



27 September 2019

Mrs Dianne Leeson
Panel Chair
Independent Planning Commission NSW
Level 3, 201 Elizabeth Street
Sydney NSW 2001

Dear Dianne,

MP 08_0098 (MODIFICATION 13) – RESPONSE TO INDEPENDENT EXPERT ADVICE

We write on behalf of the Star Entertainment Group Limited (**the Proponent**) in response to the Independent Planning Commission's (**IPC**) Statement dated 20 September 2019, in which the IPC confirmed acceptance of written comments regarding the '*Review of the Independent Assessment and Design Advice*' prepared by Yvonne Von Hartel AM (**the Review**).

The Review was commissioned by the IPC '*to provide advice in relation to visual impacts associated with the Star Casino redevelopment...*' Modification 13 to Major Project Approval 08_0098 (**the Proposal**). The brief issued by the IPC was limited in intent and scope to '*undertake a peer review of the Independent Assessment and Design Advice prepared by Peter Webber...*' (**the IDA**) and to '*provide advice to the Commission as to [its] robustness and validity*'.

The Review arrives at the same outcome, based on the same limited scope, as the IDA commissioned by the Department of Planning, Infrastructure and Environment (**the Department**). However, the Review departs from the brief and its primary purpose appears to be:

- to provide commentary on the comprehensiveness of the Department's Assessment Report regarding the Proposal; and
- to refute the opinion's outlined in the independent advice submitted with the Proposal from Dr Richard Lamb, Mr Russell Olsson and Mr David Moir.

This correspondence provides a response to the Review and highlights the reasons why it is reasonable for the IPC to continue to question the Department's reliance on the IDA to inform the recommendation to refuse the Proposal. Specifically, the Review:

- concludes that the IDA findings are justified by its analysis despite the numerous deficiencies of the IDA identified in the Review;
- justifies these inadequacies by referring to the level of detail in the Department's Assessment Report. This in itself is confusing as it is understood that the IDA was prepared to inform the Department's Assessment Report not the reverse;

- asserts that the Proposal is inconsistent with local planning controls without addressing the fact that local planning controls do not apply to the Proposal;
- echoes the findings of the IDA, which did not have the benefit of the Proponent's extensive environmental assessment, nor the benefit of the Proponent's Response to Submissions (**RtS**) or the recent confirmation to reduce the height of the tower, dated 6 September 2019 to address concerns regarding overshadowing of Union Square;
- dismisses Architectus' Visual Impact Assessment (**VIA**) as subjective despite the detailed methodology followed in the preparation of the VIA;
- fails to explain why the Neighbourhood Centre should be discounted as a public benefit, instead relying on the fact that the Proposal does not provide open public space and is therefore an inferior offer;
- does not reference the Architectural Design Statement, Urban Context Reports, and Heritage Impact Statement (amongst many others) submitted with the Proposal which provide details of the design development, impact assessment and the strategic planning context of the site which would have provided context and responses to issues raised in the IDA; and
- concludes first that the Proposal is not acceptable and then uses that position to conclude that overshadowing and heritage impacts of the Proposal are therefore also not acceptable.

1. **FORMAT OF THIS RESPONSE**

The format of this response follows that provided by the Review, providing a response to:

- the published brief which informed the Review - **section 2.0**;
- the IDA – **section 3.0**
- the Richard Lamb Peer Review of the VIA – **section 4.0**;
- the Department's Assessment's Report – **section 5.0**;
- the David Moir Peer Review of the IDA – **section 6.0**; and
- the Olsson & Associates Peer Review of the IDA – **section 7.0**.

For each of the above, a summary table detailing the Proponent's response is provided. Reference is also made to documents lodged with the Proposal where the issue has otherwise been addressed.

2. **THE PUBLISHED BRIEF**

In responding to the conclusions made in the Review, it is important to acknowledge the limitations of IPC letter of instruction dated 12 September 2019 (**the published brief**):

The writer of the Review was 'engaged by the Commission to provide advice in relation to visual impacts associated with the Star Casino redevelopment...' (page 1)

'undertake a peer review of the Independent Assessment and Design Advice prepared by Peter Webber...' (page 1).

Purpose and Intent:

'...provide advice to the Commission as to the robustness and validity of the Independent Assessment and Design Advice prepared by Professor Webber on behalf of the Department' (page 1).

Scope of Works:

To conduct a detailed examination of the Independent Assessment and Design Advice prepared by Professor Webber and provide a report to the Commission containing advice as to the its robustness and validity.

In undertaking this peer review, the Commission asks that you consider all other material relates to the visual impacts of the proposed redevelopment – including (but not limited to) the following six (6) documents:

- 1. Independent Assessment and Design Advice, Professor Webber (July 2019);*
- 2. Visual Impact Assessment, Department of Planning, Industry and Environment (DPIE) (July 2019)*
- 3. Visual Impact Assessment, Architectus (August 2019)*
- 4. Peer Review of Visual Impact Assessment, Richard Lamb & Associates (July 2018)*
- 5. Urban Context Report, Olsson & Associates Architects (September 2019)*
- 6. Landscape & Visual Assessment Review, D. Moir (September 2019)*

Deliverables:

- 1. A final report that addresses the above points within the Scope of Works*
- 2. Meet with the Commission Panel to discuss the deliverables upon completion of the report' (page 2)*

On reading of the Review it is evident that it provides comment on matters outside the defined scope of works and maintains the same assumptions applied in the IDA, specifically:

- Commenting on matters beyond that pertaining to visual impacts – and extending these assumptions to inform the ultimate conclusions of the Review;
- Reliance on the Department's Assessment Report where the IDA fell short in its assessment, rather than calling into question its 'robustness'. It is important to note that the IDA was prepared to inform the Department's assessment of the Proposal and so any deficiency in the IDA cannot be rectified by the Assessment it was to inform;
- Provides comments on the architectural design and form of the tower to account for the deficiencies of the "extremely brief and economical description of the unique building form of the proposed tower". While this appears to fall outside of the brief, it would seem appropriate that if commentary was to be made on the architectural design and form that there should be some consideration of the Architectural Design Statement (**ADS**) submitted with the Proposal; and
- The Review does not appear to have considered the findings of the Urban Context Report provides a comprehensive assessment on which to understand the complexities of the site's context.



3. THE IDA

Extract from the Review	Proponent Response
<p>Site</p> <p>The IDA “...provides a very brief description of the site...” (page 2).</p> <p><i>“He dismisses the tower location as an issue as the ‘alternate locations which were explored ... would inevitably have given rise to similar impacts’[.] These impacts are not stated or explored in any detail” (page 2).</i></p>	<p>The Review raises a number of deficiencies with the IDA before ultimately concluding that the IDA findings are justified. With reference to ‘the site’, the items that were overlooked in the IDA are:</p> <ul style="list-style-type: none"> • the location of the tower, at the northern-most point of the site formed the subject of an extensive site analysis process to arrive at location for a tower, to reduce off-site environmental impacts – alternative tower locations would give rise to additional off-site impacts. • the design of the tower with the smallest floorplate at lower levels, was a deliberate design element to reduce visual impacts to private views – an alternative tower design would have had increased visual impact to private views. <p>To dismiss the location of the tower in the manner that the IDA does, also dismisses the fundamental principles of architectural design and how the Proposal was informed by a response to the site’s context. The Review also dismisses these fundamental elements and concludes that IDA findings are justified by it’s analysis, despite the numerous deficiencies recognised.</p>



“The brief description of the site does not cover the character of the site, or the importance of its character, or its topography ...I note that the above criteria are well covered by the Department’s review.” (page 2).

