



20 November 2019

Star Casino Redevelopment – MP 08_0098 (MOD 13)

1. INTRODUCTION

1. On 25 July 2019, the NSW Independent Planning Commission (**Commission**) received from the NSW Department of Planning Industry and Environment (**Department**) a modification request, pursuant to section 75W (s75W) of the *Environmental Planning and Assessment Act 1979 (EP&A Act)*, from Star Entertainment Group Limited (**the Proponent**) to modify the existing Major Project Approval for alterations and additions to the Star City Casino Entertainment Complex and Darling Hotel Development (MP 08_0098) (Mod 13) (**Application**).
2. Major Project Approval MP 08_0098 for alterations and additions to the Star City Casino Complex was originally granted on 27 January 2009 by the former Minister for Planning (the **Major Project Approval**). The Major Project Approval included the construction of a 10-storey hotel above a 3 storey podium, additional basement car parking, redevelopment of the eastern frontage and works to the exterior.
3. On 1 March 2018, the EP&A Act was amended and the project became a transitional Part 3A project under clause 2(1) Schedule 2 of the *Environmental Planning & Assessment (Savings, Transitional and Other Provisions) Regulation 2017 (ST&OP Regulation)*. The Commission is the consent authority in respect of such transitional Part 3A projects under the Minister for Planning's (**Minister**) delegation of that function to the former Planning Assessment Commission by instrument of delegation dated 14 September 2011. The Commission is to be taken to be the same legal entity as the Planning Assessment Commission, pursuant to clause 7 of the ST&OP Regulation.
4. Under the Minister's delegation dated 14 September 2011, the Commission is the consent authority in respect to the Application because:
 - the Application constitutes a development of a kind declared by an environmental planning instrument as development for which a public authority (other than a Council) is the consent authority
 - the Department received more than 25 submissions from the public objecting to the Application
 - the City of Sydney Council (**Council**) objected to the Application.
5. The ability to modify transitional Part 3A projects under s75W of the EP&A Act has been discontinued, however as the Application was made before 1 March 2018, the provisions of Schedule 2 continue to apply.
6. Separate to the matters related specifically to the Application, the Greater Sydney Commission (**GSC**) was requested to review the planning framework for the Western Harbour Precinct, including Pyrmont, in August 2019. This review was finalised on 30 September 2019 and is discussed further in section 5.8 of this Statement of Reasons.
7. Professor Mary O'Kane AC, Chair of the Commission, nominated Ms Dianne Leeson (Chair), Mr Adrian Pilton, and Mr Stephen O'Connor to constitute the Commission determining the Application.

1.1 Site and locality

- The site is located at 20-80 Pyrmont Street on the Pyrmont Peninsula, to the west of Darling Harbour. It is approximately 550m west of the Sydney Central Business District (CBD), and located in between the three key precincts of Barangaroo, Darling Harbour and the Bays Precinct. The site is located within the City of Sydney Local Government Area (LGA) (see **Figure 1**).

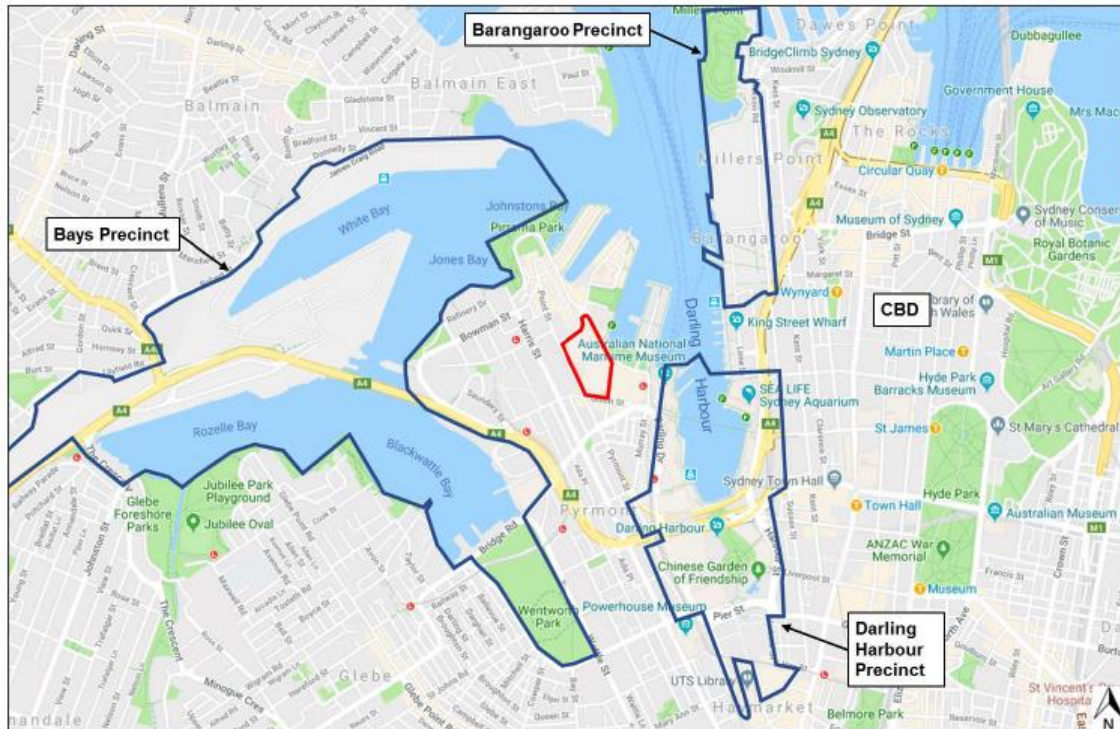


Figure 1 – Site Location (Source: NSW Department of Planning, Industry and Environment)

- The site contains The Star Casino Complex (**The Star Complex**), which comprises casino gaming areas, retail/shops, restaurants, bars, a night club, a multi-use entertainment facility (**MUEF**), the Sydney Lyric Theatre, Astral Hotel and Astral Residences (accommodating 480 hotel rooms/serviced apartments) and basement car parking. The site also contains the former Pyrmont Power Station Administration Building (also referred to as the Sydney Electric Light Station Building (**SELS**)), which is a local heritage item (see **Figure 2**).

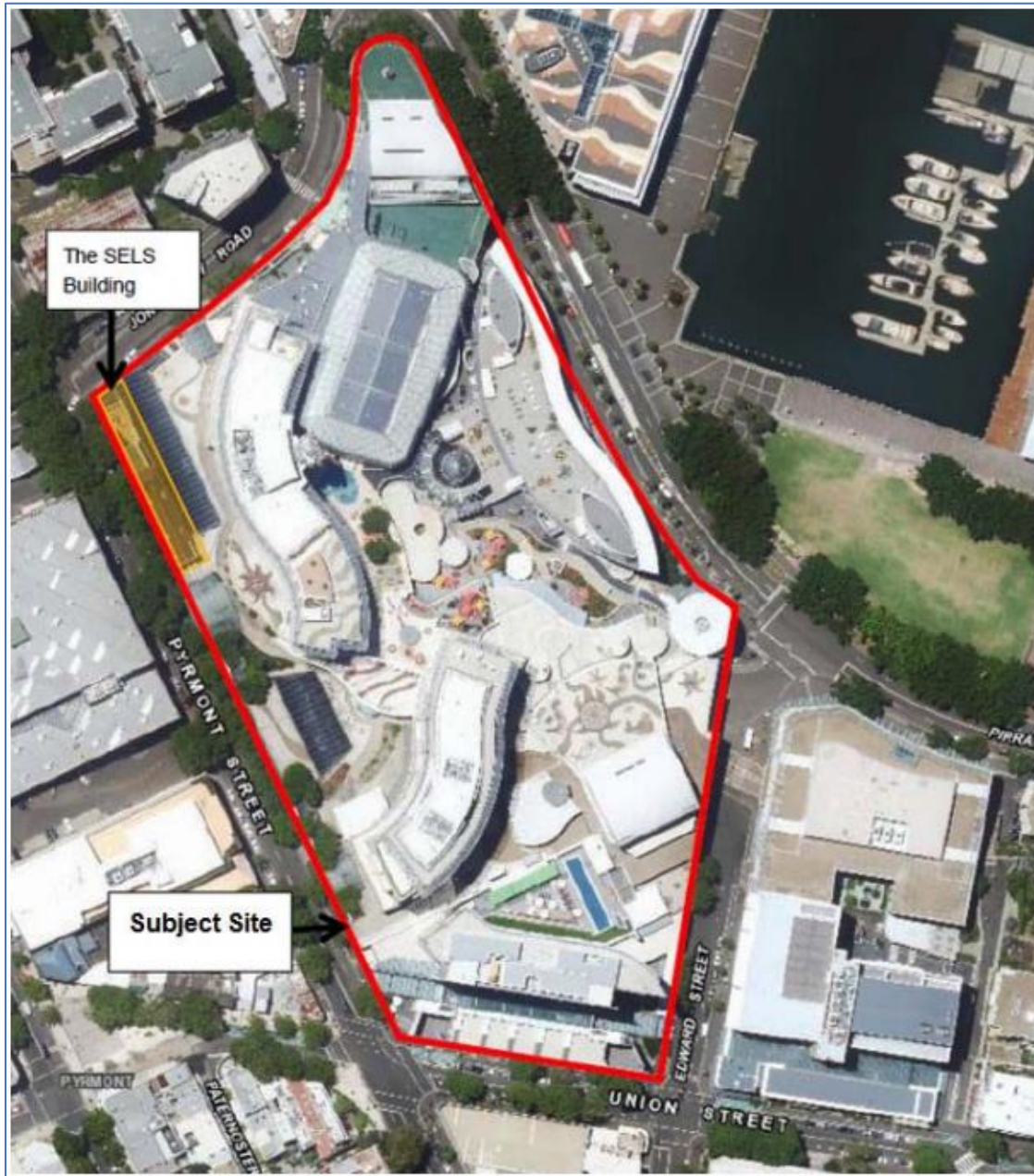


Figure 2 – Site location with respect to the SELS Building (Source: Proponent’s Environmental Assessment Report)

10. The existing building heights within The Star Complex are varied. The tallest building accommodated within The Star Complex reaches 74m (approximately 19-storeys), including the lift motor room.
11. The site is leased by a company within the Star Entertainment Group Limited (**SEGL Group**) of companies from the Independent Liquor and Gaming Authority (**ILGA**).
12. A site inspection was conducted by the Commission on 20 August 2019 (see **section 3.5**) to understand the physical attributes of the site. In addition to inspecting the site, the Commission visited a number of surrounding locations to gain an understanding of the context of the Application. A copy of the site inspection notes is available on the Commission’s website.

1.2 Background to Modification Application

13. The Proponent's (s75W) Environmental Assessment Report (**Proponent's EAR**) provides a historical summary of the Major Project Approval for the site. On 9 December 1994, the then Minister for Planning approved a development application (DA 33/94) for the demolition of the Pymont Power Station and construction of a casino and entertainment complex, including a hotel, serviced apartments, theatres, restaurants, bars, car parking and associated facilities.
14. On 27 January 2009, the then Minister for Planning approved a Part 3A Major Project Application (MP 08_0098) for alterations and additions to The Star Complex, including the construction of a 10 storey hotel (above the podium), redevelopment of the eastern frontage to include retail uses and external amendments to the exterior façade of the existing Casino tower buildings.
15. A total of 14 modifications to MP 08_0098 have been proposed by the Proponent. The Application represents the 13th modification.
16. On 9 February 2016 the Proponent was notified of the Secretary's Environmental Assessment Requirements (**SEARs**) for the Application. The SEARs were subsequently modified and the Proponent re-notified of the SEARs on 9 May 2016. The SEARs stated that *'if the modification application is not exhibited within two years after [9 May 2016] the proponent must consult further with the Secretary in relation to the preparation of the environmental assessment'* and *'[i]f you do not lodge the modification application for the proposal within 2 years of the issue date of these SEARs, you must consult further with the Secretary in relation to the preparation of the application.'*
17. Council contended that the Application contravened this requirement as it was placed on public exhibition on 22 August 2018 (more than two years after 9 May 2016) and there was no evidence to indicate the applicant consulted with the Secretary as required. However, as the Department's Assessment Report (**AR**) notes, on 28 March 2018 the Proponent wrote to the Secretary requesting that the SEARs be reviewed for currency. On 11 May 2018 the Department completed its review of the SEARs and notified the Proponent of the minor amendments to the SEARs to update the relevant policies/guidelines that had come into force since the SEARs were issued in May 2016.
18. According to Department's AR dated July 2019, the Proponent's written correspondence dated 28 March 2018 is considered by the Department to constitute consultation with the Secretary in relation to the environmental assessment of the Application. The Commission is satisfied that the Proponent complied with the requirement in the SEARs to consult further with the Secretary.
19. According to the Proponent's EAR, the Major Project Approval MP 08_0098 has been modified on 13 occasions between March 2009 and October 2017, as outlined in **Table 1**.

Table 1 – Previous Modification Application

Approval / Modification No.	Approval Date	Summary of Modification
MOD 1	3 March 2009	Administrative changes seeking amendments to Conditions A6 and B1 to provide clarity on what constitutes external artwork, lighting and signage, and alterations to the timing of

Approval / Modification No.	Approval Date	Summary of Modification
		compliance requirements for a number of conditions.
MOD 2	25 March 2009	Modification of Condition B2 to clarify the approved hotel height and exclude lift overruns from the height limit.
MOD 3	6 April 2009	Modification of Condition B4 to allow a staged agreement process between the Sydney Metro Authority and the proponent for excavation within the vicinity of the rail easement tunnel easement.
MOD 4	1 December 2009	Modifications to the façade design, consolidation of the porte cochere, reconfiguration of the entry stairs, consolidation of the entry water features to a single water feature, relocation of the gaming entry point, and a 682m ² extension to the entertainment deck.
MOD 5	20 July 2010	Modifications to Conditions A2, A3 and D11 to alter the general project arrangement, reference to revised BCA capability statement and to extend the hours for construction to 3:00pm on Saturdays.
MOD 6	9 September 2009	Deletion of Level 13 of the hotel and increased the floor to ceiling heights on Levels 11 and 12 of the hotel. The application also reduced the number of suites on Level 6 to 12 of the hotel from 14 to 7 on each floor, resulting in an overall reduction in the total number of hotel suites from 252 to 173.
MOD 7	29 July 2011	Construction of the Multiuse Entertainment Facility (MUEF) on the Level 4 rooftop terrace area.
MOD 8	17 November 2010	Partial enclosure of the existing outdoor terrace adjoining the Sovereign Room on Level 3.
MOD 9	13 October 2011	Relocation of the night club to the southern end of Level 2 and relocation of the restaurant to the northern end of Level 2.
MOD 10	16 December 2011	To change the cladding material on the façade of the MUEF from profiled stainless-steel sheeting (as approved under MOD 7), to starfire glass.
MOD 11	17 October 2012	Amend Condition F1 'No Speakers or Outside Music' to permit the playback of background music and DJ/live band/amplified music events on the Level 3 Darling Pool Terrace of the Star Casino.
MOD 12	14 October 2014	Amendment of Condition F1 to allow for the installation and use of speakers on Level 1 Pirrama Road outdoor gaming area and Level 3 Pirrama Road Entertainment Deck and amend Condition F3(2) to allow for permanent 24-

Approval / Modification No.	Approval Date	Summary of Modification
		hours 7 days use of the Level 1 Pirrama outdoor gaming area.
MOD 13	Subject Application currently under assessment	Modification to the project approval to facilitate the delivery of a tower to a maximum of RL 237m, including podium accommodating 220 hotel rooms, 204 residential apartments, basement car parking and a neighbourhood centre. The modification also relates to internal and external amendments to the existing buildings, operational hours, various infrastructure upgrades, signage and the consolidation/surrendering of existing consents.
MOD 14	4 October 2017	Expansion of gaming floor area, enclosing the level 3 terrace and pre-function centre, internal alterations to the Astral Hotel and the SELS building, upgrades to vertical transportation, services and infrastructure, consolidation of existing development consents, enable a range of minor works to the building which would be undertaken without further approval, establish a cumulative noise management framework, allow 24-hour construction for minor internal works, extend trial periods on various gaming areas and use of outdoor speakers and other administrative amendments.

1.3 Summary of Modification Request

20. The Application before the Commission, including the Proponent's Environmental Assessment Report (**EAR**) prepared in response to the SEARs, was lodged on 13 August 2018. The Application was accepted by the Department on 13 August 2018 under s75W of the EP&A Act to modify the Major Project Approval MP 08_0098. The Proponent stated in its Request to Modify under s75W of the EP&A Act – Major Project MP 08_0098, that the modification request seeks approval for:
- partial demolition of the existing Star Casino Building
 - construction of a RL 237m tower (approximately 66 storeys, including podium, standing 234m above ground) providing 220 hotel rooms, 204 residential apartments, a neighbourhood centre and 220 car parking spaces
 - an increase of 48,799m² gross floor area (**GFA**)
 - lighting, including special events lighting
 - site-wide signage upgrades and new signage and site-wide cumulative noise controls/management
 - upgrade existing and create new commercial units including hours of operation
 - internal and external amendments to the existing Star Casino building and upgrades to landscaping and the public domain
 - plant, stormwater and flooding infrastructure amendments and upgrades
 - stratum subdivision to create five lots.
21. The Application is anticipated to create approximately 265 operational jobs and 489 construction jobs (expressed as annual average Full Time Employment).

22. A chronology of this Application's background is provided in **Table 2**.

Table 2 – MP 08_0098 Application and Assessment Chronology

Date	Timeline
27 January 2009	The Minister for Planning approved a Part 3 Major Project Application (MP 08_0098) for alterations and additions to The Star Complex.
3 March 2009 – 13 August 2018	Between March 2009 and August 2018, a total of 14 modifications have been submitted seeking approval for amendments to Major Project Approval MP 08_0093. A total of 13 modifications have been approved.
17 December 2015	The Proponent submitted the modification (MOD 13) request to the Department pursuant to s75W of the <i>EPA Act 1979</i> to modify MP 08_0098 to permit the delivery of a tower development.
9 February 2016	The Proponent was notified of the SEARs for the s75W modification request.
9 May 2016	The Proponent was notified of the amended SEARs for the s75W modification request.
1 March 2018	Cut-off-date for the consideration of s75W modification requests.
28 March 2018	The Proponent provided written correspondence to the Secretary requesting that the SEARs be reviewed for currency.
11 May 2018	The Department notified the Proponent of the minor amendments to the SEARs to update the relevant policies/guidelines.
13 August 2018	The Proponent submitted the EAR (MOD 13) to the Department to modify MP 08_0098 to permit the delivery of a tower development.
22 August – 18 September 2018	The modification request was publicly exhibited for a period of 28 days. During the exhibition period 11 government agency submissions and 117 public submissions were received.
23 October 2018	The Department issued a Request for Response to Submissions.
November 2018	The Proponent responded to the Department's request through the submission of a formal Response to Submissions and Preferred Project Report. The report provided a response to the submissions received during the exhibition and a revised statement of commitments.
25 July 2019	The Department released its AR for MP 08_0098 (MOD 13).
25 July 2019	Application referred to the NSW Independent Planning Commission for determination.
14 August 2019	The Commission received separate briefings on the Application from both the Proponent and the Department. The Proponent's briefing notes and the meeting agenda were made available on the Commission's website on 15 August 2019. A transcript of both meetings was also made

Date	Timeline
	available on the Commission's website on 22 August 2019.
15 August 2019	A meeting was held with the City of Sydney between Council staff and the Commission. A transcript of the meeting was subsequently uploaded to the Commission's website on 22 August 2019.
20 August 2019	A site inspection was undertaken by members of the Proponent's project team and the Commission.
22 August 2019	<p>Additional information consisting of written correspondence prepared by the Proponent and architectural plans were submitted to the Commission. The correspondence confirmed that the neighbourhood centre would be provided for community use for the life of the lease of the casino site, being until the year 2093.</p> <p>In addition, the Proponent submitted a formal written request for a confidential meeting with the Commission prior to the public meeting to be held on 27 August 2019.</p>
26 August 2019	The Commission responded to the Proponent's written request dated 22 August 2019 stating it would not be prepared to attend a private meeting with the Proponent.
27 August 2019	A Public Meeting was held to discuss the Application.
2 September 2019	A copy of the transcript and the material tendered at the public meeting were made progressively available on the Commission's website.
6 September 2019	<p>The Proponent submitted correspondence to the Commission indicating a preparedness to reduce the proposed height of the tower from RL 237m to RL 213m if the Commission considered overshadowing to Union Square was unacceptable.</p> <p>The Proponent submitted additional information in the form of: Response to Assessment Report and Public Submissions Report addressing the Department's AR and public submissions received following the submission of the Proponent's Response to Submissions and Preferred Project Report. An Independent Urban Context Report prepared by Olsson & Associates Architects and a Landscape and Visual Assessment Review prepared by Moir Landscape Architecture. All of the submitted material was uploaded to the Commission's website.</p>
12 September 2019	The Commission provided a brief to Ms von Hartel requesting the preparation of an independent peer review (Ms von Hartel's Peer Review) of the Independent Assessment and Design Advice

Date	Timeline
	prepared by Professor Peter Webber (Professor Webber's Independent Assessment and Design Advice) for the Department. The brief was uploaded to the Commission's website on 12 September 2019.
16 September 2019	The Commission submitted formal written correspondence to the Department requesting further clarification on a number of matters raised in the Public Meeting held on 27 August 2019.
20 September 2019	The Commission received Ms von Hartel's Peer Review of Professor Webber's Independent Assessment and Design Advice for the Department. Ms von Hartel's Peer Review was made available on the Commission's website on the 20 September 2019. The Commission accepted written comments from the public with respect to the peer advice up until Friday 27 September 2019.
26 September 2019	The Commission received formal written correspondence from the Department (dated 20 September) in response to the matters raised on 16 September 2019. This correspondence was made available on the Commission's website on 26 September 2019.
27 September 2019	The Commission received submissions from the public and the Proponent in response to Ms von Hartel's Peer Review. The submissions were made available on the Commission's website.
30 September 2019	The Commission received the Proponent's response to the Department's response (dated 30 September 2019) to the matters for clarification raised by the Commission. This correspondence was made available on the Commission's website on 1 October 2019.
5 October 2019	The NSW government released the findings and recommendations arising from the GSC ' <i>Review of the Planning Framework for the Western Harbour Precinct including the Pyrmont Peninsula</i> ' (Pyrmont Review).
16 October 2019	The Commission received submissions from the public regarding the GSC's Pyrmont Review. The submissions were made available on the Commission's website.
16 October 2019	The Commission received a submission prepared by Urbis on behalf of the Proponent which provides a response to the findings of the GSC's Pyrmont Review. The submission was made available on the Commission's website.

