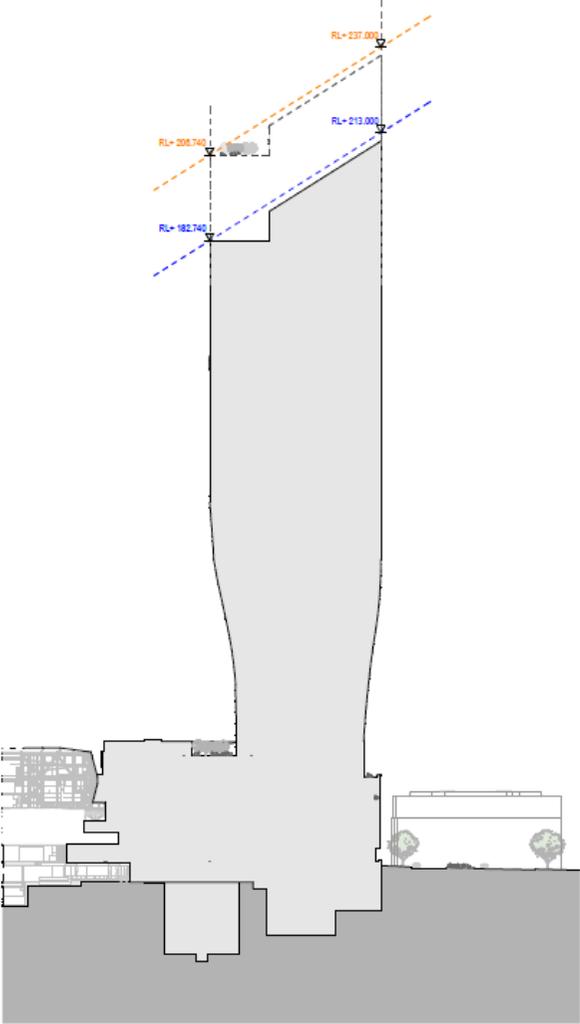
- Top of building heights noted on the Architectural Drawings and Design Statement lodged with the Proposal are presented in RL's;
- The lowest ground floor level occurs along Pirrama Road and is RL 2.7m; and
- RL's are taken from the upper most tip of roof feature, including all plant.

FJMT, the Proponent's Architect, detailed in the presentation to the IPC, the maximum height of the tower presented as part of the Design Excellence Process had a maximum height of RL 213 and a maximum building height of 210.3m (refer blue line in **Figure 3** below). This height was nominated to prevent overshadowing of Union Square..

FJMT presented an alternative height for the consideration of the DRP as part of the second phase of the Design Excellence process. The revised scheme (which forms the exhibited Proposal) has a maximum RL of 237 and a maximum building height of 234.3m (refer orange line in **Figure 3** below). The DRP supported the taller scheme as they considered it to *'achieve more elegant proportions with negligible additional environmental impacts'* (Design Review Panel, December 2016).

Figure 3 – Original and Revised Building Height

© FRANCIS-JONES MOREHEN THORP PTY LTD 2019 ABN 28 101 197 219 NOMINATED ARCHITECT: RICHARD FRANCIS-JONES (REG NO 5301)



Source: FJMT

2.8. NEIGHBOURHOOD CENTRE

2.8.1. Increase in Length of Neighbourhood Centre Tenure

The neighbourhood centre is secured for community use until the year 2093.

The length of tenure of the Neighbourhood Centre was increased from 30 years to the life of to lease remaining on the site, in a letter to the IPC dated 22 August 2019 (**Appendix A**) and publicly available on the IPC website.

The Department referenced the 30-year tenure of the Neighbourhood Centre in their presentation to the IPC public meeting and the IDA suggests that the Proposal should not be approved because it does; *'not result in a public benefit near the order needed to offset and/or justify its negative impacts'* (IDA, page 139).

It is confirmed that the Neighbourhood Centre will be available for community use until 2093 being the remaining tenure held by the Proponent on the Site. The Proponent has undertaken a cost analysis of the net community benefit arising from the Neighbourhood Centre being extended to the maximum available timeframe (the remaining life of the lease). The resultant public benefit of the Proposal has increased since lodgement by 113 percent, equating to approximately \$80M in today's value to the community (excluding construction and fit out).

2.8.2. Confirmation of Extent of Neighbourhood Centre

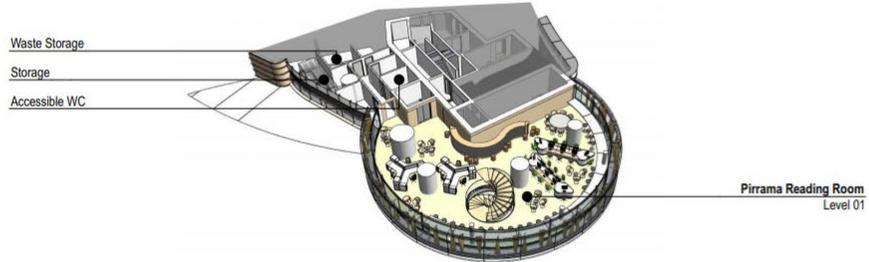
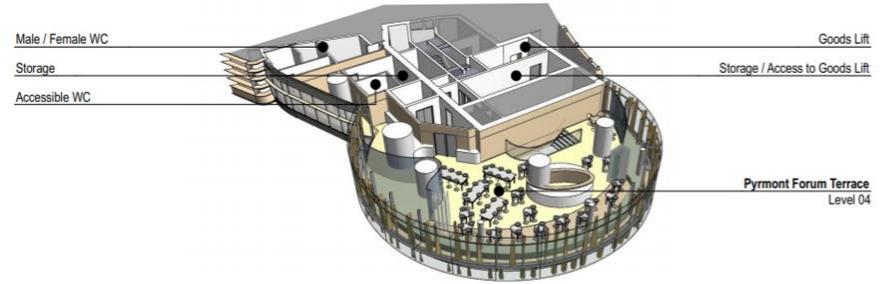
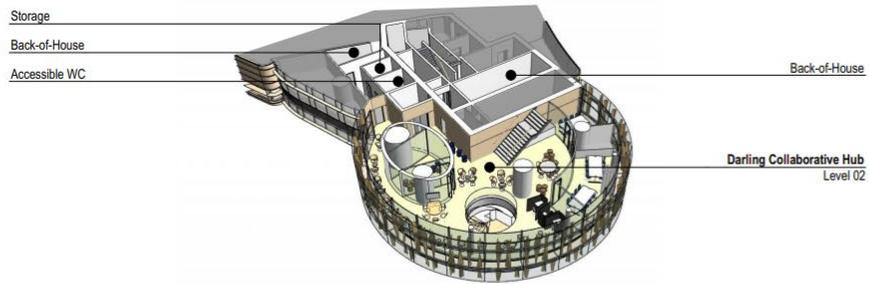
The Neighbourhood Centre consists of five levels of community space with a floor area of 1,690sqm

The IDA (page 138), states; *'The application does include 'Neighbourhood Centre' facilities within the development at ground floor level'*. The Proponent confirms the extent of the Neighbourhood Centre as being across five levels, (ground floor and levels 1, 2, 3 and 4) and having a floor area of 1,690sqm as detailed in **Figure 4**. A breakdown of each level is as follows:

- Level 00 Ground Level – community lounge and terrace, outdoor terrace, Enterprise Café, Technology Bar, makers space;
- Level 1 – Reading room and library space, elevated lounge, children and family space, space for study and group setting;
- Level 2 – Open plan training and class settings, casual group lounge settings, consultation and tutoring settings, meeting rooms and conference spaces, community and digital literacy classes;
- Level 3 – Civic function space with harbour views, dual purpose catering and neighbourhood kitchen, access to Harbour Roof Terrace, private and community functions; and
- Level 4 – Community terrace with harbour views, green space and seated settings, private and community functions.

Figure 4 – Neighbourhood Centre

Neighbourhood Centre - Illustrative Scheme 5 levels ~1690sqm



fjmt studio architecture interiors urban landscape community



Ritz Carlton Tower

Source: FJMT

2.8.3. The Need for a Neighbourhood Centre

There is a community need for additional floor space for use by the Community.

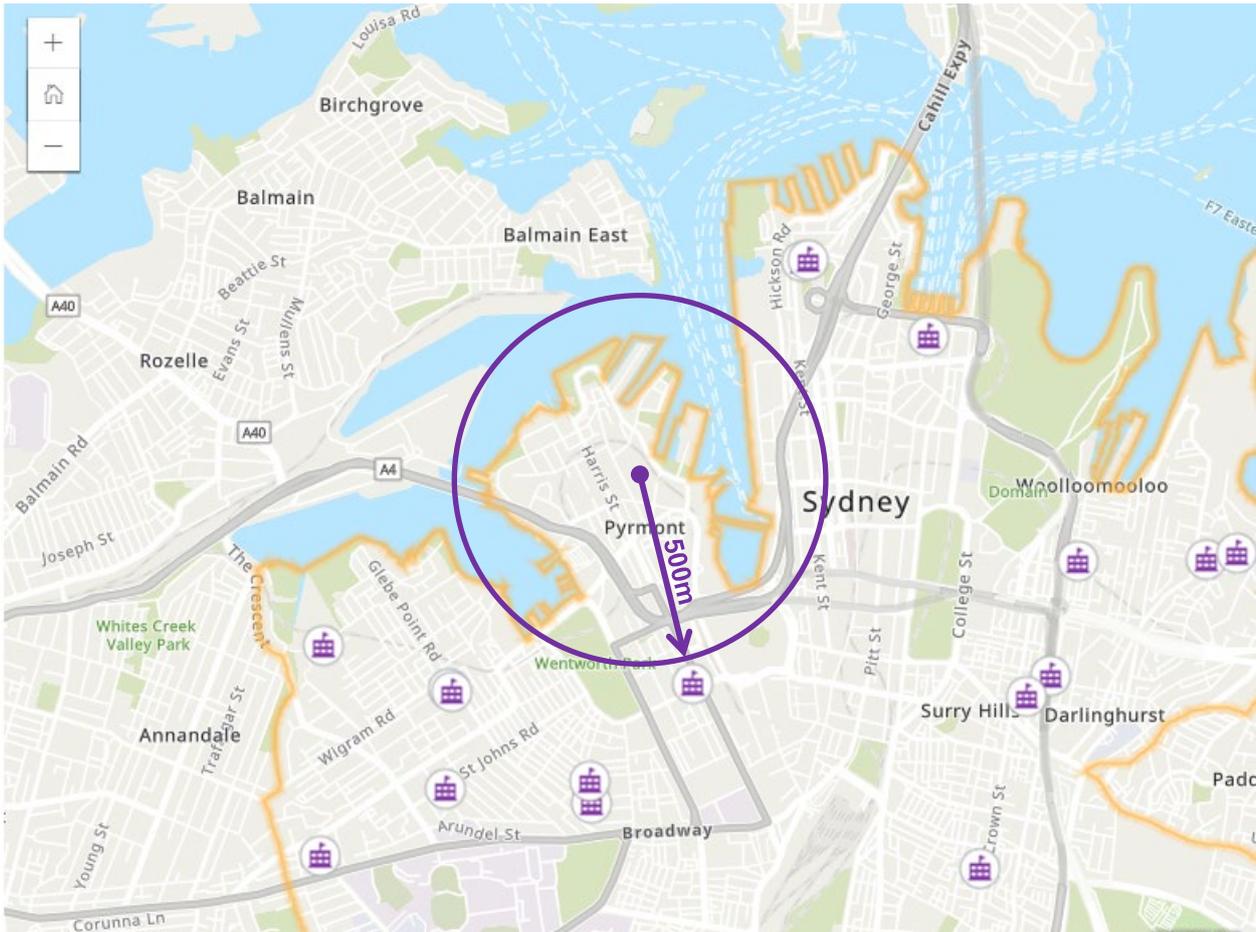
Prior to the submission of Modification 13 an assessment of local community facilities was undertaken. This included inspection of Pymont Community Centre and an assessment of available facilities, which are summarised below:

- playground;
- two halls (one for classes, one for craft);
- gym;
- kitchen;
- BBQ;
- library 'link';
- lack of smaller meeting rooms;
- overly subscribed for class space;
- lacking adequate casual community drop in space;
- no study space or digitally enabled meeting areas;
- need more places for children and families;
- large room now occupied by local Out of School Hours care (OOSH) has reduced space further;
- gym occupies primary space; and
- special places for exhibition and music.

The proposed Neighbourhood Centre has been developed in consideration of the above to ensure the new facilities are complementary to and reinforce those already available.

The assessment of available facilities identified a shortfall in bookable community spaces within the Pymont peninsula (**Figure 5**). This led to the Level 04 'Pymont Forum' being proposed within the Neighbourhood Centre.

Figure 5 – Bookable Community Facilities



Source: www.cityofsydney.nsw.gov.au

2.8.4. Benchmarking Analysis

The Neighbourhood Centre compares to other facilities in City of Sydney.

The Proposal was benchmarked to other facilities within City of Sydney including:

Table 1 – Comparison with other new community facilities in City of Sydney

Darling Exchange	Surry Hills Library	Green Square Library	The Star
<ul style="list-style-type: none"> Delivered in partnership with private development 2,200sqm library open plan with mobile meeting pods maker space interactive innovation space digital technology 	<ul style="list-style-type: none"> 1,200sqm library and neighbourhood centre Small meeting room, Kitchen; and multifunction room; additional childcare (~250sqm included) 	<ul style="list-style-type: none"> 3000sqm library computer lab music room meeting rooms 	<ul style="list-style-type: none"> 1,690sqm community lounge and terrace, outdoor terrace, Enterprise Café, Technology Bar, makers space; Reading room and library space, elevated lounge, children and family space, space for study and group setting Civic function space

Darling Exchange	Surry Hills Library	Green Square Library	The Star
Population Haymarket ~ 8,000	Population ~ 16,000	Projected population ~ 50,000	Projected population ~ 12,813
0.275 sqm of community space per person offered	0.075 sqm of community space per person offered	0.06 sqm of community space per person offered	0.132 sqm of community space per person offered

Benchmarking indicates that the proposed Neighbourhood Centre will deliver a greater range of space and functionality when compared to other facilities within the City of Sydney. The operation and maintenance of which is to be funded by the Proponent.

*It is important to acknowledge that the Darling Exchange Library occupies privately held floor space and is leased by Council.

2.8.5. Comparison of Public Benefit in State significant development

An important consideration for the IPC is how the proposed public benefit offer compares to that of other recent State significant developments in the Harbour CBD.

The following table provides a summary of public benefits and contributions made by or required from recently approved or proposed State significant developments in the Eastern City Harbour CBD. This is presented for comparison purposes to place in context the comments in the Department's AR and the IDA, that the Proposal will not deliver worthwhile public benefit.

Table 2 – Comparison of Public Benefit – Recent SSD Applications

Project	CIV (\$)	GFA (sqm)	S7.11 Contributions	Affordable Housing Contributions	Summary of Public Benefit
ICC (SSD6116)	\$128M	37,090sqm	Nil.	Nil.	<ul style="list-style-type: none"> • Landmark architecture; • Strengthening the role of Darling Harbour as a tourist attraction; • Supporting the role of Darling Harbour by providing hotel accomodation; • Economic benefits to NSW; • Local employment (350 construction jobs + 250 operational jobs); • Enhance public domain and integration of the site into the wider Sydney International Convention Centre, Exhibition and Entertainment Precinct (SICEEP)

Crown, Barrangaroo (SSD 6957)	\$1.127B	77,500sqm	Nil.	Nil.	<ul style="list-style-type: none"> • Improved public domain – via public domain upgrades to foreshore promenade within the site; • Economic benefits to NSW; • Integral part of the Barrangaroo South Precinct; • Supporting Barrangaroo by providing hotel accomodation, residential and tourist facilities. • Local employment (1,100 construction jobs + 1,831 operational jobs)
4-6 Bligh Street, Sydney (SSD 18_9527)	\$311M	26,796 sqm	Monetary – Central Sydney Infrastructure - \$1003 per square metre of strategic gross floor area. Based on 6,236.16sqm - 8,672.16sqm = \$6.2-\$8.6M	Nil	<ul style="list-style-type: none"> • Local employment (325 construction jobs + 450 operational jobs) • Monetary contributions payable to Council.
1 Alfred Street, Sydney (SSD 15_7101)	\$500M	57,610sqm	Nil.	Nil.	<ul style="list-style-type: none"> • A series of land dedications and restrictions on title to facilitate the provision of publicly accessible open space, lanes and other links across the site for use as both pedestrian thoroughfares and for passive recreation via a VPA with Council. • Local employment (2,320 construction jobs + 10,000 operational jobs)
Cockle Bay (SSD 7684)	\$649M	89,000sqm	Nil.	Nil.	<ul style="list-style-type: none"> • On-site landscaping works, minimum 6,500sqm publicly accessible open space.

					<ul style="list-style-type: none"> • New and updated pedestrian linkages through the site to improve pedestrian connectivity • Local employment (300 operational jobs)
The Star Mod 13 (MP08_0098)	\$529M	48,977sqm	\$5.7 million	\$1.9 million	<ul style="list-style-type: none"> • Construction and fit out of 1,690sqm Neighbourhood Centre for community use until 2093 • Net community benefit \$80M (excluding construction and fit out) in present day value. • Local employment (754 FTE construction and operational jobs). • Improvements to local traffic management • Landmark architecture. • Economic benefits to NSW. • Supporting Darling Harbour Precinct by providing hotel accommodation, residential and tourist facilities.

The above summary notes for site's excluding The Star, have been extracted from the Department's Assessment Report for the respective projects.

With direct reference to the Department's AR, the IDA references the nearby Cockle Bay Site (SSD 7684), suggesting that it has *'worthwhile public benefit'* due to the *'dedication of attractive public space'* (IDA, page 138). On review of SSD 7684, it is clear that no dedication of public space is proposed, rather the embellishment of existing public space through landscape works is to be undertaken by the Proponent of SSD 7684. The net public benefit of these proposed landscape works should be subject of further scrutiny should they form the benchmark of how to measure *'worthwhile public benefit'* (IDA, page 138).

It is apparent that the public benefit to be delivered through Mod 13, in addition to statutory contributions to be paid and the economic and employment benefits that will be generated during construction and operation will be significant in terms of financial commitment and physical form of the Neighbourhood Centre.

2.9. APPLICATION OF *VELOSHIN*

The Department's AR notes (at page 39) that *'As no planning controls technically apply to the proposal the Department considers that the appropriateness of a tower in this location should also be considered against the principles established in The Land and Environment Court case Veloshin'*. The conclude that it considers that the proposed tower fails to address Planning Principle No.4 because the tower *'exceeds the height and bulk of surrounding buildings'*, *'is at odds with the surrounding low-to-medium rise built form'*, *'is overly dominant and does not look appropriate in its context'*, and *'has impacts that are inconsistent with those reasonably expected from an LEP-compliant envelope'*. This approach is erroneous and should not inform the assessment of the merit of the Proposal.

It appears that the Department has misunderstood the nature of the *Veloshin* principles. As planning principles, they are simply a statement of appropriate matters to be considered in making a planning decision. Senior Commissioner Roseth specifically noted that the planning principles were established 'to guide how [height, bulk and character] may be assessed' (emphasis added). Planning principles are not authoritative, legally binding principles laid down by a judge which must be applied by a decision-maker. Consequently, there appears to be no basis for the Department's assertion that, as no planning controls apply (SLEP 2012), it follows that it should apply *Veloshin*. To the extent that a decision-maker (consent authority) regards itself as bound to apply *Veloshin*, then it is asking itself the wrong question and arguably is committing a reviewable jurisdictional error by misdirecting itself in law.

It is important to note that the *Veloshin* principles do not apply to a Part 3A Project. *Veloshin* concerned a development that was subject to a local environmental plan and various development control plans. In that case, the relevant Council opposed the development the subject of a development application on the basis that 'excessive floor space, height, bulk and scale of the proposed development are unsuitable for the subject site'. In considering that argument, Roseth SC noted how '[t]he debate about height and bulk can be meaningful only against the background of local planning controls'. Roseth SC also observed how such instruments and policies are usually aimed at balancing adverse impact on neighbours on the one hand, and achieving a certain urban character on the other hand.

It was in the context of this discussion about consideration local environmental controls that Roseth SC set out the *Veloshin* principles, in circumstances that presupposed the applicability of those local controls. They did not contemplate a situation where local environmental controls existed but had been rendered inapplicable by the operation of Part 3A of the EP&A Act 1979. Once it is appreciated that this latter situation is not what the words 'there is an absence of planning controls' in the fourth *Veloshin* principle are intended to capture, it becomes clear that the fourth *Veloshin* question of '[d]oes the proposal look appropriate in its context' does not arise for consideration for a Part 3A Project. Supporting this view is the fact that there is no case law considering the *Veloshin* principles in the context of Part 3A of the EP&A Act 1979.

In any event, even if the *Veloshin* principles do not strictly apply but the IPC chooses to have regard to the fourth *Veloshin* principle as part of the general merits assessment, it is quite clear from Urban Context Report (RtS, Appendix N) that the answer to this question is 'yes' that the proposed tower is appropriate in the context of the site and the wider urban context in which it sits, the Darling Harbour Precinct.

2.10. RELIANCE ON THE IDA

2.10.1. The Scope of IDA

The IDA does not appear to be based on review of the full suite of documents which form Mod 13. Likewise, the scope of the design opinion was based on a single premise:

'Is a tower form appropriate in this location given the local and wider urban design context?' (IDA, page 134).

As detailed on page 134 of the IDA the material reviewed in preparation of the design opinion was:

- *'Urban Context Report (Urbis – November 2018);*
- *Visual Impact Assessment (Architectus - August 2018);*
- *Peer reviews of the Urban Context Report (Olsson and Associates – June 2018); and*
- *Visual Impact (Richard Lamb and Associates – July 2018) – commissioned by applicant.*

It is noted that a number of strong objections have been received, including those from the City of Sydney, and from local residents who would potentially be impacted. A further document submitted by the applicant 'Addendum Response to Submissions: Visual Impact' (Architectus Group Pty Ltd November 2018) has also been reviewed'.

On the face of the report it appears the writer of the IDA was not provided as part of the review the Proponent's EAR, RtS Report, the architectural plans or the Architectural Design Statement (ADS) prepared by FJMT which provides the design context of the tower. For the IDA to conclude with absolute certainty the *appropriateness* of a tower on the Site, the opinion:

- should have been based on the full suite of documents lodged with the Proposal; and

- should identify any planning policy that is inconsistent with the Proposal.

The strategic justification for the Proposal exists within the Eastern City District Plan at a State level, and as set out the Proponent's EAR and identified in Section 3.0 'Strategic Context' of the Department's AR, the Proposal is consistent with the objectives/strategic directions of the referenced plans (refer to **section 3.1** of this report for further detail).

In narrowing the scope of the opinion, the IDA has not had the benefit of the Proponent's extensive environmental assessment.

2.10.2. Reliance on the IDA to Determine 'Public Benefit'

The Department agrees with the IDA on the matter of public benefit, as follows:

'The independent design advice discussed the notion of public benefits when considering the appropriateness of a large tower in the proposed location. The advice correctly noted approval of developments that are not consistent with controls and/or nearby development can sometimes be justified because of the amount of public benefit. The advice concluded in this instance the public benefits resulting from the Proposal would not justify its negative impacts' (Department's AR, P61).