To this point, the IPC should question whether additional detail in the Department’s Assessment Report alleviates the need for the IDA to respond to these issues and whether the IDA should have had regard to the Proponent’s Urban Context Report (**UCR**) (RtS, Appendix N).

The UCR undertakes a thorough investigation and analysis of place and character and considers both the localities of Pymont and Darling Harbour and identifies that the characteristics of the site are consistent with the characteristics of sites and development in the Darling Harbour locality and **are markedly different to the characteristics of the residential areas of the Pymont locality.**

Specifically, with regard to typography, that **the site’s physical topography denotes a transition point from the clearly defined Darling Harbour waterfront and Pymont peninsula ridgeline as defined by the sandstone cliffs to the north.** The roundabout at the intersection of Pirrama and Jones Bay Road provides a gradual transition into the heart of Pymont (Harris Street) or transition down to the waterfront and continues along the frontage of the site to the waterfront (Darling Harbour).

The Department does not provide any evidence to demonstrate that the locality of Pymont or North Pymont is a more appropriate context of which to base the site’s context assessment. The site is identified as being located in the Darling Harbour Precinct in strategic planning policy (Eastern City District Plan, page 63). **Reliance on the Department’s Assessment of character and typography by the Review to justify the IDA’s deficiencies demonstrates the continued disregard for the wider context of the Proposal** and how this context informs the measure of

	<p>visual impact. It also fails to recognise that the IDA was prepared to inform the Department's assessment.</p> <p>In this regard, the Review echoes the findings of the IDA, based on the narrow scope of the Department's brief, which did not allow for consideration of:</p> <ul style="list-style-type: none"> • the Proponent's extensive environmental assessment; • the Proponent's Response to Submissions (RtS); or • the confirmed proposal to reduce the height of the tower, dated 6 September 2019.
<p>Built form</p>	
<p>Built Form – Existing:</p> <p><i>“[The IDA] leaves any discussion of height to elsewhere in...[the] report and does not comment here. In fact more could have been...[in the IDA] of the built form of the existing buildings” (page 3).</i></p>	<p>The Proponent notes the inadequacy of the IDA in this regard.</p>
<p>Built Form - Proposed</p> <p><i>“...there is no description of the form of the tower other than ‘the tower form has a small setback from the podium and then as it rises it extends out again to the street frontage about 20 levels above. ...’. This is an extremely brief and economical description of the unique building form of the proposed tower” (page 3)</i></p>	<p>The Proponent notes the inadequacy of the IDA in this regard. Both the IDA and the Review would benefit from consideration of the FJMT Architectural Design Statement which identifies that <i>‘The design will deliver a refined, highly elegant tower form, that efficiently accommodates the hotel and apartment components of the brief with a sensitivity to limiting adverse environmental impacts’.</i></p>



“It is assumed that the competition’s accommodation brief was prepared by the proponent, not by the planning authorities; hence the resultant tower may well suit the proponent without acknowledging or complying with planning controls” (page 3).

This assumption does not recognise or appreciate the context of the preparation of the design excellence brief.

As demonstrated in the Proponent’s Environmental Assessment Report (**EAR**), the RtS and the Response to the Department’s Assessment Report, **the approval pathway is valid and Sydney Local Environmental Plan 2012 (SLEP 2012) does not apply to the Proposal.** The Department agrees with the Proponent on this fact (Department’s Assessment Report, section 4.1). Comprehensive assessment against the relevant planning controls was provided in the EAR Section 6.0 Statutory Context.

The Department was provided a copy of the Design Excellence Brief on the 26th of April 2016 and feedback sought by the Proponent. Minor rewording comments were received in email exchanges from the Department with regards to the Design Excellence Brief but no advice or objection was provided regarding:

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

Comments made by the Department on page v of the Assessment Report, that the *‘brief was established to achieve a tall tower at this specific location’* and *‘The nature of the brief discouraged the consideration and selection of*

	<p><i>an alternative approach to the proposal, such as a more contextual design response’, are surprising to the Proponent, given the level of engagement that the Department had throughout the Design Excellence Process, prior to formal lodgement during the Test of Adequacy phase and post lodgement of Mod 13.</i></p> <p>The Department endorsed the Design Excellence process, provided comment on the Design Excellence Brief and confirmed that <i>the ‘process adequately addresses the Secretary Environmental Assessment Requirements’ (SEARs)</i> in correspondence dated 26 October 2016.</p> <p>Following exhibition of the EAR, the Department requested that the DRP responsible for awarding design excellence, be reconvened to confirm that the DRP recommendations had been addressed in the exhibited Proposal and that the Proposal retained design integrity. Following integration of the recommended DRP design changes to the Neighbourhood Centre, the DRP was reconvened and provided their final comments.</p> <p>As detailed in the commentary following, the steps undertaken by the Proponent to maintain design excellence were in accordance in the endorsed Design Excellence Process and the Design Excellence Brief. Ultimately, the DRP - charged with determining whether the Proposal exhibited design excellence - confirmed in writing that the ‘design remains faithful to that selected as the winner of the Design Excellence Competition’ (RtS, page 38).</p>
<p><i>“The tower as proposed is a most complex form, slender at the base and extending out to over double its floor plate at the bottom third of the tower</i></p>	<p>The location of the tower at the northern end of the site was established in the Design Excellence Brief. This northern location allows for limited</p>

height. The tower setback from the podium is minimal, particularly at the northern face:. (Page 3)

overshadowing of adjacent public space and private residences as much of the shadow occurs within the exiting site boundary.

The tapered tower form responds to detailed consideration of view sharing, solar access and mitigation of wind impacts. A detailed wind assessment, including wind tunnel analysis was undertaken to ensure that the tower setback as provided would result in appropriate wind conditions for pedestrians.

"The Department considers that if it was determined that the project should proceed it is likely to have acceptable wind impacts for pedestrians within and around the development." (The Department's Modification Assessment Report, page 60)

The tower setback also allows the volume of the neighbourhood centre to be clearly articulated within the streetscape, with the reduced scale responding to the local context.

"The Department notes that with the exception of the Ribbon elements the new podium height is largely within the 28m LEP height limit and considers the form and scale of the new podium relates well to the grain and scale of the residential buildings to the west on Jones Bay Road" (The Department's Modification Assessment Report, page 48).

Given that the tower stands alone from other tower clusters, and will be viewed in the round, an architectural form and expression was adopted that responds to this unique condition. The organic form of the tower with incremental adjustments in plan between floors at the lower levels ensure

“The proposed height of the development, at RL 237 (which [the IDA]... calls a tower height of 233m), exceeds the planning controls over the site; ...[the IDA] does not address the issue of height in his discussion on Built Form. The height exceeds the planning control height by a factor of 8 (based on the LEP permitted height of 26 metres); whereas the previously approved development had a maximum height of 74 m, this application seeks approval for a Tower to RL 237” (page 4).