1.4 Stated need for Modification

23. The Proponent's EAR, dated 13 August 2018, states that:

"In the context of the changing tourist landscape, SEGL does not consider the 'Business as Usual' option to be a viable option. SEGL has concluded that, in order to ensure its accommodation, entertainment and casino environment offer a unique experience to drive visitation, the existing development on-site needs to be upgraded to continue to grow and deliver as an integrated resort".

2. THE DEPARTMENT'S CONSIDERATION OF THE APPLICATION

2.1 Key steps in the Department's consideration of the Application

24. The Department received the Application on 13 August 2018. It was accompanied by the Proponent's EAR. In accordance with section 75X(2)(f) of the EP&A Act, the Department publicly exhibited the Application for a period of 28 days from 22 August 2018 until 18 September 2018.

25. The Department received submissions from 11 government agencies. The key issues raised by these agencies are summarised in **Table 3**.

Table 3 – Summary of comments from Agencies

Agencies	Summary of Comments
Transport for NSW (TfNSW)	<ul style="list-style-type: none">• The need for the protection of light rail infrastructure during the construction and operation of the development.• The development should comply with the relevant requirements of Asset Standards Authority (ASA) Standard T HR C1 12080 ST External Developments 1.0 and Developments Near Light Rail Corridors and Busy Roads – Interim Guidelines.
Roads and Maritime Services (RMS)	<ul style="list-style-type: none">• The right turn from Jones Bay Road must be approved by Council prior to installation.• Appropriate line marking at the Pyrmont Bay entry/exit should be included.• The submission of a construction traffic management plan prior to issue of Construction Certificate.• Signage is to be at no cost to RMS.
Heritage Council of NSW (Heritage Council)	<ul style="list-style-type: none">• The development would not have adverse impacts on nearby SHR (State Heritage Register) item.• Impacts on local heritage items should be considered and mitigated where necessary.• An unexpected archaeological finds protocol should be implemented.• Stormwater upgrades outside the site should be subject to archaeological assessment and management.

Agencies	Summary of Comments
Office of Environment and Heritage Communities and Greater Sydney Division (OEH)	<ul style="list-style-type: none"> Inclusion of replacement tree planting consisting of locally indigenous species. Review of the vehicle access design to address potential flooding impacts. Confirmation of consultation with relevant Aboriginal stakeholders.
Department of Industry (DoI)	<ul style="list-style-type: none"> Recommended that a groundwater dewatering report be prepared. Recommended that future analysis of the contaminant hydrochemistry of groundwater and the potential impact of dewatering on the quality and quantity of the groundwater source be undertaken.
Sydney Airport Corporation (SAC) / Civil Aviation Safety Authority (CASA)	<ul style="list-style-type: none"> If the development or construction cranes exceed 285m AHD a controlled activity approval must be sought. The highest point of the building should be obstacle lit.
Environmental Project Authority (EPA)	<ul style="list-style-type: none"> The EPA does not consider that the Application will require an Environment Protection Licence (EPL) under the POEO Act.
Independent Liquor and Gaming Authority (ILGA)	No comment
NSW Police	No comment
Ausgrid	No comment

26. A total of 117 public submissions were received in response to the public exhibition. Of these submissions 89 were from residents of Pyrmont (68 objected, 2 provided comments and 19 indicated support for the Application).
27. A breakdown of the key issues raised from all 117 submissions is summarised in the Department's AR dated July 2019 and reproduced in **Table 4**.

Table 4 – Summary of public submissions

Issue	% of Submissions
Traffic and car parking impacts	50.8%
Excessive height of the tower	34.4%
Overshadowing of neighbouring properties	34.4%
Proposal should comply with Council's LEP/DCP controls	31.1%
Out of context within low-rise Pyrmont and exceeds previous power station height	31.1%
Overshadowing of public domain and open spaces	28.7%

Issue	% of Submissions
Adverse visual impacts from the public domain	26.2%
Operational noise impacts	22.1%
Adverse heritage impact	18%
Apartments will not be affordable / international owners will leave them vacant	17.2%
Adverse impact on property values	16.4%
Loss of private views	13.9%

Source: Department of Planning Assessment Report July 2019 (Table 7)

28. The key issues raised by those in support of the Application were:
- the level of community engagement undertaken by the Proponent
 - high quality architectural design
 - the neighbourhood centre
 - strengthening of tourism within Pyrmont and Sydney
 - improved hotel accommodation
 - new retail restaurant and bar uses
 - employment and economic benefits of the Application.
29. Council objected to the Application. The key issues raised by Council were as follows:
- The Application does not qualify as a modification application on the basis that it was submitted after the two year deadline nominated by the SEARs and the 1 March 2018 'cut-off-date' for the consideration of s75W modification applications
 - The Application is beyond the scope of a modification in that it represents a radical transformation with respect to the terms and impact of the project approval
 - The height and scale is considered excessive and inappropriate in the scale of the surrounding development
 - The tower will have adverse view impacts
 - The Application will have adverse heritage impacts on the General Post Office clock tower
 - The Application for residential uses is not justified and not permissible under the Sydney Local Environmental Plan 2012 (**SLEP 2012**)
 - The Application will result in adverse wind and overshadowing impacts.
- The full details of Council's comments are detailed in section 5.4.1 of the Department's AR.
30. Following the exhibition period, the Department issued the Proponent with a Request for Response to Submissions dated 23 October 2018. In considering the request, the Proponent made amendments to the scheme and engaged in further consultation with the Council and TfNSW. In response to the Department's request, the Proponent issued a Response to Submissions Report dated November 2018 which included a response to the submissions received during public exhibition, a revised statement of commitments and a preferred project report. The amendments to the Application made in response to on-going design development and the information requests from the Department are identified in Section 1.7 of the Proponent's Response to Submissions Report.
31. The Department prepared an AR dated July 2019 detailing its assessment. As part of its assessment, the Department reviewed the documentation supporting the Application which was submitted to the Department on 13 August 2018. It also considered the documentation

submitted following the public exhibition period, including the Proponent's Response to Submissions Report dated 23 October 2018.

2.2 The Department's Assessment Report

32. In its AR, dated 25 July 2019, the Department identified the key assessment issues associated with the Application as being:
- design excellence
 - built form, including visual impacts on the amenity of the surrounding area
 - public benefits, contributions and the public interest
 - modifications to the existing building
 - traffic parking and access
 - special event and operational lighting
 - internal amenity
 - landscaping and public domain
 - signage
 - noise
 - consolidated consents.
33. The Department's overall conclusion was that the Application should not be approved. The Department determined that some assessment issues could be considered acceptable or capable of being acceptable subject to the adoption of appropriate mitigation measures. However, the Department did not recommend specific forms of mitigation for every issue because of its conclusion that the modification application should be refused. The Department's reasons for concluding that the application should be refused included, in summary, the following:
- The Proponent's justification for the location of the tower lacks strategic merit as the concept of "*global waterfront precinct cannot be relied upon to justify a landmark tower in this location*"
 - "*the proposed tower would appear incongruous and incompatible with its surrounding built form context, overly dominant and would adversely affect the established character of Pyrmont and wider views and vistas from a large number of public vantage points*"
 - "*the proposed tower would appear isolated and overly prominent,*" whilst remaining "*unrelated to its context within Pyrmont*" and causing unacceptable visual impact "*to the detriment of local and wider views from many public vantage points*" including: Balls Head Reserve, Central Barangaroo Foreshore, Pyrmont Bridge, east Cockle Bay, Giba Park and Pyrmont Bay Park.
 - "*negative impacts on views and outlook of some private residences*"... "*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 Application would have moderate overshadowing impact on Union Square and minor overshadowing impact on Pyrmont Bay Park, Pyrmont Bridge which could not be justified as they resulted from an unacceptable form of development*"
 - "*The Application is not consistent with all relevant Environmental Planning Instruments, in particular State Environmental Planning Policy No.65 – Design Quality of Residential Apartment Development (SEPP 65) and Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (SREP (SHC) 2005)*"
 - "*the Department also considers the proposal is contrary to Planning Principle no.4, established in The Land and Environment Court case Veloshin v Randwick Council [2007] NSWLEC 428 (The LEC Case). The impacts of the proposed tower are not consistent with the impacts that may be reasonably expected from an LEP complaint envelope; the proposed height and bulk significantly exceed the height and bulk of*"

existing buildings; the proposed tower is at odds with the predominant low-to-medium rise-built form character of the surrounding area and it is overly dominant.”

- The proposed public benefit is not considered “*to be sufficient to offset the impacts that would be caused by the proposed tower and therefore, the proposal is not in the public interest*”.

34. In summary, the Department concluded that the Application is not in the public interest and not wholly consistent with objects (c) and (g) of the EP&A Act. The Department considered it would fail to promote the orderly use and development of land as required by object (c) given that the Application:

- *‘is inconsistent with the current strategic planning for the area*
- *would fundamentally change the established character of Pyrmont*
- *could set an unwelcome precedent for further tall buildings, outside of any adopted strategic planning policy framework.*

Furthermore, it would not promote good design and amenity of the built environment (object (g)) as:

- *the scale of the proposed tower is out of character with its immediate context*
- *the tower would result in unacceptable visual impacts due to its scale, isolation and visual dominance of the existing Pyrmont townscape and wider view impacts.’*

3. THE COMMISSION’S MEETINGS AND SITE VISIT

35. As part of its determination, the Commission met with various persons as set out below. All meeting and site inspection notes were made available on the Commission’s website.

3.1 Meeting with the Proponent

36. On 14 August 2019, the Proponent met with the Commission to explain the Application. The meeting covered the following key topics:

- an overview of the Application
- the design excellence competition process
- the strategic justification
- environmental impacts
- community engagement effort
- public benefit
- the response to submissions.

A copy of the transcript of the meeting and the meeting agenda were made available on the Commission’s website on 15 August 2019.

3.2 Meeting with the Department

37. On 14 August 2019, the Department met with the Commission. A copy of the meeting agenda and transcript was made available on the Commission’s website on 15 and 22 August 2019 respectively. The key issues addressed include the following:

- the appropriateness of the approval pathway given the scope of the proposed changes
- the appropriateness of the approval pathway with respect to the 9 May cut-off date nominated by the SEARs
- strategic justification for the Application and the status of the ‘global waterfront precinct’
- the site’s exclusion from the designated precincts identified under the State and Regional Development SEPP
- the bulk and scale of the Application relative to the surrounding scale

- future strategic planning directions for Pyrmont
- visual impacts of the Application
- the *Veloshin* principle, including Principle 4 and its use as a tool for the assessment of comparable Part 3A applications
- public benefit and the public interest
- the entity responsible for the management of the proposed Community Centre
- the design excellence process, including the weight given to the design excellence brief in the assessment and the advice of the Design Review Panel.

3.3 Meeting with the City of Sydney

38. On 15 August 2019, Council officers met with the Commission. A copy of the meeting agenda and transcript was made available on the Commission's website on 15 and 22 August 2019 respectively. At the meeting the following key issues were discussed:

- scope of proposed works under the Application
- the planning approval pathway
- strategic justification for the project, including:
 - the site's location within the Eastern City District Plan's 'Innovation Corridor'
 - the site's relationship to the scale of the existing development in Pyrmont
 - the site's positioning within the 'Darling Harbour Precinct'
- overshadowing impacts to surrounding public open spaces
- visual impact, including the scope of the Visual Impact Assessment (VIA)
- pedestrian wind impacts
- the assessment process, including the Department's application of the *Veloshin* principles
- traffic congestion
- the public benefit, including the proposed Community Centre
- the economic benefits
- the adequacy of public transport
- the implications associated with the proposed hotel and gaming uses.

3.4 Site inspection

39. On 20 August 2019, the Commission conducted a site inspection and visited the broader surrounding locality. During the inspection the Proponent accompanied the Commission around the site. The Commission, independent from the Proponent, then conducted a further site inspection on the day covering the locality around the site, including the following locations:

- Union Square
- corner of Harris and Miller Streets
- north along Harris Street (from Miller Street) to John Street
- from Pyrmont Street along Jones Bay Road, then along Pirrama Road to Pyrmont Bay Park
- from Pyrmont Bay Park along Pirrama Road to Pyrmont Bridge
- along Pyrmont Bridge east towards the city ending at Market Street.

40. The Proponent provided a site inspection booklet which was made available on the Commission's website on 3 September 2019.

41. At the site inspection, the Proponent and its representatives stated that "*the neighbourhood centre will now be provided for community use for the life of the lease of the casino site, which is estimated to approximately be 74 years. The applicant will confirm this in writing*". Following the site inspection, the Proponent provided written correspondence on 22 August 2019

confirming community use of the neighbourhood centre for the life of the casino lease would now form part of the Application's public benefit offer.

3.5 Public Meeting

42. On Tuesday 27 August 2019, the Commission held a public meeting at Customs House in Circular Quay, Sydney. A copy of the meeting agenda is available on the Commission's website. A list of 23 speakers scheduled to present at the meeting was published on the Commission's website on 26 August 2019.
43. A copy of the meeting transcript was made available on the Commission's website on 2 September 2019. A copy of the material tendered at the public meeting was also made available on the Commission's website on 3 September 2019. An opportunity to lodge any written submission or comments was afforded until 6 September 2019. A summary of issues raised in written submissions and by speakers is outlined below.
44. The main issues of concern raised in the submissions and commentary from the public included:
 - excessive bulk and scale
 - lack of infrastructure to support the Application
 - inconsistency with the ADG
 - increased antisocial behaviour
 - incompatibility with the surrounding low scale development
 - unacceptable visual impacts
 - unacceptable view impacts
 - potential to establish a precedent for future high scale development within Pyrmont
 - increased traffic generation
 - contribution to the overdevelopment of Pyrmont
 - represents a significant departure from the original application and does not constitute a modification
 - overshadowing impacts to public open space and adjoining properties
 - insufficient contextual and strategic justification (i.e. 'global waterfront precinct' concept cannot be used as a strategic justification).
45. In submissions and commentary in support of the Application, the issues raised included:
 - positive contribution to the tourism industry
 - creation of additional employment opportunities
 - opportunity to deliver a multipurpose integrated community hub
 - delivery of a high-quality design; and
 - contribute to the expansion of 'Western Harbour Super Precinct'.

4. ADDITIONAL INFORMATION

46. The Commission received:
 - additional information consisting of written correspondence pertaining to the funding and operation of the Neighbourhood Centre from the Proponent dated, 22 August 2019
 - additional information consisting of architectural plans provided by the Proponent, dated 14 and 15 August 2019
 - additional information consisting of a formal written request from the Proponent for a confidential meeting with the Commission, dated 22 August 2019
 - additional information consisting of written correspondence indicating the Proponent's preparedness to reduce the height of the tower from RL 237m to RL 213m, dated 6 September 2019

- additional information prepared by the Proponent consisting of a Response to Assessment Report and Public Submissions Report, dated 6 September 2019
- additional information accompanying the Response to Assessment Report and Public Submissions Report consisting of an Independent Urban Context Report Prepared by Olsson Associates and Architects, dated 6 September 2019
- additional information accompanying the Response to Assessment Report and Public Submission Report consisting of a Landscape and Visual Assessment Review prepared by Moir Landscape Architecture, dated 3 September 2019
- additional information from the Department in response to specific questions raised by the Commission on the Application's strategic justification, documentation provided to the visual impact consultant, design competition brief, and precinct considerations, dated 20 September 2019
- additional information consisting of Ms von Hartel's Peer Review of Professor Webber's Independent Assessment and Design Advice for the Department, dated 19 September 2019
- additional information consisting of the Proponent's response to Independent Expert Advice (Ms von Hartel), dated 27 September 2019
- additional information from the Department in response to the Commission's request for information dated 19 September. The response from the Department is dated 20 September 2019
- additional information consisting of a response from the Proponent addressing the matters raised by the Commission and the Department, dated 16 September and 20 September, respectively. The additional information supplied by the Proponent is dated 30 September 2019.

All of the above information was made available on the Commission's website by 30 September 2019.

5. THE COMMISSION'S CONSIDERATION

5.1 Material considered by the Commission

47. In this determination, the Commission has carefully considered the following material (**material**):
- Amended SEARs – 9 May 2016
 - s75W Modification Application – 13 August 2018 and associated documents
 - Agency submissions on the s75W Modification Application from:
 - Transport for NSW – 21 December 2018
 - Roads and Maritime Services – 18 September 2018
 - Heritage Council – 17 September 2018
 - Office of Environment and Heritage, Communities and Greater Sydney Division – 17 September 2018
 - Department of Industry – 5 November 2018
 - Sydney Airport Corporation – 27 August 2019
 - Civil Aviation Safety Authority – 27 August 2018
 - Environmental Protection Authority – 12 September 2018
 - Independent Liquor and Gaming Authority – 26 September 2018
 - NSW Police – 5 October 2018
 - Ausgrid – 28 September 2018
 - City of Sydney's Submission – 9 October 2018
 - Response to Submissions – November 2018 and associated documents
 - Agency Comments on the Response to Submissions from:
 - Office of Environment and Heritage – 7 December 2018 and 19 December 2018
 - City of Sydney's Submission – 17 January 2019

- Department of Industry – 18 January 2019
 - Roads and Maritime Services – 5 December 2018
 - Sydney Water – 15 January 2019
 - Transport for NSW, including Transdev and Sydney Trains – 21 December 2018
 - Proponent’s Response to Notification of Response to Submissions (**RTS**) report – 31 January 2019 and associated documents
 - Proponent Additional Information, including:
 - Initial Response to Notification of RTS – 17 January 2019
 - Updated Architectural Design Statement (Section 8.0) – 24 January 2019
 - MP 08_0098 MOD 13 – Department’s AR and all associated documents
 - Submissions made to the Department in respect of the proposed modification during the public exhibition of the Application
 - Proponent’s briefing to the Commission on 14 August 2019
 - Additional comments from the Proponent, including:
 - Additional Architectural Plans – dated 15 August 2019
 - The Proponent’s written correspondence regarding the community hub – 22 August 2019
 - Oral comments made to the Commission at the public meeting held on 27 August 2019 and written comments received to the Commission up until 23 August 2019
 - Visual observations made at the site and locality inspection on 20 August 2019
 - Proponent’s Response to Assessment Report and Public Submissions, including the Landscape and Visual Assessment Review undertaken by David Moir and the Urban Design Advice prepared by Russell Olsson dated 6 September 2019
 - Ms von Hartel’s Peer Review of Professor Webber’s Independent Assessment and Design Advice, dated 19 September 2019
 - Comments received in response to Ms von Hartel’s Peer Review
 - The Department’s response dated 20 September 2019 to the Commission’s request for information dated 16 September 2019
 - Response from the Proponent addressing the matters raised by the Commission and the Department, dated 19 September and 20 September 2019, respectively. The additional information supplied by the Proponent is dated 30 September 2019
 - The findings and the recommendations of the GSC’s Pyrmont Review dated September 2019
 - Comments on the GSC’s Pyrmont Review received from the public and the Proponent.
48. This Statement of Reasons sets out the Commission’s reasons for the decisions it has made in relation to the issues and environmental impacts of most importance to the Commission’s ultimate decision.