The Department's reliance on the IDA for determining public benefit is questioned. The IDA has assumed the Neighbourhood Centre is single storey and that it should be measured against the financial gain to be achieved from the development (IDA, page 138). The IDA does not consider the scale of the Neighbourhood Centre, the range of spaces and experiences to be delivered or the need for community spaces in the locality. Additional information is provided in **section 2.7** of this report, quantifying the public benefit and benchmarking the Neighbourhood Centre against similar proposals. The Proponent clarifies the following:

- The Proponent has undertaken a cost analysis which details that, for the life of the lease, the net community benefit equates to approximately \$80M in today's value to the community (excluding construction and fit out);
- The Neighbourhood Centre tenure has been extended to 2093 (for the remaining life of the site lease) (**section 2.7.1**);
- The IDA appears to have misinterpreted the scale of the neighbourhood centre, referring to it as a single storey facility (where five levels are proposed) (**section 2.7.2**);
- The community *need* for the Neighbourhood Centre and the social benefit are confirmed in **section 2.7.3**;
- The Neighbourhood Centre compares well to other facilities in City of Sydney (**section 2.7.4**); and
- How this public benefit delivered in this Proposal, compares to other State significant development in the Council area (**section 2.7.5**)

The above is a relevant consideration for the IPC's in determining whether '*the amount of public benefit*' is adequate to '*justify*' the Proposal, as it is apparent that the Department's AR relies on the IDA which has seemingly not yet accounted for these matters.

3. RESPONSE TO THE DEPARTMENT'S ASSESSMENT

3.1. STRATEGIC JUSTIFICATION

3.1.1. Global Waterfront Precinct

The Department states it *“considers that the Proponent’s suggested “global waterfront precinct” cannot be relied upon to justify a landmark tower in this location. The Proponent’s concept does not have any planning weight, has not been subject to community consultation as part of any strategic planning process and is not part of any current or proposed Council or Government planning policy. Furthermore, the concept is reliant on matters which have not been committed to including a metro station at Pyrmont and future tall towers within the Bays Precinct. For these reasons the Department is not persuaded by the ‘global waterfront precinct’ concept.”* (Department’s AR, page iv)

Response:

Source of the term

The Proponent has used the term ‘Global Waterfront Precinct’ throughout the Urban Context Report (RtS, Appendix N) for consistency, ease of reference and to provide clarity. It was identified through the process of preparing the Urban Context study that a term was needed to refer to the locality in which the Site sits. It came about through three observations being:

1. The use of the term ‘Darling Harbour’ inconsistently in Council and Government planning policy across different documents and over time. This includes the use of ‘Darling Harbour’ as referring to:
 - The Darling Harbour waterbody;
 - The land once managed by the Darling Harbour Authority; and
 - The Darling Harbour Precinct as identified in the current Eastern City District Plan as prepared by the GSC.
2. The need for a concise term that would collectively refer to the waterfront land that encloses the Darling Harbour waterbody including the localities of Barangaroo, Cockle Bay, previous Darling Harbour Authority land, Darling Park, the ICC, Darling Quarter, the Lyric Theatre and The Star. This would prevent the need to use the above long list of places every time reference was made to this land.
3. The three words used within the term were identified as appropriate through the observation that:
 - The land is currently waterfront or is located on land that was once originally water or waterfront;
 - The land encloses the Darling Harbour waterbody;
 - The destinations, development and facilities on this land and surrounding the Darling Harbour waterbody are consistently referred to as of ‘global’ or ‘international’ standards, quality or importance in government policy or communications; and
 - ‘Precinct’ is a commonly used term to describe an area or locality.

Reference to the terms ‘Global’ or ‘International’ in Council or Government planning policy or other official documentation includes:

- **Eastern City District Plan (GSC)** - Strengthening the international competitiveness of the Harbour CBD, supported by the Innovation Corridor (page 6);
- **Eastern City District Plan (GSC)** - the Harbour CBD, as its metropolitan centre, Australia’s global gateway and financial capital (page 8);
- **Sustainable Sydney 2030 Community Strategic Plan (CoS)** – The City will remain Australia’s most significant global city and international gateway with world-class tourism attractions and sustained investment in cultural infrastructure, icons and amenities (page 21);
- **Sustainable Sydney 2030 Community Strategic Plan (CoS)** - The City Centre and Village Centres create an integrated Global Sydney (page 53); and

- **City of Sydney Local Strategic Planning Statement (CoS)** - Build internationally competitive and knowledge-intensive business clusters in the Innovation Corridor (page 18).

Use of the term

No statement has been made anywhere throughout the documentation submitted with Mod 13 that suggests:

1. The term has been subject to community consultation as part of any strategic planning process (nor was this the intention);
2. The term is used in any current or proposed Council or Government planning policy;
3. The term is reliant on a Metro West station at Pyrmont; or
4. The term is reliant on future tall towers within the Bays Precinct.

The term is not used to justify a landmark tower in this location. The use of the term, as stated above, is to provide a common point of reference to the waterfront land that encloses the Darling Harbour waterbody which is the current context of the Site.

The justification for the tower is provided throughout the almost 100-page Urban Context Report and in the EAR (Section 7.0) which provides detailed consideration of urban context and character elements to establish the appropriate urban context for the Site and the Proposal. The Department has made no comment on this analysis or provided evidence as to why the established area of Pyrmont is a more reasonable built form context in which to consider the Proposal.

The Star is presently different to, and distinct from, the low to medium rise residential character of Pyrmont to the west of the Site.

3.1.2. Character and Built Form Context

The Department's AR states (page iv):

'The Proponent's justification for a tower also fails to adequately respond to the local character of Pyrmont. Pyrmont is characterised by an established low to medium scale character whilst supporting reasonably high levels of density. Furthermore, Pyrmont is not specifically identified in any strategic planning policy to accommodate future growth in the form of very tall buildings or significantly increased density.'

'The Department does not accept the Proponent's contextual or strategic justification for a tower in this location and notes there is a significant distance between the proposed tower and the established clusters of taller buildings within Barangaroo, the CBD and Darling Harbour. The Department considers a more reasonable built form context for the Site is one defined by the established area of Pyrmont, separate to the strategically identified precincts of Barangaroo, the CBD and Darling Harbour.'

Response:

The Proponent prepared an Urban Context Report which presents a thorough approach to understanding place and context as outlined below, including:

- Four scales on context;
- Three timescales; and
- Six themes.

Figure 6 – Urban Context Approach



Source: Urbis

The below diagram provides a summary of the approach and findings of this detailed investigation.

Figure 7 – Summary of Approach

	STRATEGIC OBSERVATION	URBAN CONTEXT DIRECTION	DETAILED SITE INVESTIGATIONS			SITE DEVELOPMENT PRINCIPLE	SITE OUTCOME
A LANDFORM & URBAN MORPHOLOGY Understanding place and identity	A city of bays and peninsulas	A piece of Sydney's heritage A site of two parts - Darling Harbour and Pyrmont	Pyrmont & Darling Harbour European history Local topography	Site historical built form Site development history	Heritage & conservation context	Re-establish the site's presence within Sydney's skyline Respect heritage context whilst embracing global city location	Embrace solid podium base and tall slender towers as future development form for the site Retain lower scale tower elements for Pyrmont setting and allow Darling Harbour frontage to grow in scale.
B ACCESS & ARRIVAL The site as a destination	A major city centre destination	A central city development site with significant capacity A public transport node	City-wast redevelopment capacity Light rail arrival	Site development constraints Vehicle access & movement		Maximise development potential of land close to transport infrastructure. Celebrate a seamless grand arrival for all transport modes	Embrace the opportunity for a series of significant new towers Physically open up the light rail station to the street and integrate with a new private transport hub
C CONNECTIVITY & WAYFINDING The site and its contribution to visual experience	A part of everyday city life	Integrated into the city's primary east-west pedestrian spine A marker on the city's iconic foreshore pathway	Union Street active edges and pedestrian entrances View lines & decision making		Waterfront precincts and markers	Complete the city block by filling in the corners with activation Physically mark the eastern arrival into Darling Harbour	Improve legibility and activation of pedestrian entrances along Union Street frontage Celebrate the Pirrama Road / Jones Bay Road corner of the site with an iconic tower
D PUBLIC REALM & PLACE MAKING The site as a celebration of place	A part of everyday city life	A waterfront site A parkland setting Sandstone as a foundation	A global city response to amenity Green places and spaces A city defined by sandstone		Water's edge condition Harbour and city views	Embrace physical & visual water based experiences Extend the green heart into the site Use sandstone as a building material	Capture water views and provide water based experiences Create a series of outdoor spaces for public and private access at different levels Utilise sandstone in the base / podium areas of the building
E ACTIVATION & DESTINATION APPEAL The site as a participant in urban life	An integrated resort precinct at the heart of our global waterfront	Part of Australia's premier international events and entertainment precinct A local destination	Integrated Resorts Benchmarking Local neighbourhood uses	Central Sydney Strategy	Existing integrated resort offer	Expand integrated resort offer to retain competitiveness Create a variety of event & accommodation spaces for locals	Expand integrated resort offer to retain competitiveness including a new 5 star hotel Provide a dedicated neighbourhood facility / space on the corner of Pirrama and Jones Bay roads
F ARCHITECTURAL FORM The site as an architectural marker	A part of the emerging city west skyline	The city's global waterfront A marker for Pyrmont	Tall buildings and the waterfront Visual context analysis	Global waterfront precinct skyline Architectural markers	Darling Harbour tower proposals	Complete the emerging built context of Darling Harbour Consider the tower in its current and future context	Investigate a tower height between 166m - 253m Create an architectural marker viewed in the round

URBAN CONTEXT REPORT | 12

Source: Urbis

This methodology considers elements / factors such as economics as part of the place and character assessment. This approach to urban context is generally consistent with the elements of the Local Character Wheel identified in the *Local Character and Place Guideline* prepared by the NSW Department of Planning and Environment and published in February 2019.

Figure 8 - Place Assessment Wheel

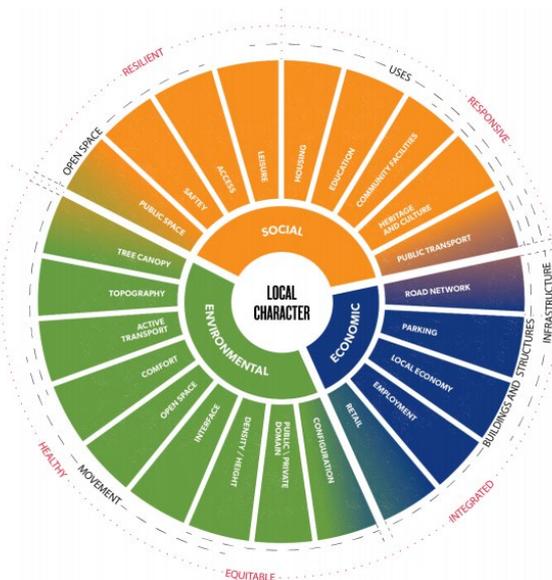


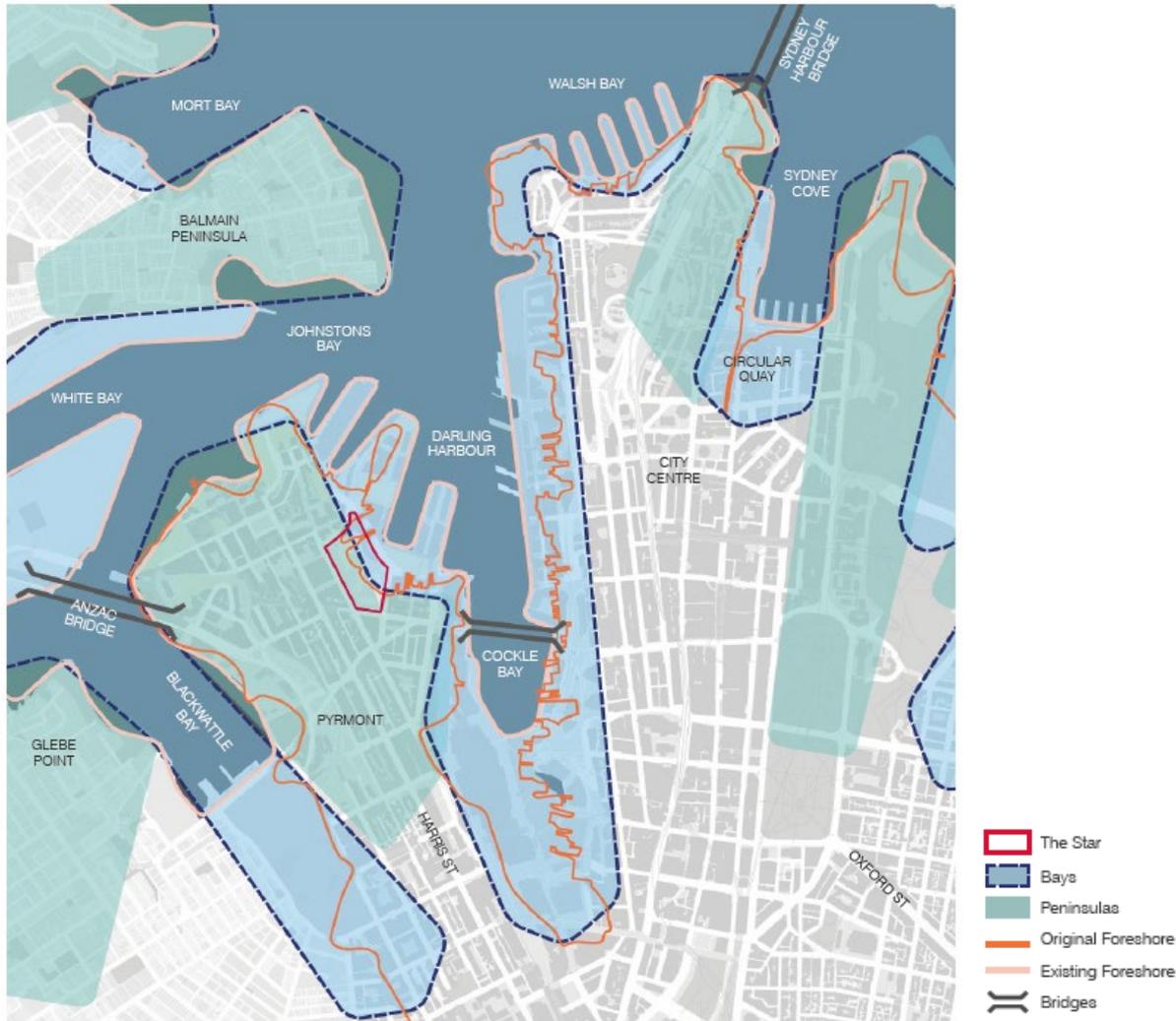
Figure 6 – Local Character Wheel

Source: Local Character and Place Guideline, NSW Department of Planning and Environment

The key findings from the Urban Context Report which details the current and future urban context for the Site include:

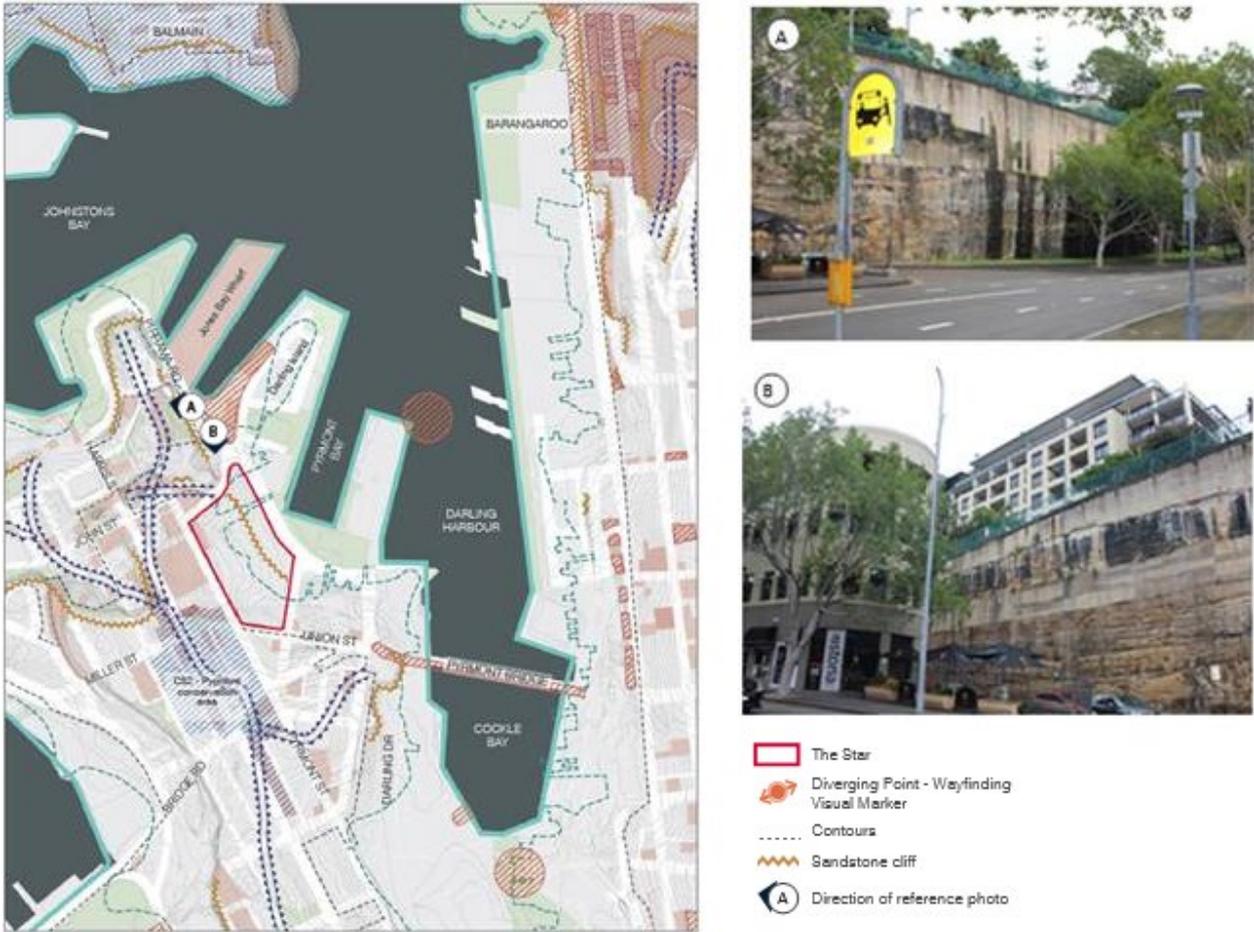
- Waterfront land:** The historical development of Darling Harbour (the waterbody) and the land that adjoins it identified significant alteration to the foreshore over time. Analysis identifies that the original foreshore line of the Pyrmont Peninsula runs lengthways through the centre of the Site and thus the Site consists of land that was either once water or waterfront land. ***This context is consistent with the majority of the land that has been included in the 'Global Waterfront Precinct' as established by the Proponent. (Refer to Urban Context Report - page 26 figure 16).***

Figure 9 – Landform and Urban Morphology



- Local Topography:** The local topography of the Pyrmont Peninsula as it exists today is characterised by a central raised ridgeline that runs generally along the alignment of Harris Street. Around the perimeter of the peninsula, immediately to the north of the Site, there is clear demarcation between the waterfront and the higher land as denoted by sandstone cliffs. At The Star, the change in levels is accommodated within the built form while the adjoining streets provide a more gradual transition from the ridgeline to the waterfront. Immediately south of the Site, the Maritime Museum also accommodates a more gradual transition while the sites of the Novotel and Ibis hotels accommodate the change in levels in the built form. ***This context is consistent with the large sites located at the southern end and on the eastern side of the Pyrmont Peninsula which has been included in the 'Global Waterfront Precinct' as established by the Proponent. (Refer to Urban Context Report - page 27 figure 17).***

Figure 10 - Topography Local Context Analysis



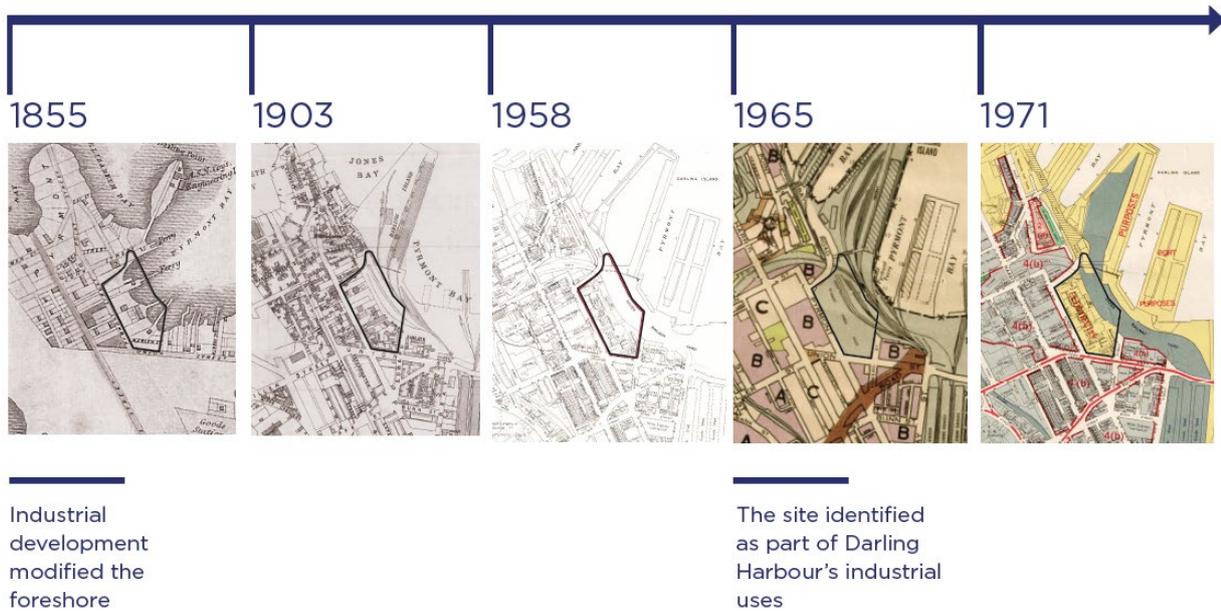
- Wayfinding:** Travelling south from the northern extent of the peninsula along Pirrama Road towards The Star area is defined by a sandstone cliff and waterfront wharfs. Arrival at the roundabout of Pirrama Road and Jones Bay Road is characterised by a gentle change in topography and denotes a transition point for people to continue to move up Jones Bay Road into the heart of Pyrmont (the Harris street ridgeline). Alternatively, they can transition back down to the waterfront and continue along the frontage of The Star and the Lyric Theatre, into Pyrmont Bay Park, past the Maritime Museum and towards the ICC. ***This context establishes The Star Site as being a natural transition between the waterfront (Darling Harbour) and the ridgeline (Pyrmont). (Refer to Urban Context Report - page 51 figure 41).***