“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 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” (page 4).

that the tower will make a rich, positive and varying contribution to the skyline of both Pymont and the broader city context. Whilst the IDA raises concern in regard to the urban context it describes the tower as *“an elegant three-dimensional form”*.

The Design Review Panel concluded that:

*“FJMT presented an elegant, international standard design with a refined, distinctive and visually interesting built form....**The design provides a holistic appreciation and response to the surrounding context, optimising positive visual, environmental and operational outcomes.**”* (Appendix F, Design Excellence Report, Section 4.5)

As detailed in Section 2.3 of the Response to the Department’s Assessment Report, local planning controls do not apply to the Proposal as it is a Transitional Part 3A project, and as such is recognised as a development of State planning significance. In reaching this position the Review has relied on an irrelevant control.

These comments are outside of the scope of works defined by the IPC in their brief for the Review.

“Whilst [the IDA] does not further elaborate on the built form, the form of the tower is relevant to an assessment of visual impact. The built form of the proposed development is challenging to the eye and the mind... The tower itself is not sleek — rather it is a combination of cylindrical and part cylindrical forms which start and stop apparently randomly. The tower is striated ... Hotel BOH and Library and other hotel uses, break the rhythm of the verticality of the tower ... The top of the tower ... is truncated, with a taper that reduces the footprint from approximately half the tower floor area ... The tapered top of the tower contributes to its unique built form and should feature in an assessment of visual impact” (page 4).

The tower's form and architectural design builds upon the recommendations and principles of the Urban Context Report, which identified an opportunity to *“Physically mark the eastern arrival into the emerging ‘global waterfront’ precinct with a tall tower form that contributes to legibility and wayfinding.”*

The tower is constructed from two interlocking forms that grow naturally from the curved geometry of the site, and setback from the north in response to the local street scale. As the two primary tower forms rise, they turn, adjust and interlock in relation to the view lines of neighbours, position of the sun in winter in relation to public open spaces, and to maximise view access for residential neighbours.

The horizontal expressions within the tower form mark the key spaces within the hotel, i.e.: the elevated sky lobby and the club lounge. These are deliberate yet subtle expressions within the tower form to provide articulation and to permit an external reading of the key spaces within the hotel.

The tapered tower form responds to detail considerations of view sharing, solar access and mitigation of wind impacts, whilst generating a highly contextual, sculptural form that is appropriate for viewing in the round.

Many local and international precedents exist for towers that taper towards the base including:

- 30 St Mary Axe, London by Foster and Partners
- Cocoon Tower, Tokyo by Tange Associates

- 150 North Riverside, Chicago by Goettsch Partners
- 60 Martin Place, Sydney by Hassell

The Review provides a subjective critique on a design that was selected via a government approved design excellence process. The form of the tower was refined and rationalised during a second round of the design excellence process. Upon completion of this process the DRP concluded that:

“The design provides a holistic appreciation and response to the surrounding context, optimising positive visual, environmental and operational outcomes. The ground plane treatments creates the promise of future improved linkages and relationships to the public domain. The design responds sympathetically to environmental considerations – for example, by maximising solar access for the surrounding area and by incorporating a façade and materials in keeping with the waterfront location.” (Appendix F, Design Excellence Report, Section 4.5).

“[T]he shard is pyramidal, well founded or grounded as the largest visible footprint occurs at ground level, whereas the proposed tower has the smallest footprint at ground level and the largest footprint elevated above ground level” (page 4).

“The shard is located in a ‘field’ of buildings of varied height (admittedly no neighbouring building matches its height), whereas the proposed development sits alone with existing buildings generally at a constant lower height” (page 4).

Comparing the proposed design to the Shard was to demonstrate that very tall buildings do occur in other global cities in a mostly low rise context. Such buildings tend to have a very unique design and form, are viewed in the round and exhibit design excellence.

The proposal has been through a design excellence process and has been held to have design excellence by the Design Review Panel (DRP). The fact that the proposed design does not taper upwards like the Shard is not the point of the comparison. The point is that tall buildings can co-exist very well in low rise contexts given a range of factors including; the global status of

	<p>the city and in this case the location in the western frame of Darling Harbour - a place with tall towers in the context of both low rise built form and city towers.</p>
<p>Context</p>	
<p>Broader context</p> <p><i>“The Visual Assessment diagram (Architectus’s Figure 6.1.3) shows developments to the east, and south of the Star site. It is an aerial view of the bay taken from the north west orientation and the towers on the eastern side of the bay are laid out to present ‘a string of pearls’, rather than each building stacking up behind each other as it might appear in a view taken from due north” (page 5).</i></p>	<p>These comments are noted.</p>
<p><i>“If one considers that Cockle Bay may not proceed to its indicative height of 235 m, the line joining the tops of towers drops significantly to the southern end of the bay with Darling Square and ICC and Harbourside rising to a maximum of 166m” (page 5).</i></p>	<p>These comments are noted however the Proponent questions why this point is raised given its speculative nature and that they are based on precedence rather than reference to future strategic planning policy.</p>
<p><i>“In contrast the western side of the bay, north of Harbourside is bereft of towers — and demonstrates a low rise dense character and a mix of large and smaller developed sites and as the IDA summarises ‘there are no very tall ‘tower’ buildings in this part of Pyrmont”” (page 5).</i></p>	<p>The Department does not provide any evidence to demonstrate that the Pyrmont locality is a more appropriate context of which to base the site’s context. The site is identified as being located in the Darling Harbour Precinct in strategic planning policy (Eastern City District Plan, page 63). Reliance on the Department’s Assessment of character and typography by the Review to overcome the IDA’s deficiencies, demonstrates the continued disregard for the wider context of the Proposal.</p>

Assessment of proposed development

Visual impacts

“[the IDA] notes, successfully in my view, that the fact that there are a ‘large majority of other viewpoints’ where ‘it is considered that the tower would be unduly prominent, unrelated to its context and unacceptable’ mean that the adverse effect of the visual impact of the proposed development is unacceptable, thereby refuting the finding of Architectus” (page 5).

“In my view [the IDA] also successfully argues that the statement by the peer reviewer that ‘the extra height obscures an area of sky only’ ... 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 viewpoints” (page 5).

“Architectus claim their assessment “is merit based, applying a visual impact methodology to outline the overall merit and reasonableness of the proposal in visual impact terms.’ and ‘the key consideration as part of a merit assessment is the contextual fit of the proposal””. (page 6).

“[T]he loss of sky view is one of the most significant losses due to the proposed development” (page 6).

“Intrusive, is the only tower form visible in Pyrmont” (page 7).

The Architectus Visual Impact Assessment is based on established methodology that has been developed in relevant cases at the NSW Land and Environment Court. The methodology defines objective criteria to measure and analyse visual impact which is a qualitative matter. On the various criteria the visual impact is assessed at low to moderate. The criteria is made clear so that the reader may come to their own conclusion regarding degree of impact. Architectus considers that a reasonable person carefully reading the VIA is likely to come to a similar conclusion. The analysis attempts to remove bias as much as possible. The fact that you can see something does not necessarily mean it has high visual impact and should not be built. If this was the case the Sydney Harbour Bridge or the Sydney Opera House would fail. 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.