5.2 Applicable Regulations

49. Part 3A of the EP&A Act relates to projects that are identified in a State Environmental Planning Policy (**SEPP**) or are considered by the Minister to have State or Regional Significance. On 27 May 2008, the then Minister for Planning formed the opinion that the proposed redevelopment of the Star City site constituted a Major Project under the terms of State Environmental Planning Policy (Major Projects) 2005.
50. s75W of the EP&A Act 1979 allows the Proponent to request the Minister to modify the approval for a project.

While Part 3A was repealed from 1 October 2011, it continues to apply in accordance with schedule 2 of the ST&OP Regulation. The effect of clause 3BA(1)-(3) of Schedule 2 is that the Major Project Approval can be modified under s75W of the EP&A Act provided that the request to modify was made prior to the cut-off date of 1 March 2018.

51. In its submission (dated 9 October 2018), Council contends that the Application cannot be modified under the s75W Part 3A modification pathway because the Application was lodged with the Department on 13 August 2018, after the cut-off date of 1 March 2018.
52. Council also contends that the s75W Part 3A is not a valid approval pathway on the grounds that insufficient information was submitted to the Department to satisfy Clause 3BA(4) of the ST&OP Regulation. Clause 3BA(4) establishes that a request to modify an approved project or concept plan under s75W cannot be dealt with if the request has not been determined by 1 September 2018 and the Secretary is of the opinion that insufficient information has been provided to deal with the request. Council considers that the Application was deficient in information. However, in its AR the Department stated that it was satisfied that the Proponent's EAR adequately provided the information required in the SEARs to enable the assessment and determination of the Request. As there is no basis to conclude that the Secretary was of the opinion that insufficient information had been provided to deal with the request, the Commission is satisfied that Council's contentions on this point are not correct.
53. Council in its submission dated 9 October 2018 contends that the extent of the changes are significant and cannot reasonably be approved under s75W. Specifically, Council has noted the following in its submission:
- “Procedural fairness within the NSW planning system should be maintained through transparent and consistent planning process. The proposed development is well beyond the scope of the approved development and is inconsistent with terms of that approval. The proposed process is an abuse of proper planning processes. Amendments of this scope and nature were never envisaged as part of the creation of s75W of the former Part 3A of the Environmental Planning and Assessment Act (the Act)”.*
54. However, as the Department's AR notes, the Proponent requested environmental assessment requirements on 17 December 2016. The Commission notes that this date appears to be an error and the request for SEARs was made on 17 December 2015. The Commission considers this amounted to a request to modify the project approval in accordance with s75W and Schedule 2, clause 3BA and as it was made before the cut-off date of 1 March 2018 s75W continues to apply.
55. The Department in its AR has noted that under EP&A Act and cl 3BA(6) of the EP&A (ST&OP Regulation), there is no test as to what constitutes a modification comparable to that which applies under s 4.55 of the EP&A Act. The Department concludes that *“the Minister could reasonably form the view that the modification request falls within the scope of s75W of the EP&A Act and is capable of being considered and determined as a modification under s75W of the EP&A Act”.*
56. The Commission considers that the Application can be determined under s75W. From a procedural perspective, the Application is a “transitional Part 3A project” in accordance with clause 2(1)(a) of schedule 2 of the ST&OP Regulation. Under clause 3BA(1)-(3) of schedule, Part 3A of the EP&A Act, the Application can be modified under s75 W of the EP&A Act given that the request to modify was made on 17 December 2015 prior to the cut-off date of 1 March 2018.
57. The Commission has considered whether the application is a request to “modify” an existing project approval within s75W of the EP&A Act. On 27 January 2009 the then Minister for Planning approved a Part 3A Major Project Application for alterations and additions to the then existing site including:
- a 10 storey hotel

- retail premises
 - gaming and entertainment facilities
 - conference facilities
 - associated infrastructure and facilities.
58. A total of 13 modifications to the 2009 Major Project Approval have been approved to allow a range of works to be carried out on the site. The existing project, as modified, is a complex mixed-use development on a large site. The application proposes the following:
- a tower containing 204 apartments, 220 hotel rooms, a neighbourhood centre and associated facilities
 - The Ribbon which comprises 2 pools and food and drink premises
 - Skye Terrace which comprises a pool and food and drink premises
 - infrastructure upgrades
 - landscaping and public domain upgrades
 - Restaurant Street containing food and drink premises
 - Darling Hotel Corner comprising food and drink premises
 - signage upgrades
 - creation of five stratum allotments
 - modification of certain conditions.
59. The Application, if approved, would continue a large complex mixed-use development on the site. The only new land uses proposed are the 204 apartments and the neighbourhood centre. While the apartments are a major component of the Application, when viewed as part of the totality of the large site they are an additional land use within an existing complex mixed-use development. Similarly, the neighbourhood centre adds a new land use to the site, but it is a very small component of the total site.
60. The Application also proposes to introduce a tower element which substantially increases the overall dimensions of the development and exceeds the height of buildings on other parts of the site. However, the existing development (as previously modified), includes a number of taller elements that are higher than the bulk of the development on site.
61. The Commission is therefore satisfied that the Application is a request to modify an existing project approval under s75W of the EP&A Act.

5.3 Relevant Considerations

62. In determining this Application, the Commission has taken into consideration the following:
- the relevant provisions of all:
 - environmental planning instruments (EPIs) outlined below at Section 5.4; and
 - relevant government policies, including:
 - Greater Sydney Regional Plan
 - Eastern City District Plan
 - Future Transport Strategy 2056
 - Sustainable Sydney 2030
 - Visitor Economy Industry Action Plan 2030
 - matters for consideration specified by the EP&A Act, including s75W
 - submissions made in accordance with the EP&A Act and Regulations
 - the public interest.

5.4 Relevant Environmental Planning Instruments

63. The Department identified the following EPIs as being relevant to the Application.
- State Environmental Planning Policy (State & Regional Development) 2011
 - State Environmental Planning Policy (Infrastructure) 2007
 - State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
 - State Environmental Planning Policy No. 55 – Remediation of Land
 - State Environmental Planning Policy No. 64 – Advertising and Signage
 - State Environmental Planning Policy No. 65 Design Quality of Residential Apartment Development, including the Apartment Design Guide (**ADG**)
 - State Environmental Planning Policy (Coastal Management) 2018
 - Draft Remediation of Land State Environmental Planning Policy
 - Draft State Environmental Planning Policy (Environment).
64. The Department also considered that the SLEP 2012 and Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (**SHC SREP**) were relevant to consider to inform a merit assessment of the Application, however, the Department notes that the SLEP 2012 and other environmental planning instruments (**EPIs**) (excluding State Environmental Planning Policies) do not apply to the Major Project Approval in accordance with section 75R of the EP&A Act (refer to Section 4.2 of the Department's AR).

Sydney LEP 2012

65. The site is zoned B3 Commercial Core under the SLEP 2012. The zoning permits entertainment facilities, gaming areas, retail, theatres, hotel and serviced apartments. Residential accommodation is prohibited in the zone and not included in the Major Project Approval (MP 08_0098).
66. The Proponent argues that SLEP 2012 is not relevant to the Application, as s75R(3) of the EP&A Act states that EPIs (other than State Environmental Planning Policies) do not apply to Part 3A Major Project Modifications. Accordingly, the Proponent's view is that SLEP 2012 is not an environmental planning instrument that the consent authority has to have regard to and the fact that residential uses would ordinarily be prohibited under the SLEP 2012 does not preclude the Commission from granting approval to the Application
67. The Commission agrees that SLEP 2012 does not apply to the proposal by virtue of s75R(3) of the EP&A Act. Nevertheless, the Commission considers that it remains open to it to take into account the provisions of a relevant planning instrument such as the SLEP 2012 in considering the overall merits of the proposal: see, in relation to project approvals, s. 75J(3).

State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development (SEPP 65), including the Apartment Design Guide (ADG)

68. The Proponent's EAR concludes that the residential uses contained within the proposed tower "*have been designed to achieve a high degree of compliance with the SEPP 65 Design Quality Principles and the objectives within Part 3 & 4 of the ADG*". An assessment against the SEPP 65 Design Quality Principles is included at Appendix C of the supporting documentation accompanying the Proponent's EAR. The assessment table suggests that the Application is entirely consistent with the SEPP 65 Design Quality Principles.
69. In addition, the Proponent has provided an assessment against the Apartment Design Guide (ADG), which is the design guideline applicable to apartment developments in conjunction with SEPP 65. The Proponent's assessment concludes that the residential component is generally consistent with or capable of achieving compliance with the relevant design

criteria. The assessment does however note a number of inconsistencies with the design criteria including:

- Objective 3F-1 - Deep Soil Zones and the requirement to provide deep soil equating to 7% of the site area (4,800m²), amounting to 336m². The Proponent notes that the Application is unable to achieve this.
- Objective 4C-1 – The requirement for habitable rooms to have a minimum ceiling height of 2.7m. The Proponent notes that 20% of kitchens have a ceiling height of 2.4m
- Objective 4E-1 – The requirement to provide private open space and balconies. The Proponent notes that in some locations Juliet balconies, being narrow balconies positioned at the outer plane of a window that are generally ornamental or only large enough for one person, are proposed in lieu of balconies.

70. A compliance assessment has been prepared by the Department and is included in Table 20 of the Department's AR. The compliance assessment notes a number of inconsistencies with the design quality principles set out in Schedule 1 of SEPP 65 Design Quality Principles, including:

- Principle 1: Context - The Department "*does not consider that the proposed tower responds appropriately to the desirable elements of the areas existing or future planned context and is considered contrary to Principle 1*".
- Principle 2: Built Form and Scale – The Department "*does not consider the scale, bulk and height of the proposed tower to be appropriate to the existing or desired future character of the street, surrounding buildings or the local Pyrmont area*".
- Principle 3: Density – The Department "*concludes the proposal unreasonably impacts on the surrounding neighbourhood and is not consistent with the existing or planned future density for Pyrmont and is therefore contrary to Principle 3*".

71. The Department's AR also provides an assessment of the Application against the ADG. The assessment notes the non-compliances listed above and identifies further inconsistencies with the ADG criteria including:

- *Objective 4D Apartment Size and Layout* – The requirement to provide adequately sized apartments and living rooms, and suitable rooms depths. The Department notes that the widths of the living rooms and the depths of a number of open plan kitchen / living rooms do not comply with the ADG. Notwithstanding, the non-compliances are considered acceptable as they are minor in nature.
- *Objective 4M Facades* – The requirement for facades to provide visual interest whilst respecting the character of the locality. The Department notes that the Application has been subject to a design excellence competition. Notwithstanding, it is considered the design of the tower fails to respond to the existing and future local context and character.
- *Objective 4T Awning and Signage* – The requirement to integrate awnings with the building. Department notes that no awnings are proposed for the residential component. Further, although the Department considers the proposed signage to be inconsistent with the ADG criteria, the variation is adequately addressed and could be managed with conditions.

72. The Commission has given further consideration to the SEPP 65 Design Quality Principles in paragraph 177. The Commission acknowledges the Department's assessment against the provisions of the ADG, as addressed in paragraph 71, and agrees that the inconsistencies with the ADG criteria are either minor in nature, or could be addressed with conditions to manage any adverse impacts to an acceptable level.

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

73. The SHC SREP applies to the site given its location within the Sydney Harbour Catchment. Clause 20 of the SHC SREP states that the matters for consideration under Part 3 Division 2 of the EPI are to be taken into consideration when assessing development under Part 4 of the EP&A Act or activities under Part 5 of the EP&A Act. As the Application has not been made under either Part 4 or Part 5 of the EP&A Act, clause 20 does not require the matters for consideration under Part 3 Division 2 to be taken into account in considering the Application.
74. The Proponent's EAR has provided an assessment against the SHC SREP and concludes that it is consistent with the aims of the SHC SREP and the accompanying Sydney Harbour Foreshores and Waterways Area DCP 2005. The Proponent identifies that "*the relevant aims and provisions of these instruments are addressed under Section 9 of this EAR in relation to Visual Impact and Marine Ecology*". Under Section 9, the Proponent's assessment concludes that "*There will be no impact on marine ecology arising from the Proposal beyond that which has already been assessed*" and "*the Proposal's impacts on public domain views is considered appropriate and acceptable*".
75. The Proponent states that the matters for consideration set out under Part 3 Division 2 of the SHC SREP are not a relevant consideration to Part 3A Projects, however, has provided an assessment of the Application against these matters for consideration in its EAR, concluding it is consistent with each matter for the reasons set out in Table 11 of its EAR.
76. Council in its submission dated 9 October 2018 contends the Application does not meet the objectives and aims set out in Part 1 and Part 2 of the SHC SREP as it will have negative long-term impacts on private and public views along with unacceptable overshadowing to key open space including Union Square and Pyrmont Park.
77. In its AR, the Department acknowledged that whilst the matters for consideration under Part 3 Division 2 Clause 20 of the SHC SREP do not strictly apply noting that the "*modification application is made under S.75W of the Act, Clause 20 does not strictly apply. However, to inform its merit assessment the Department has considered the relevant clauses*" (refer to Table 23 of its AR). The Department also concluded that the Application is inconsistent with a number of provisions under Clause 20 noting that "*this consideration concludes that the proposal is not consistent with Clause 25 (Foreshore and waterways scenic quality) and Clause 26 (Maintenance, protection and enhancement of views)*".
78. In addition, the Department considers that the Application is inconsistent with the aims and planning principles of the SHC SREP as it is not considered to "*result in the public good being given precedence over the private good, contrary Part 1, 2(2) b*".
79. While reference to the matters for consideration under Part 3 Division 2 of the SHC SREP is not required by clause 20 of the SHC SREP in relation to the Application, the Commission has had regard to clauses 25 and 26 and to the aims and objectives of the SHR SREP. It has done so as part of its overall assessment of visual impact contained in section 5.11.

State Environmental Planning Policy (Infrastructure) 2007

80. The *State Environmental Planning Policy (Infrastructure) 2007 (ISEPP)* applies to the Application because it includes more than 200 car parking spaces and 2,000m² of retail floorspace. The Application is also considered to be 'traffic generating development' under Schedule 3 of the ISEPP and therefore is required to be referred to RMS for assessment.

81. RMS reviewed the submitted application and provided a number of comments, including:
- the need for a Construction Traffic Management Plan to be submitted to Council prior to the issue of a Construction Certificate
 - the requirement for the proposed guidance line for vehicles turning into the Star to be used only at traffic lights
 - the requirement for the right turn from Jones Road to be approved by Council prior to installation
 - the requirement for works associated with the Application to be at no cost to RMS.
82. The Commission agrees with RMS's comments given the potential traffic implications of the Application. Refer to paragraph 309 for further discussion.

State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55)

83. Consistent with the information provided in the Proponent's EAR, the Department's AR states: "*Contamination has been addressed in previous approvals on the site including DA33/94 (Original Major Project Approval) and MP08_0098 (Project Star)*". Also consistent with the Proponent's report, the Department notes that "*the area of significant site disturbance as part of the proposed modification is limited to the tower location which has been confirmed to contain no adverse levels of contamination*".
84. The Department's AR notes that the Geotechnical Assessment indicates previous borehole testing identified fill material comprising sandy fill with sandstone gravel, cobbles and boulders, with sandstone bedrock encountered to an Australian Height Datum (AHD) of between 0.1m AHD and 3.0m AHD.
85. The Department's AR concludes that if the Application is to be approved, conditions relating to environmental management during construction are required.
86. The Commission agrees with the recommendations of the Department as the Commission considers the Application to be consistent with the requirements and objectives of the SEPP 55.

State Environmental Planning Policy No. 64 – Advertising and Signage

87. The *State Environmental Planning Policy No 64 – Advertising and Signage (SEPP 64)* applies to all signage that under an EPI can be displayed with or without development consent and is visible from any public place.
88. The Department has provided an assessment of the proposed signage in Table 19 of its AR. It notes that the signage to be displayed within the signage zones will be subject to separate future planning applications, however concludes that the proposed signage is largely consistent with the SEPP 64 Criteria and is proportionate to the scale of the development. The Department also notes that the signage proposed on the tower element "*would be highly visible from the surrounding open space and waterways*".
89. The Department notes in its detailed assessment of the proposed signage against SEPP 64 that whilst it does not support the proposed tower in its location, conditions could be used to mitigate any adverse signage impacts if the tower were approved.
90. The Commission agrees with the Department's view that the tower's upper level signage has the potential to have adverse visual impacts on the waterway and surrounding open space areas. However, the Commission also agrees that conditions could be used to

mitigate any adverse impacts to an acceptable level if the tower were approved in its proposed location.

State Environmental Planning Policy (Coastal Management) 2018

91. *State Environmental Planning Policy (Coastal Management) 2018 (Coastal SEPP)* identifies the site as being within the Coastal Environmental and Coastal Use Areas.
92. The Department's AR notes the Coastal SEPP assessment criteria does not apply to sites located within a Waterways Area as defined by the *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005* (SHC SREP). The site is located within a Foreshore and Waterways Area and therefore the criteria does not apply.
93. The Commission agrees with the Department's conclusions with respect to the Coastal SEPP and therefore did not undertake a further detailed assessment against this EPI.

5.5 Relevant Proposed Instruments

Draft State Environmental Planning Policy (Environment)

94. The draft State Environmental Planning Policy (**draft Environment SEPP**) consolidates seven existing SEPPs including the SHC SREP.
95. The Proponent stated that the Application aligns with the policy intent and updated aims of the draft Environment SEPP given it will *"improve the interface of the existing development with the waterfront through improved connectivity...for members of the public. In addition, Mod 13 will not result in any impacts to the marine ecology and biodiversity of Sydney Harbour"*.
96. For the reasons identified in paragraphs 77 and 78 and as set out in Table 23 of the Department's AR, the Department concluded that the Application is contrary to a number of provisions contained within the SHC SREP, including clause 13, clause 14 and clause 15. For this reason, the Department concludes that the Application will not be consistent with the provisions of the draft Environment SEPP. The Commission's conclusion on this issue is set out at paragraph 212.

Draft Remediation of Land State Environmental Planning Policy

97. The Department has published the draft Remediation of Land State Environmental Planning Policy (**draft Remediation SEPP**). The Department has concluded that consistency with the draft Remediation of Land SEPP is achievable through the inclusion of appropriate conditions of consent.
98. The Commission agrees with the Department's conclusions outlined above in paragraph 97. The Commission considers the Application would be consistent with the draft Remediation SEPP subject to the implementation and adherence with appropriate conditions of consent.

5.6 Relevant Development Control Plans

99. The Proponent's EAR states that *"given the nature of the proposed works and the operation of Section 75R(3) of the EP&A Act, the SDCP 2012 is not applicable to MOD 13"*. Notwithstanding, the Proponent notes that *"consideration has been given to relevant provisions as required by the SEARs"*. The assessment is contained within Table 16 of the Proponent's EAR.