Figure 11 – Connectivity and Wayfinding



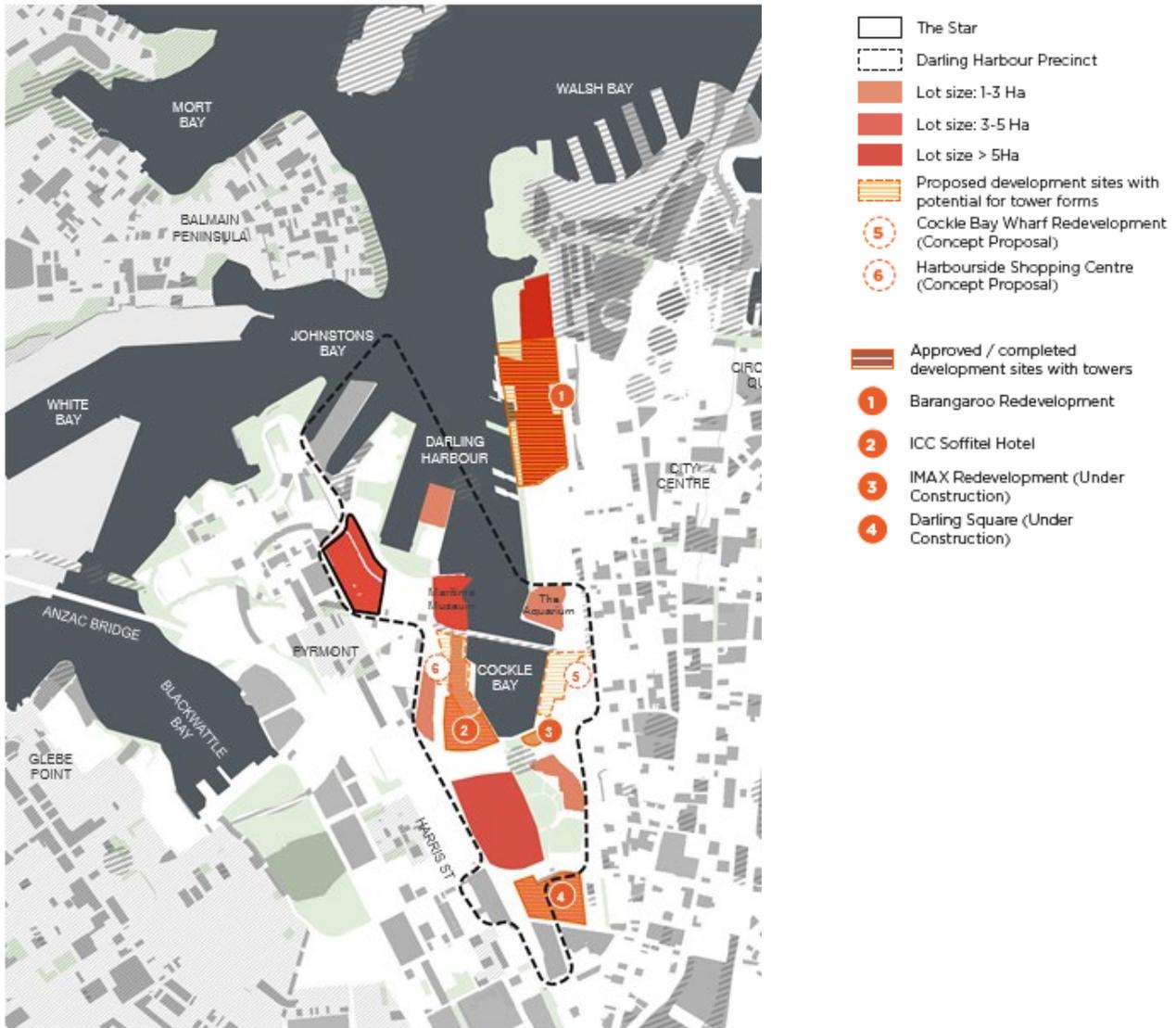
- Past industrial use:** A review of the historical development of the Site reflects its role as part of Darling Harbour, the original commercial port of Sydney. Maps from 1903 to 1971 reveal that parts of the Site, upon being filled, were occupied by The Goods Line which serviced the port functions of the Harbour. The development of the Pyrmont Power Station consolidated the once smaller sites into a single larger site. Planning in the 1950's was consistent industrial use on the Site (Pyrmont Power Station) and on the adjoining waterfront land. This contrasts with the low scale residential and scattered commercial land use of the higher land on the Pyrmont Peninsula. ***This context establishes The Star Site as having land use consistent with the Darling Harbour waterfront uses and different to uses in the higher parts of the Peninsula. (Refer to Urban Context Report - page 33 figure 27).***

Figure 12 – Historical Maps depicting development and planning of the Site (Transition of the working harbour)



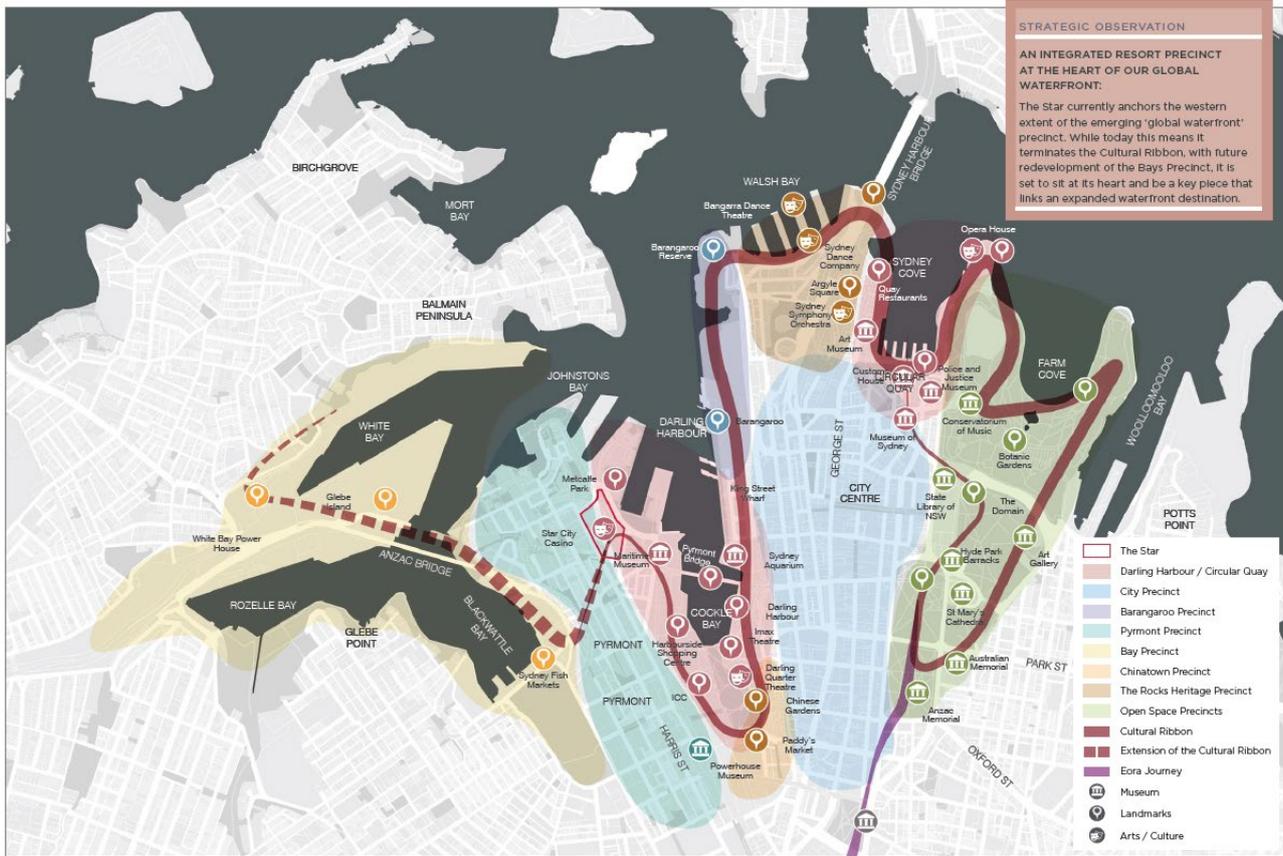
- Urban Grain:** Analysis of the current grain and size of the lots in the area surrounding the Site reveals The Star is a large, single ownership land holding this is consistent with other former industrial sites adjacent to the Darling Harbour waterfront including the ICC, Harbourside, Darling Square, Darling Park, Darling Quarter and Barangaroo. The higher land on the Pyrmont Peninsula to the north and the west of the Site consists of finer grain terrace lots and smaller strata title / warehouse lots. ***This context establishes The Star Site as having an urban grain which is consistent with the Darling Harbour waterfront urban grain and different to urban grain in the residential parts of the Peninsula. (Refer to Urban Context Report - page 39, figure 31).***

Figure 13 – Large Sites



- Current Land Use:** Analysis of the existing use of land in proximity to the Site reveals the concentration of established tourism, leisure and entertainment uses on the waterfront. This includes the ICC convention and entertainment centres and Sofitel Hotel, the IMAX theatre/hotel, the Maritime Museum, the Aquarium and dining precincts including Harbourside. The Star Site includes the Casino, the Lyric Theatre, a dining precinct, an event centre and night-time economy destinations. The Proposal for the redevelopment of the Fish Market as a world class food and dining attraction and destination for locals and tourists alike will establish a new tourist destination to the west of the Site. The Star and the Lyric Theatre provide a stepping-stone between the Maritime Museum and the Fish Markets. The Star has been developed under a 99 year lease (i.e. 2093) and has been the subject of continued investment which is essential to retaining the international competitiveness of the destination. ***This context establishes The Star Site as having existing (and proposed) uses which are consistent with the Darling Harbour tourism, entertainment, cultural and leisure uses and different to uses in the higher parts of the peninsula. The inclusion of residential uses within the Proposal provides a transition to the adjoining residential uses. (Refer to Urban Context Report - page 70 figure 57).***

Figure 14 – Large Sites



Source: Urbis Urban Context Report page 70 Figure 57

- Historical built form context:** Analysis of previous built form on the Site reveals that it was occupied by the Pyrmont Power Station for over 89 years. The power station building underwent modification over time resulting in incremental height increases from 61m to 107m (33 stories). The Power Station Building was decommissioned in 1983 and demolished for redevelopment in 1990. These stacks were acknowledged as a prominent feature on the skyline of Sydney as recently as 1989 through statements such as:

 - “a major part of Pyrmont life and contributed greatly to its development, as well as to that of Wider Sydney” – OEH Statement of Significance Former Pyrmont Power Station Administration Building - <https://www.environment.nsw.gov.au/heritageapp/ViewHeritageItemDetails.aspx?ID=2424796>.
 - Description of the Pyrmont Power Station featured in the Sydney Morning Herald at the time of opening: “Upon this site a very fine power station has been erected, comprising generating station and offices, with a chimney stack probably the largest in the State.” (Sydney Morning Herald, 9 February 1954, p10).

This context establishes The Star Site as having previously included highly visible and industrial scale built form which is consistent with the Darling Harbour tourism, entertainment, cultural and leisure uses and different to the built form of the residential parts of the peninsula. The presence of height that is inconsistent with the surrounding residential areas is not a reason in itself for refusal of Mod 13. (Refer to Urban Context Report - page 29 figures 18-22).

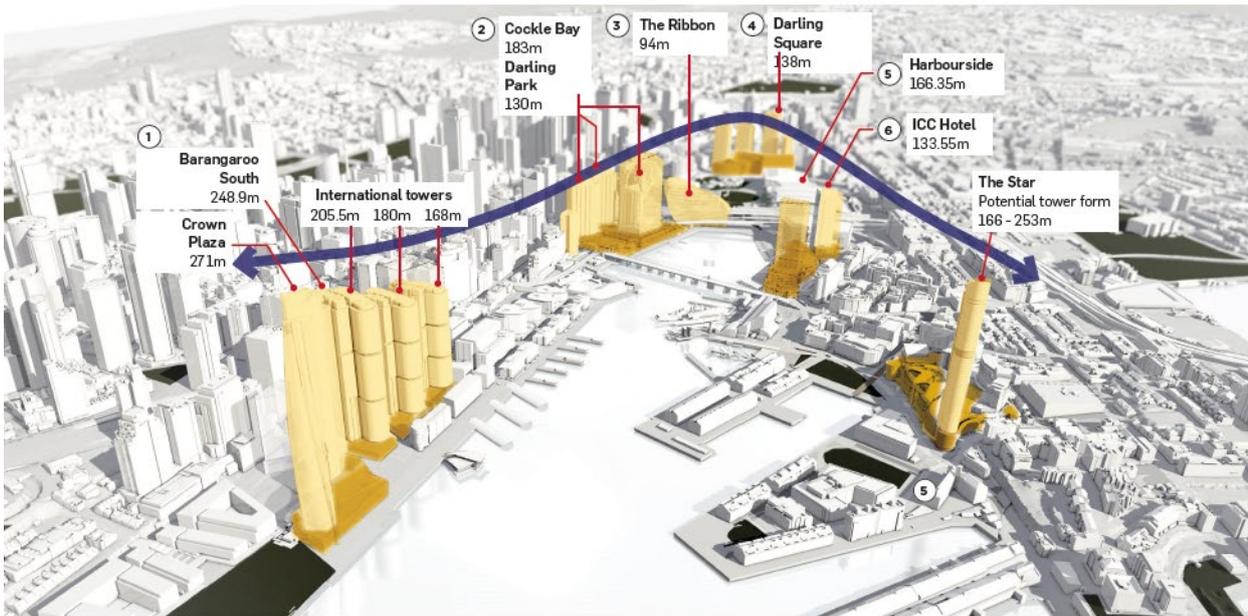
Figure 15 – Pyrmont Power Station in 1987 and 1988



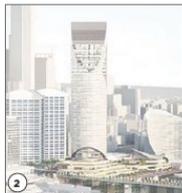
Source: Urbis Urban Context Report page 29 Figures 19 & 22

- **Built Form Context:** Recent redevelopment of the large industrial scale sites on the waterfront land around Darling Harbour (the waterbody), have seen a common built form typology emerge being a low-rise podium form and a tall tower element. This is due to the ability for large sites to accommodate tall elements with minimal environmental impacts on adjoining development. This has seen previously established approaches to built form context around the harbour change significantly. Examples include Cockle Bay and Barangaroo which have seen tower elements closer to the waterfront where previously built form stepped down. The Star is a large site which can also accommodate a tower element in which the environmental impacts can be minimised and mitigated. Analysis of the recently approved and proposed tower elements reveals clustering of buildings on the eastern side of Darling Harbour waterfront. On the western side, the towers are spaced with significant distance between them such that they are viewed as buildings in the round. The Proponent's Design Advice (Appendix F paragraph [25]–[27]) notes that: *'However, the very close spacing of the Barangaroo towers is a commonly voiced criticism of that development. Darling Square has more widely spaced towers and this is more appropriate to its location in Darling Harbour'*. **This context confirms The Star Site as having a built form context consistent with the large waterfront Sites surrounding Darling Harbour (the waterway). The height of tower forms approved around the harbour has given consideration to the environmental impacts of the Proposal. (Refer to Urban Context Report - pages 82-97 figures 64-76).**

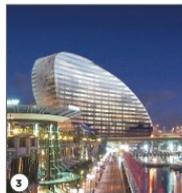
Figure 16 –Redevelopment Areas along the Harbour



1 Barangaroo: International Towers & Crown Plaza



2 Cockle Bay Wharf (recent approval)



3 The Ribbon (under construction)



4 Darling Square



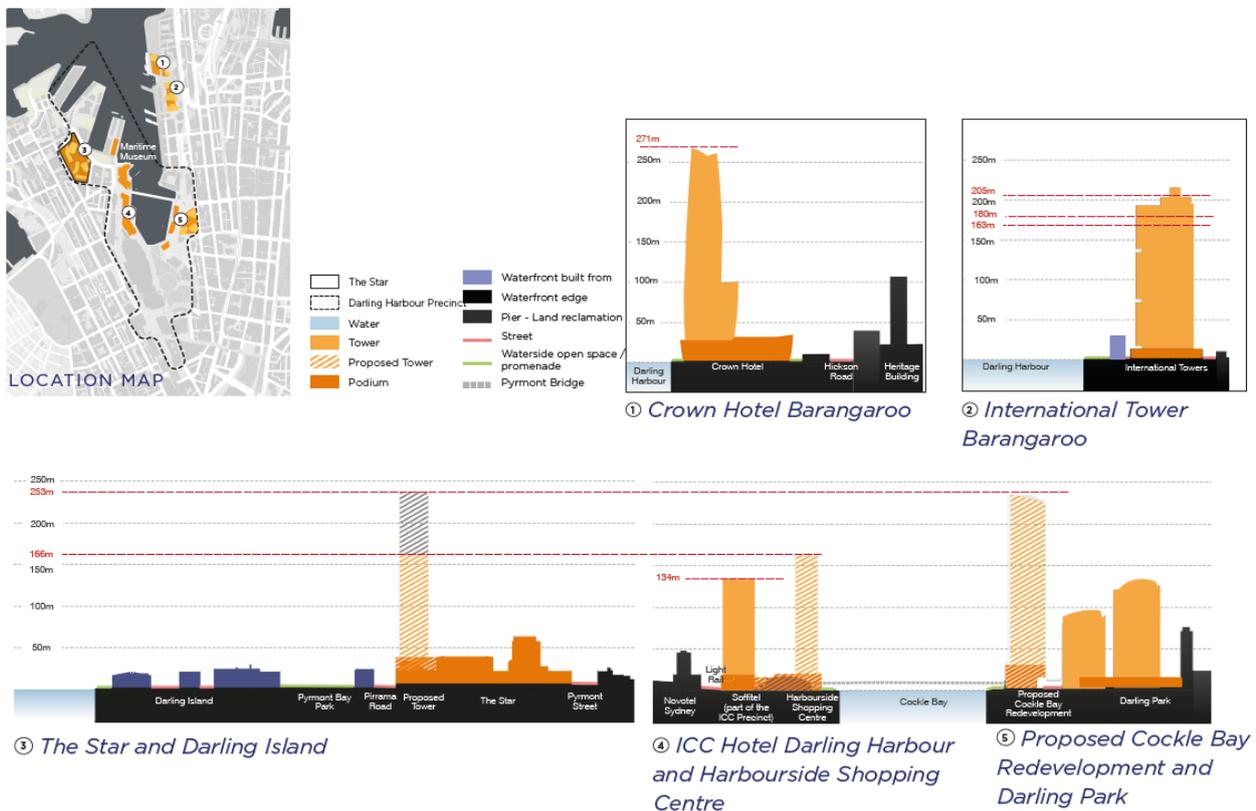
5 Harbourside Shopping Centre



6 International Convention Centre (ICC) Including Darling Harbour Live & Sofitel

Recent Development Sites

Figure 17 – Recent Development Sites within the Darling Harbour Precinct.



The IDA Report

The IDA provides very limited consideration of context being:

- two short paragraphs on context (one on 'North Pyrmont' and one on the 'Broader' context);
- one paragraph on the existing built form; and
- one paragraph on built form as part of the assessment of the Proposal.

The IDA provides no evidence as to how this limited consideration of context has been established. Additionally, there is no acknowledgment of the detailed investigations and analysis that was undertaken by the Proponent and why other contextual considerations identified within the Urban Context Report have not been considered.

The Proponent's Urban Design Advice (**Appendix F**) at [41] elaborates on the Site's context:

41. *A similar pattern of stepping heights has emerged on the eastern side of Darling Harbour at Barangaroo, where The Crown Resort Building at Barangaroo is the tallest tower and steps down to the Barangaroo South International Towers, to the existing lower rise buildings along Sussex Street and to Darling Park.*

42. *The effect of these stepped building heights from the north down to the south creates a sense of symmetry on either side of Darling Harbour.*

43. *A commonly held principle of tower design is that the tower should be slender, visually free-standing and set back from the edge of a horizontal podium which defines the space of the public realm. The Proposal demonstrates that design principle and is an appropriate response to this Site and this area.*

The symbolic issues identified within the IDA are not a unique situation relevant to this Proposal. If they are to be considered, they would have ramifications for every tall commercial building in every city across the world. That observation in the IDA that '*In contemporary cities the tallest towers almost always serve commercial and residential uses*' is not unique to this Proposal or its assessment. It also signals a move

away from “the context of medieval and later eras where the highest and most prominent buildings were limited to those services religious or civic functions” (IDA page 138).

With regard to this matter, the Proponent’s Urban Design Advice (**Appendix F**) at [82] notes:

‘[The IDA does] not give any standing to the role of commercial developments in the modern-day city, and the benefits arising from commercial developments. Tall buildings are not unique to The Star’s Proposal and the same could be said for every tall building in Sydney, whether commercial or residential buildings.’

3.1.3. Development Precedent

The Department’s AR states:

Concerns were raised in public submissions that the proposed tower would set an undesirable development precedent for Pyrmont. The independent design advice also considered that the proposed tower would establish an undesirable precedent which would potentially encourage further tower buildings on nearby waterfront sites stating:

- *there are no other current proposals for tower blocks on the western side of Darling Harbour north of the Harbourside development;*
- *statutory planning controls over Pyrmont limit heights in this area;*
- *if a tower were to be approved on the site it should be in the context of a change to statutory controls to permit tall buildings on other adjoining and nearby sites along the waterfront and no such change is currently intended.*

The Department notes that all surrounding properties within the City of Sydney are subject to SLEP 2012 planning controls and that there is currently little opportunity for sites in Pyrmont (i.e. within 550m of proposed tower) to accommodate further tower developments. The Department does acknowledge that if approved, the proposed tower would fundamentally change the existing mid/low rise character of Pyrmont, creating a new built-form context which would have to be considered in the assessment of any future development.

The Department therefore considers the approval of the tower would establish a precedent for future tall buildings in its immediate vicinity, as a defining component of an entirely new Pyrmont character. This new character could and most likely would, be used to justify additional tall buildings, further eroding the established character of Pyrmont, unsupported by any adopted planning policy.

Response:

The assertion in the IDA that if the Proposal ‘were to be approved, other applications would almost certainly follow and would be difficult to refuse’ does not consider that each and every proposal must be considered on its own merit. It also does not acknowledge the findings of the urban context analysis including:

- The characteristics of the Site are consistent with the character of the Darling Harbour locality which also contains large industrial scale Sites not of the fine grain character of the Pyrmont locality;
- There are no other large Sites on the northern part of the peninsula which have the ability to accommodate a tall tower whilst mitigating any environmental impacts including overshadowing as many of these impacts falling within the Site boundary; and
- The strategic planning documents which identify the Site as being located in the Darling Harbour Precinct.

3.1.4. Unduly Prominent Built Form

The Department’s AR considers:

‘The Department considers that the above visual analysis indicates that from all directions the proposed tower would be highly visible/prominent in views from nearby public domain and public open spaces, and more distant views from the north shore. The prominence of the tower would be both significant and detrimental to those public views.’

The IDA concluded that:

‘...from the large majority of other viewpoints it is considered that the tower would be unduly prominent, unrelated to its context and unacceptable.’

Response

The Department's opposition to the Proposal on the basis of its lack strategic justification as a location for a tower is a result of the Department's failure to assess the Proposal as part of the Darling Harbour precinct. The Urban Context Report undertakes a thorough assessment of character and place and established that the Site's characteristics are consistent with the character of the Darling Harbour locality. Once it is considered in that context, the proposed tower at the proposed location is entirely appropriate.

The visibility or prominence of the tower does not affect the elements of ascribed importance within views. Additionally, for 89 years the built form on this Site was prominent with high visibility across the city. It was different in scale to the built form in the adjoining residential areas and reflective of the industrial character of Darling Harbour of which it was key.

The towers on the western side of the harbour are more widely spaced reflective of the emerging built form which is characterised by large sites with podium forms and tower elements. This includes Darling Square, the ICC and the Harbourside proposal.

This is different to the character of the city centre on the eastern side of the harbour which is a large cluster of buildings on smaller sites. The spacing of towers in central Sydney CBD is relatively close. There are many reasons for this, including the permissible density of the city centre, the relatively narrow peninsula of land available between Hyde Park and Darling Harbour, and the relatively small urban block sizes of Sydney compared to other cities. The city centre of Sydney CBD is relatively small and densely packed in comparison with other world cities. For example, the whole of central Sydney CBD, from Hyde Park to Darling Harbour, Circular Quay to Central Station could, fit within Central Park in New York (Proponent's Urban Design Advice, [25], **Appendix F**).

The small size of the city centre leads to scarcity of land, commercial pressure to develop at high densities and with closely spaced towers.

The growth of Barangaroo, Darling Square and the proposed Cockle Bay can be understood as recent expansions from the CBD on relatively unfettered land. These Sites set the transition between the central CBD and the western side of the Harbour including the Darling Harbour Precinct.