The Review says that the loss of sky view 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. While 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. A visual impact assessment endeavours to be as factual as possible enabling

	<p>the reader to understand all of the criteria together and come to a balanced conclusion.</p>
<p><i>“[Architectus] fail to mention the planning height controls which are there to contain the form of future development” (page 6).</i></p>	<p>The Review continues to reinforce the ill-informed premise of the IDA that the Proposal is inconsistent with planning controls without acknowledging that local planning controls do not apply to the Proposal. Nor recognising the controls that are referenced had their genesis in the 1990s and planning and development in the Darling Harbour Precinct and Western Harbour area of the CBD have changed dramatically.</p>
<p><i>“More importantly the Architectus’ assessment of views as low impact, moderate or moderate high impact, appear subjective” (page 6).</i></p>	<p>The Review states that the VIA evaluation of views is still subjective. This appears to be a dismissive statement. Appreciation of views is a subjective or qualitative matter. That is why a comprehensive methodology has been established over the years based on many cases before the NSW Land and Environment Court to establish criteria to analyse and measure as much as possible the impact in views caused by a proposal. This methodology was followed in the VIA.</p>
<p>Private views</p> <p>The IDA <i>“...classes the impact of the proposed development ‘range from minor to very severe as is inevitable in this location’ He does not specify which of the 24 simulated images are categorised as most severe. In my view I believe he felt that it was not his ‘job’ to rank the views ... It would have been beneficial if [the IDA]...had provided his opinion on the most severe impacts. Equally it would have been beneficial if...[the IDA] had commented on the summary of impacts” (page 7).</i></p>	<p>It is of concern that the IDA does not identify from the Architectus VIA which viewing points were of concern. The VIA is a professional study in accordance with established procedures of analysis. And yet the IDA provides no detailed response but rather retreats to loaded statements. The purpose of the VIA is to provide a clear framework for analysis and minimise subjectivity. For each criteria the reader can readily see how Architectus has ranked each view. It is then a simple matter to think about one’s own</p>

	<p>ranking or rating. It appears that this process was not followed by the IDA or the Review.</p>
<p>Built form</p> <p><i>“[The IDA] suggests that the selected design is the best of the three competition designs and acknowledges that the preferred design is still problematic. He does not define why he thinks the selected design is the best of the three completion designs, suggesting only that it could be an elegant three dimensional form when viewed as an isolated object but not when placed in this location as it has no sympathy with its urban context. His analysis of the built form is restricted to ‘a relatively slender tower form ... rounded corner forms’. In my view this assessment is weakened by the lack of discussion of the detail of the design or its materiality” (pages 7 and 8).</i></p> <p><i>“I assume that...[the IDA] did not comment on the other competition entries as it was ‘a fait accompli’ [sic], nor did he expand on the design detail of the tower as he believed he has succinctly summed up the form of the tower” (page 8).</i></p>	<p>The mechanism for ensuring design excellence is via a government approved Design Excellence Process with an associated Design Review Panel (DRP). Reference to a “<i>disturbing built form</i>” is highly subjective and at odds with the feedback from the DRP, which noted:</p> <p><i>“FJMT presented an elegant, international standard design with a refined, distinctive and visually interesting built form....The design provides a holistic appreciation and response to the surrounding context, optimising positive visual, environmental and operational outcomes.”</i> (Appendix F, Design Excellence Report, Section 4.5)</p> <p>Reference to “<i>an intrusive object on the skyline</i>” is at odds with the objective analysis that forms part of the Visual Impact Assessment by Architectus, and subsequent peer review by Dr Richard Lamb.</p> <p>The deficiencies in the IDA relating to a lack of discussion of the detail of the design and materiality is noted. This would have been informed by the Architectural Design Statement.</p>
<p>Overshadowing</p> <p><i>“He makes the point that although the tower appears slender because of its height, it still has a substantial footprint which itself will cause overshadowing. He does not elaborate on this point as well as he might. I</i></p>	<p>The Proponent notes the inadequacy of the IDA in this regard.</p>



believe that Professor Webber's succinct style made any elaboration unnecessary in his view" (page 8).

The IDA "...does not comment on specific overshadowing issues relating to Public Open Space such as the overshadowing of Union Square and Pymont Bay Park. Again I suspect that Professor Webber thought further elaboration unnecessary in view of the Department's analysis" (page 8).

'I support the Department's analysis that the overshadowing to Union Square would only occur as the result of an unacceptable development'. (page 8)

The Proponent calls into question whether the details in the Department's Assessment Report alleviate the need for the IDA to address these issues, should they form the basis of the conclusions drawn. This premise of the Review falls away on consideration of the fact that the IDA was written to inform the Department's Assessment Report and not the other way around.

There is no detail of the overshadowing that will be caused by the tower footprint or impact that might arise in either the IDA or the Review. Extensive solar impact assessments were prepared by the Proponent and contained within the ADS, of which was not referenced by the writer of the Review in Appendix 1 '*Documents Referred to*'.

The Review has misunderstood the role of the IPA and its relationship to the Department's Assessment Report. The Proponent continues to question the "robustness" of the reasoning applied in the Review where overshadowing impacts are used to justify the *acceptability of the development*.

Union Square currently achieves 92.8% direct solar access at mid-summer and 64.4% during mid-winter. The Proposal reduces the mid-winter figure by 4.6% while there is nil impact during summer.

The impact to Union Square is limited to between 19 May and 24 July. The impact lessens as we move away from mid-winter.

The mid-winter impact occurs between 10.30am and 11.30am with any single point of the square being impacted for approximately 30 minutes.

	<p>A comparison study was undertaken between a lower height option that removes overshadowing to Union Square and a taller tower as per the Competition Brief. This was reviewed with the Design Review Panel (DRP) with the panel concluding;</p> <p><i>“FJMT presented alternative height approaches with the Panel supporting the taller scheme which is considered to achieve more elegant proportions with negligible additional environmental impacts”.</i> (Design Excellence Report, section 4.5)</p> <p>The Proponent has offered to proceed with a lower height tower that removes overshadowing to Union Square. This has not been reflected or considered in the Review. 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.</p> <p>Detailed assessments of overshadowing have been undertaken by the Proponent. 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.</p>
<p>Symbolic issues</p> <p><i>“[I]t is ‘stretching the idea’ to suggest that the proposed residential and hotel tower draw attention to the attached casino, unless of course signage and branding on the tower or casino emphasise this fact” (page 8).</i></p>	<p>The Proponent notes this response.</p>