100. In its submission dated 9 October 2018, Council has provided the following commentary:
- *“The height of the tower is entirely inconsistent with the maximum 28m building height standard in Sydney LEP 2012 and 7 storey height control in Sydney DCP 2012 for this part of the site”.*
 - *“The proposed tower creates substantial overshadowing to Union Square between 10am and 12pm and to Pyrmont Park between 2 and 3pm on 21 June. This contravenes provision 3.2.1.1 of Sydney DCP 2012 which requires overshadowing effects of new buildings on publicly accessible open space to be minimised between the hours of 9am to 3pm on 21 June”.*
 - *“Sydney DCP 2012 requires a minimum of 10% of the site area to be provided as deep soil, and for sites greater than 1,000sqm the deep soil area is to be consolidated with a minimum dimension of 10m... This proposal includes no areas of deep soil and is not compliant with both the ADG and SDCP 2012”.*
 - *“The amount of communal open space provided is 661.58sqm or 19.4% of the site, and with only 21% soft landscaping which is non-compliant with both the ADG and SDCP2012”.*
 - *“The appropriate planning mechanism to consider significant alterations, such as those proposed here, to existing land use and building height standards is a Planning Proposal to amend Sydney LEP 2012 and DCP 2012”.*
101. The Department’s AR recognises that under 75R(1) of the EP&A Act, development control plans (**DCPs**) do not strictly apply to s75W application. The Department nevertheless considered the Sydney Development Control Plan 2012 (**SDCP 2012**) and the Sydney Harbour Foreshores and Waterways Area Development Control Plan 2005 (**SHFW DCP**) to inform a merit-based assessment of the Application.
102. The Department has considered the Application against the relevant provisions of the SDCP 2012 with respect to view loss, overshadowing and bicycle parking facilities. Further discussion is provided below in section 6.2.
103. The Department has assessed the Application against the relevant provisions of the SHFW DCP in Table 23 of its AR. With respect to the siting of buildings and structure, the Department concludes that the tower will *“not obstruct views and vistas from public places to the waterway”*. Notwithstanding, the Department notes that with regard to built form the Application is *“not appropriate within its context and would have an adverse visual impact on the surrounding area and views from the foreshore at a number of locations”*.

5.7 Relevant Strategic Plans

The Greater Sydney Region Plan

104. The *Greater Sydney Region Plan (the Region Plan)*, or *A Metropolis of Three Cities*, integrates land use, transport and infrastructure planning across Greater Sydney. It outlines how Greater Sydney will be transformed into a metropolis of three cities. The site is located in the Eastern City of the Region Plan.
105. The Region Plan sets out ten directions, namely a city supported by infrastructure, a collaborative city, a city of people, housing the city, a city of great places, a well-connected city, jobs and skills for the city, a city in its landscape, an efficient city and a resilient city.
106. The Department’s AR finds the Application is consistent with the Region Plan as it will contribute toward the following directions of the Region Plan:

- *“fosters productivity through a growth in jobs, housing and hotel accommodation with good access to public transport within the Harbour CBD, and in doing so, supports the integration of land use and transport, contributing to a walkable and ‘30-minute city’ (Objectives 14 and 18).*
- *Supports the Harbour CBD’s role to grow an internationally competitive commercial sector to support an innovation economy, provide residential development without compromising commercial development and provide a range of entertainment and leisure activities and a vibrant night-time economy (Objective 18).*
- *Increases business activity and provides access to jobs (Objective 22)”.*

Eastern City District Plan

107. The Eastern City District Plan (**District Plan**) is a 20-year plan to manage growth in the context of economic, social and environmental matters. The District Plan guides the decisions of State Agencies and informs the private sector and the wider community of approaches to manage growth and change. It sets out the planning priorities and actions for implementing the Region Plan at a district level and is a bridge between regional and local planning.
108. The District Plan informs local strategic planning statements and local environmental plans, the assessment of planning proposals as well as community strategic plans and policies. It assists councils to plan for and support growth and change and align their local planning strategies to place-based outcomes.
109. The Proponent has considered the District Plan in its EAR and provided an assessment of the Application against the relevant Directions and associated Planning Priorities and Actions. The assessment concludes that the Application is generally consistent with the Eastern City District Plan and will deliver on a number of its priorities, including:
- *“The Application will create a hub in the heart of Pyrmont and provide services to the community (Planning Priority E3).*
 - *The proposed housing contributes to the housing supply targets identified in the Eastern City District Plan... and will assist in improving housing diversity and affordability (Planning Priority E5).*
 - *Public realm upgrades and landscaping and improvements will assist in the renewal of the site and its greater context. Conservation of a locally significant heritage item...with no adverse impact on heritage items in the locality (Planning Priority E6).*
 - *Provides an additional 747 jobs every year (Planning Priority E7).*
 - *Contributes to making the Harbour CBD more economically competitive and stronger, by contributing an additional \$793 million to the NSW economy from FY2017 to FY2030 (Planning Priority E11).*
 - *Provides job opportunities close to Sydney City and is easily accessible via public transport (Planning Priority E11);*
 - *Provides visitor and residential accommodation options in a well-connected and central location (Planning Priority E11)*
 - *A 6-star hotel in Sydney, contributing to the range of hotels across different price points. The Ritz-Carlton brand will contribute to Sydney’s tourism infrastructure (Planning Priority E13)”.*
110. The Department’s AR finds the proposed uses are consistent with some of the priorities of the Eastern City District Plan, as they will:
- *“deliver social infrastructure and foster healthy communities via the proposed community centre, reflecting the needs of the community now and in the future (Planning Priorities E3 and E4).*

- increase housing supply in proximity to jobs, services and public transport (Planning Priority E5).
- contribute to a stronger and more competitive Harbour CBD (Planning Priority E7).
- foster the creation of the '30-minute city' (Planning Priority E10).
- grow investment, business opportunities and jobs within the Harbour CBD (Planning Priority E11)".

Draft City of Sydney Local Strategic Planning Statement

111. The draft City of Sydney Local Strategic Planning Statement (**draft LSPS**) was publicly exhibited from 30 August 2019 to 11 October 2019. Council have prepared the draft LSPS in response to the release of the District Plan and the requirement for all Councils in NSW to prepare a LSPS, which is intended to inform the review of the SLEP 2012 and any future potential planning proposal amendments. It sets out Council's land use vision, and is supported by a number of priorities and actions.
112. The Commission acknowledges the recent release of the draft LSPS and recognises that it is still the subject of ongoing review. Being a draft strategic document, there is no statutory requirement for the Commission to consider the draft LSPS. The Commission does not consider it necessary to assess the Application with respect to its directions and actions as these are not yet finalised.

Visitor Economy Industry Action Plan 2030

113. The Visitor Economy Industry Action Plan 2030 supports the Commonwealth Government's ambition to develop Australia's visitor economy industry to a top tier sector over the next decade.
114. The Proponent's EAR assessed the consistency of the Application against the *Visitor Economy Industry Action Plan 2030*. The report notes:

"As noted in PWC's Economic Impact Assessment at Appendix L, the Australian Government is striving for an ambitious growth target to double overnight domestic and international visitor expenditure by 2020 (Tourism 2020). To facilitate this growth, the existing development pipeline needs to meet a target of 6,000 to 20,000 new rooms by 2020. PWC states that The Star is a fundamental driver of economic growth through tourism in Sydney, with benefits flowing through to the rest of NSW, and concludes that with the targets for tourism and the focus on high-end accommodation, the contribution of The Star (including Mod 13) is crucial in contributing to these targets.

The Proposal will provide a significant addition to Sydney's visitor economy by providing a 220 room Ritz-Carlton Hotel with a niche target market as a '6 star' hotel, which is new to the NSW visitor accommodation sector. PWC notes that this investment will bring a significant new demand into the market, with the overall impact being growth in the accommodation and food services industry, and associated industries".

115. Whilst Council did not reference the *Visitor Economy Industry Action Plan 2030* specifically, they stated at the meeting held on the 14 August 2019 that "the very hotel market that is being sought by The Star is being satisfied by other projects that legitimately have exploited the planning vision and controls of the city' and that 'work that [Council] did identified that it was more at the middle and lower to middle market...that needed to grow".
116. The Department has assessed the consistency of the Application against the *Visitor Economy Industry Action Plan 2030* and considers that the Application is consistent with the

Plan in that it will “support the revitalisation of the hotel and overnight visitor accommodation within the Harbour CBD and tourist district of Sydney”.

Future Transport Strategy Transport 2056

117. The Proponent has assessed the Application’s consistency against the actions and priorities of *Future Transport Strategy 2056*. The Proponent notes that a new metro station may potentially be located to the west of The Star, as indicated by the Interim Rail Link and Metro Corridor Land Application Map. Further, in accordance with *Future Transport 2056*, The Star will benefit from its proximity to a future light rail link connecting the site to the Bays Precinct. The Proponent states the Application capitalises on the opportunity to maximise the full development of the site given its proximity to the potential metro station.
118. The Department’s AR suggests that the Application is consistent with the *Future Transport Strategy 2056* in that it is located within walking distance of public transport; provides active transport options; and does not seek to increase the 3,000 on-site car parking spaces already approved under Major Project Approval MP 08_0098.
119. The Department also notes that the delivery of a metro station at Pyrmont has not yet been committed to and therefore cannot be relied upon to justify the Application’s strategic merit. In response to the Department’s comments, the Commission notes that the Proponent clarified that a metro station was not relied on for the purposes of strategic merit but was identified as a potential opportunity to leverage upon in the future.

Sustainable Sydney 2030

120. The Proponent has assessed the Application’s consistency against the actions and priorities of the *Sustainable Sydney 2030* and states the Application is consistent with the vision of the strategy in that it is:
- “Green: The Proposal will incorporate several ESD strategies, with the tower component targeting a 5-star green star rating. The proposed development will also enhance walking, active transport, and public transport patronage.
 - Global: The Proposal will enhance the visitor accommodation and tourism offering that Sydney has to offer, and
 - make a significant contribution to the NSW and Sydney economy in the form of investment and employment.
 - Connected: The Proposal will enhance pedestrian connectivity into the site and improve the ground plane of the development through street-level activation”.
121. The Department’s AR concludes that the Application will support many of the strategic directions nominated in *Sustainable Sydney 2030*. Specifically, it will contribute to increasing interstate and global competitiveness; target a 5-star Green Star rating; and contribute towards a lively and engaging city centre.

Commission’s Consideration of Strategic Plans

122. The Commission agrees with the Department’s assessment that the Application is consistent with aspects of the strategies outlined above for the following reasons:
- the Application supports the goals of The Region Plan by fostering productivity growth through the contribution of employment growth and by increasing the provision of housing and hotel accommodation within the Harbour CBD.
 - the Application is consistent with the District Plan and the relevant directions for the reasons outlined in paragraph 110.

- the Application is consistent with the *Visitor Economy Industry Action Plan 2030* in that it will contribute to the provision of hotel accommodation in the Sydney market and assist in meeting the targets established by the Plan.
- the Application is consistent with the actions and priorities of *Future Transport Strategy 2056* in that it does not seek to increase the provision of parking beyond what is approved; provides accommodation and employment in walking distance of transport and provides active transport options.
- the Application is consistent with the actions and priorities of the *Sustainable Sydney 2030* for the reasons outlined in paragraph 120.

5.8 Other Strategic Considerations

Proponent's Consideration

123. As outlined in section 9.2.4 of the Proponent's EAR, the Proponent has relied upon a strategic and contextual justification to support development of the scale proposed.
124. The Proponent argues that the Application has strategic merit in that it will contribute to the redevelopment of Pyrmont as a "*Global Waterfront Precinct of Sydney City*".
125. The Proponent has provided a contextual justification for the Application, highlighting that the Application's scale is appropriate in the context of existing and future developments concentrated along the eastern foreshore of the 'global waterfront precinct'. The Proponent contends that the 'global waterfront precinct' is to be visually transformed over the next 20-30 years by a number of renewal projects with tower developments with heights ranging from 168m to 253m. These developments are depicted in Figure 57 of the Proponent's EAR and include the ICC hotel, Barangaroo, Darling Park, Hyatt Regency, Cockle Bay, IMAX, Darling Square, and Harbourside. The Proponent states that waterfront development within the Bays Precinct has the potential to further contribute large scale development commensurate with the existing and future built form of the Precinct.

Council's Comments

126. In its public submission dated 9 October 2018, Council has addressed the suitability of a tower in Pyrmont. Council contend that the contextual argument used to justify the location and scale of the tower is unacceptable. In particular, Council has made the following comments in its submission "*Figure 1 in the visual impact assessment prepared by Architectus provides a "context" to justify the tower that exists outside of Pyrmont. It is clear from the view assessment on Cockle Bay that there is no context of towers in the Pyrmont vicinity. Nor is there a proposed or approved future context of towers*".

Public's Comments

127. The Commission heard concerns at the public meeting regarding the lack of strategic justification for the Application. By way of example, these concerns are reflected in the following comment made by a member of the public:

"Even more alarming is the statement in the environmental assessment report of the proponent that the Pyrmont Peninsula continues to undergo renewal, and would be broadly considered as an area in transition with future development opportunities likely to be informed by large-scale redevelopment occurring within the immediate and broader context of the site.... We are pleased that the Department of Planning has stated in the proponent's suggested global waterfront precinct cannot be relied upon to justify a landmark tower in the

location of the Star, and does not accept the proponent's contextual or strategic justification for the tower in this location...".

The Department's Consideration

128. The Department's AR notes that Barangaroo, Darling Harbour and the Bays are 'identified sites' within the State and Regional Development SEPP. Conversely, the Department notes that the site is "*not located within an identified precinct or any area specifically designated for significant future growth (additional height and floor space) in any adopted or emerging planning policy*".
129. In addition to the above, the Department contends that the Proponent's strategic rationale for the development, which is based on the site's location within a 'global waterfront precinct', cannot be relied upon as the concept is not defined in any existing or draft strategic or statutory planning policy. The Department therefore does not accept the Proponent's strategic justification.
130. The Department also notes that the future redevelopment of the Bays Precinct is not yet formalised and therefore cannot be relied upon as a strategic justification.
131. The Proponent's amended Urban Context Report submitted alongside the Response to Submission and Preferred Project Report dated November 2018, identifies the site as being "*physically part of the Darling Harbour Waterfront*" and justifies the tower of the proposed height on the basis that it will allow the "*Darling Harbour frontage to grow in scale*" and "*complete the emerging built context of Darling Harbour*" as well as contribute to the emerging 'global waterfront precinct'.
132. The Department concludes it does not accept the Proponent's strategic and contextual justification for the Application. Specifically, it notes that:

'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 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.'

The Greater Sydney Commission's Pyrmont Review

133. In August 2019, the GSC was requested to review the '*effectiveness of the planning framework to deliver the Government's vision for the Western Harbour Precinct and Pyrmont Peninsula*' by the Minister for Planning and Public Spaces. The area reviewed by the GSC was bound to the north by Sydney Harbour, by Wentworth Park to the west, Darling Harbour to the east, and Broadway to the south and included the Star Complex.
134. The Pyrmont Review does not relate to or comment on any individual development application or planning proposal, however it states that '*significant projects planned and underway have been identified where they relate to planning processes and how parts of the Review Area functions as a place.*'
135. The Pyrmont Review resulted in a number of specific findings, relevant to the planning framework, infrastructure capacity, stakeholders, and significant projects planned or underway. Those findings considered relevant to the assessment of the Application are outlined below.

- **Finding 1:** *The vision for the Western Harbour Precinct and Pyrmont Peninsula, within the Innovation Corridor, in growing a stronger and more competitive Harbour CBD, requires comprehensive and detailed planning at the local level, informed by the existing strengths of the area*
- **Finding 2:** *The current planning framework activated by significant sites, promotes a project-based approach over a place-based approach to planning outcomes*
- **Finding 3:** *There is no coordinated spatial framework to guide assessment of competing project priorities to deliver place-making outcomes*
- **Finding 6:** *Community infrastructure facilities are in high demand and serve a broad community base including residents, workers, tertiary students and visitors*
- **Finding 9:** *The current planning activity is substantial but characterised by a small number of large but disconnected projects, many on the edges of the review area.*

136. The GSC also made three recommendations within the Pyrmont Review, which were all adopted by the NSW Government:

- **“Recommendation 1: Alignment with the Greater Sydney Region Plan and Eastern City District Plan”.**

This recommends that in the Western Harbour Precinct, government “actively support the consistent delivery of objectives of the Greater Sydney Region Plan...and the planning priorities and actions of the Eastern City District Plan”. The recommendation states “this should include consistent and holistic consideration” of the Region Plan and the District Plan in local and State contexts “so that cumulative benefits can be realised for the Harbour CBD”.

- **Recommendation 2:** *Develop a Place Strategy (planning framework, master plan, economic strategy and governance).*

This recommendation states “A Place Strategy should be developed for the Western Harbour Precinct, including the Pyrmont Peninsula, encompassing:

- *A simplified planning framework that co-ordinates the delivery of the Western Harbour Precinct and Pyrmont Peninsula Place Strategy*
- *The development of a place-based master plan that addresses the planning priorities and actions of the Eastern City District Plan, including*
 - *Identification and characterisation of the sub-precincts, including: Ultimo, Darling Harbour, Blackwattle Bay/Wentworth Park and Pyrmont and Harris Street Village*
 - *Development of principles to respond to the individual character and potential of the sub-precincts”.*

- **Recommendation 3:** *Implementation of the Place Strategy.*

This includes the recommendation to “Finalise Terms of Reference and the 9 - 12 month program for delivery of a Place Strategy that addresses the requirements of the Greater Sydney Region Plan and Eastern City District Plan across the themes of infrastructure, liveability, productivity and sustainability”.

137. The Commission stated on 9 October 2019 that it would accept written comments regarding the findings and recommendations of the Pyrmont Review until 16 October 2019. In response, the Commission received a total of four written comments, which consisted of three public comments and one comment on behalf of the Proponent.

138. Comments from members of the public were generally supportive of the GSC's recommendation that more detailed master planning take place and that a place-based approach be taken as opposed to a project-based approach. These comments generally suggested that the Commission should view the Pymont Review as a reason to refuse the Application. However, comments from members of the public also raised some concerns such as:

- the timeframes in which the GSC undertook its review, which was not considered to be adequate to prepare its recommendations and findings
- a lack of adequacy in terms of addressing the significant heritage values of Pymont
- that the proposed Ritz-Carlton development would not be consistent with the intended outcomes for the area envisioned under the District Plan.

139. Urbis, on behalf of the Proponent, noted in its submission:

- the limited timeframe for the review which *“did not allow the GSC to undertake a robust assessment of the intricacies of the current development standards and controls at a fine grain level”*
- that the GSC did not fully respond to the Terms of Reference of the review, specifically in terms of a lack of an independent assessment of the development standards and controls
- that the Star Complex is the single largest private sector employer in the area, which was not acknowledged in the Pymont Review, and that the Application *“presents an opportunity to bolster the current contribution to the NSW economy and jobs”*
- that the Star Complex is not identified as one of the businesses listed by the GSC in the tourism sector as being a major employer and visitor attraction, although the Sydney Fish Markets is mentioned despite attracting less visitors compared to the Star Complex (three million v 11.6 million)
- that the Application would provide monetary contributions and the construction, management, and funding of a proposed Neighbourhood Centre, and that these would respond to the Pymont Review statement that *“The demand for community services, facilities and public open space in the Review Area are increasing and expected to increase in the future....”*
- that the Pymont Review did not *“include a discussion regarding visitor accommodation needs despite recognition of the importance of the tourism industry...”* and that the Application would contribute to visitor accommodation needs and respond to the demand outlined in the *Visitor Economy Industry Action Plan 2030*
- the unique topographical location of the Star Complex and how this context *“establishes The Star Site as being a natural transition between the waterfront...and the ridgeline...”*
- that the review references the City of Sydney's *Development Capacity Study, 2019* but that mapping referenced in the Pymont Review excluded capacity on NSW Government controlled sites, including the Star Complex
- the identification of the Application as a significant project in the area, and that the Pymont Review *“does not restrict the ability of the IPC to progress the determination”* of the Application.

140. With respect to the recommendations of the Pymont Review, Urbis' submission states:

- that the Application is consistent with the aim of **Recommendation 1**, and that its approval *“would result in the realisation of cumulative benefits”* and *“enforce the Innovation Corridor's role”*.
- that the Application is consistent with **Recommendation 2** as it has considered the concept of Place, provided a suite of documentation to analyse the site's context, and has *provided an extensive account on how the proposal responds to the complexities of*

the context in which it is located. Urbis states that approval of the Application would “not preclude the achievement of GSC’s Recommendation to develop a Place Strategy”.