3.1.5. Future Context

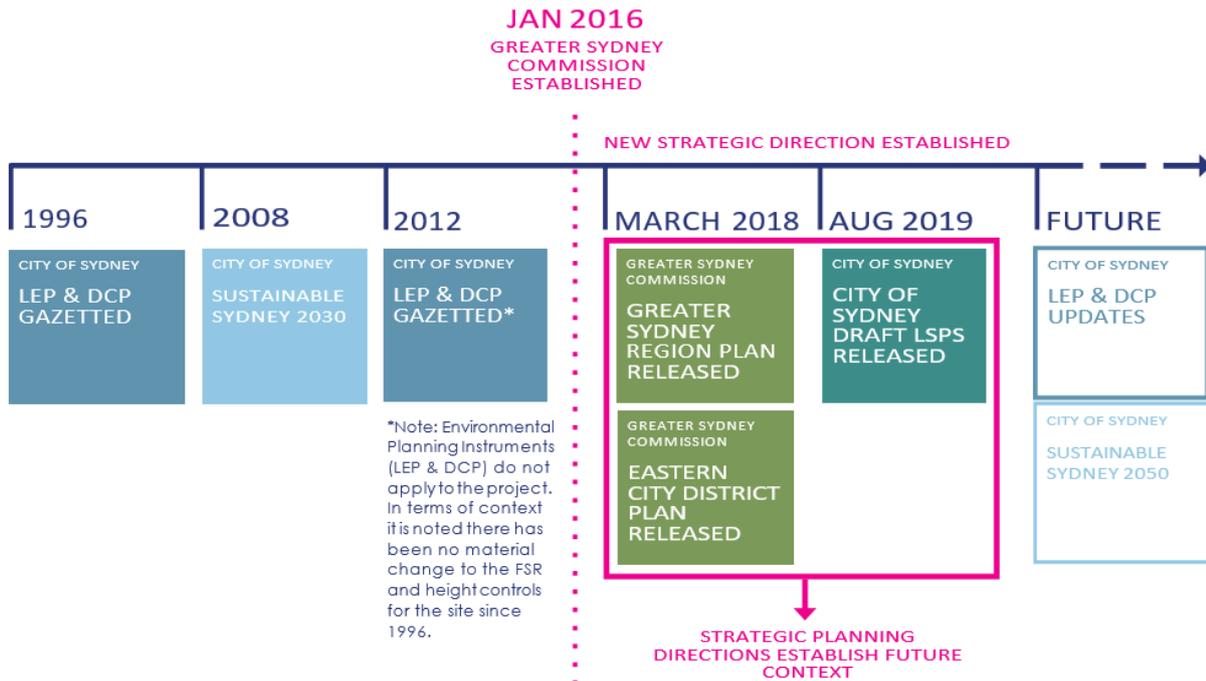
The urban context investigations identified that the strategic context of the Site is set out by the Greater Sydney Commission's directions and initiatives as outlined in:

- *Greater Sydney Region Plan (2018) – A Metropolis of Three Cities; and*
- *The Eastern City District Plan (2018) (ECDP).*

It is noted that:

- While Sydney LEP 2012 and DCP 2012 do not apply to the Proposal, they have been considered in terms of context. However, the height controls are reflective of the original Star City Casino approved in 1994. Since that time, the GSC has prepared strategic documents which set the future context for the Site and significant development has taken place on sites in proximity to the Site and on the waterfront land enclosing the Darling Harbour waterbody changing the context. As such the built form controls for the Site are not considered to be reflective of the current strategic directions for the Site; and
- The City of Sydney draft Local Strategic Planning Statement (**draft LSPS**) was released in July 2019 and is required to be consistent with the Eastern City District Plan. This document was not available at the time of assessment and as such reference is made in this report to key directions for the Site as contained within the draft LSPS.

Figure 18 - Overview of NSW Strategic Planning Direction



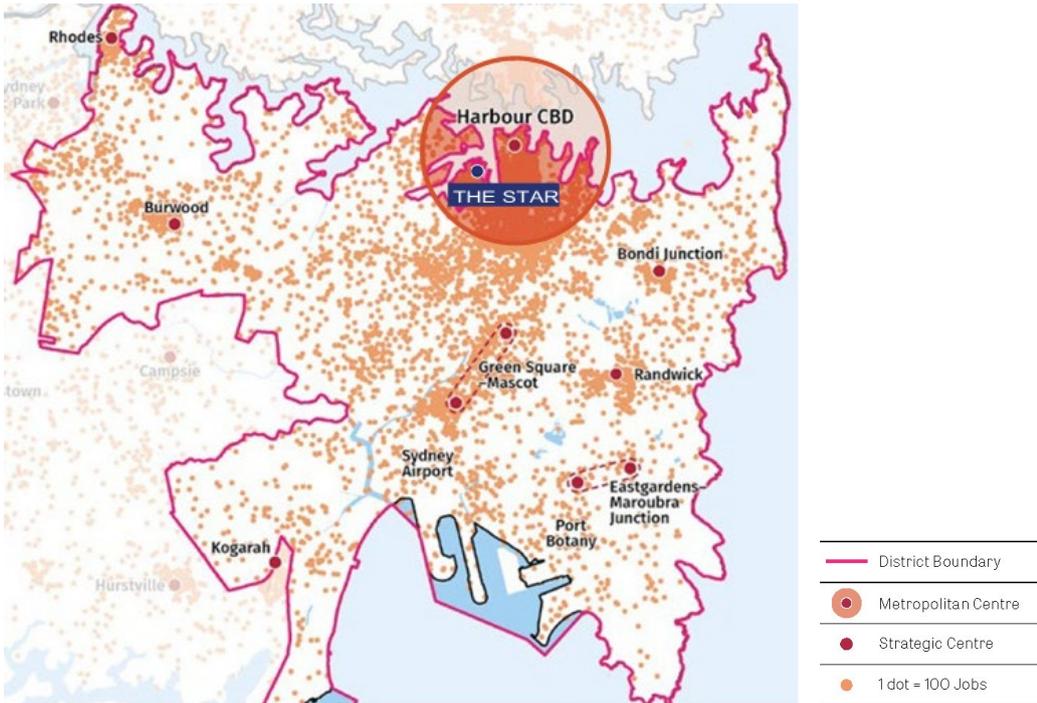
Source: Urbis

3.1.6. Eastern City District Plan

In the ECDP, the Site is identified as being located within:

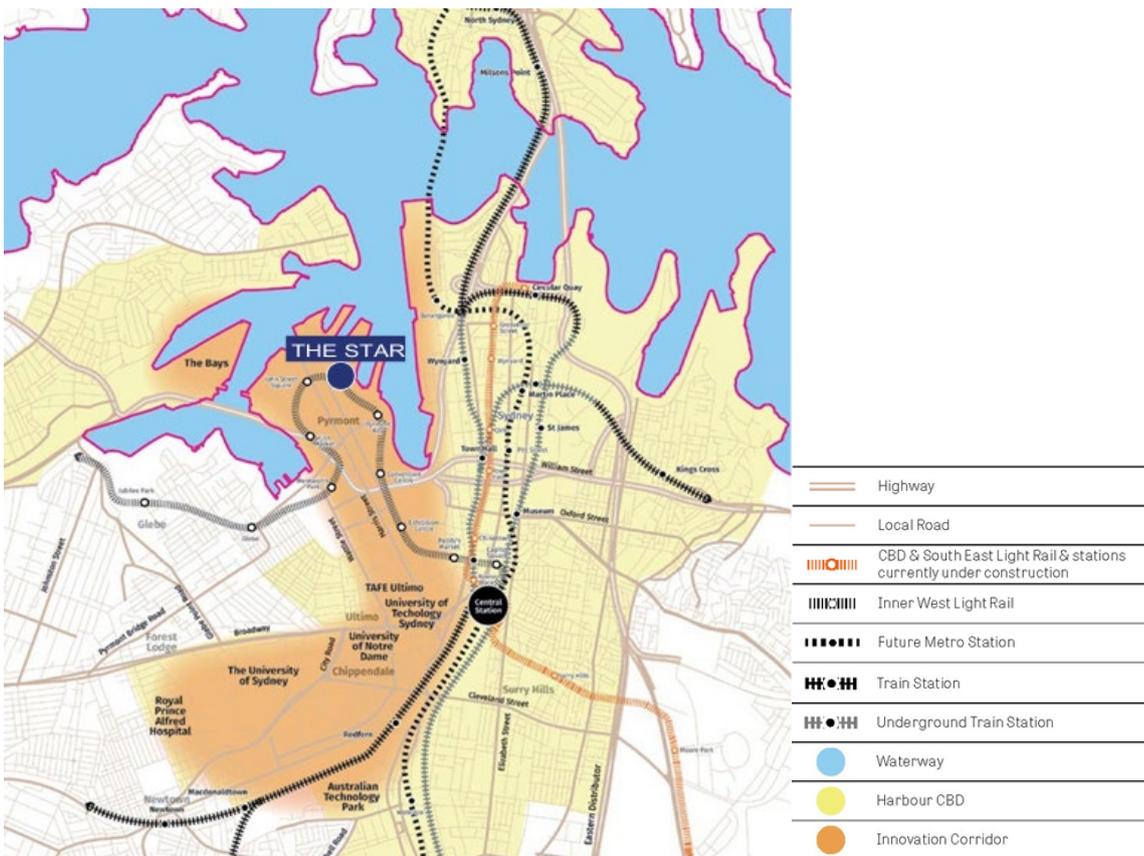
- The **Harbour CBD (ECDP figure 15 page 56)**: Australia’s global gateway and financial capital (ECDP page 8). The success of the Harbour CBD is underpinned by a package of competitive advantages including *‘its existing and growing entertainment, cultural, tourist and conference assets’*. The plan identified that the *‘growth of the Harbour CBD must be enabled for the region to remain competitive’* (ECDP page 57);
- The **Innovation Corridor (ECDP figure 16 page 60)**: which contains knowledge intensive, creative and start-up industries along with health, education and research services that support the global competitiveness of the Harbour CBD. Tourism, conferences, entertainment and culture contribute to the Harbour CBD’s attractiveness to international talent. Ongoing investment in major entertainment precincts such as Darling Harbour build a more diverse and competitive offering in these sectors. (ECDP page 59); and
- The **Darling Harbour Precinct** within the Innovation Corridor (**ECDP figure 17 page 63**). The Darling Harbour Precinct is identified as a *‘major entertainment precinct’*. The plan identifies *‘Cultural, entertainment, arts and leisure activities must continue to be provided to build a more diverse and competitive offering in these sectors.’* a destination for tourism, conferences, entertainment and culture. (ECDP page 50).

Figure 19 - The Star within Harbour CBD



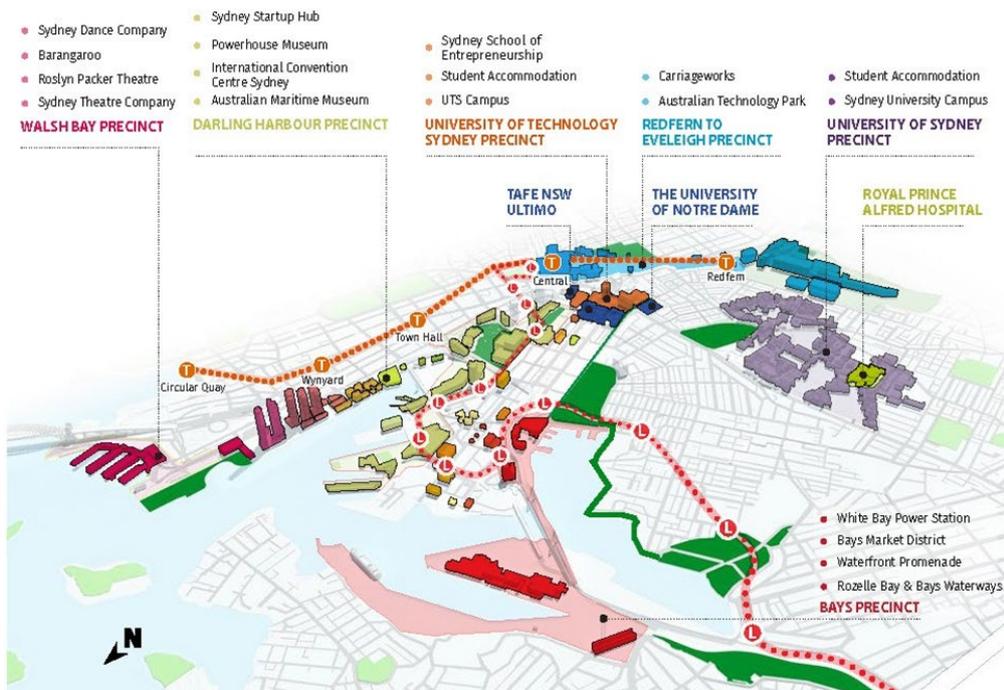
Source: Eastern City District Plan, Figure 15 'Eastern City District Job Density'

Figure 20 - The Star within Eastern City's Innovation Corridor



Source: Eastern City District Plan, Figure 16 'Harbour CBD'

Figure 21 - The Star within the Innovation Corridor Precincts



Source: Eastern City District Plan, Figure 17 'Innovation Corridor Harbour CBD'

Conclusion: The Proposal is consistent with the emerging future context and strategic planning directions of the ECDP

The Proposal is consistent with the strategic directions of the ECDP including:

- **A Globally Competitive Precinct**
Sydney’s Harbour CBD must remain a powerhouse of creativity and innovation at all levels to remain its attractiveness to international talent and global competitiveness;
- **An Innovation Corridor of the Harbour CBD and part of the Darling Harbour Precinct**
The Darling Harbour Precinct must continue to strengthen the City’s international competitiveness and grow its vibrancy through investment in diversity and the offering of tourism, entertainment, conferences and culture; and
- **A Tourism Destination**
The Star is an internationally competitive tourism destination, supporting the growth, productivity and attractiveness of Sydney’s Harbour CBD.

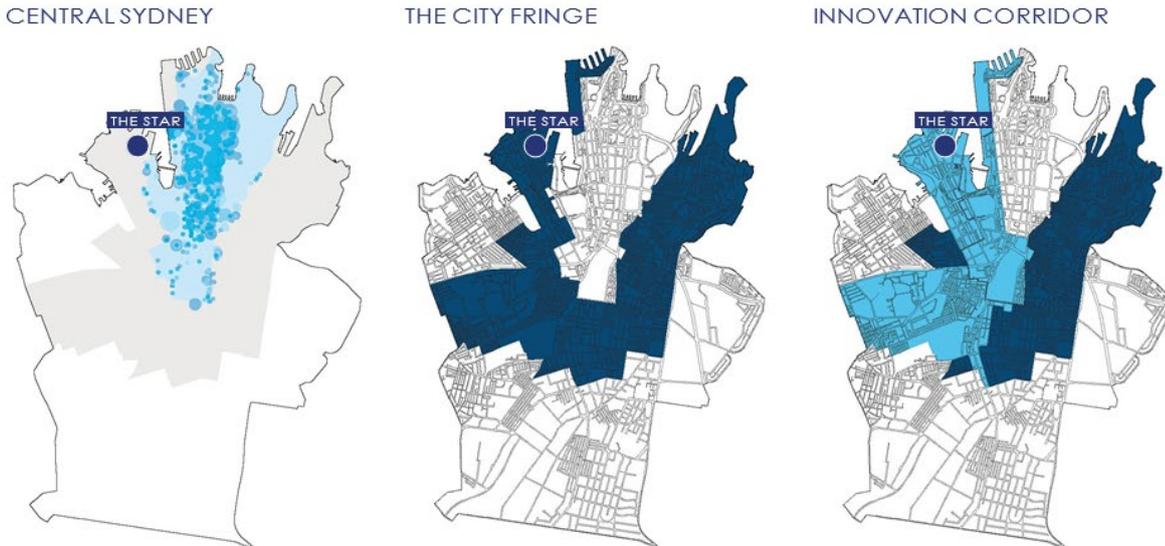
3.1.7. City of Sydney Draft LSPS

Innovation Corridor

The draft LSPS reflects the ECDP directions for the Site as being located within:

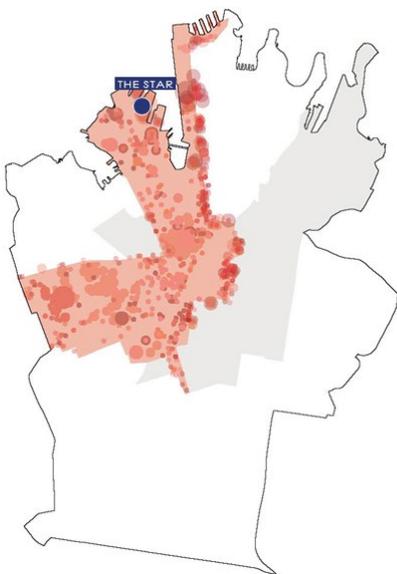
- **The Innovation Corridor:** The Innovation Corridor includes parts of Central Sydney and parts of The City Fringe (as indicated in the maps below). The strategic direction for the Innovation Corridor is ‘*Build internationally competitive and knowledge-intensive business clusters in the Innovation Corridor.*’ (LSPS page 18).

Figure 22 - The Star within Harbour CBD



Source: City Plan 2036 Draft LSPS, page 149, Productivity Priority 2

Figure 23 - The Star within the Innovation Corridor



Source: City Plan 2036 Draft LSPS, page 79, Key Moves

The LSPS builds on the 'Green, Global and Connected' vision for the City of Sydney and states:

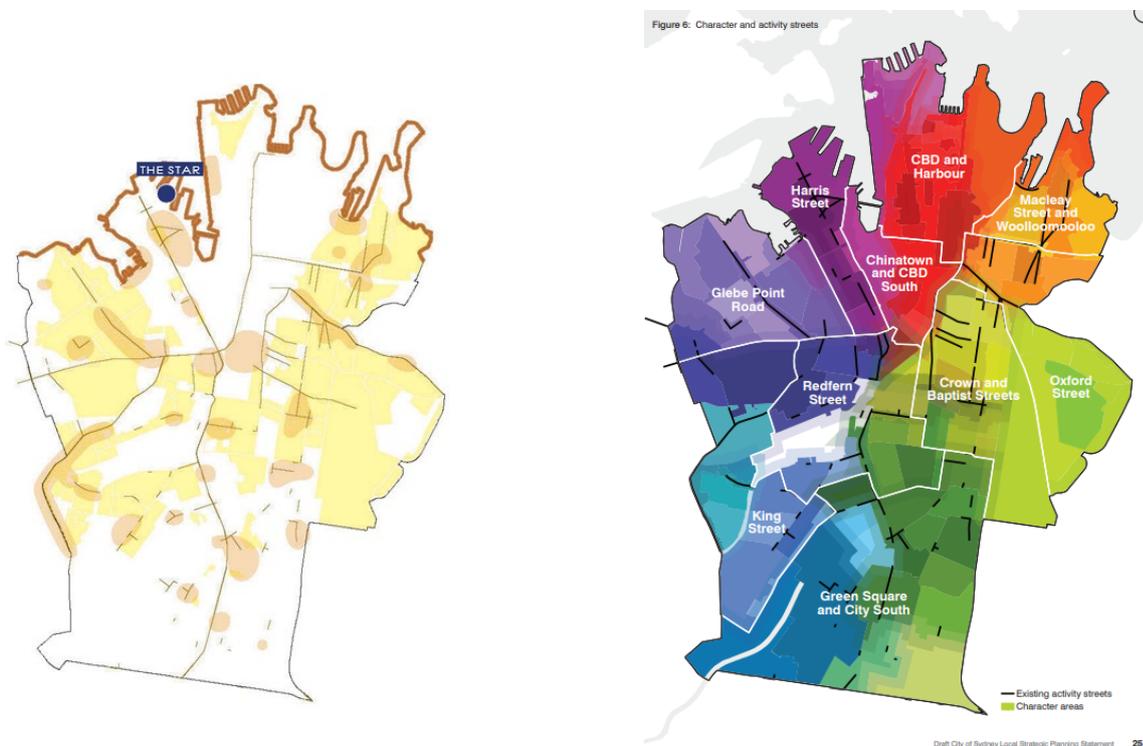
- 'Sydney will remain Australia's most significant global city, home to globally aware people, jobs and businesses and an international gateway with world-class tourism attractions and sustained investment in cultural infrastructure, icons, amenities and public spaces' (LSPS page 54); and
- "We need to continue managing growth sustainably and promoting economic diversity and collaboration by ensuring that internationally competitive industries and sectors can innovate, agglomerate and grow" (draft LSPS, p.137).

Place and Character

The draft LSPS identifies the distinct identity and character of the City's precincts and places including local heritage items and conservation areas.

- **The Star is located in proximity to a character area.** This character area is located to the south of the Site and sits alongside the western edge of the recently redeveloped Darling Harbour precinct including the ICC and proposed Harbourside redevelopment, both of which include tall towers (LSPS, page 20);
- **The LSPS acknowledges the design excellence** process as a leading example across the country of how the planning system can deliver a highly values architectural and design outcomes (LSPS page 20); and
- **The LSPS identifies local character.** It includes colour shading for character areas, black lines for existing activity streets and white lines which reflects named areas on the plan. The names areas on the plan include multiple shades of different character areas and character area shading extends across the identified white line areas. In proximity to the Site – the map identifies a similar colour (purple) across different character areas of the CBD and Harbour, Chinatown and CBD South and Harris Street areas. The mid-tone purple colour includes waterfront areas of Barangaroo, Darling Harbour, Cockle Bay, Darling Park, the ICC and Harbourside as well as the Maritime Museum and The Star and Lyric Theatre. It extends around the north of the Pyrmont Peninsula to Jackson’s Landing (LSPS page 25). A darker purple shading is provided along the Harris Street Spine including the Heritage Conservation area while red areas extend across the majority of the CBD and Harbour and Chinatown and CBD South areas.

Figure 24 – Make Great Places



Source: City Plan 2036 Draft LSPS, page 20, Key Moves

Source: City Plan 2036 Draft LSPS, page 25, Character and Activity Streets

Conclusion: The Proposal is consistent with the strategic planning directions of the LSPS

The Proposal is consistent with the strategic directions of the LSPS including:

- **World Class Tourism Attractions:** The Proposal includes significant investment to grow a world-class offer and ensure the ongoing international competitiveness of the entertainment, leisure and tourism industry;
- **Design Excellence:** The proposed tower and ribbon element are the result of an extensive design excellence process; and
- **Character and Place:** The urban context analysis identified the waterfront land enclosing Darling Harbour as having a consistent character which extends across different localities. This is generally consistent with the mid purple tone area identified in the City of Sydney LSPS character area.

3.2. BUILT FORM

The Department's assessment of the built form identified the following:

- the proposed height of the tower is '*unacceptable*';
- the tower is '*inconsistent with surrounding buildings in height and form*'; and
- the tower '*would not contribute positively to the skyline*' (Department's AR, page iv).

The following section considers the key environmental impacts of the built form, including visual impacts, overshadowing and wind, as identified by the Department and the IDA as informing the above conclusions. This section echoes the conclusions of the EAR, that the Proposal will result in limited environmental impacts beyond those already assessed for the Approved Project MP08_0098.

3.2.1. Visual Impact

Section 6.2.2 of the Department's AR provides a brief assessment of the visual impacts of the proposed tower using select views from the Proponent's VIA (EAR, Appendix H) and the subsequent Addendum VIA (RtS, Appendix Q). The Department's AR undertook a cursory consideration of visual impact assessment and did not include a qualitative or quantitative assessment of impact. The Department did not seek an independent peer review or assessment of the VIA or the Addendum VIA rather it sought independent urban design advice. The Department's assessment of the Proposal places heavy reliance on the IDA which finds the Proposal will '*[h]ave adverse impacts on views from residential properties... and negative impacts on outlook*' (IDA, page 139). The Department's AR states:

'The Department accepts the independent design advice in relation to the visual impact assessment' and 'considers that the [IDA]...indicates that from all directions the proposed tower would be highly visible/prominent in views from nearby public domain and public open spaces, and more distant views from the north shore. The prominence of the tower would be both significant and detrimental to those public views' (Department's AR, page 45).