<p><i>“If the development proceeds, the impact of the height and singularity and form of the tower will be the landmarks that are noticeable and memorable. Height, as it will be so much taller than any currently permissible development in the future and the singularity of a tower in Pymont and its disturbing built form will mark it as an intrusive object on the skyline” (page 8).</i></p>	<p>The VIA conclusion after weighing all the criteria is that while the proposal is much taller than other development in Pymont it is of low to moderate visual impact. This is mainly because when analysing a large number of viewing points both near and far it was revealed that nearby views are mostly concerned with low angle views that would fit within current planning controls and for further away views the proposal is seen in a very broad context and represents a very small part of the overall view. In VIA terms, the proposal is not unacceptable.</p>
<p>Public benefit</p> <p>The IDA <i>“...argues that there is very little public benefit assigned to the proposed development; merely ‘Neighbourhood Centre facilities’ within the development at Ground Floor; rather than new additional attractive and easily accessible public open space (I note that...[the IDA] does not acknowledge that in fact the ‘Neighbourhood Facilities’ are being offered over 5 floors)” (page 8).</i></p>	<p>As demonstrated in the Proponent’s Response to the Department’s Assessment Report, section 2.8, the extent of the Neighbourhood Centre was misinterpreted in the IDA.</p> <p>It is important to acknowledge also, that enclosed space accessible to the public is different from an open public space. The Proponent continues to question on what basis public open space outweighs the significant benefit of the Neighbourhood Centre which is to be constructed and managed for the duration of the current lease of the site (to 2093).</p>
<p>Lack of street activation</p> <p><i>“Given the scale of the proposed development, I support this view and suggest that...[the IDA] could also have commented on the lack of activation at street level for pedestrians, which the proposed development seems to lack. With an extensive street frontage it seems that there could</i></p>	<p>A key measure of success as initially identified by SEGL in the Competition brief was that the design proposal <i>“...leave a positive legacy of SEGL’s historical involvement for the locality of Pymont, including a positive contribution to the quality of public domain areas”.</i></p>

be a far greater contribution proposed to activate the street facades of the buildings that comprise the development” (page 8).

The public domain strategy, developed identified distinct yet overlapping public domain zones as follows:

- **Pirrama Road:** Public Entry, Boulevard, Activation and Park
- **Pirrama Road (north):** Hotel porte-cochere
- **Pirrama Road / Jones Bay Road (north of site):** Public / Neighbourhood centre
- **Jones Bay Road:** Local Cafe and F&B - Residential

The proposed improvements to the podium result in a very significant increase in street level activation as compared to the existing, via the introduction of a hotel porte-cochere, neighbourhood centre, residential lobby and increased retail activation.

The Proposal will also improve activation within Pirrama Road opening up the access into the light rail corridor and station adjacent to Pirrama Road.

The Review contradicts the Departments assessment which notes:

“The Department notes that with the exception of the Ribbon elements the new podium height is largely within the 28m LEP height limit and considers the form and scale of the new podium relates well to the grain and scale of the residential buildings to the west on Jones Bay Road.

Therefore, the Department considers the form and scale of the proposed changes to the podium, together with the introduction of the Ribbon Feature,

	<p><i>to be acceptable, as these are sympathetic to the local Pyrmont context and enhance the visual appearance of the building." (The Department's Modification Assessment Report, page 48)</i></p>
<p>Precedent argument</p> <p><i>"Precedence [sic] is not necessarily a successful argument in planning; but Professor Webber's view is more than reasonable based on previous planning decisions.</i></p> <p><i>Height controls are established for valid reasons; if the reasons change over time, height controls should be reassessed and re-established; it should be the responsible authority's prerogative to review height controls, and authorities should not be forced into changing controls to match increased heights brought about by constant challenges to the planning system, but rather by sensible strategic forethought" (page 9).</i></p>	<p>The assertion in the IDA that if the Proposal <i>"were to be approved, other applications would almost certainly follow and would be difficult to refuse"</i> does not consider that each and every proposal must be considered on its own merit. It also does not acknowledge the findings of the urban context analysis including:</p> <ul style="list-style-type: none"> • The characteristics of the site are consistent with the character of the Darling Harbour locality which also contains large industrial scale Sites not of the fine grain character of the Pyrmont locality; • There are no other large sites on the northern part of the peninsula which have the ability to accommodate a tall tower whilst mitigating any environmental impacts including overshadowing as many of these impacts fall within the site boundary; and • The strategic planning documents which identify the site as being located in the Darling Harbour Precinct. <p>As demonstrated in the Proponent's RtS and the Response to the Department's Assessment Report, the approval pathway is valid and SLEP 2012 does not apply to the Proposal. The Department agrees with the Proponent on this fact (Department's AR, section 4.1).</p>

SLEP 2012 and other environmental planning instruments (**EPI**) excluding State environmental planning policies do not apply to the Proposal. **The Height of Building Control (SLEP 2012) of 28m and 65m therefore does not apply to the Proposal.** The Department agrees with the above (Department’s AR, section 4.2 page 16).

Conclusions

The IDA “... *did not cover the design of the tower, or challenge the classification that Architectus used to evaluate impact of views*”. The IDA...*did not stress the importance of Union Square and it’s ambience or the importance of loss and meaning of sky views.* (Page 9)

More could have been made by...[the IDA] of the built form of the existing buildings; their rectilinear shape, their adherence (or otherwise) to a podium and tower form, especially where proposed tower setbacks are by no means generous; to allow a further discussion on the appropriateness or otherwise of the proposed development”. (Page 9)

“In summary, it is my conclusion that... [the IDA] is a very concise and economical summary and commentary on the Application. In addition his 5 conclusions are to the point and in my view, in the main, justified by his analysis. I believe his report would have had even greater strength if he had amplified his report to include the missing information I have noted and if he had expanded on his rationale underpinning his assessment and further questioned the view assessment criteria and evaluation presented by Architectus” (page 9).

It is instructive that the IDA did not challenge the VIA in its methodology or evaluation of impact. It must be assumed that the IDA did not find fault with the VIA but rather assessed the Proposal in other terms.

The visual and environmental impacts of the Proposal upon Union Square are discussed at length in the fjmt Architectural Design Statement and the VIA.

The VIA notes that the tower “...*does not significantly affect appreciation of existing important elements within the view, the visual impact of the development can be summarised as moderate.*”

Dr Richard Lamb’s peer review of this assessment concludes that the “VIA shows that the tower does not cause more than limited impacts compared to what has previously been assessed, irrespective of its additional height. 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”.



4. THE LAMB REPORT

Extract

“[Richard Lamb] claims actions such as determining the importance of both private and public views are logical; what is missing however is that the evaluation of views is still subjective. There is no guideline established for the evaluation of views” (page 10).

“There is no discussion on how close the buildings will be, or in fact what is the likelihood of the Barangaroo buildings proceeding (and when that might occur). The visual impact will still be that of a solitary tower in what under current planning controls is a low rise zoned area. The evaluation of visual impact in this instance is a subjective response. Note that (for example) the definition for Low-Moderate assessment is ‘the proposal is prominent in the view and/or obscures minor elements within the view’. The definition itself limits the assessment; it is not the fact that the definition is conservative, but rather that the definition is not necessarily appropriate or the right definition for each setting.” (page 10).

Proponent Response

The Review states that the VIA evaluation of views is subjective. This position overlooks that the appreciation of views is a subjective or qualitative matter and that is why a comprehensive methodology has been established over the years based on many cases before the NSW Land and Environment Court to establish criteria to analyse and measure as much as possible the impact in views caused by a proposal. This methodology was followed in the preparation of the VIA.