- With respect to **Recommendation 3**, that the Review confirms that existing projects can be progressed under the relevant planning pathway and that the Application provided analysis relating to different themes which make up the concept of Place, “including economic role and function, land use, physical features such as built form grain, massing and scale, topography and landform”. The submission states that the Application is consistent with the aim of the third recommendation as a development of State significance.

The Commission’s Consideration

141. The Commission acknowledges that the Application is located within a precinct which is evolving in terms of strategic context. The findings and recommendations of the Pyrmont Review have provided guidance to the Commission in considering the Proponent’s and the Department’s positions on the ‘global waterfront precinct’ concept, the location of the site as being within Pyrmont or Darling Harbour, and strategic context generally.
142. With respect to the ‘global waterfront precinct’ concept, the Commission notes that the Department’s conclusions are also reflected in a number of public submissions which also question the ‘global waterfront precinct’ concept and the strategic merit of the Application.
143. The Commission does not accept the Proponent’s strategic and contextual argument that the site forms part of an emerging ‘global waterfront precinct’. The Commission notes that the concept of an emerging ‘global waterfront precinct’ is not identified in any current or draft strategic or statutory plan, including the GSC’s Pyrmont Review, and therefore does not consider the Application has the strategic and contextual merit which the Proponent contends it has on these grounds.
144. The Commission has considered the Proponent’s rationale regarding the site’s specific location and does not consider that the Application is located within Darling Harbour. Planning instruments including the SEPP (*State Significant Precincts*) 2005 and the *Darling Harbour Development Plan No.1* do not identify the site as forming part of the *Darling Harbour Development Area*.
145. It is acknowledged that Figure 17 of the District Plan does suggest the site forms part of the *Darling Harbour Precinct*, however its location and role within the Precinct under Figure 17 of the District Plan is ambiguous.
146. Further, the Commission agrees with comments provided by the Department on 20 September 2019 with respect to Figure 17 and the Innovation Corridor. The identification of the Darling Harbour Precinct within Figure 17 of the District Plan is interpreted by the Department to relate to the Innovation Corridor only, as opposed to a broader strategic planning precinct. In this respect, the Department noted that the Innovation Corridor falls under the heading of Planning Priority E8 (Growing and investing in health and education precincts and the Innovation Corridor) within the District Plan. This Priority relates to digital innovation and start-ups as opposed to a project of the nature or scale of the Application, hence the Applicant’s use of Figure 17 to justify the site as being mixed use and at the proposed scale within Darling Harbour is considered unreasonable in this instance.
147. Based on the conclusions drawn in paragraph 146 above, the Commission considers the site to be located within Pyrmont for the purposes of its assessment, and the Application should therefore be assessed with respect to the existing low-to-medium scale development of its immediate surrounds.

148. The Commission has also given consideration to the context of the Bays Precinct renewal. The Commission agrees with the Department which noted in its AR that *“planning for the Bays precinct is in the preliminary stages and the future built form aspirations...are yet to be identified”* and considers that there is no firm definition around the form that future development at the Bays Precinct should adopt in terms of height, bulk, and scale. Therefore, little weight can be given to the context of the site in relation to the Bays Precinct until this is further progressed, alongside more comprehensive planning for the Pymont Peninsula.
149. The Commission considers that the primary outcomes from the Pymont Review relevant to the assessment of the Application are the GSC’s identification of two key recommendations:
- *“Alignment with the Greater Sydney Region Plan and Eastern City District Plan”*
 - *“consistent and holistic consideration of the Greater Sydney Region Plan and Eastern City District Plan in both Local and State contexts so that cumulative benefits can be realised for the Harbour CBD”*
 - *“Develop a Place Strategy (planning framework, master plan, economic strategy and governance)”*
 - *“a simplified planning framework that co-ordinates the delivery of the Western Harbour Precinct and Pymont Peninsula Place Strategy”*
 - *“the development of an economic strategy and industry attraction program that recognises the potential of the Western Harbour Precinct and Pymont Peninsula in growing a stronger and more competitive Harbour CBD”*
 - *“the establishment of collaborative and inclusive governance arrangements that include State Government, industry, council and community representation. These arrangements should focus on master planning and land use controls in the short term and on the transition to ongoing collaborative curation-of-place in the medium to long term”*
150. In response to the Proponent’s submission on the recommendations of the Pymont Review, the Commission acknowledges that the Proponent submitted a substantial amount of information in terms of ‘place’ and context to support the Application. However, the Commission does not agree that this leads to the Application therefore being consistent with the two recommendations of the Pymont Review, as the work undertaken for the Application was to support and contextualise development on a single site only as opposed to a precinct wide master planning exercise.
151. The Commission takes the view that the outcomes of the Pymont Review support an assessment of the Application on merit against the existing statutory framework and strategic context of the area, as opposed to a potential future context which at this stage is not yet known.

5.9 Likely impacts of the development on both natural and built environments

152. The Commission considers the key impacts associated with the Application include:
- height, bulk and scale
 - visual impact
 - private view loss impacts
 - overshadowing
 - heritage impacts
 - wind impacts
 - traffic impacts
 - public benefit.

5.10 Height, Bulk and Scale

Proponent's Consideration

153. The Proponent submitted an Urban Context Report and Contextual Analysis Report alongside its EAR. Both reports note that the site forms part of an emerging 'global waterfront precinct' that is earmarked to undergo significant change to accommodate greater density commensurate with the Application. The Proponent's Urban Context Report notes the following:

"The Star plays a strategic role in Global Sydney's tourism and entertainment precinct. It acts as the western gateway and anchor of this 'global waterfront precinct' that wraps around the inset including Darling Harbour, Darling Live, along the western foreshore of the CBD peninsula and is terminated at Barangaroo".

Likewise, the Contextual Analysis Report that accompanied the Proponent's EAR provides the following commentary:

"The emerging skyline locates the tallest buildings towards the peninsula at the entrance to the harbour framing the precinct. The Star responds to this emerging context by creating a landmark tower form that sits between 166m-235m at the entrance to the global waterfront precinct".

154. The Proponent's EAR notes that *"within the emerging 'global waterfront' precinct that includes The Star, Barangaroo and Darling Harbour there has been a recent change in the overall character of the area including the way in which buildings relate to the public spaces and waterfront areas of the precinct. While the Proposal is not of a similar scale with its immediate surrounds, it is considered in scale with its context when considering its location within an area of significant change within Sydney"*.
155. The Contextual Analysis Report that accompanies the Proponent's EAR concludes that *"Mod 13 redevelopment of The Star responds to the existing context of both the global waterfront precinct and Pyrmont... the tower built form responds to the emerging global-city character of the locality by locating tall tower elements framing the waterfront"*.
156. The Urban Context Report and Contextual Analysis Report have been peer reviewed by Olsson and Associates. Olsson and Associates endorse the methodology and findings of the reports, noting that *"whilst the tower is considerably taller than its local context, it also makes a relatively smooth transition of built form... and responds well to its local context of Ultimo-Pyrmont"*.
157. In its Response to Assessment Report and Public Submissions dated 6 September 2019, the Proponent commented on the Department's use of the *Veloshin* principles set out in *Veloshin v Randwick Council* [2007] NSWLEC 428 to inform its assessment of the Application's height and bulk with respect to the broader locality (see paragraphs 165-166). The Proponent notes that *"Planning Principles are not authoritative, legally binding principles laid down by a Judge which must be applied by a decision maker"*.
158. The Proponent contends that the *Veloshin* principles were developed in response to an assessment against the local planning controls. Specifically, the Proponent notes that Roseth SC noted in his judgement that *"[t]he debate about height and bulk can be meaningful only against the background of local planning controls"*. Consequently, the Proponent considers that the principles are not applicable to the Application because it

relates to a Part 3A project and accordingly the local EPIs do not apply in accordance with s75R(3).

Council's Comments

159. In its submission dated 9 October 2018, Council has commented on the suitability of the tower. Council contends that *"the tower form does not contribute positively to the Pyrmont Skyline. Rather it is inconsistent with all the surrounding buildings in height and form"*. Council subsequently notes that the View Impact Assessment prepared by Architectus submitted alongside the Proponent's EAR demonstrates that *"there is no context of towers in the Pyrmont vicinity, nor is there a proposed or approved future context of towers"*.
160. Council concludes that the built form significantly breaches the primary controls applicable to the Pyrmont locality. Specifically, Council notes: *"the view impacts are created by a building form that far exceeds all primary controls and community expectations based on those controls"*.

Public Comments

161. The Commission heard concerns at the public meeting regarding the bulk and scale of the Application, including:
- *"I object to the excessive height, build, bulk, dominating visual impact. The fact that it's an isolated skyscraper placed totally out of context with its low, medium-high surrounds"*.
 - *"It is inconsistent with the existing and desired future built form of Pyrmont. It's at odds with the predominant low-to-medium scale of the surrounding area and it's isolated, overly dominant and does not look appropriate in its context"*.
 - *"It's isolated, it's overly prominent, it's inconsistent with the character of Pyrmont, it's inconsistent with planning precedents, it's not in the public interest"*.
162. The Commission has reviewed the public submissions provided during the exhibition period in support of the Application, including:
- *"I appreciate the scale and iconic nature of this development and am very much in favour of the proposal"*.
 - *"With Continued growth [sic] around Darling Harbour, I see this proposal as a positive addition to the benefits of the Pyrmont Community. A first-class hotel and accommodation precinct that can attract international and interstate tourism could add financial benefits and growth to local business. The inclusion of a neighborhood [sic] centre that will provide social amenities supportive of local residents is a welcome approach that makes me feel I have been included in the proposal"*.

Department's Comments

163. The Department's AR has assessed the built form with regards to the prevailing character of the area, including the heights of surrounding developments.
164. The Department did not accept the Proponent's position that the Application's scale would be appropriate in the context of existing and future developments, noted in paragraph 125. In its AR, the Department states the *"Star site is located approximately 700m north of the ICC Hotel and ICC Sydney, and over a 1km from three residential buildings of Darling Square. Harbourside (currently under assessment by the Department) is located approximately 600m from the Star site ... the Bays precinct is isolated from other 'identified sites' and located between 600 and 1000m from the Star site"*.

165. The Department acknowledges that the height restrictions nominated by the SLEP 2012 do not apply and have therefore relied on the principles established in The Land and Environment Court case *Veloshin v Randwick Council* [2007] NSWLEC 428 for the assessment of the Application's height and bulk.
166. The Department considers that the Application is inconsistent with Planning Principle No. 4 (refer to paragraph 191) for the following reasons:
- *“the proposed height and bulk significantly exceed the height and bulk of existing buildings surrounding the site and in the wider Pyrmont Peninsula, inconsistent with the existing and desired future built form character of Pyrmont;*
 - *it is at odds with the predominant low-to-medium rise built form character of the surrounding area;*
 - *it is overly dominant and does not look appropriate in its context;*
 - *the impacts are not consistent with the impacts that may be reasonably expected from an LEP compliant envelope. To adequately understand the appropriateness of the proposed tower in this context, the Department has carefully considered the potential visual, private view, heritage, overshadowing, and wind impacts of the proposal”.*

Professor Webber's Independent Assessment and Design Advice

167. Professor Peter Webber's Independent Assessment and Design Advice prepared for the Department seeks to address whether *“a tower form [is] appropriate in this location given the local and wider urban design context?”*.
168. In response to the Proponent's Visual Impact Assessment and the review undertaken by Richard Lamb & Associates, Professor Webber states the following:

“It cannot be agreed that this would be the case, because from the large majority of other viewpoints it is considered that the tower would be unduly prominent, unrelated to its context and unacceptable. The argument that ‘only sky views’ are obscured by extra height ignores that fact that the substantial visual bulk of the very tall tower seen against the sky would be oppressive from many viewpoints”.

Ms von Hartel's Peer Review

169. Ms von Hartel was engaged by the Commission to provide independent assessment and design advice in relation to visual impacts associated with the Application by undertaking a peer review of Professor Webber's Independent Assessment and Design Advice prepared for the Department.
170. Ms von Hartel agrees with Professor Webber's review of the peer review prepared by Richard Lamb & Associates of Architectus' VIA submitted alongside the Proponent's EAR. She states *“In my view Professor Webber also successfully argues that the statement by the peer reviewer that ‘the extra height obscures an area of sky only’ (Richard Lamb & Associates P 8) is fallacious as ‘it ignores the fact that that the substantial visual bulk of the very tall tower against the sky would be oppressive from many view points”.*

Proponent's Comments on Professor Webber's Independent Design Advice and Ms von Hartel's Peer Review

171. In response to Professor Webber's Independent Assessment and Design Advice prepared on behalf of the Department, the Proponent questioned the merits of the independent review stating that Professor Webber did not have the *“benefit of the Proponent's extensive environmental assessment”*. Further, in support of the VIA carried out by Architectus the

Proponent notes that “*the Architectus Visual Impact Assessment is based on an established methodology...the methodology defines objective criteria to measure and analyse visual impact which is a qualitative matter*”.

172. In response to Ms von Hartel’s Peer Review, the Proponent has provided the following commentary in its Response to the Review of the Independent Design Advice:

“The Review says that the loss of sky is one of the most significant losses due to the proposed development. ‘For example, the view from Balls Head Reserve’. This is a subjective statement. In the Visual Impact Assessment methodology, the Proposal is seen from Balls Head in a broad panorama including the Central Sydney skyline. Whilst the proposal is clearly seen, it is a relatively small aspect of the horizontal panorama and the vertical angle of the large sky. In and of itself the visual impact cannot really be regarded as oppressive – which is an emotionally laden word”.

173. The Proponent’s Response to Ms von Hartel’s Peer Review further notes that “*the fact that you can see something does not necessarily mean it has high visual impact and should not be built... The fact is that on almost all objective measures from a variety of near and far viewing point locations the proposal has low to moderate visual impact*”.

Commission’s Consideration

174. The Commission has considered the comments of the Department and the Proponent with respect to the *Veloshin* principles. Having reviewed the Proponent’s comments quoting the judgement (noted in paragraph 157), the Commission considers that the full extent of Roseth SC’s comments should be noted. As set out in paragraph 30 of *Veloshin v Randwick Council* [2007] NSWLEC 428, Roseth SC states:

“The debate about height and bulk can be meaningful only against the background of local planning controls, such as maximum height, floor space ratio, site coverage and setbacks. While these controls are usually also based on subjective judgment, they have been through a statutory process involving exhibition and the consideration of public comment. They therefore express the subjective preferences of a local community and should be given greater weight than the subjective preferences of individuals”.

175. The Commission agrees with the Department that the use of the *Veloshin* principles is a reasonable approach to take as the principles can assist in providing an assessment of the built form and height, in circumstances where local planning controls do not strictly apply. The Commission acknowledges the comments of the Proponent in paragraphs 153 - 158. The Commission notes that pursuant to s75R of the EP&A Act the provisions of SLEP 2012 do not apply.

176. In addition to the Department’s consideration of the *Veloshin* principles the Commission also considers it appropriate to assess the merits of the application against the existing use rights planning principles established by *Fodor Investments v Hornsby Shire Council* [2005] NSWLEC 71; 141 LGERA 14, as these apply in instances where existing LEP planning controls are not a matter for consideration (as is the case for the Application). Although the Commission acknowledges that the Application does not involve an existing use rights issue, the planning principles are a useful tool for assessing the merits of the Application, including whether the Application’s bulk and scale is appropriate in the context of its overall assessment of the public interest. The Commission’s consideration of the Application against those planning principles is as follows:

How do the bulk and scale (as expressed by height, floor space ratio and setbacks) of the proposal relate to what is permissible on surrounding sites?

The Commission concurs with the Department's findings that the bulk and scale is inconsistent with that of the surrounding developments. The proposed density is significantly greater than the density permitted under SLEP 2012 for surrounding properties. The Commission is of the view that the relevant strategic planning documents do not provide clear guidance on future density and form, but notes that the GSC's Pymont Review promotes a place-based approach to planning in the area. Consequently, the Commission considers it necessary to have regard to the existing form that prevails in the locality.

What is the relevance of the building in which the existing [use] takes place?

The proposed works would contribute to the continued use of the site as a casino and hotel. The proposed works seek to introduce a residential and additional hotel component to be delivered in the proposed tower addition. This tower addition significantly increases the scale of the existing building. It intensifies the development contained within the site, which the Commission considers unacceptable given the resulting impacts.

What are the impacts on adjoining land?

In its AR, the Department concludes "amenity impacts including overshadowing and private view loss are acknowledged as being relatively minor but would only occur as the result of an unacceptable form of development and are therefore not considered to be justified by the proposal". The Commission agrees with the conclusions of the Department with respect to the Application's impacts to adjoining land. The Commission acknowledges that the additional impacts to adjoining properties occur as a result of an inappropriate development.

What is the internal amenity?

The Application is considered to provide an appropriate level of amenity for occupants.

177. The Commission has had regard to the Design Quality Principles established under SEPP 65 which relate to bulk and scale, namely Principle 1 (Context and neighbourhood), Principle 2 (Built form and scale), and Principle 3 (Density). In this regard, the Commission agrees with the Department's assessment that the Application is inconsistent with these principles for the following reasons:
- the bulk and scale is considered to be excessive and inconsistent with the existing surrounding low-to-medium scale development in Pymont
 - the proposed bulk and scale does not reflect the desired future character for the locality as identified in currently adopted strategic and statutory plans
 - the Application will have unreasonable amenity impacts on surrounding properties which arise from an unacceptable built form.
178. Consistent with the Department's conclusions, the Commission is also of the view that the Application is inconsistent with many of the provisions of the SHFW DCP as it applies to bulk and scale in that:
- the built form is not appropriate for the context and will have an adverse visual impact on public views from the foreshore
 - the built form significantly contrasts with the scale of the low to medium built form in the surrounds and consequently will not enhance the setting.
179. The Commission acknowledges the findings and recommendations of the Pymont Review and recognises that Pymont and the Bays Precinct will undergo change in the future. However, as outlined in paragraphs 141 to 150, the Commission is of the view that the findings of the Pymont Review support the Application being assessed against the existing

statutory framework and surrounding built form context as the future built form context is not yet established. In this regard the Commission particularly notes Recommendation 2 of the Pyrmont Review which states “A Place Strategy should be developed for the Western Harbour Precinct, including the Pyrmont Peninsula, encompassing:

- A simplified planning framework that co-ordinates the delivery of the Western Harbour Precinct and Pyrmont Peninsula Place Strategy
- The development of a place-based master plan that addresses the planning priorities and actions of the Eastern City District Plan, including
 - Identification and characterisation of the sub-precincts, including: Ultimo, Darling Harbour, Blackwattle Bay/Wentworth Park and Pyrmont and Harris Street Village
 - Development of principles to respond to the individual character and potential of the sub-precincts”.

180. The tower is geographically distant from taller buildings noted by the Proponent (e.g. Barangaroo, Darling Harbour, the ICC Hotel, the ICC Sydney and the Bays Precinct). Accordingly, the tower presents as being isolated, particularly when viewed in the context of the surrounding low-to-medium scale built form in the surrounds of Pyrmont.
181. Based on the Material, the Commission finds that the Application has excessive height, bulk and scale when viewed in the context of the surrounding development of Pyrmont as outlined in paragraph 180. Further, the contextual justification predicated on the emerging ‘global waterfront precinct’ concept is not accepted by the Commission.