The IDA was based on a single premise of whether a tower form was 'appropriate in this location', not to measure the visual impacts of the Proposal. The conclusions drawn in the IDA, inform the Department's ultimate recommendation for refusal point 2, Schedule 2. The Department's brief consideration of visual impact is prefaced by the strategic justification section 6.2.1, which relies on Principle 4 of *Veloshin* to define the context of the Site. As detailed in **section 2.8** of this report, *Veloshin* cannot be relied upon for a Part 3A Project. This misinterpretation informs the Department's recommendation for refusal point 3, Schedule 2.

There is no discussion of the relationship to the planning framework, SEARs and planning principles in either the Department's AR or the IDA on which it relies, or an assessment of public domain impacts. Instead, reliance is placed on the IDA which describes the visual impacts of the Proposal in emotive terms suggesting that it is '*unduly prominent*' and '*oppressive from many viewpoints*' (IDA, page 136). Further, the Department asserts that the Proposal will be highly visible and would '*alter the townscape setting, resulting in indirect impacts to the heritage character of the area...*' The Department has equated a change in the broad setting of heritage items to result in an adverse heritage impact. The Department's AR provides no evidence of the nature of the impact, or how the Proposal (or which element of Mod 13) results in an impact on the 'heritage character of the area' (Department's AR, page 19). Any such impact was not noted or identified by NSW Heritage Council or the Office of Environment and Heritage (OEH) in their written submissions (numbered 281029 and 281293, respectively). The Department's conclusions inform the Department's recommendation for refusal point 4, Schedule 2.

The Proponent's VIA (EAR, Appendix H) and the subsequent Addendum VIA (RtS, Appendix Q) outlined the relationship to the relevant planning framework, SEARs and planning principles⁴. It noted that the important

⁴ The planning framework referred to in the VIA is set out in the 'key considerations for assessment' (VIA, Chapter 2) and includes the following.

- The SEARs
- Planning Framework: Eastern City District Plan, Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005, Foreshores and Waterways Development Control Plan 2005;
- Sydney LEP 2012, Sydney DCP 2012, Draft Central Sydney Planning Strategy; and
- Planning Principles regarding views: Public Views - Rose Bay Marina Pty Ltd v Woollahra Municipal Council [2013] NSWLEC 1046 and Private Views - Tenacity Consulting v Warringah Council [2004] NSWLEC 140

elements for view retention are water views and views to and from heritage items, rather than sky. The Proposal does not obstruct those views. The conclusions on view loss in the VIA note this impact as being 'acceptable'. The submitted VIA (EAR, Appendix H) was the subject of a peer review by Dr Richard Lamb. In the opinion of Dr Lamb, the Proponents 'VIA far exceeds what is required by the SEARs, in comprehensiveness of the coverage of potential view locations, the range of viewing places considered and the variety of viewing opportunities for both public and private viewers' (EAR, Appendix ZZ, page 6).

A Heritage Impact Assessment (HIA) (EAR, Appendix P) and a Heritage Impact Addendum (RtS, Appendix Y) was also undertaken to assess the potential for impact on views to and from heritage items and more broadly any impact to the heritage context of Pyrmont, including the Pyrmont Heritage Conservation Area and the state listed Pyrmont Bridge. The Department's AR notes that the heritage impact is 'minor' (page iv) because the 'tower [is] located sufficient distance from the conservation area' (page iv) however that the 'heritage impact of the Proposal would only occur as a result of an unacceptable form of development'. The heritage impact referred to is not quantified in the Department's AR. As detailed in the Proponent HIA 'the proposed works would not have an adverse impact on The SELS Building or a significant impact on the setting of the heritage items in the vicinity. The proposed works are therefore supported from a heritage perspective' (page 70).

Following receipt of the Department's AR, the Proponent sought a peer review of the IDA. The review undertaken by David Moir (the Proponent's VIA Advice in **Appendix B**) found;

... 'without an explicit and logical methodology and a process of quantitative assessment, conclusions on the extent of [visual] impacts are purely subjective and valueless in communicating the potential extents of the visual impact of a Proposal'. (page 7)

the IDA '...is very brief and subjective. The IDA does not provide a clear explanation on why the Proposal is considered to be 'overly dominant', why the impacts upon the character of Pyrmont are 'adverse' or how and why the introduction of this tower into the existing Sydney landscape would be 'detrimental' to public views. Being visible or prominent alone are not detrimental visual impacts'. (page 11)

The Proponent's Urban Design advice in **Appendix F**, references at [67]:

'it is misleading to refer to the conclusion of the [IDA] as "visual analysis" as there is no evidence of any visual analysis being undertaken as part of the [IDA]. There is a subjective opinion on the visual impact of the proposal however this opinion is not based on the outcomes of the application of a visual assessment methodology. As stated previously the subjective opinions presented in the [IDA] relating to visual impact should not be given the same weight in assessment as the conclusions of the Architectus VIA which has directly responded the comprehensive requirements of Visual Impact Assessment detailed in the SEARS'.

Further, the Proponent's VIA Advice in **Appendix B**:

'the justifications for refusal on the basis of visual impact are tenuous at best and are not based upon appropriate assessment methodology. For a development of this significance a methodology of assessment, such as the one clearly outlined in the SEARS, should form the basis of any justification for refusal for reasons of adverse visual impact' (page 14).

Public Domain Visual Impact and Methodology

The VIA includes the following key assessment criteria:

- 'Iconic features' such as the Sydney Opera House and the 'land-water interface' (Land and Environment Court Planning Principles established in 'Tenacity' and 'Rose Bay Marina');
- 'Public places, identified landmarks and heritage items', 'views and vistas from public places to the waterway' (Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005, Foreshores and Waterways Development Control Plan 2005); and

- *'Public places, parks, Sydney Harbour, Alexandra Canal, Heritage Buildings and monuments including public statues and art'* (Sydney Development Control Plan 2012).

The Proposal does not obstruct views to or from the significant elements listed above. There is agreement in both the VIA (EAR, Appendix H) and the Department's AR (page 45) that the Proposal is 'prominent' however there are differences in how this 'prominence' is considered. The VIA identifies that despite being prominent, the visual impact of the proposed tower form is both reasonable and acceptable. The Department's AR does not present an alternative or any assessment approach in order to conclude a contrary position.

The VIA sets out a comprehensive methodology for the assessment of visual impact (VIA, Chapter 2) including relationship to the planning framework, SEARs and relevant planning principles from the Land and Environment Court. The VIA was peer reviewed by independent experts; Dr Richard Lamb (EAR, Appendix ZZ) and following the Department's AR, also a further review by Mr David Moir (the Proponent's VIA Advice **Appendix B**). The peer review of the VIA found that the Proponent's VIA *'demonstrated best practice in its assumptions, methods and conclusions methodology'* (Lamb, 2018, page 8) and the Proponent's VIA Advice, page 7:

The VIA prepared by Architectus is a comprehensive and thorough visual impact assessment.

Architectus have developed a methodology for the assessment that is appropriate for the Proposal. The report focuses on the context of the setting and the impact on key public domain views throughout the city (including those specifically identified in the SEARS), the impact on identified view corridors and addresses the potential impact upon views from private residences.

The VIA clearly demonstrates adherence to the specific visual impact requirements detailed in the SEARS. (Specifically addressed in Section 2.2 Secretary's Environmental Assessment Requirements of the VIA p.21)

The assessment addresses the impacts in the context of the relevant planning legislation, guidelines and principles relating to the site.

As requested in the SEARS the VIA adopts the preferred methodology of the Land and Environment Court of New South Wales in the preparation of photomontages and on assessment it appears that these provide an accurate representation of the proposal in the context of the buildings setting and its introduction into the current urban landscape. The methodology for the preparation of the building model and the process through which this was integrated into the photomontage, to ensure an accurate representation of the proposal, is clearly described.

The Department's AR and the IDA on which the assessment relies, do not include any discussion on visual impact methodology relating to public domain views, nor do they critique the methodology applied in the VIA. Reliance is placed on emotive language such as *'undue prominence'*, *'oppressive from many viewpoints'* and *'loom over the environment'*. Terms which have no clear basis in visual impact assessment.

As confirmed by the Proponent's VIA Advice; (**Appendix B**) *'without an explicit and logical methodology and a process of quantitative assessment, conclusions on the extent of [visual] impacts are purely subjective and valueless in communicating the potential extents of the visual impact of a Proposal'* (page 7).

The Proponent's VIA Advice contends that the Department's AR *'dismisses the conclusions of the comprehensive VIA undertaken by Architectus and the conclusions of the peer review of the VIA by RLA, in favour of several paragraphs of subjective opinion on the subject of visual impact in the [IDA] which are not supported by any demonstrated methodology of assessment or clear justification'* (page 14).

Use of the 'Veloshin' Planning Principle

The Department's AR cites the NSW Land and Environment Court's planning principle regarding 'height, bulk and scale' in *Veloshin* at pp 32-33. This principle is separate to the Court's planning principles regarding views and visual impact (*'Tenacity'* and *'Rose Bay Marina'*) however there is a relationship between them.

The application of this principle in the context of the Proposal, has regard to;

'Where there is an absence of planning controls related to bulk and character, the assessment of a Proposal should be based on whether the planning intent for the area appears to be the preservation of the existing character or the creation of a new one'.

This is a broader consideration than visual impacts alone and should be considered through the strategic justification of this report (**section 3.1**) which discusses the strategic planning context of the Site, the absence of planning controls relevant to this Proposal, the design excellence process undertaken and overseen by the Department and the Urban Context analysis (EAR, Appendix G), Contextual Analysis (EAR, Appendix XX), Amended Urban Context Report (RtS, Appendix N) and Amended Contextual Analysis (Appendix O), in ensuring that the Proposal responds successfully to both the future context and existing urban context.

The Proponent maintains the position that the Proposal does not negatively alter the existing character of the locality in which it is located and that there is an emerging character supported contextually and via strategic justification of the future context of the Site (**section 3.1**).

Separate consideration of the extent to which the Department relies on *Veloshin* should also be acknowledged (**section 2.8**), whereby it appears that the Department has misunderstood the nature and context of the *Veloshin* principles. It is important to note that the *Veloshin* principles do not apply to a Part 3A Project. *Veloshin* concerned a development that was subject to a local environmental plan and various development control plans. In that case, the relevant Council opposed the development the subject of a development application on the basis that *'excessive floor space, height, bulk and scale of the proposed development are unsuitable for the subject site'*.

The principles established in *Veloshin* do not contemplate a situation where local environmental controls existed but had been rendered inapplicable by the operation of Part 3A of the EP&A Act 1979. Once it is appreciated that this latter situation is not what the words *'there is an absence of planning controls'* in the fourth *Veloshin* principle are intended to capture, it becomes clear that the fourth *Veloshin* question of *'[d]oes the proposal look appropriate in its context'* does not arise for consideration for a Part 3A Project. Supporting this view is the fact that there is no case law considering the *Veloshin* principles in the context of Part 3A of the EP&A Act 1979.

In any event, even if the *Veloshin* principles do not strictly apply but the IPC chooses to have regard to the fourth *Veloshin* principle as part of its general merits assessment, it is quite clear from Urban Context Report (RtS, Appendix N) that the answer to this question is 'yes' and that the proposed tower is appropriate in the context of the site and the Darling Harbour Precinct.

Views from Martin Place

The Proponent provides further clarification with respect to the Martin Place viewpoint. The Department noted:

'The Proponent's comparative analysis (Figure 32) is unclear as to the exact impact of the tower on the GPO clock tower and the extent to which this is mitigated by the building at 151 Clarence Street, as the comparative analysis uses two different viewpoints' (Department's AR, Figure 32, page 46).

Clarification of Viewpoint

A view from Martin Place was presented as part of the VIA, and the RtS Report included discussion that a new building, 151 Clarence Street, had been constructed in this view plane since the original VIA had been undertaken.

In responding to the Department's AR the image below is a recently produced photomontage (**Figure 25**) which demonstrates the impact on this view including the recently completed 151 Clarence Street and the Proposal. Please note this photo is from 2018 and includes a large object partially obstructing the view at the centre of Martin Place. A more recent and clear version has not been possible to produce as there is currently:

- no access to Council's designated view location (construction work is taking place here); and
- a large crane is located in the centre of Martin Place as part of the Metro West construction works.

The Proponent's Architect FJMT has also modelled a tower form with a maximum height of RL 213 and notes that this would reduce the intrusion of the tower from the view plane of the GPO building, as viewed by pedestrians in Martin Place.

Figure 25 - Proposal seen from Martin Place including 151 Clarence Street (24mm focal length)



Source: Architectus

With regard to the impact that the Proposal has to Martin Place from a visual impact perspective, the IDA agrees with the Proponent's VIA that:

'Even from Martin Place, where glimpses would be visible, the new tower being relatively distant may not be unduly intrusive from most viewing positions' (IDA, page 136).

It is also noted that the OEH did not identify a concern in relation to potential impact on the GPO and did not object to Mod 13. In heritage terms, the Council objected only to the impact on the view of the GPO from within Martin Place. The NSW Heritage Council did not note any heritage impacts to the State listed GPO in their written submission, nor share the sentiment that the view of the GPO from within Martin Place was compromised.

Heritage Considerations

A Heritage Impact Assessment (HIA) (EAR, Appendix P) and a Heritage Impact Addendum (RtS, Appendix Y) were undertaken to assess the visual impact views to and from heritage items and more broadly any impact to the heritage context of Pyrmont, including the Pyrmont Heritage Conservation Area and the State listed Pyrmont Bridge.

The Department's AR notes that the heritage impact is 'minor' because the 'tower located sufficient distance from the conservation area' however that the 'heritage impact of the Proposal would only occur as a result of an unacceptable form of development' (page iv). These statements appear to be contradictory.

The HIA concludes on the matter of heritage and visual impact that the:

'visibility of a tower of a larger scale than existing development in the vicinity of heritage listed items does not necessarily equate to a detrimental impact on the setting of heritage items...the tower would not obscure any identified significant views, rather it would obscure sections of sky. Further, it has a physical separation from most of the identified heritage items and substantial (largely contemporary high density residential) development exists between. Although the tower would be visible in the background of a number of items and may introduce another focal point in some views,

it would not preclude an ability to fully appreciate the heritage items as at present' (EAR, HIA, page 70).

It is unclear which subject matter specialist has contributed heritage advice to the Department which enables the Department to conclude that the Proposal would have an adverse impact. The Department's AR makes assertions relating to heritage impact which are not supported by evidence.

The Department's AR (page 101) provides an assessment against *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*, Part 2 Planning Principles. Clause 15 specifically relates to Heritage Conservation. The Department echoes the position of Council, suggesting that the Proposal is not in accordance with clause 15 as it *'would result in substantial and long-term negative impacts on private views from residential dwellings and views from the public domain including Martin Place, Glebe Foreshore Parks, Cockle Bay, Union Square and Pyrmont [Bay] Park amongst others'* (Department's AR, page 101). This statement does not constitute a heritage impact assessment; the Department appears to be conflating perceptions of heritage and visual impact. There is no evidence that loss of private views (if arising) will result in any heritage impact. Further, it is important to note that some of the parks identified are not heritage items, including Pyrmont Bay Park.

Given the lack of heritage assessment to suggest otherwise, there is no evidence to support the Department's conclusion that the Proposal will result in an adverse impact on heritage values and to use this statement as a contributing factor to justify the conclusion that *'the impacts of the Proposal would only occur as the result of an unacceptable form of development and therefore not be supported'* (page v).

3.2.2. Amenity Impacts (overshadowing, view loss and wind)

The following responds to the Department's AR regarding amenity impacts (overshadowing, view loss and wind) and submissions to the IPC on glare.

Overshadowing, Public Space

The Executive Summary of the Department's AR notes:

'The Department's assessment confirmed that the proposal will have overshadowing impacts to public spaces including Union Square, Pyrmont Bay Park and Pyrmont Bridge. The impacts will occur during autumn and winter and will reduce the amenity of those spaces.' (page v)

The main body of the Department's AR notes (emphasis added):

*'The Department notes that due to the existing low-rise character of Pyrmont, **Union Square** presently achieves excellent solar access throughout the year. On the most affected day (21 June), Union Square would continue to receive direct sunlight most of the day, with the exception of the one-hour window from 10:30am to 11:30am. The Department notes that during this period the greatest overshadowing occurs between 10:45 and 11:15am. As a result of the narrow tower form and fast-moving shadow, the square would remain capable of providing a high-quality open space during early mornings, lunch times and afternoons. However, there is a moderate impact from the loss of solar access in the late morning when the space could be expected to be used for active and passive recreation.'*

*Having carefully considered the Solar Study, together with Council's comments, the Department considers the impact of a tower on Union Square is **moderate** for the following reasons:*

- the Proposal affects solar access to Union Square for 65 days of the year between May 19th and July 23rd (for 300 days per year there is no impact)*
- overshadowing of Union Square occurs for a maximum of approximately 60 minutes on the most affected day (being 21 June)*
- the amount of direct sunlight on the most affected day reduces from 64.4 percent to 59.8 percent, a reduction of 4.6 percent (Department's AR, page 54 - 55)*

*'**Pyrmont Bay Park** is a large grassed area located directly east of the site and approximately 165m to the south east of the proposed tower. Pyrmont Bridge is located to the south east of the site approximately 530m from the proposed tower location. (Figure 38). Presently both Pyrmont Bay Park and Pyrmont Bridge received 100 percent solar access between 9:00am and 3:00pm throughout the year.'* (page 55 - 56).

The Proponent's overshadowing analysis demonstrates that the largest impact to Pymont Bay Park is in mid-winter (21 June) where existing solar access is reduced from 100 percent to 97.9 percent with no additional overshadowing of the park until 2:30pm. In the equinox solar access would be reduced from 100 percent to 98.33 percent with no additional overshadowing of the park until 2:45pm.

The Department considers overshadowing impact on Pymont Bay Park is to be **minor** as:

- *'additional overshadowing in mid-winter and the equinox is confined to a limited period and results in a negligible 2 percent reduction to existing solar access between 9:00am and 3:00pm*
- *the maximum overshadowing during the equinox (March and September) and mid-winter takes place outside the lunch period, after 2:45pm*
- *The park would retain over 5.5 hours of solar access during the most affected days (21 June and the Equinox) with the impact reducing thereafter*
- *over the period of the year the additional overshadowing results in only a 2.3 percent reduction from 100 percent to 97.7 percent*
- *the Park maintains excellent solar access through the year and the additional overshadowing will not alter its function or usability as a passive and active recreation space*

(Department's AR, page 55 – 56)

*Concern was raised in public submissions that the overshadowing of **Pymont Bridge** would affect the usability and pleasant nature of this space during the afternoon' (Department's AR, page 57)*

*The Department has carefully considered the submissions and the Proponent's solar analysis and considers the overshadowing to Pymont Bridge is **minor** as:*

- *the solar impact in mid-winter is confined to a small section of the western edge of the bridge after 2:40pm on the peak day (mid-winter) and reduces thereafter*
- *the bridge retains full solar access for more than 5.5 hours on the most affected day (21 June)*
- *solar access is unaffected during the summer and the equinox*
- *OEH raised no issues in relation to overshadowing impacts on heritage listing of the bridge.'*

(Department's AR. page 56 - 57)

*'A public submission was received objecting to the proposal on the basis that it would overshadow **Clifftop Walk**. Clifftop walk is a public pedestrian path located approximately 360 m from the location of the proposed tower. The majority of the path is overshadowed due to its position behind neighbouring buildings, however a small section of the path, approximately 35m in length would experience additional overshadowing as a result of the proposed tower' (Department's AR, page 57).*

In the RtS the Proponent provided additional overshadowing analysis of Clifftop Walk (Figure 40) which demonstrated that the currently sunlit section of the path would experience overshadowing between 9:00am and 9:30am during mid- winter. No overshadowing would be experienced at any other time of year.'

*The Department considers the minor overshadowing to this short section of Clifftop Walk is **minor** as:*

- *it would only be experienced for a 30-minute period during mid-winter for 9:00am to 9:30am, reducing thereafter*
- *would always retain full solar access outside of this window during summer and the Equinox.*
- *the paths function as a pedestrian thoroughfare, rather than recreational space, would not be affected by the resulting overshadowing. (Department's AR, page 57 - 58)*

The Department's AR concluded that overshadowing to Pymont Bay Park, Pymont Bridge and the Clifftop Walk are considered minor, while the overshadowing to Union Square is considered to be moderate.

Union Square currently achieves 92.8 percent direct solar access at mid-summer and 64.4 percent during mid-winter. The Proposal reduces the mid-winter figure by 4.6 percent while there is nil impact during summer. The impact to Union Square is limited to between 19 May and 24 July. The impact lessens as one moves away from mid-winter. The mid-winter impact occurs between 10.30am and 11.30am with any single point with the Square being impacted for approximately 30 minutes.

Overshadowing resulting from the submitted scheme was discussed in detail with the Design Review Panel (DRP) in December 2016 with the DRP concluding that;

'FJMT presented an elegant, international standard design with a refined, distinctive and visually interesting built form meeting the expectations of the Ritz-Carlton brand and considered unique to its place as part of both the Star Entertainment complex and the broader Sydney environment'.

The design provides a holistic appreciation and response to the surrounding context, optimising positive visual, environmental and operational outcomes. The ground plane treatments creates the promise of future improved linkages and relationships to the public domain. The design responds sympathetically to environmental considerations – for example, by maximising solar access for the surrounding area and by incorporating a façade and materials in keeping with the waterfront location.

FJMT presented alternative height approaches with the Panel supporting the taller scheme which is considered to achieve more elegant proportions with negligible additional environmental impacts." (P11, Design Excellence Report prepared by Urbis)

A tower form with a maximum height of RL 213 (original competition scheme) would remove overshadowing from Union Square. In addition, this would reduce the minor shadow impacts to Pyrmont Bay Park, Pyrmont Bridge and the Clifftop Walk. FJMT has undertaken additional modelling of this scenario and extracts are provided at **Figures 27, 28 and 29**.

Overshadowing, Private Residences

The Executive Summary of the Department's AR notes:

'Overshadowing of private residences is confined to short periods, due to the fast-moving shadow of the tower. Three instances of non-compliance with ADG guidelines have been identified where solar access to any part of residence is reduced to below 2 hours. These instances of non-compliance are related to single bedroom windows only, with all other windows in the affected apartments including living rooms and balconies, remaining compliant with the guidelines'. (page v)

The main body of the Department's AR notes:

'The State Environmental Planning Policy 65 – Design Quality of Residential Apartment Development – Apartment Design Guide (ADG) recommends controls for new residential developments including their impact on existing residential buildings. The Department considers the ADG is a helpful guide to assess impact on adjoining existing residential development.

The ADG recommends at least 70 percent of apartments in urban areas receive at least 2 hours of solar access between 9am and 3pm in mid-winter and recommends further, that where an adjoining property does not currently receive 2 hours of solar access the proposed building ensures solar access to neighbouring properties is not reduced by more than 20 percent.

The Proponent provided a sun access impact analysis, which considered the overshadowing impact of the building to residential properties between 9:00am and 3:00pm in mid-winter. The analysis identified three instances to the southeast of the site where solar access to any part of an apartment is reduced to below 2 hours (Figure 41). The sun access analysis confirms that no properties currently receiving less than 2 hours solar access would have their solar access reduced by more than 20 percent as a result of the proposal, in accordance with the ADG guidelines.