It is a limitation of both the IDA and the Review to not give credence to such an established and widely accepted approach. The Review misunderstands Lamb and the VIA when it says that the VIA is too conservative. The Proponent considers that the Review means that the criteria are rated too low when in fact Lamb and the VIA demonstrate the opposite - that the criteria are conservative because they do not understate view impacts.



5. THE DEPARTMENT'S ASSESSMENT REPORT

Extract	Proponent Response
<p><i>“The Department assessed the proposal most comprehensively against the planning controls and guidelines as follows; 1. Character of the area 2. Special Areas 3. Views and Vistas 4. Streetscape, setting or landscape 5. Site and building 6. Associated devices and logos with advertisements and advertising structures 7. Illumination 8. Safety” (at 10).</i></p>	<p>The Proponent has provided an extensive response to the Department’s Assessment Report which was provided to the IPC dated 6 September 2019. For a detailed response to this item reference should be had to section 9.0 of the Proponent’s EAR.</p> <p>The Proponent questions the relevance to the Review calling up these specific items given the defined scope of works outlined in the IPC’s brief which sought the Review “...conduct a detailed examination of the Independent Assessment and Design Advice prepared by Professor Webber and provide a report to the Commission containing advice as to the its robustness and validity”.</p> <p>The Proponent calls into question the reliance on the list of items at page 10-12 of the Review as a means to justify its conclusion.</p>
<p><i>“I concur with the assessment prepared by the Department and its stated outcomes and note that in my view it is a most comprehensive and well framed assessment” (page 12).</i></p>	<p>The Proponent maintains that the Review comments on matters that do not answer the question set out in the IPC’s published brief. The Review:</p> <ul style="list-style-type: none"> • Comments on matters beyond that pertaining to visual impact, extending its assumptions to inform the ultimate conclusions of the Review; • Relies on the Department’s Assessment Report where the IDA fell short in its assessment, rather than calling into question the ‘robustness’ of the IDA;



- Provides comments on the architectural design and form of the tower to account for the deficiencies of the IDA’s *“extremely brief and economical description of the unique building form of the proposed tower”*;
- Follows the precedent set by the IDA acknowledging the findings of the Urban Context Report which forms a comprehensive assessment on which to understand the complex nature of the context of the site. In the absence of this assessment which demonstrates an alternative context, the Proponent maintains that deficiencies in both the Department’s Assessment and the IDA exist.

The purpose of the peer review was *“to provide advice to the Commission as to the robustness and validity”* of the IDA, not to comment on the efficacy of the Department’s Assessment.



6. REVIEW OF THE MOIR REPORT

Extract

“Moir refers to Professor Webber’s comment that the Pirrama Road / Jones Bay Road view (Architectus p 89) ‘shows how the setback of the tower from the podium façade at lower levels would do very little to mitigate the adverse impact of the tower bulk rising above’. Moir questions why this would be considered an adverse impact; arguing that people in close proximity rarely look up”.

“The photomontage image shows two things; a) that the tower visually from this viewpoint is hardly set back, (in fact it is only setback c 4.8 m at its maximum point) and therefore the tower podium is virtually a continuous form and the lack of appropriate and proportional setback puts more building bulk in the face of the viewer, and b) given the lower scale of the surrounds the tower is dominant as the viewer is not restricted to the ‘window’ that is suggested — the viewer is aware of the continuous height of the tower, registering that it is there but perhaps not registering it in the same detail as the area directly in the prime field of view.” (page 12)

Proponent Response

The paraphrasing by the Review misrepresents the point that Moir was making (refer point 49, Moir). The point was that the IDA does not explain why the presence of the tower in the view is an adverse impact.

In the VIA, Architectus acknowledge that *“The proposal is highly prominent in views from this location (which) is large(ly) due to the short distance and significant height of development”.*

The VIA also notes that *“It is generally seen as a short-term passing view as a pedestrian or within a vehicle and is not a significant location for obtaining views” and “There are few important features in this view compared to other views”.*

This is the reason why the VIA provides a visual impact rating of moderate which is consistent with the methodology of assessment.

All tall buildings can be prominent in a view and Moir agrees that the setback from this viewpoint will be barely discernible. However, in the context of visual impact assessment, prominence alone is not considered an adverse impact or is the awareness of the viewer that an object is within a view. Other than stating that the Proposal will be prominent from this viewpoint the IDA provides no explanation why he considers the impacts to be adverse or how and why he disagrees with the conclusions of the VIA.

“Moir argues that ...[the] conclusions [of the IDA] are subjective; I would comment that they are no more subjective than the Architectus [VIA] rating” (page 13).

The SEARS included a comprehensive outline of requirements to be adhered to in the preparation of the VIA (refer SEARS 9 May 2016 – Plans & Documents - Section 7. Visual Impact Assessment). In reference to the visual assessment methodology, the SEARS clearly require that when undertaking the VIA:

- *The consultant's methodology should be explicit. This may include a flow-chart indicating how the analysis is to be undertaken, or a narrative description of the proposed sequence of activities.*
- *As part of the methodology, the consultant should provide, and explain, criteria for assessment relevant to the site, local context and proposed built form and public domain outcomes. A rationale should be provided for the choice of criteria. Criteria must include reference to the planning framework.*
- *Visual catchment should be defined and explained (see below).*
- *An assessment matrix should be produced including number of viewers, period of view, distance of view, location of viewer to determine potential visual impact - i.e. high, medium or low.*

An explicit and logical methodology and a process of quantitative assessment is always undertaken as part of a visual impact assessment to form a baseline for discussion and conclusions on the extent of impacts. **Without these baseline conclusions on the extent of impacts, assessments are purely subjective, prone to inconsistency, and ultimately valueless in communicating the potential extent of the visual impact of a proposal.**

Architectus developed a methodology for the assessment that is appropriate for the proposal. The report focuses on the context of the setting and the impact on key

	<p>public domain views throughout the city (including those specifically identified in the SEARS), the impact on identified view corridors, and Architectus addresses the potential impact upon views from private residences.</p> <p>The VIA clearly demonstrates adherence to the specific visual impact requirements detailed in the SEARS (specifically addressed in Section 2.2 Secretary's Environmental Assessment Requirements of the VIA p.21).</p> <p>If the Review genuinely believes that the Architectus ratings are subjective, then the question needs to be asked whether or not the Review should provide further explanation why, and identify where the flaws in the VIA methodology exist.</p>
<p><i>“At para 55 Moir argues that ‘the objective is not to determine whether the proposed impact is visible or not visible, but to determine how the proposal will impact on the existing visual amenity, landscape character and scenic quality’. I would suggest that these criteria may well be appropriate for the visual assessment of ‘objects’ in the landscape’ eg wind farms, but they are not the full criteria for the assessment of proposed developments in the urban environment. Considerations such as view loss, view sharing or access to views of scenic, iconic or other items of documented importance (as stated by Lamb) or other criteria such as building height and bulk, overshadowing and context may be of greater importance” (page 13).</i></p>	<p>The Review dismisses Moir’s opinion that the VIA objective is to determine impact on visual amenity, landscape character and scenic quality by saying these are objectives for assessing wind farms and the like in a landscape not an urban environment. This is an unreasonable assertion. Moir is using the term landscape in broad sense including urban areas.</p> <p>The Review goes on to say that other issues may be of greater importance. It is the role of the VIA to be comprehensive. A reasonable criticism would be to interrogate any perceived gaps in the VIA. This is not done in either the IDA or the Review so it must be assumed that the VIA is a reasonable basis to conclude view impacts.</p> <p>It is considered that the objective for visual assessment, as stated by Moir, is appropriate for all landscapes, be they urban, natural, rural or other. Although there may be distinct lack of vegetation in the urban setting it is still a visual landscape. It</p>



is imperative that the assessment of visual impact is consistent across all landscapes.