5.11 Visual Impact

Proponent’s Consideration

182. The VIA prepared by Architectus has given consideration to the five-step assessment process established by *Rose Bay Marina Pty Limited v Woollahra Municipal Council and anor* [2013] NSWLEC 1046 and accounted for both the existing and future urban context, noting that the “existing open skyline view is likely to change over the next 20-30 years as the Bays Precinct is developed and further development occurs along the western side of Darling Harbour”.
183. The VIA prepared by Architectus concludes that: “the Proposal does not obstruct views of water, land-water interface or public places of heritage items or landmarks. Moreover, while the Proposal is highly prominent within many public views assessed it does not generally reduce the quality of these views or their ability to be appreciated”.
184. A peer review was undertaken by Richard Lamb and Associates and submitted alongside the Proponent’s EAR and concludes that:
- “In my opinion, the overall assessment of the extent of visual impacts on public domain views is sound, but it is also conservative.... The VIA shows that while the building would be a change to the visual environment in the public domain, the building does not have substantive negative visual impacts measured with regard to view loss, view sharing, or access to views of scenic, iconic or other items of documented importance. The additional environmental impacts (visual impacts) would therefore be limited”.*
185. The Proponent’s Response to Request for Submissions and Preferred Project Report dated November 2018 is accompanied by a supplementary VIA prepared by Architectus. Architectus has provided a contextual justification for the Application, noting that “the site is in the broader context of change where future tall buildings are anticipated”. Further, in response to the submissions, Architectus commented on the future strategic planning

framework noting that future development has set a precedent for comparable development. Specifically, the Proponent notes that:

“The Eastern City District Plan describes that the city is anticipated to grow west through the ‘innovation corridor’ and this is reiterated in the Draft Central Sydney Strategy (by the City of Sydney), although there has to date been no further development of this strategic aim towards new planning controls. Sites such as Barangaroo, and the Sydney Convention and Exhibition Centre (including ICC hotel and Darling Harbour Live) and ‘The Ribbon’ as well as the expectation for future development in the Bays Precinct have further set a precedent, having been accepted and developed in this strategic context or even prior to the development of these strategic documents”.

Council’s Comments

186. Council in its submission dated 9 October 2018 has addressed the suitability of a tower in Pyrmont. Council concludes that *“the tower form does not contribute positively to the Pyrmont skyline. Rather it is inconsistent with all surrounding buildings in height and form”*. In the same submission, Council does not support the Proponent’s contextual justification for the tower and its associated visual impact, stating:

“the visual impact assessment prepared by Architectus provides a “context” to justify the tower that exists outside of Pyrmont. It is clear from the view assessment on Cockle Bay that there is no context of towers in the Pyrmont vicinity. Nor is there a proposed or approved future context of towers”.

187. In addition, Council does not accept the contextual argument provided by Architectus in the supplementary VIA noting that it is clear from the view assessment on Cockle Bay *“that there is no context of towers in the Pyrmont vicinity. Nor is there a proposed or approved future context of towers”*.

Public Comments

188. The Commission acknowledges comments raised in the public submissions and at the public meeting regarding the visual impact of the proposed tower.

189. Public concerns included:

- the proposed tower will dominate views throughout Pyrmont and in the broader surrounds
- the tower is excessive in height and bulk
- the signage logos placed at the top of the building would adversely impact night views
- the tower is at odds with the surrounding low-to-medium scale context and will have an adverse visual impact.

190. Public support included:

- The tower is iconic and contributes to a progressive cityscape.
- As Australia’s global city, Sydney should have tall and iconic buildings in locations close to transport, visitor and commercial infrastructure.
- The proposal will enhance the Pyrmont peninsula in terms of the built form, streetscape, public domain and commercial amenities.

Department's Consideration

191. The Department has considered the visual impacts resulting from the Application against the planning principles established by *Veloshin v Randwick Council* [2007] NSWLEC 428. The Department concludes that the Application is inconsistent with Planning Principle No. 4 which requires the consent authority to determine “*does the proposal look appropriate in its context?*”.
192. When applying the above principle to the assessment of the Application, the Department considers that the proposed tower would appear “*isolated and overly prominent and unrelated to its context within Pyrmont to the detriment of the local and wider views from many public vantage points*”.
193. In addition to being at odds with the surrounding low-to-medium rise built form, the Department considers the Application would set a precedent for future tall buildings within Pyrmont. The Department notes that approval of the Application would “*be used to justify additional tall buildings, further eroding the established and desired character of Pyrmont, unsupported by any adopted strategic policy direction*”.
194. The Department further notes that the visual impacts resulting from the proposed tower cannot reasonably be expected from an LEP compliant envelope.
195. The Department's AR states that it agrees with the independent design advice outlined in paragraph 196 below.

Professor Webber's Independent Assessment and Design Advice

196. Professor Webber's Independent Assessment and Design Advice prepared for the Department provides a review of the VIA prepared by Architectus, and the peer review prepared by Richard Lamb and Associates, both of which were submitted alongside the Proponent's EAR. Professor Webber's advice does not provide an independent VIA, rather, it is a peer review that has been prepared to address whether “*a tower form [is] appropriate in this location given the local and wider urban design context*”.
197. Professor Webber's advice disagrees with the conclusions of the peer review of the Proponent's VIA undertaken by Richard Lamb and Associates, which were as follows:

“*the overall visual impact of the proposal on public and private views, including cumulative impacts, is acceptable*”. (p.162) *The peer review of Visual Impact similarly argues that the building would not have “...substantial negative visual impacts...”, and that “The extra height obscures an area of sky only...” (Richard Lamb & Associates p.8)*”.
198. Contrary to the findings of Richard Lamb's peer review (noted in paragraph 197), Professor Webber's Independent Assessment and Design Advice considers that the tower would be “*unduly prominent, unrelated to its context and unacceptable*”.
199. Professor Webber's advice acknowledges the Proponent's argument that the Application will predominantly impact sky views. Notwithstanding, it is concluded that the substantial visual bulk of the very tall tower seen against the sky would appear “*oppressive from many viewpoints*”.

Ms von Hartel's Peer Review

200. The peer review undertaken by Ms von Hartel has identified that Professor Webber's advice is sound; however, considers that aspects of the report could have been enhanced. In

particular, Ms von Hartel concludes that Professor Webber's assessment could have benefited from questioning the view assessment criteria and evaluation presented by Architectus.

201. The planning principles referenced are detailed in Section 2.7 of the VIA prepared by Architectus submitted alongside the Proponent's EAR and are divided into two broad categories which include the importance of the view and the visual impact rating. As noted by Architectus, these principles have been adopted "*based on Planning Principles described in this section and Architectus' experience in the assessment of Visual Impacts*". Ms von Hartel considers that "*none of these criteria are applicable in the circumstances*". In light of this, Ms von Hartel concludes that Architectus' assessment of views '*appear subjective.*'
202. With regards to the Proponent's assessment, Ms von Hartel notes that "*Architectus also claim that the tower should be viewed not in the 'open skyline' of today as the context is likely to change over the next 20 – 30 years, particularly in the future development of the western side of Darling Harbour*".
203. Ms von Hartel disagrees with the conclusions outlined in paragraph 202 and notes that '*this argument cannot be supported as Planning controls are formulated (and revised from time to time) to accommodate future planning strategies and current planning controls are in place to facilitate development in accordance with Government policy*'.
204. Ms von Hartel's Peer Review considers that the loss of sky view is a significant outcome of the Application given the tower's isolation and setting. Ms von Hartel notes that "*in my view the loss of sky view is one of the most significant losses due to the proposed development. For example in the view from Balls Head reserve, the cluster of buildings at North Sydney form part of the ground mass, whereas the single tower at Pyrmont 'sticks out' as a single oppressive element and divides the sky area into two parts – east and west of the tower*".

Proponent's Comments on Ms von Hartel's Peer Review of Professor Webber's Independent Assessment and Design Advice

205. In the Proponent's response to Ms von Hartel's Peer Review, it references the independent advice that accompanied its EAR prepared by Richard Lamb which notes that the loss of sky views is not a matter for consideration in any established planning principles or development controls. Specifically, Richard Lamb's review states "*the extra height obscures an area of sky only, which, while this is a kind of view loss, is not one that is called up by the planning principles or development controls that apply*". In response to Richard Lamb's commentary, Ms von Hartel states "*In my view the loss of sky view is one of the most significant losses due to the proposed development*". the Proponent considers that Ms von Hartel's conclusion that the loss of sky views is "*one of the most significant losses*" is a "*subjective statement*".

Public Comments on the Ms von Hartel's Peer Review of Professor Webber's Independent Assessment and Design Advice

206. A total of seven public comments were received following the publication of Ms von Hartel's Peer Review on the Commission's website. All comments support the conclusions of Ms von Hartel's Peer Review, with the majority concurring that the bulk and scale of the Application is excessive.

Commission's Consideration

207. The Commission has reviewed the Proponent's VIA and recognises that it has been prepared with respect to the planning principles established by *Rose Bay Marina Pty Limited v Woollahra Municipal Council and anor* [2013] NSW LEC 1046.
208. The Commission also considered the Proponent's justification for the tower based on its location within the District Plan's Innovation Corridor and the anticipated future development in the surrounds, including the Bays Precinct.
209. As outlined earlier in paragraphs 141 to 150, the Commission is of the view that it is appropriate to assess the Application on merit against the existing statutory framework and surrounding built form, as planning for the area is evolving and desirable built form outcomes are not yet established.
210. The Commission acknowledges the concerns raised in the public submissions regarding the Application's visual impacts and its incompatibility with the surrounding context, and agrees with the findings of the Department, the Independent Assessment and Design Advice and Ms von Hartel's peer review addressed above from paragraphs 197 to 206.
211. The Commission acknowledges the use of the *Veloshin* principles is limited in this case, given that the LEP height controls do not strictly apply due to s75(R) of the EP&A Act. However, the Commission is of the view that the *Veloshin* principles are useful for assessing the merits of the application. In particular, the Commission agrees with the Department's reasoning and conclusions referred to in paragraph 191 that the Application is inconsistent with Planning Principle No. 4.
212. The Commission also agrees with the Department's assessment against the SHC SREP and finds that the Application is contrary to the SHC SREP as it relates to visual impact as it is:
- inconsistent with the planning principle at clause 13(f), as the proposed bulk and scale is excessive in the current context of the area, will have an adverse visual impact on views obtained from the foreshore and waterways and therefore the unique visual qualities of Sydney Harbour
 - inconsistent with the planning principle at clause 14(d), as the proposed bulk and scale is incompatible within the context of the existing low-to-medium density development and therefore will adversely impact the visual quality of Sydney Harbour
 - inconsistent with the provisions of clause 26, as the built form proposed is obtrusive in appearance, will dominate views and vistas to and from public places, and will therefore reduce the visual amenity of the area.
213. Consistent with the Department's conclusions outlined in paragraph 96, the Commission also concludes that due to the Application's inconsistency with several clauses of the SHC SREP, the Application is consequently inconsistent with the draft Environment SEPP as it relates to visual impact as it will have a significant impact on the visual quality of, public spaces, Sydney Harbour and surrounding foreshore areas, including Union Square, Glebe foreshore parks, Cockle Bay and Pyrmont Park.
214. The Commission finds that the Application will have unacceptable visual impacts as it will appear overly obtrusive when viewed in the skyline and in the context of the low-to-medium scale development in the surrounding area.

5.12 Private View Loss Impacts

Proponent's Consideration

215. The Proponent commissioned Architectus to prepare a Visual Impact Assessment (VIA) and assess the impacts from 24 private view corridors.
216. In its VIA, the Proponent has assessed the view impacts from the properties noted under the SEARs which include:
 - 88 John Street
 - 24 & 26 Point Street
 - 2 Jones Bay Road
217. The Proponent has also assessed the view impacts from the following additional properties:
 - 21 Cadigal Avenue
 - 8 Distillery Drive
 - Astral Residences
218. The supplementary VIA submitted alongside the Proponent's Response to Submissions and Preferred Project Report addresses the view loss impacts to additional private view corridors identified in the submissions, including:
 - 14 Pymont Street
 - 16 Pymont Street
 - 27 Mount Street
 - 851 and 852 Astral Tower

Additional private views with unidentified addresses have also been assessed.

219. The impact analysis has considered the likely impacts on private views with respect to the *Tenacity* principles set out in *Tenacity Consulting v Warringah Council* [2004] NSWLEC 140 at [25] to [29]. The principles involve the application of a four-step assessment, which can be summarised as follows:
 - step one: assessment of views to be affected
 - step two: consider from what part of the property the views are obtained
 - step three: assess the extent of the impact
 - step four: assess the reasonableness of the proposal that is causing the impact
220. The Proponent's EAR contends the: *"impacts on private residences, could not be avoided or reduced through a 'more skilful design' recognising the Proposal has gone through a rigorous design excellence process. On balance the impacts are reasonable as the areas of view loss experienced would have occurred with a development no more than 28 metres in height"*.
221. With respect to the individual properties identified in paragraph 125 and noted in the Proponent's Response to Submissions and Preferred Project Report, Architectus maintains that *"the proposal is acceptable and appropriate in visual impact terms, with reference to all relevant standards, guidelines and controls"*.
222. The Proponent commissioned David Moir to prepare a Landscape and Visual Impact Review. The review accompanied the Proponent's response to the Department's Assessment Report dated 6 September. David Moir states that *"I recommend the Independent Planning Commission take the Department's lack of process of assessment into consideration in their review of the Department's justification for refusal on the grounds of perceived visual impact"*.

Council's Consideration

223. In its submission dated 9 October 2018, Council has commented on the private view loss addressed in the Proponent's VIA. Council considers the view loss to be unacceptable on the basis that the view loss is attributed to a built form that provides a substantial variation to the controls and therefore does not facilitate view sharing. Council notes the following:

"It is argued by the applicant that this is acceptable on the basis of "view sharing". However, the impacts are created by the proposed 237m high tower, a tower that is not anticipated by any of the controls and therefore could never be anticipated by the impacted Pyrmont residents. The view impacts are created by a building form that far exceeds all primary controls and community expectations based on those controls, therefore the principles of view sharing are not exhibited".

224. In its submission dated 9 October 2018, Council also stated that while both 24mm and 50mm focal length imagery was included in the VIA, that the 50mm focal length 'more accurately represents what a human eye sees' and that therefore whilst the 24mm focal length impact appears lesser, this is not what would be perceived as the actual impact.

Department's Consideration

225. The Department has undertaken a view impact assessment using the four-step process established by *Tenacity Consulting vs Warringah* [2004] NSWLEC 140 to determine the extent of the view impacts. In accordance with the *Tenacity* principles, the Department has considered the views affected by the Application and the qualitative value of those views.
226. Using the *Tenacity* principles, the Department has considered view loss from the following apartments:
- 2 Jones Bay Road:
 - Mid-levels (level 6) south facing apartments
 - Mid-levels (level 6) east facing apartments
 - High-level (level 8) south facing apartments
 - High-levels (level 8) east facing apartments
 - Watermark Tower (24 & 26 Point Street):
 - South facing apartments at 26 Point Street
 - East facing apartments at 24 Point Street
 - South facing apartments 88 John Street
 - East facing apartments at 88 John Street
 - 21 Cadigal Avenue;
 - Astral Residences:
 - Lower Levels (Podium and level 1 north facing and dual aspect apartments)
 - Mid-portion of the Astral residences (level 4 and level 5)
 - Upper-portion of the Astral residence (level 10)
 - 4A/4 Distillery Drive
 - 14 & 16 Pyrmont Street
 - 27 Mount Street
 - Astral residences (Apartment 851 and 852)
227. The Department generally agrees with the Proponent's VIA assessment. However, from some locations the Department has identified greater view impacts than those identified by the Proponent. The Department has categorised the impacts as follows:
- *"The view impacts to mid-level south facing apartments at 2 Jones Bay Road and apartments at levels 4 and 5 of the Astral Residents are considered to be severe not moderate".*

- The view loss from the apartments in the lower levels of the Astral Residence (podium and level 1) is considered “*devastating, noting the loss of water and foreshore views and significant loss / significant change of distant backdrop developments*”, which departs from the Proponent’s VIA assessment that was considered high (severe).
 - The view loss impacts from the “*apartments at levels 4 and 5 of the Astral Residents are considered to be severe not moderate*”. The Department justifies its assessment by acknowledging that these apartments will receive a “*complete loss of water and foreshore views as a result of the development*”.
228. In accordance with the *Tenacity* principles, the Department has assessed the reasonableness of the Application and considered:
- The extent of the view loss resulting from the built form approved under previous modifications
 - The extent of the view loss resulting from an LEP compliant scheme.
229. The extent of the view loss provided by the proposed envelope when compared to the envelope approved under MOD 7 for the MUEF is considered to be more significant. MOD 7 was used for the comparison because it was the most recent approved modification that affected views. Specifically, the Department in its AR states:
- “The Department notes that the view impacts from the most recent modification affecting views (MOD7) included severe view impacts to a similar number of apartments. In the current case however, the significant increase in height and visual prominence of the proposed tower is considered to result in greater impacts than those experienced because of MOD 7”.*
230. The Department has acknowledged that the private views obtained from the lower floor apartments within the Astral Residences and 2 Jones Bay Road would be impacted even in the instance that the Application complied with the LEP height limit. In support of this, the Department has noted “*An LEP compliant envelope would result in similar or greater view impacts to these properties at their lower levels*”.
231. In assessing the reasonableness of the Application, the Department has (noting that as set out in paragraph 100, development control plans such as the SDCP 2012 do not strictly apply to the Application) taken into consideration the requirements of the SDCP 2012. The Department’s view is that the controls under the SDCP 2012 provide that outlook is the appropriate measure of residential amenity and that there is no guarantee that views or outlook from existing development will be maintained. The Department has also noted that the SHC SREP acknowledges that public good has precedence over the private good when changes are proposed to Sydney Harbour or its foreshores.
232. The Department concludes that an acceptable level of outlook (as opposed to views) is maintained from affected apartments noting in its AR that “*with regard to outlook, as opposed to views, the Department considers that an acceptable level of outlook is maintained from affected apartment...whilst some apartments are negatively impacted, they would retain some outlook*”. Notwithstanding, the Department finds that the Application provides unacceptable view loss impacts, with some of these impacts categorised as being severe for a number of the affected properties.

“The Department acknowledges the negative impacts on views and outlook of some private residences, particularly those at 2 Jones Bay Road and Astral Residences within the Star site.

View loss impacts to the most affected properties, being Astral Residences and Watermark Apartments range between moderate to severe”.

233. These impacts emanate from an unacceptable form of development that cannot be supported. Specifically, the Department has noted:

“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”.

234. The Department acknowledges that the *Tenacity* principles require a consideration as to whether a more skilful design could reduce private view impacts. It is noted that the proposed tower adopts a slender and curvaceous form to minimise view impacts. However, the Department considers that a further reduction in the Application’s height and scale would continue to produce private view loss impacts and therefore *“would not significantly alter the degree of view loss resulting from the proposal”.*

235. The Department’s conclusions are supported by Professor Webber’s Independent Assessment and Design Advice, which states:

“Private Views

A range of view impacts from 24 locations are simulated using digital images, with in addition a transparent envelope representing “a 28m. LEP compliant height for the site within the proposed view” (p. 92). The images range from minor to very severe as is inevitable in this dense location. The relatively slender tower form, as well as the rounded corner forms would mitigate impacts to the extent possible if a development of this density were to be approved on the site”.

Ms von Hartel’s Peer Review of Professor Webber’s Independent Assessment and Design Advice

236. Ms von Hartel has questioned the accuracy of the Proponent’s private view loss impact assessment and considers that Professor Webber’s Independent Assessment and Design Advice could have been bolstered by commenting on the Proponent’s impact ratings. Specifically, Ms von Hartel contends that *“it would have been beneficial if Professor Webber had commented on the summary of impacts (Architectus p145 and following pages) as this could have amended the Architectus overall impact ratings which in my view deserve to be questioned”.*

Proponent’s Comments on Ms von Hartel’s Peer Review of Professor Webber’s Independent Assessment and Design Advice

237. In response to Ms von Hartel’s review, the Proponent contends that *“the tapered tower form responds to detailed consideration of view sharing”.*

Public Comments

238. The Commission heard concerns at the public meeting regarding the impact of the Application on private views. One speaker from the public identified that:

“The tower’s height alone represents a dramatic increase over that approved in the approved master – major project approval, and subsequent modifications and we agree with the Department’s assessment that it would appear isolated and overly prominent and unrelated to its context within Pyrmont, not Darling Harbour, to the detriment of local and wider 45 views”.