The Department has carefully considered the potential overshadowing impact on nearby affected properties and considers, on balance, the proposal to be acceptable for the following reasons:

- *non-compliance with the ADG guidelines is restricted to three individual properties.*
- *at 49-51 Mount Street the impact is confined to one of two street-facing second story windows, with sun access to the other street facing window, living room and balcony all remaining compliant with the ADG guidelines.*

- *at 102 Miller Street the impact is confined to single bedroom windows within two flats, with the balcony living room and master bedrooms at each flat maintaining in excess of 2 hours sun access during mid-winter’.*

*‘The Department considers that despite the proposal creating reductions below the ADG guidelines for some individual windows, the impact to the affected properties as a whole would be **negligible** [sic] as all other rooms maintain compliance with the ADG guidelines [sic]. The Department notes further [sic] that overshadowing is confined to the peak day (21 June) with any impacts reducing thereafter. Due to the fast moving nature of the proposed shadow, the impact to these properties is considered [sic] to be acceptable [sic].’ (Department’s AR, page 58 - 59)*

During the design phase a number of methodologies were employed to test solar access to adjacent residential properties, including shadow diagrams, suns eye view studies and heat map analysis using Grasshopper software that located those properties currently receiving greater than two hours direct solar access which would drop below this threshold. A further analysis located those properties receiving less than 2 hours which would lose greater than 20 percent of their current solar access - a threshold established in Section 3B of the ADG.

This analysis concluded that the location of the tower at the northern end of a uniquely large site within the Pymont peninsula would enable the Proposal to proceed whilst delivering negligible solar impacts upon adjacent residential properties.

As noted above, the Department’s AR concurs that the solar impact of the tower upon private residences is negligible.

Speaker 15 of the IPC public meeting schedule raised the issue of loss of solar access as result of the Proposal. The overshadowing of Speaker 15’s dwelling, was addressed in the ADS Addendum (RtS, Appendix Z), which demonstrated limited overshadowing that would occur to the dwelling as a result of the Proposal.

Private View Impacts

The Department’s AR includes a visual impact assessment of private views (Department’s AR, Appendix I) that follows the ‘Tenacity’ Planning Principle. While there is some variation in the assessment and terminology of individual views from that contained in the VIA, the more substantive variation between these documents is in the assessment of ‘reasonableness’ of the Proposal (step 4 of the ‘Tenacity’ principle). There is general acceptance in the Department’s AR that the impacts of a 28-metre high LEP-compliant development would have a similar impact on important views, that key aspects of private views are generally maintained and that a sufficient level of ‘outlook’ is retained in most circumstances.

As set out in Section 6.1 of the VIA, the conclusions of the assessment are that:

- there is no absolute requirement for protection of private views;
- view loss that is consistent with the LEP envelopes is acceptable consistent with the planning principles; and
- the impacts are also consistent with other developments in the area (e.g. ICC tower).

The VIA has been the subject of two peer reviews which have found the process and conclusions to be accurate.

The Department’s AR includes an assessment of private views (page 50-53 plus supporting Visual Impact Assessment ‘Appendix I’) that follows the ‘Tenacity’ Planning Principle. The issues raised in this assessment are addressed below.

Critique of the Department’s AR with regard to Private View Loss

The Department considers *“the form and scale of the proposed changes to the podium, together with the introduction of the Ribbon Feature, to be acceptable, as these are sympathetic to the local Pymont context and enhance the visual appearance of the building”* (Department’s AR page 47). The VIA has demonstrated that the view loss experiences from private dwellings adjacent to the Site and from apartments within the Site is primarily a result of the podium and ribbon features. These are elements that the Department considers to be acceptable and sympathetic to the local Pymont context and will enhance the visual appearance of the building.

At page 52:

'The Department notes that of the severely impacted views, the Proposal will generally only obstruct views of sky above an LEP compliant building envelope, and that an LEP compliant scheme at a height of 28 metres would also obstruct existing views of land, water and land-water interfaceWith regard to outlook, as opposed to views, the Department considers that an acceptable level of outlook is maintained from affected apartments ...The Department notes the key aspects of private views are retained in most circumstances. Whilst the severe view impacts to lower floor apartments within Astral Residences and 2 Jones Bay Road are acknowledged, the Department notes that an LEP compliant envelope would result in similar or greater view impacts to these properties at their lower levels'.

There is no logic or basis in the assessment for the Department to then state (page 52):

'Whilst recognising that to some extent similar impacts would result from an LEP compliant scheme or a reduced height tower form, the Department notes that these impacts would be the result of an unacceptable form of development'.

Summary of affected views

Both the Department's AR and the VIA are broadly consistent in terms of assessment of individual views, however there are some differences in the categorisation of impact. The impact is summarised on the diagram below (**Figure 26**) from the VIA (EAR, Appendix H), with the Department's assessment having a slightly higher categorisation of three views Private residence 21, Private residence 22 and Private residence 12.

The VIA summarises the affected private views as follows (page 161), which are also shown on the diagram below:

"The Proposal's impact on private views includes:

- high and moderate to high impacts:*
 - approximately 16 apartments in 2 Jones Bay Road, of which approximately 13 also received a 'high' impact from the previous MOD7 approval (this Proposal will remove the majority of the view which remained after MOD7).*
 - approximately 14 apartments within the Astral Residences.*
- moderate impacts (generally a significant portion of view is retained) - further apartments in Jones Bay Road, 88 John Street, 24 & 26 Point Street, 8 Distillery Drive, 21 Cadigal Avenue and upper levels of the Astral Residences."*

Figure 26 – VIA Extract

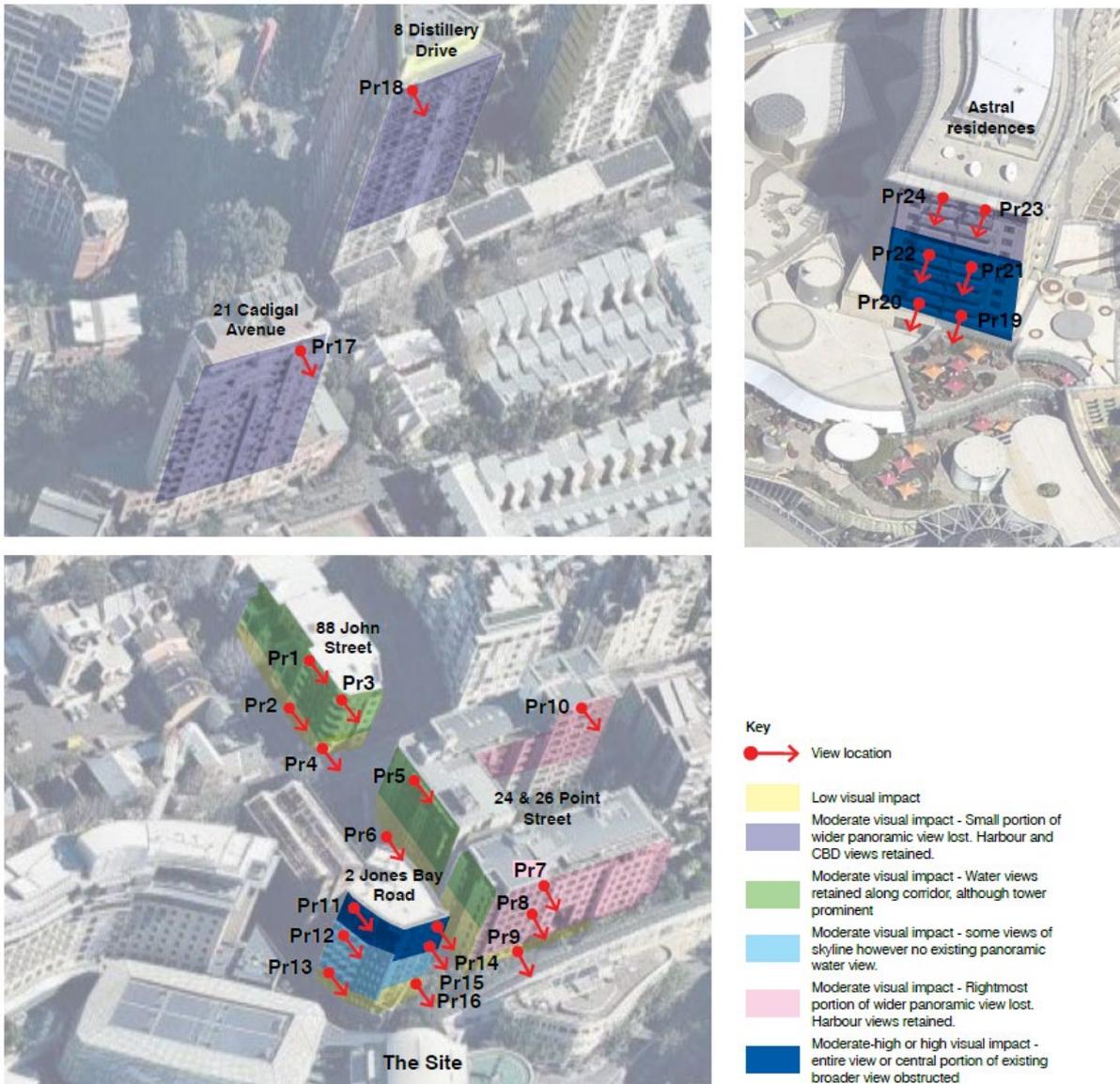


Figure 5.3.1 View locations considered and estimated visual impacts across key building facades

Summary of view impacts (Architectus VIA, page 151)

Individual views

While the vast majority of views have been assessed similarly by the Department and in the VIA, there is variation in the following which have been assessed as ‘severe’ by the Department and ‘moderate’ or ‘moderate-high’ in the VIA:

- Mid-level south facing apartments at 2 Jones Bay Road (level 6) [Private residence 12 (Pr12) in the VIA]; and
- Apartments at levels 4-5 levels of the Astral Residences [Private residence 21 and 22 (Pr 21 and Pr 22) in the VIA].

These individual views are presented below with some commentary as to why the VIA is lower.

It is normal in undertaking an assessment of a broad number of views that there is some variation in view categorization and assessment by two different assessors.



Level 6 south-facing apartment – front facing view – assessed as ‘moderate’ by the VIA and ‘severe’ by Department.

The VIA notes that the city view (left) will be predominantly available from the balcony (internal views will have a narrower angle).



Level 4-5 of Astral Residence –17mm focal length view. Assessed as ‘moderate-high’ by the VIA and ‘severe’ by Department.

The VIA notes that the “Proposal is highly prominent within the view. It obstructs water and the horizon interface which are important elements within the view however the majority of the city skyline remains”

Speaker 15 of the IPC public meeting schedule raised the issue of view loss as result of the Proposal. The extent of view loss from Speaker 15’s dwelling, was addressed in the VIA Addendum (RtS, Appendix Q), which demonstrated that there would still be outlook from the ground floor terrace and upper level balcony and that no Harbour views would be impacted as a result of the Proposal.

Differences in conclusion and ‘reasonableness’:

The Department’s report includes the following comments that are broadly consistent the VIA:

- *‘similar impacts would result from an LEP compliant scheme’;*
- *‘a reduction in the Proposal’s height and scale of the proposed tower would not significantly alter the degree of view loss resulting from the Proposal’;*
- *‘the key aspects of private views are retained in most circumstances’; and*
- *‘an acceptable level of outlook is maintained from affected apartments’.*

The key concluding description from the Department’s AR in describing the private view impacts as unacceptable and hence reaching a different conclusion in the VIA is as follows:

‘Whilst recognising that to some extent similar impacts would result from an LEP compliant scheme or a reduced height tower form, the Department notes that these impacts would be the result of an unacceptable form of development. The scale of the proposed tower is not anticipated or supported by adopted policy and is not considered to be justified in the proposed location. On this basis the Department considers that the identified impacts to private views are not justified and should not be supported at this time’.

In response to this it should be noted that there is no absolute requirement for the protection of private views, only for 'outlook', which the Department's AR identifies as being acceptable.

The Department's conclusions appear to describe that even an LEP-compliant proposal would be considered unacceptable. In considering this, it should be noted that the SLEP 2012 controls do not formally apply and are presented as a comparison only. Even if the SLEP 2012 height of building controls were to apply strictly, the following extract from the 'Tenacity' planning principle would apply.

"With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable."

In line with this, the impacts of an LEP-compliant proposal would only be **unacceptable** if there was a "more skillful design" that "could provide the applicant with the same development potential and amenity and reduce the impact on the views from neighbours". The Department's assessment does not provide or indicate such a design. It is considered that the Proposal represents a skillful design and includes the following design treatments to mitigate private visual impacts (VIA, Appendix H of RtS, page 156).

"To improve its view sharing outcomes, the design has adopted an inset within the lower-portion of the tower to help provide a greater 'gap' for private views along the axis of John Street. This feature has been carried through by FJMT from the design competition."

With regard to the views from the Astral Residences views it is notable that the current proposal has reduced significantly in height facing Pirrama Road from the design competition winning scheme to the final proposal (see diagram adjacent - the height has reduced from RL 49.5 to RL44.3 through this process)."

In addition to the above it should be noted that the impacts of the proposal on private views are consistent with other developments in the area that have caused some significant private view loss, in many cases well beyond that anticipated by current controls. The impacts of those other developments have been considered acceptable in visual impact terms and those developments have been approved. Those developments include:

- Barangaroo towers, including the existing Barangaroo International Towers as well as future planned towers in Central Barangaroo;
- The Sydney International Convention, Exhibition and Entertainment Precinct (SICEEP) including the Haymarket precinct towers and ICC Hotel;
- 'The Ribbon' development to replace the existing IMAX building;
- Redevelopment of the Four Points Hotel, Darling Harbour; and
- Central Park.

Based on the above, the VIA concluded that the Proposal is appropriate and acceptable in terms of its impact on private views. It is considered that the Department's assessment in concluding that the impacts of the Proposal on private views is not acceptable has not correctly followed Step 4 of the 'Tenacity' principle.

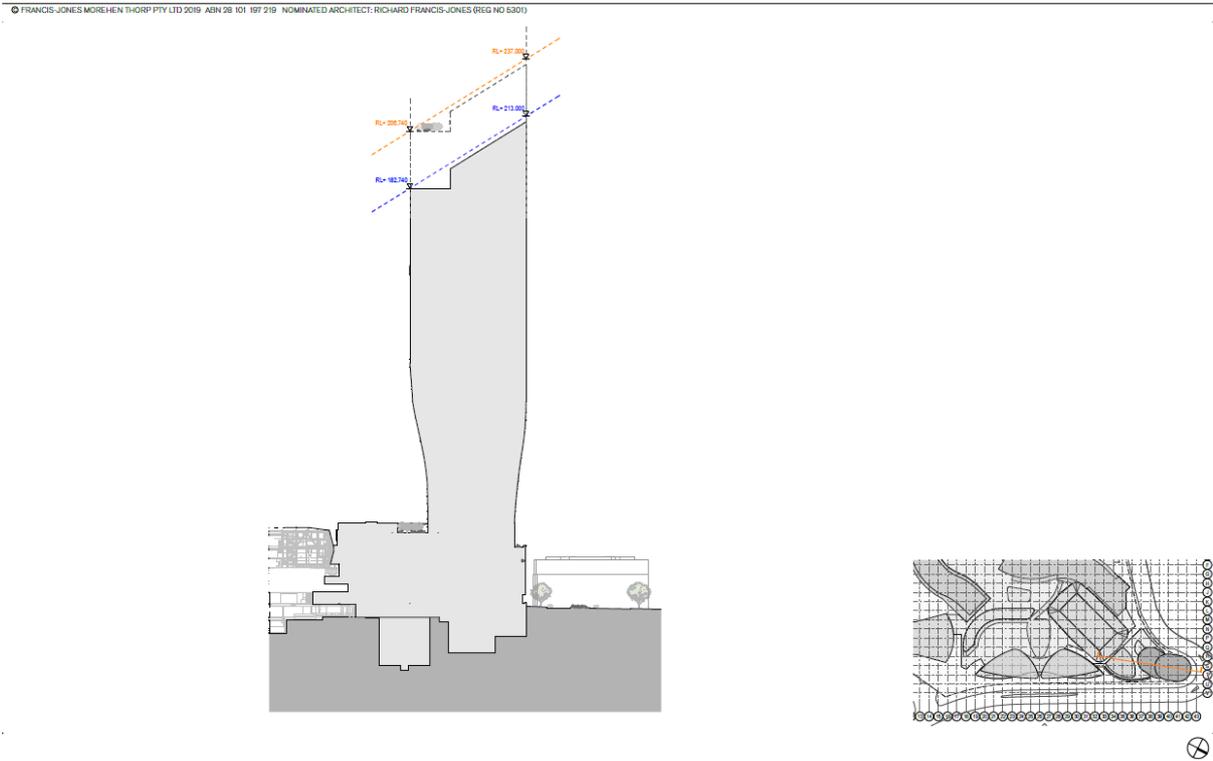
Responding to Environmental Impact – Overshadowing and View Impact

The EAR, RtS and associated technical reports have identified that the Proposal will result in minimal additional environmental impact. The proposed tower form will result in some view loss and increase in overshadowing of public spaces but as demonstrated in the Architectural Design Statement (RtS Report, Appendix Z), Visual Impact Assessment (EAR, Appendix H), Peer Review of the Visual Impact Assessment by Richard Lamb (EAR, Appendix ZZ), Heritage Impact Assessment (EAR, Appendix P) the design of the tower has minimised the potential impacts.

The tower will be able to be viewed in the round and is an appropriate built form response for the Site having regard to the current and future context of the Site. The Proposal will deliver significant economic and social benefits in the form of investment, construction jobs, training and employment in the hospitality industry, increased tourism and visitation to Sydney as a global destination and delivery, funding and operation of a community benefit in the form of a five level Neighbourhood Centre for the life of the lease held by The Star. On balance the Proposal is considered to be a suitable form of development for the Site resulting in minimal additional impact beyond that of the presently approved development of the Site.

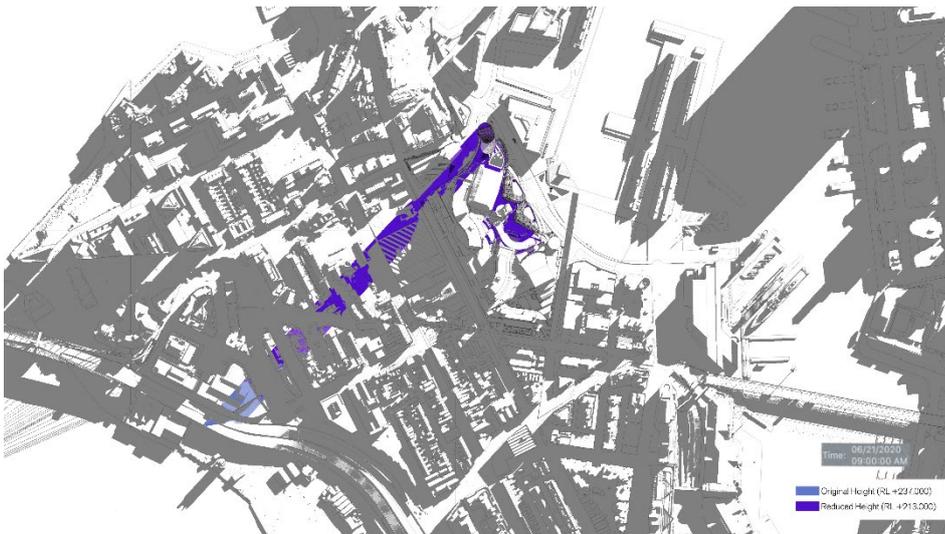
If the IPC considers that the overshadowing of Union Square and the intrusion of the tower into the view plane of the GPO when viewed from within Martin Place is not appropriate, this impact can be mitigated by the lowering of the tower height to RL 213 as detailed in **Figure 27** prepared by FJMT. As shown in the shadow diagrams at **Figure 28, 29** and **30**, the reduction in the tower height to RL 213 will remove overshadowing to Union Square. In addition, this reduced height proposal would further reduce the minor shadow impacts to Pymont Bay Park, Pymont Bridge and the Clifftop Walk and will reduce the intrusion of the tower when viewed from Martin Place (refer **Figure 31**).

Figure 27 – Building Height (RL 213)



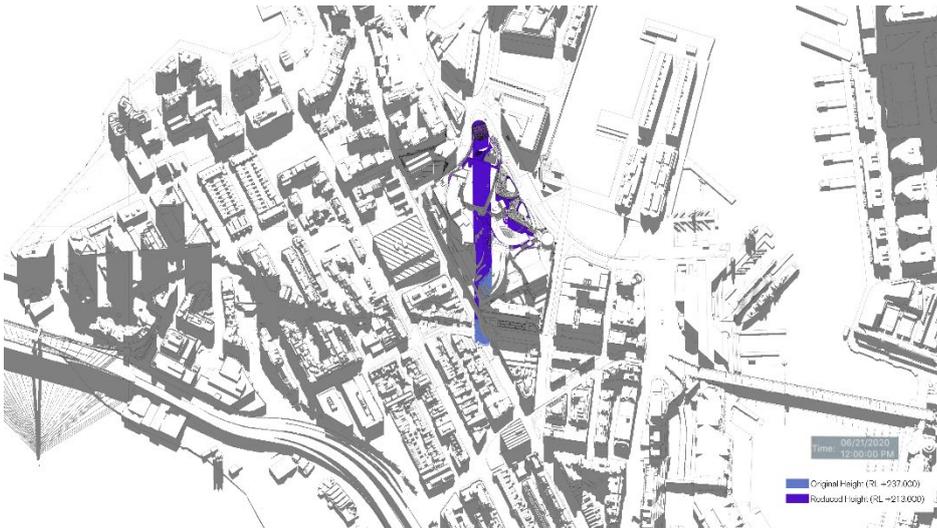
Source: FJMT

Figure 28 – Shadow Diagrams (RL 213) – 9:00am June 21



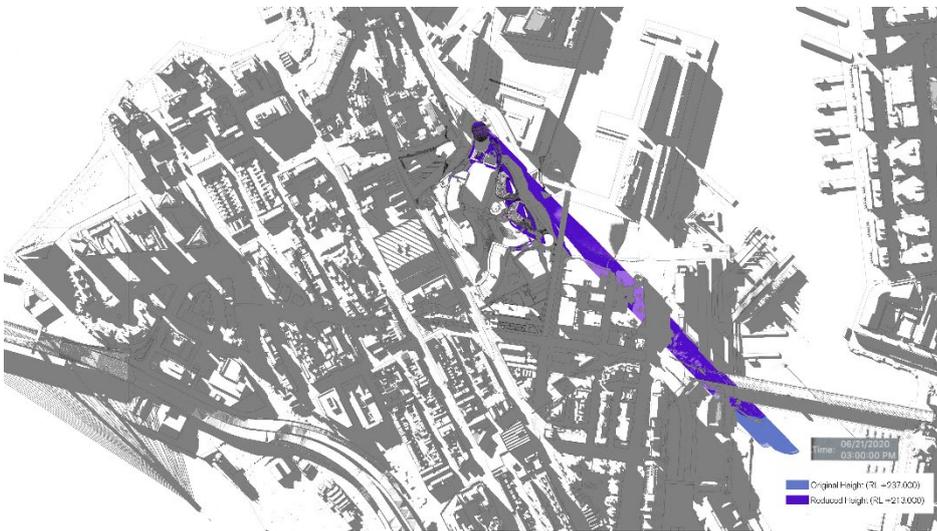
Source: FJMT

Figure 29 - Shadow Diagrams (RL 213) – 12:00pm June 21



Source: FJMT

Figure 30 - Shadow Diagrams (RL 213) – 3:00pm June 21



Source: FJMT

Figure 31 – Martin Place Viewpoint (RL 213)



Picture 1 – Submitted Proposal – maximum RL 237.00

Source: Architectus



Picture 2 – Competition Scheme – maximum RL 213

Source: Architectus

Wind

The Department's AR (page v) lists 'wind' impacts to be a key concern raised in the public submissions. However, Table 7, section 5.4.2 'Summary of public submissions to the exhibition of the project modification' wind impacts were not listed as a key issue of the community submissions. This issue was also raised by presenters to the IPC public meeting.