The other criteria such as “*view loss, view sharing or access to views of scenic, iconic or other items of documented importance*” are equally not unique to urban settings and are important considerations when undertaking the visual impact assessment of a proposal. These criteria were adequately addressed in the VIA.

Building height and bulk are considerations in assessing the object in a view and its impact upon character and visual amenity, however it is not the role of the visual impact assessment to discuss the architectural merits of a proposal or how the bulk and height of a proposal relate to planning controls unless the controls are specifically oriented towards the protection of views or a specific landscape character. Context is important and addressed through the character assessment and overshadowing is generally not a consideration as its impact upon a view is minimal and changeable with variations in weather and available light.

All of the criteria identified by the Review in this point have been addressed in the VIA and other documentation supporting the Proposal.



7. THE OLSSON REPORT

Extract	Proponent Response
<p>General / Strategic justification</p> <p><i>“Olsson claims seven reasons for his disagreement with the Department’s decision arguing that ‘the site should be considered as part of the Darling Harbour Precinct rather than Pymont as in his view ‘the site has been and is currently being used in a manner that is more consistent with the land uses in Darling Harbour’. The validity of this approach is questionable as the applicable controls relate specifically to the location of the proposed development ie Pymont” (page 13).</i></p>	<p>It is considered that Olsson’s statement that “...the site has been and is currently being used in a manner that is more consistent with the land uses in Darling Harbour” is accurate, as historically the site was a power station similar to other power station and industrial sites in Darling Harbour.</p> <p>Currently, the site contains a hotel, theatre, casino, retail shopping arcade, bars and restaurants which are similar uses to those in Darling Harbour Plan Area No 1. They are also uses found in Barangaroo and the King Street Wharf on the eastern side of Darling Harbour.</p> <p>While Olsson agrees that the applicable controls relate specifically to the location of the proposed development, he did not conclude that the controls for all of Pymont are relevant to the site. The control that is specific to this location is the Transitional provisions of Part 3A of the NSW EP&A Act.</p> <p>Whilst SLEP 2012 has height of building (HoB) and floor space ratio (FSR) controls for the site, Part 3A allows for these to be varied.</p> <p>It is also noted that the current HoB control is atypical of Height of Building Controls and is overly restrictive. The HoB map has heights that precisely follow the curvilinear forms of the existing hotel buildings on the site, are shown as AA2 – 65m on the SLEP 2012 Map. The podium height is T3 – 28m. These controls were introduced after the existing hotel buildings were built, moulding the controls to the</p>

	<p>built forms. The effect of these controls is to allow virtually no potential development of the site if the SLEP 2012 controls were to be followed. This is unconventional planning practice, as planning controls elsewhere in Pyrmont and the City generally have one Height of Building over an entire site or urban block. The height does not normally relate directly to the existing buildings under the control, allowing for future development within the height limit.</p>
<p><i>“Olsson argues that the Department’s opposition to the proposal is a direct result of the failure to consider the development as part of the Darling Harbour Precinct. This is not a valid approach as the existing planning controls apply to the proposed development’s location in Pyrmont” (page 13).</i></p>	<p>It is considered that the Review does not accurately represent Olsson’s position regarding the Department’s assessment. The Department states that the site is <i>“not located within an identified precinct or an area specifically designated for significant future growth (additional height and floor space) in any adopted or emerging planning policy”</i>.</p> <p>This statement does not recognise the:</p> <ul style="list-style-type: none"> • Greater Sydney Region Plan, released March 2018 by the Greater Sydney Commission; • Eastern City District Plan, released March 2018 by the Greater Sydney Commission;or • City of Sydney Draft LSPP, released August 2019. <p>as emerging planning policies.</p>

Built form

“The tower element is not in accordance with the planning controls and he has provided no proof that the tower has been designed to minimise environmental impacts and effect on the streetscape” (page 13).

This assertion is incorrect. The following is an extract of the Olsson report *“The tower has been designed specifically to minimize environmental impacts. The siting of the tower at the northern end of the site minimizes its overshadowing impact. The worst of the shadow impacts of a tower are those close to the tower, where the shadow moves slowly and creates continuous shadow next to the tower. This area in the proposal is on the roof of The Star. The shadow caused by the top of the tower is a fast-moving shadow. The impact of this shadow is relatively low due to the short period of time that buildings are within the shadow, and in my view the shadow impacts from the tower are acceptable. The siting of the tower at the northern end of the site is an important factor in making this acceptable.*

The form of the tower also assists in reducing the shadow impact. The tower is narrower in its east-west axis and longer in its north-south axis. This more slender form in the north-south axis minimizes the overshadowing of sites to the south, such as Union Square.

The effects on the streetscape are also minimized by the siting and form of the tower.

The siting of the tower is away from Pyrmont Bay Park and the open space at the edge of Pyrmont Bay and Pyrmont Bay ferry wharf. This allows the continuous horizontal street frontage along Pirrama Street to be a cohesive low-rise form addressing the park and the bay.

The form of the tower also minimizes its effect on the streetscape. The streetscape at the corner of Jones Bay Road, Darling Island Road and Pirrama Road is

	<p><i>comprised of curving streets and curving built form. The ground level also changes around the corner, creating an undulating landform. This curvilinear context is well complemented by the curving forms of the proposed podium and tower.</i></p> <p><i>The curve of the tower at its northern end complements its built form context and potential wind impacts are reduced by setting the lower levels of the tower back from the podium. Wind downdrafts from the tower would fall onto the roof of the podium and not onto the footpath or street. As the Department said in its assessment in response to a question from the community regarding wind impacts, the impacts will be minimal.</i></p> <p><i>The base of the tower is also gradually curved up and out, which in my view is an elegant form complementing its context. The tower form is made more slender at its base, reducing its visual impact. The vertical tower is visually separated from the horizontal podium with this tapering base. This is a desirable design principle in tower and podium design.</i></p> <p><i>The tower itself is comprised of intersecting ovoid forms that minimize the visual impact of the tower by articulating the form onto smaller rounded forms. Due to these smaller rounded forms intersecting, the vertical proportions of the tower are emphasized, creating in the words of the Design Competition jury, “a more elegant form”.</i></p>
<p>Heritage / Overshadowing</p> <p><i>“Olsson argues that the Department’s assessment is based on an imposing presence based on views, rather than Heritage issues. The Department’s comment is apt justification “that the heritage impacts of</i></p>	<p>Having regard to the inferences made in the Review regarding heritage and overshadowing it is important to separate the assessment of a proposal into distinct topics so that a rational and objective assessment can be made. For example, shadow impacts are measurable on the ground and can be assessed on that basis,</p>



the proposal, although minor would only occur as a result of an unacceptable form of development” (page 14).