Commission’s Consideration

239. The Commission notes the comments of Mr David Moir in his review (referred to in paragraph 222), including his recommendation that the Department’s “lack of process of assessment be taken into consideration” in considering the Department’s recommendation. The Commission recognises that there is a degree of subjectivity in the assessment of private view loss impacts and has formed its own view of those impacts applying the *Tenacity* Principles and taking into account all of the material before it, including that referred to at paragraphs 214 to 238.
240. The Commission considers that the Proponent’s VIA prepared by Architectus has addressed the requirements of the SEARs and the methodology adopted for the assessment of private view impacts is mostly sound.
241. The Commission notes that the Department’s VIA disagrees with some of the Proponent’s VIA’s finding, considering some impacts to be more severe. Based on the material provided, the Commission agrees with the Department’s contention that the Application results in greater private view loss impacts to that identified by the Proponent. The Commission agrees with Council that a 50mm focal length more accurately represents what human eye sees. Whilst the view impacts to Level 6 of 2 Jones Bay Road are considered by the Proponent to be moderate, the Commission agrees with the Department’s conclusions that the impacts can more accurately be described as severe. The Commission considers that the private view loss impacts to the dwellings at 14 and 16 Pyrmont Street will be devastating.
242. The Commission has identified public submissions received during the exhibition of the Application and the Response to Submissions noted that Level 7 of the Ribbon Buildings would experience view loss impacts not acknowledged by the Department or the Proponent.
243. Overall, the Commission considers that the private view loss impacts range from moderate to devastating and are therefore unacceptable, notwithstanding the Department’s view that an LEP compliant envelope would result in similar or greater view impacts to these properties at their lower levels. The Commission agrees with the Department’s conclusion extracted at paragraph 232 that the view impacts of the proposed tower are not considered to be justified. The Commission further notes that these impacts result from a built form that is excessive in scale and incompatible with the surrounding context.

5.13 Overshadowing

Proponent’s Consideration

244. The Proponent's overshadowing analysis which accompanied the EAR addressed the overshadowing impacts to surrounding private properties. Of these surrounding properties, only three are identified to experience less than the 2 hours of required solar access in midwinter (21 June). Notwithstanding, the overshadowing impacts will not impact the living rooms and balconies of these properties, with most shadow impacts affecting bedroom windows. These properties are:

- 49-51 Mount Street, Pyrmont
 - 102 Miller Street, Pyrmont (8th floor)
 - 102 Miller Street, Pyrmont (4th floor)
245. The analysis reveals that three properties currently receive less than the ADG required solar access to their private open space on 21 June, including:
- 102 Miller Street, Pyrmont
 - 33-35 Union Street, Pyrmont
 - 1-27 Murray Street, Pyrmont
246. Consistent with the ADG requirements, solar access to these properties will not be reduced by more than 20% as a consequence of the proposed tower.
247. The Proponent's Response to Submission and Preferred Project Report dated November 2018 addresses the overshadowing impacts to the following private properties:
- a) 4A/4 Distillery Drive, Pyrmont
 - b) 16 Pyrmont Street, Pyrmont
 - c) 14 Pyrmont Street, Pyrmont
 - d) 16/1 Murray Street
 - e) 74/1 Murray St, Pyrmont
248. The Proponent concludes that the majority of the aforementioned properties will experience no additional overshadowing on the 21 June with the exception of 1 Murray Street which will continue to receive a compliant amount of solar access as required by the ADG.
249. In its Response to Submission and Preferred Project Report dated November 2018, the Proponent states that the proposed overshadowing to Pyrmont Bay Park and Union Square complies with Section 3.2.1.1 of the SDCP 2012 which requires that overshadowing to public spaces is to be minimised between the hours of 9am to 3pm on 21 June. The Proponent concludes that the scheme provides no overshadowing to Pyrmont Bay Park during this period. With respect to Union Square, the Proponent's assessment indicates that the Application will reduce its solar access by 4.6 percent on 21 June.
250. In the Proponent's Response to Department's AR and Public Submissions dated 6 September 2019, it is noted that alternative schemes were considered during the design excellence process, including a scheme with a smaller height (RL 213), which relative to the proposed scheme provided reduced overshadowing to Pyrmont Bay Park, Pyrmont Bridge and Clifftop Walk and removed overshadowing to Union Square. The Proponent advised that the taller scheme was supported by the Design Review Panel as it was considered to represent an improved design outcome.
251. The Proponent has commented on the conclusions of the Department's AR pertaining to overshadowing and notes that *"it is unreasonable for the Department to conclude that, because the project is deemed to be unacceptable on the basis of built form, that its shadow impacts are also considered unacceptable"*. In light of this, the Proponent also notes that *"it would be reasonable to conclude that if overshadowing of Union Square did not result from the Proposal that it would be an acceptable development"*.
252. The Proponent stated that it was prepared to proceed with a reduced tower height that would remove overshadowing of Union Square if that was considered unacceptable.

Council's Comments

253. Council noted in its public submission dated 9 October 2018 that “*the non-compliant tower creates unreasonable overshadowing of Union Square between 10am and 12pm and to Pymont Park between 2pm and 3pm on 21 June*” which contravenes the SDCP 2012. Council noted a SLEP/DCP compliant scheme would have no additional shadow impacts on Union Square and a lesser impact on Pymont Bay Park.
254. Council also contends that due to the tower’s proposed scale, the overshadowing impacts cannot have been reasonably contemplated under the original Major Project Approval.
255. Council contends that the shadow diagrams do not adequately identify the shadow impacts to surrounding residential properties and do not consider the overshadowing from a compliant envelope. Accordingly, the Proponent’s submission is considered to be insufficient to allow for an assessment of the overshadowing impact.

Department’s Consideration

256. The Department has assessed the overshadowing impacts to key public spaces identified in the submissions and the Proponent’s assessment, including Pymont Bay Park, Pymont Bridge and Clifftop Walk. Consistent with the Proponent’s assessment, the Department finds that the overshadowing to these public spaces is minor. Whilst being minor, the Department considers the overshadowing to Pymont Bay Park or Pymont Bridge to be unacceptable given it results from an unacceptable form of development.
257. The Department has assessed the overshadowing impacts to Union Square. The Department’s assessment indicates that Union Square will receive additional overshadowing between 10:45 and 11:15am, which is considered to be a moderate impact. The Department considers that the additional overshadowing to Union Square cannot be supported as it results from an unacceptable form of development.
258. The Department has assessed the overshadowing impacts to surrounding residential properties, including those identified by the proponent and in the public submissions, and has concluded that on balance the Application provides an acceptable level of overshadowing.
259. The ADG recommends that at least 70% of apartments in adjoining residential properties receive at least 2 hours solar access between 9am and 3pm in mid-winter. The Department’s assessment concludes “*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*”. The overshadowing impacts to these properties are therefore considered by the Department to be acceptable.

Public Comments

260. The Commission heard concerns from speakers at the public meeting and received written submissions that the Application would result in additional overshadowing to key public spaces, including Pymont Bay Park, Union Square and surrounding private properties. Concern was also expressed that the Proponent’s EAR lacked sufficient information to adequately assess the extent of the overshadowing.

Professor Webber's Independent Assessment and Design Advice

261. Professor Webber's Independent Assessment and Design Advice commented on the overshadowing analysis. Whilst an independent overshadowing analysis has not been prepared, Professor Webber noted that the Application has a substantial footprint that would produce generous shadows. Professor Webber added that if the Application were to be approved it could provide a precedent for future applications, which cumulatively would provide a significant amount of overshadowing.

Commission's Consideration

262. The Commission acknowledges concerns from the public regarding the potential impact of the Application on the solar access to Union Square and surrounding properties due to the scale of the Application.
263. The Commission also acknowledges that the Design Review Panel (DRP) recommended the adoption of a taller tower from that which was originally presented during the design excellence competition process. However, it notes that the scheme with a reduced scale as considered during the design excellence process does not form part of the Application.
264. Whilst the Proponent has confirmed it is prepared to reduce the height of the tower from RL 237m to RL 213m, as noted in correspondence dated 6 September 2019, in order to avoid any overshadowing of Union Square, the Proponent did not seek formally to amend its Application to seek approval for a shorter tower. Rather, the Proponent effectively invited the Commission to approve a modification which permitted a shorter tower, if considered suitable in particular to address overshadowing concerns.
265. The Commission considers that there is limited publicly accessible open space in proximity to the site, with nearby open space areas being limited to those identified in paragraphs 256-257. The Commission recognises that there will be some minor additional overshadowing impacts to public open space areas at Pyrmont Bay Park, Pyrmont Bridge and Clifftop Walk. The Commission notes that the greatest overshadowing impact occurs to Union Square. The Commission considers that the overshadowing impacts are unacceptable at Union Square given they will significantly reduce the amenity of this public open space area.
266. Even if the overshadowing of Union Square were to be mitigated by a reduction in tower height, the Commission's overall view, taking into account its other findings, would still be that the Application should be refused.

5.14 Heritage Impacts

Proponent's Consideration - Local Heritage Impacts

267. The Proponent's Heritage Impact Assessment has provided an assessment of the Application against relevant legislation and the relevant policies set out in the Conservation Management Plan for the SELS Building (**CMP**) (2017) for the site. The Proponent concludes that the Application will *"not have an adverse impact on the SELS Building or items of significance in the locality including those within the Pyrmont Conservation Area"*.
268. With respect to visual impacts the Proponent considers that the tower element will not prevent the appreciation of the surrounding heritage items, noting that:
- *"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"*.

- *“It is acknowledged however, that the proposed tower would be discernible as new fabric, diminutive in scale in comparison to the buildings which address Martin Place, and would only be visible from some parts of Martin Place. Further, the highly significant fabric in Martin Place constitutes the cenotaph at the western end of Martin Place. It is understood that the proposed tower would not be visible from this location”.*

269. In response to the overshadowing impacts to the heritage items, the Proponent’s Heritage Addendum Report states that overshadowing is not a heritage impact noting that *“the impact of overshadowing is not a heritage impact and as such has not been addressed in the Heritage Impact Statement (HIS)”*. The report then states that the Application will have minimal overshadowing impacts to Pyrmont, noting that *“a detailed sun access impact analysis was undertaken to evaluate the impact of the proposed tower on the sun access on adjacent properties. The analysis sought to identify any apartments that currently achieve 2 hours of sun access to balconies and living spaces, that may drop below 2 hours as a result of the proposed tower. Only three instances were identified, none of which were living spaces or balconies”*.

Proponent’s Consideration - GPO Clock Tower

270. The Heritage Impact Statement submitted alongside the Proponent’s EAR did not provide an assessment of the impacts to the General Post Office (GPO) Clock Tower, which is an item listed on the State Heritage Register.

271. The Proponent’s Heritage Addendum Report submitted alongside the Response to Submissions and Preferred Project Report (dated November 2018) considers that the recently constructed tower building (151 Clarence Street) conceals views of the proposed tower when viewed from Martin Place, which is argued to provide no impact on the GPO clock tower. Specifically, the report notes:

“This recently completed building sits prominently within the view corridor of Martin Place and obscures views from Martin Place to the new Ritz Carlton Hotel and Residential Tower making the visual impact of the proposed development as viewed west from Martin Place a redundant point.

It is acknowledged however that the proposed tower would be discernible as new fabric, diminutive in scale in comparison to the buildings which address Martin Place, and would only be visible from some parts of Martin Place. Further, the highly significant fabric in Martin Place constitutes the cenotaph at the western end of Martin Place. It is understood that the proposed tower would not be visible from this location”.

272. The Proponent assessed the impacts to the GPO Clock Tower in a Heritage Addendum report submitted alongside the Proponent’s Response to Submissions. The assessment addresses the impacts to the State heritage listed GPO Clock Tower.

273. To facilitate the assessment, the Proponent included two images at Figure 2 and 3 of its Heritage Addendum report which illustrate the view corridor towards the GPO clock tower under the existing scenario and following the construction of the proposed tower. Specifically, the first image provided at Figure 2 is a photomontage which simulates the impacts to the view corridor with the proposed tower. The second image at Figure 3 depicts the existing view corridor with the recently constructed building at 151 Clarence Street.

274. The Proponent has undertaken a comparative analysis of the two view corridors, concluding that the building at 151 Clarence Street as shown in Figure 3 *“sits predominantly within the view corridor of Martin Place and obscures views from Martin Place to the new Ritz Carlton*

Hotel and Residential Tower making the visual impact of the proposed development as viewed west from Martin Place a redundant point”.

Council’s Comments

275. In its public submission dated 9 October 2018, Council noted that the proposed tower will have an unacceptable impact on the GPO clock tower when viewed from Martin Place. Council in its submission contends *“the tower height results in the tower being visible in close proximity to the GPO clock tower when viewed from the east down Martin Place. The view of this key heritage landmark against an uncluttered sky has been identified as a key planning constraint in current and proposed planning for the west side of the city. This is an unacceptable heritage impact. The conclusions of this assessment are not credible given the immense scale and isolation of the project on the harbour foreshore – and with no planning framework to support the project”.*

Department’s Consideration

276. The Department notes that the SELS component of the Star is a local heritage item and a number of local and State heritage items are located within the surrounds. Additionally, the Pyrmont Conservation Area is located to the south west of the site.
277. The Department considers that the proposed tower element will have a high level of visibility from the surrounding heritage items and the Pyrmont Conservation Area, which will indirectly impact upon the heritage character of the area.
278. Further, the Department notes that the visual imagery that accompanies the Proponent’s assessment is unclear on the level of impact the proposed tower will have on the heritage listed GPO clock tower located in Martin Place when viewed in the context of the newly constructed tower at 151 Clarence Street because the Proponent’s comparative analysis relies on two different viewpoints.
279. The Department concludes that the: *“heritage impacts of the proposal, although minor, would only occur as the result of an unacceptable form of development. The scale of the proposed tower is not anticipated or supported by adopted policy and not considered to be justified in the proposed location. On this basis the Department considers that the heritage impacts have not been justified and should not be supported at this time”.*

Public Comments

280. The Commission heard concerns at the public meeting regarding the Application’s impact to surrounding heritage items, including the dwellings that form part of the Pyrmont Conservation Area. A number of speakers raised concern that the overshadowing impacts resulting from the tower would impact the heritage fabric of this conservation area and detract from the heritage character. Specifically, the concerns raised stated:
- *“Critically, the morning sun also helps to reduce brick and timber deterioration from dampness in the heritage listed building”.*
 - *“... the vast majority of its neighbours are either strata title buildings or very low heritage buildings. That is they won’t be changing no matter what the Greater Sydney Commission’s review reveals. It will always stick out like a sore thumb”.*

Professor Webber's Independent Assessment and Design Advice

281. Professor Webber has commented on the redevelopment of Pyrmont with respect to the heritage fabric, noting that:

"During the late 20th century there has been extensive redevelopment, mainly residential, which generally responded sensitively to the character and important heritage of the area. In this part of northern Pyrmont many existing structures have been adapted for residential use, and new buildings have been required to respect the heights and forms of neighbouring structures. There are no very tall 'tower' buildings in this part of Pyrmont".

Commission's Consideration

282. The Commission has reviewed the Proponent's and the Department's heritage assessment pertaining to local heritage, addressed in paragraphs 267-268 and 276-277 respectively.
283. The Commission acknowledges that the Heritage Council noted *"impacts on local heritage items should be considered and where necessary mitigated"*. The Heritage Council did not raise concern with any heritage impacts to the GPO clock tower when viewed from the public domain within Martin Place.
284. The Commission has reviewed the Proponent's and the Department's heritage assessment pertaining to the visual impacts to the GPO clock tower when viewed looking east from Martin Place, as addressed in paragraphs 270-274 and 278 respectively, alongside Council's contentions outlined in paragraph 275. The Commission noted, although there was a variation in the two viewpoints in the Proponent's Heritage Addendum submission dated 5 November 2018, the Commission considers that the Application will have no significant adverse visual impact on the GPO clock tower and will continue to allow for its interpretation from a variety of different vantage points from within Martin Place.
285. The Commission has reviewed the Proponent's and the Department's assessment pertaining to local heritage. Further, the Commission acknowledges that Council and the Heritage Council did not raise concerns about impacts to local heritage. The Commission considers the impacts to local heritage would be minor and occur as a result of scale and height of the proposed development.

5.15 Wind Impacts

Proponent's Consideration

286. The Proponent identifies a Pedestrian Wind Environment Assessment has been prepared by Cermak Peterka Petersen (CPP) and is included at Appendix FF2 of the EAR. The assessment includes a wind tunnel investigation, which found that: *"wind conditions at all investigated locations on the ground plane passed the distress/safety criterion"*. With respect to the upper levels, the assessment concludes that some locations do not pass the distress criterion. The following commentary is provided:

"Wind conditions at investigated locations on the upper level terraces are mostly classified as pedestrian standing and walking, while locations within the semi-enclosed areas of the Level 7 Pool Terraces experiences conditions classified as pedestrian sitting, suitable for the poolside seating. Locations in the BBQ area of the Level 7 Residential Terrace and the Level 59 Club Lounge Terrace experienced wind conditions classified as business walking and pedestrian walking, respectively, and exceed the distress/safety criterion. Mitigation at locations exceeding the distress/safety criterion is recommended..."

With the adoption of mitigation measures, CPP concludes *"the Star MOD13 redevelopment as documented in this DA application will have a limited environmental impact on the ground plane from a wind perspective"*.

287. The Proponent's Response to Submission and Preferred Project Report has undertaken additional wind modelling and undertaken a further assessment of the wind impacts to address the concerns raised in the submissions. The assessment has provided a comparison of the wind conditions under the existing and post development scenarios and states:

"the scheme will not have significant impacts on the existing wind environment surrounding the development site on the ground plane. Some locations close to the tower have become slightly windier, however these levels of conditions remain suitable for moving pedestrians along the footpath. Furthermore, wind conditions at some locations have slightly improved with the addition of the tower".

Council's Comments

288. In its submission dated 9 October 2018, Council considers that due to the excessive bulk of the tower, the additional wind impacts could not have reasonably been contemplated on the grant of the approval for the Part 3A Major Project Application (MP 08_0098). For this reason, Council contends that the massing of the Application and associated environmental impacts, including wind impacts, cannot reasonably be considered as a modification.

Department's Consideration

289. The Department has considered the wind impact assessments prepared by CPP submitted alongside the Proponent's EAR and Response to Submissions. It concludes that *"from a comfort perspective, the future conditions would be suitable for pedestrians sitting, standing and walking. The wind impacts from the proposal are considered acceptable should the recommended mitigation outlined in the proponent's updated Wind Assessment be applied"*. The Department notes that the recommended mitigation measures nominated by CPP have been incorporated into the Application and as a result the Application provides acceptable wind conditions for pedestrians.

Public Comments

290. The Commission heard concerns at the public meeting regarding the Application's potential to contribute to wind tunnelling impacts in and around the development. These concerns included:
- *"Our Home [...] will be adversely affected by the development of this tower directly behind our property, which will see significantly reducing our privacy, increasing the wind tunnel effect in our area and blocking precious access to direct sunlight"*.
 - *"The increased wind tunnel conditions at ground level have been classified by the Star as suitable for public access ways and suitable for pedestrian sitting, standing and walking. Our home is within this wind tunnel. Are these expected conditions suitable for residential living? With an increase in wind gust coupled with overshadowing will make our home a very inhospitable home throughout late autumn and winter"*.

Commission's Consideration

291. Based on the Material, the Commission agrees with the Department and considers that the wind impacts from the Application are likely to be acceptable subject to the adoption of the recommended mitigation measures noted in the Proponent's Wind Assessment Report provided alongside the Proponent's Response to Submissions and Preferred Project Report.

5.16 Traffic Impacts, Public Transport and Car Parking

Proponent's Consideration

292. The Proponent's Traffic Impact Statement (TIS) identifies that the Application will provide 220 parking spaces. The proposed quantity of parking remains within the threshold of 3,000 spaces permitted under the original Major Project Approval MP08_0098.
293. The Proponent's EAR and supporting TIS have considered the expected traffic generation against the existing operations and the proposed operations associated with all modification applications, including the subject application and Mod 14. It is concluded that the Application and the proposed mitigation strategies will have *"limited environmental impacts on network performance and parking demand beyond what is currently experienced due to the existing development and operation of the site up to and including Modification 14"*.
294. The Proponent's TIS has addressed the cumulative traffic generation impacts resulting from the Application. It concludes that with the adoption of the proposed traffic reassignment strategy, which will *"redirect traffic away from critical parts of the road network towards a new car park access on Pyrmont"*, the Application will *"minimise traffic growth at the Pyrmont Bridge Road and Murray Street intersection to 14% in the AM peak, whilst maintain or reducing current flows in the PM and Off-peak periods"*.
295. The Proponent's TIS has assessed the impacts the Application will have on bus operations in the vicinity of the site. The assessment is based on a traffic analysis which demonstrates that there will be no impact on the bus services that operate in the surrounding street network during the construction phase of the development. Specifically, the TIS states *"the traffic analysis has demonstrated that the increased traffic due to construction (workers and deliveries) will not have any significant impact on the performance of the network used by existing bus services"*. The report then notes that *"the temporarily shortened northbound Pirrama Road bus stop will still have sufficient capacity and accessibility to satisfy current bus requirements"*.
296. The Proponent concludes that the Application will have no impact on bus services during the operational phase of the development. The TIS identifies that the site is well serviced by bus services that are currently underutilised. Further under the Transport for NSW Integrating Land Use and Transport policy, new bus services are expected to become operational both during the day and at night and will support the increased demand for public transport services resulting from the Application.
297. The Proponent has identified that the Application will provide 35 Class 1 bike spaces and 62 visitor bike spaces to encourage active transport. The TIS also confirms that during the construction phase of the development, the Application will have no impact on existing cycle infrastructure or on-site cycle parking facilities.