With regard to wind impacts, *'the Department considers that if it was determined that the project should proceed it is likely to have acceptable wind impacts for pedestrians within and around the development'* (Department's AR, page 60). The conclusion on wind impact was based upon the following items provided by the Proponent:

- Pedestrian Wind Environment Assessment (EAR, Appendix FF); and
- Amended Pedestrian Wind Environment Assessment (RtS Report, Appendix BB).

It is also relevant to note the comment in the Department's AR where they consider the benefits of the Proposal to include *'no negative environmental impacts with respect to wind, traffic or ESD principles'* (Department's AR, P61).

Glare

Presenter's to the IPC meeting raised the issue of amenity impact from glare from the proposed tower. The EAR was supported by a Solar Reflectivity Report (Appendix GG) which states:

"The assessment methodology in this report assumed a 20% reflectivity coefficient would be used for the proposed development's glazing. Utilising glazing with a reflectivity coefficient in the order 12-15% would be expected to reduce the TI levels to a satisfactory level given the receiver locations modelled are on a secondary road."

It is expected solar reflections from the west façade will not negatively impact drivers' vision at remaining investigated locations 8 and 9 if a reflectivity coefficient on the proposed development's glazing is reduced as described above."

The recommendations of the report have been adopted by the Proponent in order to address this issue.

Summary

As demonstrated, the key environmental impacts of the built form, including visual, overshadowing, wind, and glare as identified by the Department and the IDA and in community submissions, result in limited environmental impacts beyond those already assessed for the Approved Project MP08_0098.

3.3. DESIGN EXCELLENCE

3.3.1. Endorsement of the Design Excellence Process

On a matter of clarification, the Department was provided a copy of the Design Excellence Brief on the 26th of April 2016 and its feedback was sought by the Proponent (**Appendix E**). Minor rewording comments were received in email exchanges from the Department with regards to the Design Excellence Brief but no advice or objection was provided regarding:

- scale or location of the building envelope;
- strategic merit of a tower in the proposed location;
- nomination of an alternative building envelope; or
- any limitations to building height (of which the Design Excellence Brief confirmed to be a maximum of 237m).

Comments made by the Department on page v of the AR, that the *'brief was established to achieve a tall tower at this specific location'* and *'The nature of the brief discouraged the consideration and selection of an alternative approach to the proposal, such as a more contextual design response'*, are surprising to the Proponent's consultant team, given the level of engagement that the Department had throughout the Design Excellence Process, prior to formal lodgement during the Test of Adequacy phase and post lodgement of Mod 13.

The Department endorsed the Design Excellence process, provided comment on the Design Excellence Brief (EAR, Appendix F) and confirmed that the *'process adequately addresses the Secretary Environmental Assessment Requirements'* (SEARs) in correspondence dated 26 October 2016 (**Appendix D** – refer page 25).

Following exhibition of the EAR, the Department requested that the DRP responsible for awarding design excellence, be reconvened to confirm that the DRP recommendations had been addressed in the exhibited Proposal and that the Proposal retained design integrity. Following integration of the recommended DRP design changes to the Neighbourhood Centre, the DRP was reconvened and provided their final comments.

As detailed in the commentary following, the steps undertaken by the Proponent to maintain design excellence were in accordance in the endorsed Design Excellence Process and the Design Excellence Brief. Ultimately, the DRP - charged with determining whether the Proposal *exhibited design excellence* - confirmed in writing that the *'design remains faithful to that selected as the winner of the Design Excellence Competition'* (RtS Report, page 38).

3.3.2. Responding to the Department's Measure of Design Excellence

There are three items highlighted in the Department's AR regarding the Design Excellence of the Proposal that require comment. These are:

1. Does the architecture exhibit design excellence?
2. Does the scheme consider the urban context, general character of the area and the visual impacts?
3. Does the scheme demonstrate how the Proposal relates to planning for other nearby areas to the west of the CBD, including for example Darling Harbour and the Bays Precinct (Fish Market and White Bay, etc)?

These points have been drawn from page v of the Department's AR which states:

'the overall assessment of design excellence is not only restricted to the architecture of the building, it also needs to consider the urban context, general character of the area and the visual impacts associated with such a tall building'.

'The competition DRP also recommended the modification application clearly demonstrate how the project relates to planning for other nearby areas to the west of the CBD, including for example Darling Harbour and the Bays Precinct (Fish Market and White Bay, etc.).'

3.3.3. Does the Architecture Exhibit Design Excellence?

As cited in the Department's AR page v: *'The proposed building represents the winning design of a design competition'...* *'The Department is satisfied that the alternative design process competition was carried out in accordance with the SEAR's and the competition brief'* and *'... the advice of the competition DRP [Design Review Panel] that the proposed building's architecture exhibits design excellence when considered in accordance with the brief'.*

The RtS Report Section 3.1.13.7 *Design Excellence*, confirms that the DRP was reconvened following exhibition of the EAR and that the DRP concluded that the exhibited scheme remains faithful to the scheme selected as the winner of the design excellence competition – demonstrating that the architecture *exhibits design excellence*.

The Proponent agrees with the statements made by the Department with regard to the design excellence of the proposed architecture and **Appendix D** of this report includes a full account of the Design Excellence Process in the Design Excellence Report (EAR, Appendix F).

The DRP said the following of the FJMT competition winning design:

'The tower will be a wonderful addition to Sydney's skyline and the proposed Ritz-Carlton adds a genuine, luxury-standard hotel to the City's lodging supply. In my opinion the current scheme addresses the DRP's comments and displays the sort of design integrity expected of iconic developments of this type' (RtS Report, page 37).

The architecture of the Proposal exhibits design excellence.

3.3.4. Does the Proposal consider the urban context, general character of the area and the visual impacts?

The Proposal has considered urban context, the general character, and the visual impacts associated with the built form in the identified documents submitted with the EAR and RtS:

Table 3 – Submitted Documentation

	Specific to context, general character and views – what did this report consider?	EAR Appendix Reference	RtS Appendix Reference	Additional information/ clarification sought by the Department post exhibition
Urban Context Report (UCR)	Context, general character	G	N	No
Contextual Analysis	Context	XX	O	No
Peer Review by Russell Olsson	Peer Review of UCR and Contextual Analysis	YY	-	No
VIA	View impacts	H	-	No
VIA Addendum	View impacts	-	Q	No

	Specific to context, general character and views – what did this report consider?	EAR Appendix Reference	RtS Appendix Reference	Additional information/ clarification sought by the Department post exhibition
Peer Review by Richard Lamb	Peer Review of VIA	ZZ	-	No
Architectural Design Statement	View impacts	C	Z	No
Architectural Design Statement Addendum	View impacts	-	R	No
Heritage Impact Analysis	Heritage context, view impact	P	-	No
Heritage Addendum	Heritage context, view impact	-	Y	No

The Proponent has considered the urban context and general character of the area and that of other nearby areas and the visual impacts of the Proposal, in the EAR, RtS and suite of technical assessments. The Proposal has adequately addressed its context and potential environmental impacts:

*The design provides a holistic appreciation and response to the surrounding context, optimising positive visual, environmental and operational outcomes...The design responds sympathetically to environmental considerations – for example, by maximising solar access for the surrounding area and by incorporating a façade and materials in keeping with the waterfront location (Design Excellence Report, **Appendix D**, page 11).*

The tower’s form remains slim-line, elegant and iconic. This means there is minimal overshadowing of surrounding areas (RtS Report, page 37).

The FJMT design is of truly international quality and provides an elegant, distinctive and visually striking form that is befitting of its iconic location (RtS Report, page 37).

*FJMT presented alternative height approaches with the Panel supporting the taller scheme which is considered to achieve more elegant proportions with negligible additional environmental impacts (Design Excellence Report, **Appendix D**, page 11).*

Consideration of urban context, general character of the area and the visual impacts has been undertaken by the Proponent. The DRP confirmed that the competition winning scheme (forming the exhibited Proposal) has ‘negligible additional environmental impacts’ and ‘a holistic appreciation and response to the surrounding context.

3.3.5. Does the scheme demonstrate how the project relates to planning for other nearby areas?

As detailed, in **section 3.1** of this report, the Proposal is located within the Harbour CBD. The Harbour CBD includes Sydney CBD, Darling Harbour and extends westward to include the Bays Precinct (Fish Market and White Bay, etc).

The strategic context of the Site is identified in Greater Sydney Commission’s directions and initiatives detailed in the Greater Sydney Region Plan – *A Metropolis of Three Cities*, and more specifically, the

Eastern City District Plan. As demonstrated in the Urban Context Report and **section 3.1** of this report, the Proposal relates to planning of these areas by:

- Being located in Sydney's Harbour CBD (which includes the Bays Precinct), *Greater Sydney Region Plan, 2018*; and
- Being located in the Eastern City's Innovation Corridor (which includes the Bays Precinct) *Eastern City District Plan, 2018*.

Section 3.1 of this report clearly demonstrates *how the project relates to planning for other nearby areas* to the west of the CBD, including the Darling Harbour Precinct and the Bays Precinct (Fish Market and White Bay).

The position of the DRP on the matter of design excellence and how the Proposal '*relates to planning for other nearby areas*', is clear from the DRP's final comments, confirming that:

The Urban Rationale has been well covered in the additional documentation presented here. (RtS Report, page 37).

The idea of the Pyrmont Peninsula becoming more integrated to the city centre of Sydney is acknowledged in the work of the Greater Sydney Commission and related planning documents. (RtS Report, page 37).

The reference from the DRP to '*the work of the Greater Sydney Commission*' is a reference to the Greater Sydney Region Plan and associated Eastern City District Plan.

The Proponent has considered how the Proposal relates to planning for other nearby areas in the EAR, RtS and suite of associated technical assessments submitted. The DRP identifies the planned strategic context of the Greater Sydney Commission and *Urban Rationale* for the Proposal, and it confirmed in writing that the '*design remains faithful to that selected as the winner of the Design Excellence Competition*'.

The Proposal exhibits design excellence when applying the Department's measure of design excellence.

3.4. PUBLIC BENEFIT, CONTRIBUTIONS AND THE PUBLIC INTEREST

The Department agrees that the '*public benefit from the project would include both economic and social benefits. The Department acknowledges economic benefits would arise from the proposal. These include construction and operational jobs, developer contributions and affordable housing contributions as well as the broader economic benefits...*' (page v). The Proponent quantified the estimated contributions in section 6.12.1 and 6.12.2 of the EAR, which equate to:

- \$5.7 million in section 7.11 Contributions; and
- \$1.9 million in Affordable Housing Contributions.

Further, '*[the] Department notes the nature and type and of these benefits is typical for a development of this type*'. The Proponent accepts this position and notes that contributions would be determined in accordance with statutory requirements and that the final contribution amount would be confirmed via condition. However, as noted in **Table 2** of this report, not all developments of State significance have been required to pay the statutory contributions.

With regard to public benefit, the Department notes that the '*only unique public benefit offered by the proposal is limited to social benefits provided by the 1691m² neighbourhood centre*'. The Department adopts the position of the IDA, which states that the Proposal would;

'Not result in public benefit near the order needed to offset and/or justify its negative impacts' (IDA, page 139).

This informs one of the five reasons stated in the IDA for why the '*application should not be approved*'.

The key concern of the Department in their assessment on the question of public benefit and determining whether the Proposal is in the public interest, seems to be a question of scale and whether it outweighs the environmental impacts of the Proposal. The IDA also suggests that the '*potential need and value [of the Proposed Neighbourhood Centre Facilities] need to be assessed*' (IDA, page 138).

In the absence of a quantitative analysis undertaken by the Department to determine a suitable extent of public benefit, the Proponent provides the following:

- The Neighbourhood Centre is to be available for community use, to 2093 (for the remaining life of the lease) (**section 2.7.1**);
- The IDA appears to have misinterpreted the scale of the neighbourhood centre, referring to it as a single storey facility (where five levels are proposed) (**section 2.7.2**);
- The potential *need* for the Community facility is confirmed in **section 2.7.3**;
- The IDA references the nearby Cockle Bay development (SSD 7784), suggesting that it has '*worthwhile public benefit*' due to the '*dedication of attractive public space*' (IDA, page 138). On review of SSD 7684, it appears that no dedication of public space is proposed, rather it is the embellishment of existing public space through landscape works to be undertaken by the Proponent of SSD 7784. The net public benefit of the proposed landscape works should be the subject of further consideration should they form the benchmark of how to measure '*worthwhile public benefit*' (IDA, page 138).

The Proponent has undertaken a benchmarking analysis, as detailed in **section 2.7.5** to compare Mod 13 to other recently approved State significant developments and found that the extent of the public benefit offered on recently approved State significant projects does not appear to form a reasonable basis from which to suggest that the Proposal does '*[n]ot result in public benefit near the order needed to offset and/or justify its negative impacts*'. The benchmarking found that the Mod 13 public benefit offer is more substantial; and

- Further, when determining whether the Proposal is in the public interest, on review of case law, a broad range of matters have been held to be capable of forming public interest such as:
 - environmentally sustainable design: *Minister v Planning v Walker* (2008) 161 LGERA 423
 - community submissions. However, the Court held in *New Century Developments Pty Limited v Baulkham Hills Shire Council* [2003] NSWLEC 154, at [61], that the consent authority must not 'blindly accept' the subjective fears and concerns expressed in public submissions and that, while those views must be taken into consideration when looking at the public interest, there must be evidence that can be objectively assessed before a finding can be made of an adverse effect upon the amenity of the area (with reference to *Dixon v Burwood Council* [2002] NSWLEC 190).
 - For a Part 3A project, the requirement for the Minister to consider the public interest '*operates at a very high level of generality, and does not of itself require that regard be had to any particular aspect of the public interest*' (*Minister v Planning v Walker* (2008) 161 LGERA 423, 451 [42] (Hodgson J)).

The above needs to be considered, when determining the adequacy of public benefit arising from the Proposal, and whether it is sufficient to demonstrate that the Proposal is in the public interest.

4. RESPONSE TO PUBLIC MEETING SUBMISSIONS

The following provides a response to or clarification of issues raised in the IPC public meeting presentations. The response addresses only matters relevant to the IPC's consideration of the Proposal in planning terms. The comments attributed below are paraphrased in the interests of brevity. Where a speaker is not referenced, we consider the matters raised are otherwise addressed in the body of this report or in a response to another speaker.

We do not identify the speaker other than by presentation number as listed in the Agenda for the public meeting. The response below is not meant to be a response to all issues raised in presentations rather it is a response to key planning issues not otherwise addressed in this report and to correct errors or respond to statements in the presentations which we consider to be incorrect.

We acknowledge the speakers in support of the Proposal and make no further comment on the opinions expressed to the IPC.

Table 4 – Response to the IPC Public Meeting

Speaker #	Presenter's Comment	Response
2	<ul style="list-style-type: none"> The Proposal as presented has a 'lack of genuine public benefit'. 	<ul style="list-style-type: none"> This position was also presented in the Department's AR. However, there is no quantification of what constitutes "<i>genuine public benefit</i>" by the Department or others. Section 2.7.5 of this report provides a comparison of public benefit delivered by similar scale projects in the Eastern City Harbour CBD and this has demonstrated that the quantum, form and value of the public benefit being delivered under Mod 13 is significantly greater than other approved projects.
	<ul style="list-style-type: none"> Proposal is reliant on provision of Metro West. 	<ul style="list-style-type: none"> As demonstrated in the Amended TIA (RtS, Appendix J) the Proposal does not rely on the provision of Metro West.
	<ul style="list-style-type: none"> Doesn't support the Proponent's Global waterfront precinct concept. 	<ul style="list-style-type: none"> The Proponent's use of the term 'Global Waterfront Precinct' was for consistency, ease of reference and to provide clarity. The term was used in the Urban Context Report (RtS, Appendix N) to describe the emerging character of the waterfront land enclosing the Darling Harbour waterbody in the Harbour CBD. This was to avoid confusion due to inconsistent use of how Darling Harbour was referred to in planning documentation. It was not used to justify the Proposal. Refer section 3.1.1 for further commentary.

Speaker #	Presenter's Comment	Response
	<ul style="list-style-type: none"> The Proponent has never submitted a request for the Site to be listed as a State significant precinct. 	<ul style="list-style-type: none"> The relevance of this is unclear in the context of the application before the IPC for determination and the objective or need for such a listing is not clear. The Star is a development of State significance as acknowledged by the declaration of Major Project status for the current development on Site.
	<ul style="list-style-type: none"> That the Bays Precinct is too far away to be relied on (i.e. 700m) to allow for a tall building in this location. 	<ul style="list-style-type: none"> The Bays Precinct is relevant to the site's context located in the Innovation Corridor in the ECDP. The proposed built form context is consistent with the established strategic context of the site, the emerging built form context of the Darling Harbour Precinct and the previously supported built form outcomes for the Darling Harbour Precinct by the Department. The proposed tower form would appropriately mark the northern extent of the Darling Harbour Precinct.
	<ul style="list-style-type: none"> The Proposal is not appropriate in its context. 	<ul style="list-style-type: none"> The Urban Design Context Report has demonstrated that the Proposal is appropriate in the context of the Site and the locality. The physical context of the Proposal is that it is to be located on a site developed as an existing Casino and Integrated Tourist Resort where the site is located within the Darling Harbour Precinct of the Innovation Corridor of the Eastern City Harbour CBD.
	<ul style="list-style-type: none"> Not in the public interest as fails to satisfy objectives (c) and (g) of Section 3.1 of the EP&A Act 1979. 	<ul style="list-style-type: none"> As demonstrated in Section 5.2 of this report, the EAR and the RtS Report the Proposal will result in the orderly and economic use and development of the Site, is a development that exhibits design excellence and will result in limited additional environmental impact.
3	<ul style="list-style-type: none"> The modification application places the credibility of planning of system at stake 	<ul style="list-style-type: none"> As accepted by the Department and detailed in section 2.1. The approval pathway is valid.
	<ul style="list-style-type: none"> The vision for Pymont is not high-rise 	<ul style="list-style-type: none"> The Site's strategic merit is described in section 3.1.

Speaker #	Presenter's Comment	Response
	<ul style="list-style-type: none"> Ad hoc decisions and the interests of 'powerful people' 	<ul style="list-style-type: none"> The scope of the Proposal has been subject to extensive investigation and review and makes a demonstrable contribution to the strategic vision for Sydney to be a destination for tourism and Darling Harbour, a major entertainment precinct consistent with the objectives of the Eastern City District Plan, 2018. The design of the Ritz-Carlton Hotel and Residential tower and associated works considered the influence of current approved and constructed development within the surrounding localities Darling Harbour, Barangaroo and the Bays Precinct. These developments have and will continue to, influence the built form character of the area and the Western Harbour into the future. Section 7 of the EAR addressed the strategic planning directions of the City of Sydney and the Greater Sydney Commission. The Proposal is consistent with the strategic vision for the locality as demonstrated. There is nothing 'ad hoc' about the process that this Proposal has undergone. The design excellence process commenced back in 2016, the extensive pre-lodgement design and test of adequacy phases lasted 22 months to get to the point of lodgement. Their project timeframe has not been expedited nor has the process been biased toward the Proponent in any way.
	<ul style="list-style-type: none"> Object on basis of Part 3A pathway, community views, undermine public faith in the planning system, grounded in fairness, planning controls. 	<ul style="list-style-type: none"> As accepted by the Department and detailed in section 2.1. The approval pathway is valid.
5	<ul style="list-style-type: none"> Precedent for further tower development 	<ul style="list-style-type: none"> As detailed in the Urban Context Report and this report the Site is unique in its historical and current context and will not set a precedent for further tower development. Any proposal for a tower development in the Darling Harbour Precinct or elsewhere in the Innovation Corridor of the Eastern Harbour City would be considered in it's relevant context.

Speaker #	Presenter's Comment	Response
	<ul style="list-style-type: none"> The Site is located in Pymont – not Darling Harbour 	<ul style="list-style-type: none"> As demonstrated in the Urban Context Report and this report the site is located within the Darling Harbour Precinct.
6	<ul style="list-style-type: none"> The Star is a unique Site due to its size 30 storeys of apartments – inequitable 	<ul style="list-style-type: none"> This comment is supported. The basis for this statement was not explained in the presentation and is at odds with other mixed use hotel/residential developments approved elsewhere in the Eastern Harbour City CBD.
9	<ul style="list-style-type: none"> Should be new DA Pressure on suburb through density proposed 	<ul style="list-style-type: none"> The approval pathway has been confirmed by the Department as noted above. The EAR and RtS have demonstrated the availability of infrastructure, improvements to traffic management and localised infrastructure improvements in relation to stormwater management.
13	<ul style="list-style-type: none"> SEGL 'casino' – not adding value to the economy. Critical of the gaming focus of the site and the Proposal. Return to a sense of history – Pymont and Darling Harbour District – not just providing entertainment playground. 	<ul style="list-style-type: none"> The Economic Assessment submitted with the EAR details the economic benefit to the NSW economy to be delivered by the Proposal. The Proposal does not increase gaming floorspace on the Site. As demonstrated in the EAR, the RtS Report and this report the Darling Harbour Precinct is concerned with the promotion of tourism and entertainment.
15	<ul style="list-style-type: none"> Wind – impacts to residential / sunlight impacts Heritage – SLEP 2012 - sensitive receiver in EAR Overshadowing - 2 hours of direct morning sunlight during winter 	<ul style="list-style-type: none"> The potential impacts to the Speaker dwelling have been addressed in the RtS Report. The HIA has considered the potential impact of the Proposal on the Heritage Conservation Area and items of local heritage significance and has found not adverse impact. The extent and limited nature of impact to Solar access was addressed in the RtS Report.

Speaker #	Presenter's Comment	Response
	<ul style="list-style-type: none"> Noise – Taxi rank Odour F+B on JBR - Seek closure of JBR F+B before 10pm 	<ul style="list-style-type: none"> An element of the Proposal is the relocation of taxi queuing areas into the Site as a response to concerns raised by residents. The relocation of the taxi queuing into the site will remove odour from taxis waiting in Jones Bay Road. The F&B space that fronted Jones Bay Road in the original submission was removed in the RtS Report and PPR in response to concerns raised by neighbours.
16	<ul style="list-style-type: none"> Object to lightspill – 57 event displays Objects to Neighbourhood Centre Construction impacts 	<ul style="list-style-type: none"> The Department's AR identified that 57 special lighting events was excessive and proposed should Mod 13 be approved that the number of events be reduced. The Proponent would accept a condition to this effect. This report and the EAR and RtS Report demonstrate the community benefits that will be delivered by the proposed Neighbourhood Centre. Construction impacts can be managed through the preparation of a Construction Management Plan and a Construction Traffic Management Plan prepared in consultation with the TfNSW CBD Co-ordination unit.
20	<ul style="list-style-type: none"> Context – Pyrmont vs CBD Capacity of existing infrastructure in Pyrmont Reflectivity impacts (related to Crown and CBD and car lights) 	<ul style="list-style-type: none"> The Site's context has been discussed in detail in this report. Infrastructure capacity and has been addressed in the EAR and RtS Report. Reflectivity impacts and mitigation measures were addressed in the Solar Reflective Report submitted with the EAR
23	<ul style="list-style-type: none"> Pyrmont has become 'slow moving polluted car park' Loading dock traffic – existing 	<ul style="list-style-type: none"> As demonstrated in the TIA and Addendum TIA the proposed amendments to the site access in Pyrmont Street and relocation of taxi queue areas will improve local traffic flows. Mod 13 includes upgrades to loading dock facilities within the Site.