“I repeat my view that any overshadowing of Public Space in Union Square or Pymont Bay Park cannot be supported” (page 14).

whereas heritage assessments draw upon a range of historical information and built form assessments use terms such as scale, bulk and articulation.

The following provides a response to heritage and overshadowing with regard to the Proposal and how it is unreasonable for the Review to rely on The Department to conclude that, because the project is deemed to be “*unacceptable*” on the basis of built form, that its heritage or shadow impacts are also considered unacceptable.

Heritage

The heritage assessment by the Heritage Council did not raise concerns about the proposed tower on state heritage items. The Department also notes that the IDA stated “...*Even from Martin Place, where glimpses would be visible, the new tower being relatively distant may not be unduly intrusive from most viewing positions.*” The Department considers that “the tower is located a sufficient distance from the (Pymont) heritage conservation area so as not to directly impact its setting or the ability to appreciate proximate heritage items.

These three statements indicate that the proposal is acceptable in terms of heritage assessment.

It is not logical then for The Department to conclude that “*the heritage impacts of the proposal, although minor, would only occur as the result of an unacceptable form of development.*” The assessment of the form of the development is a separate matter to the heritage assessment.

Overshadowing

Union Square currently achieves 92.8% direct solar access at mid-summer and 64.4% during mid-winter. The Proposal reduces the mid-winter figure by 4.6% while there is nil impact during summer.

The impact to Union Square is limited to between 19 May and 24 July. The impact lessens as we move away from mid-winter.

The mid-winter impact occurs between 10.30am and 11.30am with any single point with the square being impacted for approximately 30 minutes.

A comparison study was undertaken between a lower height option that removes overshadowing to Union Square and a taller tower as per the Competition Brief. This was reviewed with the Design Review Panel (DRP) with the panel concluding;

“FJMT presented alternative height approaches with the Panel supporting the taller scheme which is considered to achieve more elegant proportions with negligible additional environmental impacts”. (Design Excellence Report, section 4.5)

The Proponent has offered to proceed with a lower height tower that removes overshadowing to Union Square. This is a relevant consideration for the Review.

Assessments of heritage and overshadowing have been undertaken by the Proponent and the Proposal should be assessed on that basis. **It is unreasonable for The Department to conclude that, because the project is deemed to be**

Public benefit

“With no additional external public space — the proposed Neighbourhood Centre represents 3.4% of the additional Gross Floor Area” (page 14).

unacceptable on the basis of built form, that its heritage or shadow impacts are also considered unacceptable.

The proposed floor space dedicated to the public is substantial as it extends over five storeys at the corner closest to the Pymont residential area. The suggestion that the area for community uses is insufficient as it is 3.4% of the total area ignores the fact that the area is substantial in and of itself. It is also stated that there is no external public open space proposed. The Star podium currently occupies the full site, which renders the provision of public open space unachievable within the site.

External public open space is not the only way that public benefit can be provided, as demonstrated in many projects across Sydney where local libraries, community centres and the like are provided as part of new development. The provision of the Community Uses in this project is appropriate and substantial.

It is important to also acknowledge that the Proponent provided further analysis in the Response to the Department’s Assessment Report, including a benchmarking analysis (pages 12 - 18, section 2.8). It is assumed that the Review has had regard to the:

- The increased length of neighbourhood centre tenure until the year 2093 – **section 2.8.1;**
- Confirmation of extent of the neighbourhood centre – **section 2.8.2;**



	<ul style="list-style-type: none"> • The need for a neighbourhood centre – section 2.8.3; • The benchmarking analysis of the neighbourhood centre to other facilities in the City of Sydney – section 2.8.4; and • The comparison of public benefit in State significant developments – section 2.8.5. <p>This analysis concluded, that <i>“the public benefit to be delivered through Mod 13, in addition to statutory contributions to be paid and the economic and employment benefits that will be generated during construction and operation will be significant in terms of financial commitment and physical form of the Neighbourhood Centre”</i> (page 18).</p> <p>There is no planning basis on which to suggest that the public benefit provided by the Neighbourhood Centre should be diminished by its size relative to the rest of the Proposal.</p>
<p>Design excellence</p> <p><i>“This evidence of design excellence in this instance cannot be separated from the fact that the brief called for a tall tower; the resultant tower may well suit the proponent without acknowledging or complying with planning controls”</i> (page 14).</p>	<p>With regard to design excellence, a criterion in the Design Excellence Brief was that the design demonstrate; <i>“conformance with relevant planning and development requirements”</i> (page 3, Design Excellence Brief).</p> <p>The relevant planning and development requirements include Part 3A of the EP&A Act 1979, where local height controls do not apply to the project.</p>



The process that was followed in conducting the Design Excellence Competition conformed with the Department's requirements as noted by the Department that:

"In October 2016 and in response to a request from the Proponent the Department advised that the proposed alternative design excellence process adequately addressed the requirement for a design excellence process in the SEARS." (Department's Assessment Report, page 28).

As detailed in Section 2.3 of the Response to the Department's Assessment Report, local planning controls do not apply to the Proposal as it is a Transitional Part 3A project, and as such is recognised as a development of State planning significance. In reaching this position the Review has relied on an irrelevant control.

8. CONCLUSION

This correspondence provides a response to the Review and highlights the reasons why it is reasonable for the IPC to question the Department's reliance on the IDA to inform its consideration of the Proposal, given the VIA submitted with the Proposal:

- clearly demonstrates adherence to the specific visual impact requirements detailed in the SEARS (specifically addressed in Section 2.2 of the VIA page 21);
- provides assessment of the impacts in the context of the relevant planning legislation, guidelines and planning principles relating to the site and the undertaking of a visual impact assessment;
- adopts the preferred methodology of the Land and Environment Court of New South Wales in the preparation of photomontages;
- employs a methodology for the preparation of the building model and the process through which this is integrated into the photomontages, to ensure an accurate representation of the Proposal, is clearly detailed; and
- is a comprehensive and thorough visual impact assessment as confirmed in peer reviews by Mr Russell Olsson, Dr Richard Lamb and Mr David Moir.

The VIA concludes that the visual impacts of the Proposal are acceptable primarily due to:

- the emerging context of the site and its surrounds which are located in the Innovation Corridor and Darling Harbour Precinct which are targeted for future growth;
- the context of the current and proposed built form within and adjoining the Darling Harbour Precinct. In particular, the scale of development at Barangaroo and the bulk and scale of development in the southern extents of Darling Harbour;
- the tall slender design of the Proposal generally maintains views to the water and land–water interface and does not obstruct views between public spaces, heritage items or landmarks; and
- the visibility or prominence of the tower does not affect the elements of ascribed importance within views.

As demonstrated in the exhibited EAR, the Proposal has limited additional environmental impacts beyond those already assessed for the approved project. It is open to the Minister and the IPC as the Minister's delegate to modify the approved project under the provisions of the EP&A Act 1979 and associated regulations that preserve the application of section 75W.

Yours sincerely,

A handwritten signature in cursive script, appearing to read "Clare Brown".

Clare Brown
Director