Council's Comments

298. Council has not raised concern regarding the impact of the Application on traffic generation and parking.

299. Council has objected to the proposed access arrangements, noting that *“the proposed right turn from Jones Bay Road into the porte cochere is not supported. The right turn is too close to the intersection and cannot achieve the minimum length of auxiliary lane for a right turn according to the RMS design guidelines. A right turn in this location raises safety concerns as it has the potential to form a queue at the intersection”*.

Department’s Consideration

300. The Department has considered the findings of the TIS and notes that the level of service of the intersection of Pyrmont Street and Pyrmont Bridge Road will reduce during the PM peak. Specifically, the Department’s AR notes *“that the level of Service at the intersection of Pyrmont Street and Pyrmont Bridge Road reduces from LOS C to LOS D during the PM peak as a result of the modification”*.
301. The Department acknowledges that Council, RMS and TfNSW have not raised concerns regarding the impact of the Application on this intersection, noting that *“neither Council, RMS or TfNSW raised concerns regarding the impact of the proposal on this intersection”*.
302. Further, the Department notes that the Application results in improved traffic flow at the intersections of Union Street and Edward Street. The AR specifies that *“the Department notes further that the proposal results in improved traffic flow at the intersection of Union Street and Edward Street and that LOS D is a common categorisation for highly urbanised environments during peak periods”*.
303. The Department concludes that the increased traffic resulting from the Application 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”*.
304. Further, the Department concludes that the proposed addition of 220 car parking spaces are adequate to service the development and consistent with the requirements of SLEP 2012. Subject to the implementation of a service road, taxi and car stacker management plan, the Department considers the provision of parking to be satisfactory. In support of these conclusions, the Department’s AR provides the following commentary:

“The proposed increase in GFA generates the need for an additional 220 car parking spaces comprising 171 residential car parking spaces and 49 hotel car parking spaces. These spaces are to be accommodated in the car stacker facility under the proposed tower and are in accordance with the requirements of Sydney LEP 2012”.

Public Comments

305. The Commission heard concerns at the public meeting regarding the Application’s impact on traffic generation and its impact on the surrounding street network. These concerns included:
- *“The site is bounded on all sides by narrow, local roads currently choked with waiting taxis and buses”*.
 - *The inadequate public transport serving Pyrmont has not been addressed by proponent by order of the Transport for New South Wales. This lack forces visitors to the Star to use private vehicles, thus exacerbating Pyrmont’s traffic woes”*.
 - *“I am concerned about the great increase in vehicular and pedestrian traffic in a suburb which already has the highest population density in the country”*.

- *“Pymont does not have the infrastructure to support a development of this size... We already are overwhelmed on Pymont Bridge Road from all the traffic coming off the Anzac Bridge and all the traffic coming up from Wattle Street, from all the traffic coming off the flyover from the City. We are the single artery in and out between the CBD and outwards. And yet nobody seems to recognise what the issues will be when we have an overwhelming structure like the Ritz-Carlton”.*

Commission’s Consideration

306. The Commission accepts the Department views as outlined in paragraphs 301–304 and concurs with the Department that the parking arrangements are likely to be adequate and the traffic generation can be supported by the surrounding road network and will have a manageable impact. Based on the material, the Commission considers that the predicted traffic generation associated with the Application are acceptable, because they are minor and can be addressed through the proposed mitigation strategies outlined in the Proponent’s TIS.
307. The Commission notes that the Application seeks to increase the quantity of parking on the site by 174 spaces, which comprises 171 residential spaces and 49 hotel spaces, less 46 spaces that would be lost to the construction of the new Pymont Street carpark entry ramp. The total net increase of 174 car parking spaces (from 2,795 to 2,969 spaces) is provided within a car stacker facility, located beneath the proposed tower and accessed via an existing service road.
308. The Commission also notes some discrepancy between the Proponent’s EAR and the Department’s Assessment Report but is satisfied that the parking would remain within the approved threshold of 3,000 allowed for under MP 08_0098. Notwithstanding the proposed increase of car parking, the Commission considers that the Application remains consistent with the *Future Transport Strategy 2056*.
309. The Commission agrees with the conclusions of RMS noted in paragraph 82, noting that the Proponent has provided appropriate traffic investigations and considers that RMS’s comments would be able to be satisfied by the Proponent at the construction phase.

5.17 Public Benefit, Social and Economic Impacts in the Locality

Proponent’s Consideration

310. The Proponent’s EAR notes that the Application includes a public benefit in the form of a neighbourhood centre that will *‘create a Hub in the heart of Pymont and provide services to the community. The Centre will provide a place for the community to interact and collaborate through the provision of much need community services.’* The neighbourhood centre will be managed in accordance with a Plan of Management which will *“ensure that the Neighbourhood Centre retains its importance as an active space for the whole community”*.
311. The Proponent provided written correspondence dated 22 August 2019 clarifying the operational arrangements of the neighbourhood centre. The correspondence states *“the Star Casino, will commit to the funding and operation of the proposed neighbourhood centre until the year 2093. This period corresponds to the remaining term of the operating licence held by SEGL to operate The Star”*.

312. The Proponent's EAR notes that the Application will provide a number of key social benefits, including:

- *“The proposed Neighbourhood Centre will positively enhance the community's experience with a diversity of uses that will appeal to a variety of users;*
- *The development associated with Mod 13 has capacity to generate significant economic benefit through employment and local expenditure both during construction and operation;*
- *Amenity improvements associated with Mod 13 include improved activation of key public spaces, greater natural and casual surveillance, and enhanced public domain including street frontage to Pirrama Road and Jones Bay road, the entrance to the light rail station and entrances to the new tower building.*
- *The Neighbourhood Centre will provide activation to the north-eastern corner of the site which increases natural and casual surveillance:*
- *The requirements to provide funding towards affordable housing within the region will be an important contribution to social infrastructure and potentially provide options for affordable key worker accommodation”.*

313. The Proponent's EAR states that *“Overall, the investment will generate an incremental \$793m in economic benefits for NSW, stimulated by the construction phase through direct impacts to the construction industry and subsequent supply chain effects, as well as in the operational phase, through spending at The Star and wider NSW.”* The benefits of the Application outlined in the Economic Impact Assessment of The Star (PwC) (Appendix L to the EAR) include:

- capital investment of \$626m
- an additional \$800m in GSP (gross State product) (2017-2030)
- increase in average annual employment (FTEs) of 754 (2017-2030)
- increase in household consumption of \$329m (2017-2030)

The most strongly impacted industries (measured in output, real, present value terms) are:

- construction: \$447m
- retail and wholesale trade: \$237m
- professional, scientific, and technical and administrative services: \$232m
- accommodation and food service: \$217m
- manufacturing: \$163m

314. Consideration has been given to the project's public benefit in the Social Impact Assessment included at Appendix M of the Application. The SIA identifies that the neighbourhood centre will have a positive benefit for the community and the Application provides the opportunity to contribute funding towards affordable housing. Further, the modification does not include additional gaming facilities and will therefore not give rise to 'problem gaming'.

315. Additionally, the SIA states: *“Any cumulative impacts from Modification 13 which have not previously been assessed as part of previous approvals are expected to be limited. This Social Impact Assessment has demonstrated that the impacts can be managed through current practices of The Star, or through the introduction of new management plans”.*

316. The Proponent's Response to Assessment Report and Public Submissions dated 6 September 2019 indicates that the public benefit associated with the Neighbourhood Centre has *“increased since lodgement by 113 percent, equating to approximately \$80m in today's value to the community (excluding construction and fit out)”.*

317. The Proponent's EAR also notes that the Application will provide developer contributions and affordable housing contributions in accordance with the relevant statutory requirements.

Council's Comments

318. In its submission dated 9 October 2018, Council notes that in relation to the neighbourhood centre *“there is a distinct lack of detail within the submitted documentation about how it will be managed and operated, about whether it will be a bona fide facility or a whole community (as opposed to the community within the building), and certainty about it remaining a genuine community facility for the long term (notwithstanding any future change in management and/or ownership)”*.
319. Council in its submission dated 9 October 2018 states:
- “The proposed method for calculating credits under the City of Sydney Development Contributions Plan 2015 is not correct. It is not appropriate to bundle up Gross Floor Area (GFA) for a variety of different uses that are being removed and then to seek as credit against the proposed Food and Drink GFA. The credits should relate directly to the uses they are seeking credit for (and not just converted to food and drink credit)”*.
320. In calculating the contributions, Council has also questioned whether it is appropriate to define the uses provided by the proposed neighbourhood centre as business premises. Specifically, Council notes *“the applicant is utilising the definition of “business premises” within the neighbourhood centre for the purposes of calculating contributions. Business premises typically offer a service. Clarification is required as to why “business premises” is being used as opposed to “office premises”?[sic]*.
321. Council notes that the Proponent has calculated affordable housing contributions using ‘total floor area’. Council contends that this is distinct from Gross Floor Area and recommended the Department confirm the calculation is correct.

Department's Consideration

322. The Department's AR acknowledges that the Application will provide a number of public benefits, including:
- *“A new neighbourhood centre*
 - *Construction and operational jobs*
 - *Standard developer contributions and an affordable housing contribution*
 - *Broader economic benefits related to jobs, a new hotel and upgraded Casino facilities*
 - *No negative environmental impacts with respect to wind, traffic or ESD principles”*
323. However, it is considered by the Department that these benefits are typical for a development of the scale proposed.
324. It is concluded by the Department that social benefit associated with the proposed neighbourhood centre is limited. This conclusion has been reached following a consideration of the environmental impacts resulting from the Application. The Department is of the view that on balance the public benefits do not outweigh the impacts associated with the Application. The Department's full commentary on the adequacy of the public benefits is noted below:

“The Department considers 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 related to jobs, a new hotel and upgraded Casino facilities.

The Department notes the nature and type and of these benefits is typical for a development of this type and that the only unique public benefit offered by the proposal is limited to social benefits provided by the 1,691m² neighbourhood centre. The Department considers that, while there would be benefits to the public from the project, there are also impacts in relation to the proposed tall tower in this location. The Department considers the proposed tower would result in a contextually inappropriate, and overly dominant built form, inconsistent with the existing character of Pyrmont and strategic planning direction for this part of Sydney. The Department also notes other identified impacts such as private view impacts, heritage impacts and overshadowing weigh against the public benefits outlined above".

325. The Department has considered the proposed public benefits alongside the environmental impacts and the appropriateness of the proposed development. It has determined that on balance the public benefits are insufficient to offset the impacts. As a consequence, the Department considers that the Application is not in the public interest.

Public Comments

326. The comments and feedback provided at the public meeting raised concern that there was a lack of genuine public benefit, with members of the public noting:

"the usefulness to the community of the proposed neighbourhood centre is limited by five huge structural columns and a stairwell which break up any space that might have been used for performances or meetings and by its circular configuration. Affordability and community access to the proposed centre remain undefined".

"... In addressing public benefits virtually all the employees currently of the Star and its associated developments are serve(d) by in-house catering, so there's no flow back of benefit from their large workforce into our local commercial areas, and that's unfortunate".

"Unlike other waterfront developments, such as the iconic Harbour Bridge and the Opera House, this proposal by a private entity, a casino, that provides little, if any, public benefit, despite being on public land".

327. However, comments and feedback provided at the public meeting also highlighted that there was a public benefit, with members of the public noting:

"To remain competitive in the tourism market, investment must be made in new hotels such as the Ritz-Carlton hotel. Working in hospitality, it's also important to me and other workers in the industry that the tourism industry thrives".

"[The proposal]... supports the need for a new high-quality hotel development in our precinct which will provide amenity to both tourists and Sydneysiders as well as significant employment and economic value."

"... a Neighbourhood Centre is strongly supported. Pyrmont needs more community facilities, and The Star proposal includes a new neighbourhood centre with a tech hub, library, community space and function centre. With the pressure on our local council (the City of Sydney) to provide a range of community facilities for a rapidly growing population, the more we can get developers like The Star to build these types of facilities, the more council can use rate payer funds for other things. This new community facility will support the needs of our community."

Commission's Consideration

328. The Commission has considered the material provided and acknowledges the concerns and comments raised by the public and the Department in relation to the value of the public benefits proposed.
329. The Commission has taken into account the economic benefits, including the payment of developer and affordable housing contributions, the provision of the neighbourhood centre, along with the indirect and direct jobs created during the construction and operational phases.
330. The Commission accepts that the Application will deliver public domain upgrades which will result in the “*substantial revitalisation of the streetscape and public domain surrounding the site*”.
331. The Commission recognises the public benefits arising from the neighbourhood centre which has the potential to positively contribute to the community and the cost analysis undertaken by the Proponent which concludes that “*the net community benefit equates to approximately \$80m in today's value to the community (excluding construction and fit out)*”.
332. Based on the Material, the Commission acknowledges that the Application will deliver social and economic benefits as it will:
- deliver a new neighbourhood centre, as set out in paragraph 312
 - provide improvements and activation of the public domain, as set out in paragraph 312
 - provide construction and operational jobs, as set out in paragraph 312
 - deliver a new 6-star hotel which will contribute to the range of tourist and visitor accommodation within Sydney, as set out in Section 6.12 of the Proponent's EAR
 - provide standard developer and affordable housing contributions, as set out in paragraph 312.

5.18 Public Interest

Proponent's Consideration

333. The Commission notes that the Proponent has not given consideration to the objects of the EP&A Act in its EAR (dated August 2018), or Response to Submissions (dated November 2018). Some consideration is given to the objects of the EP&A Act in the Proponent's Response to Assessment Report and Public Submissions (dated September 2019).
334. The Proponent notes The Star Complex currently adopts a range of ESD measures. The proposed works will continue to adopt and utilise these existing measures. In addition, the Application will adopt a number of new sustainability measures related to energy efficiency. The Application includes a range of ESD targets and is proposing a 5-star green star rating, demonstrating the Proponent's commitment to sustainability.

Department's Consideration

335. The Department has provided an assessment of the Application against the objects of the EP&A Act as outlined in Table 3 of its AR.
336. The Department contends that the Application is inconsistent with object c) of the EP&A Act pertaining to the requirement to promote the orderly use and development of land as the siting of the tower in its proposed location:

- *“Is inconsistent with the current strategic planning for the area*
 - *Would fundamentally change the established character of Pyrmont*
 - *Could set an unwelcome precedent for further tall buildings, outside of any adopted strategic planning policy framework”.*
337. The Department also considers that the Application is inconsistent with object g) of the EP&A Act which requires the promotion of good design and amenity of the building environment on the basis that:
- *“the scale of the proposed tower is out of character with its immediate context*
 - *the tower would result in unacceptable visual impacts due to its scale, isolation and visual dominance of the existing Pyrmont townscape and wider view impacts”.*
338. The Department states in its AR that the EP&A Act adopts the definition of ESD found in the *Protection of the Environment Administration Act 1991*.
339. The Department notes that the Application incorporates ESD initiatives and sustainability measures, including the:
- adoption of best practice energy and water conservation measures
 - optimisation of the site’s orientation to maximise solar access
 - water efficient fixtures and sub-metering
 - high thermal performance walls and façade system
 - integration into existing Star rainwater harvesting system
 - energy efficient lifts and escalators
 - full LED lighting system with user control
 - high efficiency fans and pumps
 - installation of tri-generation system (combined heat, power and cooling)
 - installation of photovoltaic panels (165 kW) above the Astral and Darling hotels and the Lyric Theatre roofs
 - augmentation and integration to the waterless heat rejection system (harbour heat rejection)
 - use of responsibly sourced materials and use of recycled materials where possible.
340. The Department also states *‘The Precautionary and Inter-generational Equity Principles have been applied in the decision-making process by a thorough assessment of the environmental impacts of the project. Overall, the proposal is generally consistent with ESD principles and the Department is satisfied the proposed sustainability initiatives will encourage ESD, in accordance with the objects of the EP&A Act.’*
341. The Department states in its AR that it considers the public benefit from the Application would include both economic and social benefits. These benefits include: *“Construction and operational jobs, developer contributions and affordable housing contributions as well as the broader economic benefits related to jobs, a new hotel and upgraded Casino facilities”.*

Commission’s Consideration

342. The relevant objects of the EP&A Act relevant to the Application are shown in **Table 5** below alongside the Commission’s findings of the Application’s consistency with these objects.

Table 5 – Relevant objects of the EP&A Act

Object	Description	Commission's Findings
a)	<i>to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,</i>	The Commission finds that the Application is consistent with this object as it provides social and economic benefit through its public benefit offer and economic contribution.
b)	<i>to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,</i>	The Commission finds that the Application is consistent with this object as it includes measures to facilitate ESD.
c)	<i>to promote the orderly and economic use and development of land,</i>	The Commission finds that the scale of the development is not justified strategically under the current planning framework or the context of the site, hence the Application does not represent the orderly development of land.
g)	<i>promote good design and amenity of the built environment,</i>	The Commission finds that the height, bulk, and scale of the Application do not represent good design in the context of the surrounding built environment and results in unacceptable visual impacts.

343. Based on its consideration of the Material, the Commission agrees with the Department's assessment that on balance the public benefits do not outweigh the impacts associated with the Application, as set out in paragraphs 324-325.
344. Specifically, the Commission finds that the Application:
- lacks strategic justification, particularly given that, as addressed in paragraphs 141-151:
 - the Commission does not accept arguments related to the Application being located within the Darling Harbour precinct
 - strategic planning and related controls for the Bays Precinct and the Western Harbour Precinct are not yet finalised and cannot be used to justify the scale of the development
 - is inconsistent with the SHC SREP for the reasons set out in paragraph 212 and therefore would also be inconsistent with the draft Environment SEPP for the reasons outlined in paragraph 213
 - is inconsistent with the design principles of SEPP No. 65 – Residential Apartment Development relating to context, built form and scale, and density, as outlined in paragraph 177
 - will result in unacceptable built form, including a tower of a height which is overly obtrusive and that will result in unreasonable and unacceptable impacts with respect to view loss, visual impact, and overshadowing as addressed in paragraphs 174-181, 213-214, 239-245 and 262-265

- is inconsistent with objects (c) and (g) of the EP&A Act as set out in paragraph 342, in that it does not:
 - promote the orderly and economic use and development of land
 - promote good design and amenity of the built environment

345. The Commission also finds the Application is inconsistent with the outcomes of the GSC's Pyrmont Review, which recommends a holistic place-based masterplan to be prepared promoting a place-based approach over a project-based approach to planning in Pyrmont.

346. The Commission therefore finds that for the reasons set out in paragraphs 343-345, the Application is not in the public interest, noting in particular that the Application is inconsistent with objects (c) and (g) of the EP&A Act.

347. For the reasons outlined above, the Commission supports the overall findings of the Department's assessment and its recommendation that the Application should be refused.

6. HOW THE COMMISSION TOOK COMMUNITY VIEWS INTO ACCOUNT IN MAKING DECISION

348. The views of the community were expressed through public submissions (as part of the exhibition and as part of the Commission's determination process) and from members of the public who spoke at the public meeting and made subsequent submissions as discussed and summarised in Section 3.1.

349. The Commission has carefully considered these views as part of its decision making.

350. The way in which these concerns were taken into account by the Commission is set out in section 5 above.

7. CONCLUSION: THE COMMISSION'S FINDINGS AND DETERMINATION

351. The Commission has carefully considered the Material before it.

352. For the reasons outlined in paragraphs 342 -346 above, the Commission has determined that the Application should be refused.

353. The reasons for the Decision are given in this State of Reasons for Decision dated **20 November 2019**.



Dianne Leeson (Chair)
Member of the Commission



Adrian Pilton
Member of the Commission



Stephen O'Connor
Member of the Commission