Speaker #	Presenter's Comment	Response
	<ul style="list-style-type: none"> • 'Gambling' casino floor space • Event traffic and impacts. 	<ul style="list-style-type: none"> • No additional gaming floorspace is proposed under Mod 13. • Traffic management relating to special events is co-ordinated with the Council.

5. RESPONSE TO THE DEPARTMENT'S RECOMMENDATION

The Department's AR acknowledges:

- Mod 13 was lodged in-time under the Transitional arrangements for Part 3A Projects;
- Mod 13 is a modification application under section 75W of the EP&A Act 1979;
- The correct planning pathway has been used for the Proposal; and
- The range of land uses can be considered and there is no objection raised in relation to residential development on the Site.

As delegate for the Minister for Planning under delegation executed on 14 September 2015, the IPC should approve the request to modify the Project Approval MP08_0098.

5.1. KEY ISSUES

The Department cited four 'key issues' for consideration in assessing the request to modify the Project Approval MP08_0098. These distil to:

1. Strategic justification;
2. Built form;
 - a. Visual impacts (public); and
 - b. Impacts on amenity of the surrounding area (overshadowing, private view loss and wind);
3. Design excellence; and
4. Public benefit, contributions and the public interest.

The Proponent's response to the Department's key issues is summarised below and is further demonstrated in **section 3.0** of this report. As demonstrated in the EAR, the RtS and this submission Mod 13 with or without the lowering of the maximum height of the tower to RL 213 will result in limited additional environmental impact. In summary;

1. **Strategic Justification - section 3.1** - the strategic justification for the Proposal is provided with reference to the Greater Sydney Commissions Greater Sydney Region Plan, 2018 and Eastern City District Plan, 2018.
2. **Built Form - section 3.2** – the visual impacts (public and private), overshadowing and wind impacts of the Proposal have been considered cumulatively to result in an *acceptable* building form. Having regard to the impact assessments submitted with the Proposal, the following is noted:
 - With regard to visual impact of the Proposal as viewed from public vantage points, the Department's AR and the IDA on which it relies '*dismisses the conclusions of the comprehensive VIA undertaken by Architectus and the conclusions of the peer review of the VIA by RLA, in favour of several paragraphs of subjective opinion on the subject of visual impact in the [IDA] which are not supported by any demonstrated methodology of assessment or clear justification*' (the Proponent's VIA Advice, **Appendix B**, page 14). Consistent with the conclusions of the VIA, the visual impacts (public) of the Proposal are 'acceptable' (EAR, Appendix H, page 6);
 - With regard to private view loss, both the Department's report and the VIA are broadly consistent in terms of assessment of individual views, however there are some differences with the Department having a slightly higher categorisation of three views (private residence 21, 22 and 12). The VIA considers the Proposal appropriate and acceptable in terms of its impact on private views and it is considered that the Department's assessment in concluding that the impacts of the Proposal on private views is not acceptable, has not correctly followed Step 4 of the 'Tenacity' principle;

- With regard to the overshadowing of public space the following is noted with regard to the Department's AR:
 - Overshadowing to Pymont Bridge is minor;
 - Overshadowing to Pymont Bay Park is minor;
 - Overshadowing to Union Square is moderate (or in the view of FJMT, minor if the RL 213 building height is considered);
 - Overshadowing to Clifftop Walk is minor; and
- the wind impacts were considered 'acceptable' by the Department (Department's AR, page 60).

Accordingly, the cumulative environmental impact associated with the built form is considered to be limited.

3. **Design Excellence - section 3.3** of this report, Design Excellence is addressed, demonstrating:

- The Proposal formed the subject of expert independent design scrutiny by the DRP, to arrive at a tall tower form in the exact location proposed. The Proposal exhibits architectural design excellence.
- The Proposal responds to the '*Urban rationale*' and '*the idea of the Pymont Peninsula becoming more integrated to the city centre of Sydney*' as acknowledged '*in the work of the Greater Sydney Commission and related planning documents*'. The Proposal considers the urban context, general character and the visual impacts, as well as the emerging character of areas to the west of the Eastern City Harbour CBD.
- The DRP confirmed in writing that '*the design remains faithful to that selected as the winner of the Design Excellence Competition*'. The Proposal demonstrates design excellence to the satisfaction of the DRP.

4. **Public Benefit, Contributions and the Public Interest - section 3.4** of this report, public benefit is demonstrated and additional information provided for the consideration of the IPC.

The Proponent has undertaken a benchmarking analysis, as detailed in **section 2.7.5** to compare Mod 13 to other recently approved State significant developments and found that the extent of the public benefit offered on recently approved State significant projects does not appear to form a reasonable basis on which to suggest that the Proposal does '*Not result in public benefit near the order needed to offset and/or justify its negative impacts*' given:

- the benchmarking found that the Mod 13 public benefit offer is more substantial than other approved State significant developments; and
- the environmental impacts of Mod 13 have been quantified and found to be limited.

The Department's measure of public benefit and the weight applied in determining whether the Proposal is in the public interest, needs to be scrutinised in the IPC's decision-making process.

5.2. RECOMMENDATION

The Proponent's response to the Department's Recommendation and its key assessment issues is set out below:

1. **The Proposal is consistent with current strategic planning for the Site and the Darling Harbour Precinct in which it is located and it will promote the orderly and economic use and development of the Site in accordance with object (c) Part 1, Section 1.3 of the EP&A Act 1979.**

The Site has been developed by The Star, an integrated tourist and entertainment complex which includes four- and five-star hotel accommodation, the renowned Lyric theatre and MUEF facility, casino operations, bars, restaurants and nightclubs. It operates as an integrated resort which has transformed the old Pymont Power Station Site into a first-class facility.

The Proposal presented under Mod 13 is the next step in the evolution of the Site into a world class tourist and entertainment destination. The Proposal includes:

- Construction of a RL 237 tower including podium and basement to provide for:
 - 220 Ritz-Carlton hotel rooms;
 - 204 residential apartments;
 - 204 basement car parking spaces; and
 - Five level Neighbourhood centre within the podium.
- Construction of an extension above The Star Pirrama Road frontage to provide for a landscaped space and amenities for The Star, hotel and residential uses;
- Changes to the local traffic arrangements and upgrades to on Site loading docks to improve circulation in and around the Site;
- Up to 15 new or refurbished food and drink outlets within the Site at a range of price points;
- General upgrades to back of house and staff facilities including bike parking and end-of-trip facilities;
- An overall increase in gross floor area of 48,840 m² (to 189,040 m²);
- Internal and external amendments to the existing buildings, including facade works, amendments to tenancies, roofs, awnings and associated works; and
- Stormwater, public domain and landscaping upgrades.

The package of Mod 13 works as detailed in section 2.0 of the EAR and summarised above have an estimated value of \$529,398,061.91 which will lead to the creation of 754 incremental FTE jobs during construction and operation within The Star on commissioning and occupation of the works, in addition to any economic multiplier that will be generated in the NSW economy.

The tower and podium have a footprint of approximately of 3,409m², which equates to 8.7 percent of the overall Site area of 39,206 m² and presents as positive built form outcome for the Site integrating improvements to the public domain and upgrades at street level of the façade treatment in Pirrama and Jones Bay Roads.

The Proposal involves significant economic investment in the Site and will deliver economic and social benefits to the local community and the people of New South Wales (NSW).

The proposed Ritz Carlton tower and other external works have been integrated into the overall design concept for the Site and will deliver new and upgraded facilities on Site with minimal impacts on Site operations and resulting in minimal additional environmental impact beyond that which arises from the presently approved development.

2. **That the Proposal achieves object (g) Part 1, Section 1.3 of the EP&A Act 1979 as it is a development that exhibits design excellence and protects the amenity of the built environment. While the Proposal will introduce a new tower form to the Site and the Darling Harbour precinct. The tower is not inconsistent with its immediate context nor will it result in unacceptable visual impacts.**

The Ritz Carlton tower was designed as part of an alternative design excellence process. The proposed tower and associated works were acknowledged by the Design Review Panel as being a proposal that exhibited design excellence and that:

The Urban Rationale has been well covered in the additional documentation presented...(RtS Report, page 37).

The idea of the Pyrmont Peninsula becoming more integrated to the city centre of Sydney is acknowledged in the work of the Greater Sydney Commission and related planning documents (RtS Report, page 37)

The reference from the DRP in regard to *'the work of the Greater Sydney Commission'* is the Greater Sydney Region Plan and associated Eastern City District Plan, to which reference has been made in the Strategic Justification (section 3.1 of this report).

The Proponent has considered how the Proposal relates to planning for other nearby areas in the EAR, RtS and suite of associated technical assessments submitted. The DRP acknowledges that planned strategic context of the Greater Sydney Commission and Urban Rationale for the Proposal and on this consideration confirmed in writing that *'the design remains faithful to that selected as the winner of the Design Excellence Competition'*.

The immediate context of the Proposal is that it is a modification to an existing integrated tourist and entertainment complex in the Darling Harbour Precinct of the Harbour CBD to deliver a world class facility.

The documentation submitted in support of Mod 13 as identified and discussed in this report has assessed the potential impacts of the Proposal on the natural and built environment and identified mitigation measures were required to manage potential impacts. While the lower levels of the proposed tower and ribbon elements will result in view loss this impact would otherwise arise from a SLEP 2012 height compliant built form on Site. The impacted views are from views across the Site and the views lost are not of iconic significance and the Proposal has been designed to retain some views through the Site.

The Proposal will be read as part of The Star development which is located within the Darling Harbour Precinct which has been identified in the Eastern City District Plan.

The Site is not part of the Harris Street Conservation Area and is not part of nor representative of the low to medium scale residential development located to the west of the Site.

While the tower form will be visible from public spaces this does not need to be considered a negative outcome. The Department has previously considered the height and prominence of a tower built form as the appropriate marker for the northern extent of the Darling Harbour Precinct (ICC Hotel as stated on page 38 of the Assessment Report). The Star forms the northern extent of the Darling Harbour Precinct as identified in the Eastern City District Plan.

The Site is identified under *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005* (SREP Sydney Harbour Catchment) as being located within the Foreshore and Waterways Area of that policy. The aims of SREP Sydney Harbour Catchment relevant to the Proposal include inter alia:

- (b) to ensure a healthy, sustainable environment on land and water,*
- (c) to achieve a high quality and ecologically sustainable urban environment,*
- (d) to ensure a prosperous working harbour and an effective transport corridor,*
- (e) to encourage a culturally rich and vibrant place for people,*
- (f) to ensure accessibility to and along Sydney Harbour and its foreshores*

The Proposal:

- incorporates stormwater infrastructure upgrades which will improve the urban environment around the Site and reduce impacts of localised flooding and ponding of water due to road geometry;
- does not propose works in the harbour and as such will not alter or impact the role of the harbour as a working harbour and will not alter accessibility to and along the foreshores of Sydney Harbour;
- will deliver a high quality and ecologically sustainable urban environment within and surrounding the Site and is a development that exhibits design excellence as determined by the design excellence panel; and
- will deliver a world class Integrated tourist and entertainment facility and high-quality residential accommodation that will be a culturally rich and vibrant place for people to work in, visit and to live.

The physical context of the Proposal is that it is to be located on a Site developed as an existing Casino and Integrated Tourist Resort where the Site is located within the Darling Harbour Precinct of the Innovation Corridor of the Eastern City Harbour CBD. The Proposal achieves the Principles nominated in clause (2) (a) and (b) of the Sydney Harbour SREP Harbour Catchments 2005 as discussed below:

- while it introduces a new tower form to the Site that tower form does not physically impact nor encroach upon Sydney Harbour which is a public resource and the harbour is not relied upon by the Proponent to derive any private benefit;
- the Proposal will introduce a new built form to the Darling Harbour Precinct which is part of the Sydney Harbour catchment. The tower form will change to views of the precinct when viewed from within and adjacent to the Harbour. This change in view from the Harbour in and of itself is not negative impact. The proposed tower form has been designed to exhibit design excellence, will be compatible with the urban character of the Darling Harbour Precinct which is characterised by lower level podiums and tower forms above and will integrate with the existing architecture of The Star. The Department has previously supported a height and prominence of a tower built form as the appropriate marker of the northern end of the Darling Harbour Precinct (ICC Hotel as stated on page 38 of the Assessment Report). The Star forms the northern extent of the Darling Harbour Precinct as identified in the Eastern City District Plan.
- while there will be limited view loss from private residences this is not of iconic views within the harbour and an outlook from the dwellings will still be maintained;
- while the Proposal will result in overshadowing of public and private spaces, the majority of the shadow is cast across the Site and does not adversely impact Sydney Harbour or its foreshores. The minor overshadowing of public spaces can be mitigated by the reduction of the overall height of the tower form to RL 213; and
- the Proposal delivers significant public good in the form of a Neighbourhood Centre for operated and maintained by the Proponent until 2093 at a cost in present day value of \$80M (excluding fit out and construction). This public good is an integral part of the Proposal and sits in balance with the overall development proposed under Mod 13.

3. **The *Veloshin* Principles do not apply to a Part 3A Major Project and should not be used when determining if the Proposal is 'appropriate for its context'**

It appears that the Department has misunderstood the nature of the *Veloshin* principles. As planning principles, they are simply a statement of matters which *may* be considered in making a planning decision. Senior Commissioner Roseth specifically noted that the planning principles were established 'to guide how [height, bulk and character] *may* be assessed' (emphasis added). Planning principles are not authoritative, legally binding principles laid down by a judge which must be applied by a decision-maker.

Consequently, there appears to be no basis for the Department's assertion that, as no planning controls (for example, SLEP 2012) apply, it follows that the decision maker should then apply the *Veloshin* principles, in particular Principle 4, in considering the context or merit of the Proposal. The Department, in applying Principle 4 in this way, has asked itself the wrong question.

It is important to note that the *Veloshin* principles do not apply in the context of a Part 3A Project. *Veloshin* concerned a development that was subject to a local environmental plan and various development control plans. In that case, the relevant Council opposed the development the subject of a development application on the basis that 'excessive floor space, height, bulk and scale of the proposed development are unsuitable for the subject site'. In considering that argument, Roseth SC noted how '[t]he debate about height and bulk can be meaningful only against the background of local planning controls' and that such instruments and policies are usually aimed at balancing adverse impact on neighbours on the one hand, and achieving a certain urban character on the other hand.

It was in the context of this discussion about consideration of local environmental controls that Roseth SC set out the *Veloshin* principles in circumstances that presupposed the applicability of the local controls. This is in contrast to the circumstances of Mod 13, a situation where local environmental controls exist, but have been rendered *inapplicable* by the operation of Part 3A of the EP&A Act 1979. This situation is not what the words 'there is an absence of planning controls' in the

fourth *Veloshin* principle are intended to capture. The fourth *Veloshin* question of '[d]oes the proposal look appropriate in its context' does not arise for consideration for a Part 3A Project. Supporting this view is the fact that there is no case law considering the *Veloshin* principles in the context of Part 3A of the EP&A Act 1979. In any event, even if the *Veloshin* principles do not strictly apply but the IPC chooses to have regard to the fourth *Veloshin* principle as part of its general merits assessment, it is quite clear from Urban Context Report (RtS, Appendix N) that the answer to this question is 'yes' and that the proposed tower is appropriate in the context of the site and the Darling Harbour Precinct.

4. The Proposal will introduce a new tower form to the Site and The Star. That tower form and the resultant development on Site is compatible with the current and future context of the Site.

The Department acknowledges the proposal is consistent with the strategic directions for the site as established by the GSC in the Eastern City District Plan as referenced in section 3.1 of the Assessment Report. The Eastern City District Plan identifies:

- The strategic context of the site as within the Darling Harbour Precinct of the Innovation Corridor of the Eastern City Harbour CBD (Eastern City District Plan, 2018, page 63).
- The character of Pyrmont as *'the city high-rise areas of Pyrmont and the Sydney CBD'* (Eastern City District Plan, 2018, page 46).

However, the Department then goes on to suggest that the Proponents justification for a tower:

- *'Relies on matters which have not been committed to including a metro station at Pyrmont and future tall tower within the Bays Precinct'*; and
- *'Fails to adequately respond to the local character of Pyrmont'*.

The Department states it considers *'a more reasonable built form context for the site is one defined by the established area of Pyrmont, separate to the strategically identified precincts of Barangaroo, the CBD and Darling Harbour'* (Assessment Report page iv – strategic justification).

The 100-page Urban Context Report prepared by the proponent was prepared prior to the Design Excellence Process commencing, and both the Central Sydney Strategy and the Eastern City District Plan being released. It considers a thorough place and character analysis of the context of the site across three key elements being: four (4) scales (including Sydney CBD, Pyrmont and the Bays Precinct), three (3) timeframes and six (6) themes. The Urban Context Report considers the characteristics of the site in relation to its context across all these elements to as to establish the appropriate context for the proposal.

Upon completion of the Design Excellence Process, the Design Review Panel acknowledged the intent by the Proponent to formally lodge Modification 13. In this context the Design Review Panel advised the Project Team of the importance of the following matters being considered in relation to urban context:

'...a clear demonstration of how the project relates to the planning for other nearby areas to the West of the traditional CBD, including for example Darling Harbour and the Bays Precinct (Fish market Site and White Bay etc.). The changing character of both the Sydney CBD and areas to the West was acknowledged' (Appendix D, page 12)

The Urban Context Report was updated following the Design Excellence Process and prior to TOA to include review and reference to strategic planning documents which were released during the timeframes the formal application was prepared (as requested by the Department). This included review of the *Greater Sydney Region Plan – A Metropolis of Three Cities, the Eastern City District Plan and the Central Sydney Planning Strategy*.

The Urban Context Report considers proposed future growth, infrastructure investment and strategic planning directions as outlined within these plans. This includes acknowledgement of:

- The Bays Precinct Transformation Plan as a current state-led initiative (identified in the Eastern City District Plan, 2018, page 39).
- The Bays Precinct as a long term growth area (identified in the Central Sydney Planning Strategy, 2016, Page 222-224).
- Sydney Metro West as committed subject to final business case and funding (identified in Eastern City District Plan, 2018, page 74).
- We also note in the recently released Local Strategic Planning Statement prepared by the City of Sydney, the City of Sydney recommends a Metro West station at Pyrmont. (LSPS, July 2019, page 69).

The proposal does speak to specific heights of development at the Bays Precinct nor is it reliant on a metro station at Pyrmont. It includes these considerations as part of the future context assessment.

The analysis concludes that the characteristics of the site, including landform, built form and use, are consistent with the characteristics of the Darling Harbour Precinct, and have been throughout its history. It also demonstrates these characteristics are distinctly different to the characteristics of the established low-medium rise residential areas of Pyrmont nearby the site. These findings are consistent with the strategic directions of the site as set out in the ECDP that the site is part of the Darling Harbour Precinct. It also established that the character of the Darling Harbour Precinct and that of the *'established area of Pyrmont'* are different.

The Departments 'Local Character and Place Guide' (released in February 2019) makes the following statements in relation to local character, place and identifying boundaries for a character area.

'What is local character?': Local character is distinctive, it differentiates one area apart from another. (Local Character and Place Guideline, Feb 2019, page 7)

'What is place?': Place is the layout, division and built form of built environments – its patterns, landscape, density, development, land use and mix, these aspects set the groundwork for places to flourish. (Local Character and Place Guideline, Feb 2019, page 7)

'Identifying boundaries': The physical boundaries of a character area could be natural features, open space, thoroughfares, infrastructure, change in use (commercial to residential) or special features. There may be a change in character where one area can be characterised differently from an adjacent area.' (Local Character and Place Guideline, Feb 2019, page 21)

In considering place and character, simply adjoining a locality does not make it part of a character area. Therefore proximity to Pyrmont does not necessarily mean this is *'a more reasonable built form context'*.

The proposed built form context is consistent with the established strategic context of the site, the emerging built form context of the Darling Harbour Precinct and the previously supported built form outcomes for the Darling Harbour Precinct by the Department as follows:

- The Department has previously supported height and prominence of a tower built form as an appropriate response to mark the northern extent of the Darling Harbour Precinct (ICC Hotel as stated on page 38 of the Assessment Report).
- The Star is identified as being located within the Darling Harbour Precinct of the Innovation Corridor of the Eastern City Harbour CBD. The Star forms the northern most site of the Darling Harbour Precinct which is industrial in scale and not located on the finger wharves.
- The proposed tower form of The Star would appropriately mark the northern extent of the Darling Harbour Precinct with height and prominence.
- The impacts of the proposal can be mitigated.

5. That the Proposal is in the Public Interest

Section 4.15(1)(e) identifies 'the public interest' as a general matter for consideration in the determination of a development application.

Neither the EP&A Act 1979 nor the EP&A Regulations 2000 defines the term 'public interest', but various judicial decisions have illustrated what may constitute public interest. Pain J found that "*the public interest is a broad concept*" (*Teys Australia Southern Pty Ltd v Burns* (2015) 206 LGERA 186, 228 [97]).

The concept is also considered broadly in other judgments. A consent authority is "*able to have broad regard to what might constitute the public interest*" (*Poonsup v Ku-Ring-Gai Council* [2010] NSWLEC 1304, 46 (Moore SC and Morris C)) and "*may range widely in the search for material as to the public interest*" (*Terrace Towers Holdings Pty Ltd v Sutherland Shire Council* (2003) 129 LGERA 195, 210 [81] (Mason P)). For example, "*matters relevant to the public interest touching a particular application are not confined to those appearing in published environmental planning instruments, draft or final*" (*Terrace Towers*, 209 [81] (Mason P)).

A broad range of matters have been held to being capable of comprising the public interest such as:

- environmentally sustainable design: *Minister v Planning v Walker* (2008) 161 LGERA 423;
- community submissions. However, the Court held in *New Century Developments Pty Limited v Baulkham Hills Shire Council* [2003] NSWLEC 154, at [61], that the consent authority must not "blindly accept" the subjective fears and concerns expressed in public submissions and that, while those views must be taken into consideration when looking at the public interest, there must be evidence that can be objectively assessed before a finding can be made of an adverse effect upon the amenity of the area (with reference to *Dixon v Burwood Council* [2002] NSWLEC 190); and
- For a Part 3A project, the requirement for the Minister to consider the public interest "operates at a very high level of generality, and does not of itself require that regard be had to any particular aspect of the public interest" (*Minister v Planning v Walker* (2008) 161 LGERA 423, 451 [42] (Hodgson J)).

As delegate for the Minister for Planning under delegation executed on 14 September 2015, the Independent Planning Commission should approve the request to modify the Project Approval MP08_0098.

DISCLAIMER

This report is dated 6 September 2019 and incorporates information and events up to that date only and excludes any information arising, or event occurring, after that date which may affect the validity of Urbis Pty Ltd's (**Urbis**) opinion in this report. Urbis prepared this report on the instructions, and for the benefit only, of The Star Entertainment Group Limited (**Instructing Party**) for the purpose of Response (**Purpose**) and not for any other purpose or use. To the extent permitted by applicable law, Urbis expressly disclaims all liability, whether direct or indirect, to the Instructing Party which relies or purports to rely on this report for any purpose other than the Purpose, and to any other person which relies or purports to rely on this report for any purpose whatsoever (including the Purpose).

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This report has been prepared with due care and diligence by Urbis and the statements and opinions given by Urbis in this report are given in good faith and in the reasonable belief that they are correct and not misleading, subject to the limitations above.

Appendix A CORRESPONDENCE TO IPC – NEIGHBOURHOOD CENTRE

Appendix B

PROPONENT'S VISUAL IMPACT ADVICE

Appendix C CONDITIONS REVIEW LETTER

Appendix D

DESIGN EXCELLENCE REPORT AND ENDORSEMENT LETTER

Appendix E

CORRESPONDENCE TO THE DEPARTMENT WITH THE DESIGN EXCELLENCE BRIEF

Appendix F PROPONENT'S URBAN DESIGN ADVICE

