

## **INQUIRY INTO BARANGAROO SIGHT LINES**

**Organisation:** The Langham, Sydney

**Date Received:** 9 October 2022

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# THE LANGHAM

SYDNEY

07 October 2022

The Hon. Mark Latham MLC  
Committee Chair  
Select Committee on Barangaroo Site Lines

Dear Mr Latham,

## SUBMISSION TO THE INQUIRY INTO BARANGAROO SITE LINES

The Langham welcomes the opportunity to contribute to the Inquiry into the Barangaroo site lines. Our submission predominately focusses and relates to term of reference (e) of the committee's remit which states:

*"measures necessary to ensure the integrity of the Barangaroo redevelopment project and similar projects in the future"*

Appended to this submission is our substantive submission presented to the Department of Planning and Environment in relation to the recent MOD 9 application for Central Barangaroo. Our submission is relevant to the term of reference (e) as MOD 9 seeks to make fundamental changes to the design principles and approved building envelope as part of the Barangaroo development, contrary to the original design principles.

The Applicant has consistently shown a lack of regard for the public benefit and interest in relation to the redevelopment of the Barangaroo precinct and modifications to the original concept design.

The MOD 9 documentation contains a fundamental methodical error in the comparison of impacts of the proposed and approved schemes. This arises from the incorrect application of the height limits and design principles in the existing Concept Plan, which results in the overstatement of the scale of development that is currently permissible. The consequence of this error is that specialist reports and their assessments do not accurately reflect the proposal and its impact.

In addition, the extent of the changes sought by MOD 9 are of such a large scale that they cannot reasonably be classified as an amendment to MOD 9 but warrant a completely new application.

The impact of the proposed changes are as follows:

- Loss of all harbour and foreshore views from The Langham Hotel and its surrounds, causing a significant reduction in the amenity of an important tourism facility and the amenity of the area generally.
- Inconsistency with well-established view sharing principles followed throughout NSW, known as the Tenacity Principles.
- Meaningful reduction in the quality of Sydney's tourism offering by seriously degrading the quality of one of Sydney's few internationally branded, 5-star boutique hotels - The Langham.
- Poor urban design generally, and particularly through the siting of a tall residential tower at the northern end of the precinct. This tower is proposed adjacent to the Headland Park, which directly contradicts the long-standing principle of tapering building heights towards the headland.
- Diminished amenity and perceived heritage value in the Millers Point/Observatory Hill precinct by removing important views to and from the precinct.
- Gross inconsistency with commitments, planning principles and guidelines contained in the approved Concept Plan, particularly relating to view and heritage protection. This is especially important because the

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Concept Plan is a high-profile planning instrument based on substantial work including the results of an international design competition.

- An unacceptable example of a NSW government agency not complying with the government's own planning rules.
- Allowing major planning decisions to be based on erroneous and inaccurate assessment documentation, raising the significant prospect that any decision based on those documents will be similarly flawed. Documents submitted with this amendment omit key aspects of the relevant planning regime and exaggerate the economic benefits of proposed housing and retail development, which largely duplicate facilities already present in the area.
- A risk of serious diminution of public trust and confidence in the state's planning system because a government agency could be seen to be seeking unreasonable variation of the government's own planning rules in this important locality.
- The Biodiversity and Conservation SEPP applies to MOD 9. It recognises that Sydney Harbour and its foreshores are outstanding public assets of national significance and seeks protection, enhancement or maintenance of their values. It also notes the need to maintain public trust and intergenerational equity in decision-making by avoiding adverse impacts. The proposed modification has had no evident regard to any of these requirements, nor is it evident that the Applicant has sought to maintain public trust by lodging an application that is inconsistent with these fundamentally important planning controls.
- All the above outcomes being antipathetic to the public interest.

In summary, the circumstances and interpretation of approval pathways within the Barangaroo precinct must not, and should not have been subject to substantial built form changes from that established through the original approval process. The parameters of development set by the detailed strategic and design-led planning process should be upheld to ensure the integrity and public benefit of large precinct renewal projects. The overall changes to the founding design principles and approved gross floor area and heights undermine the integrity of the planning system and its approval process.

Thank you for the opportunity to raise these issues with you. Should you wish to clarify any matters raised in our submission and appended submission, please contact [Shane Jolly], General Manager.

Yours sincerely

Shane Jolly  
General Manager  
The Langham, Sydney

Enc. Submission on Proposed Amendment to Concept Plan MP 06\_0162

Submission on Proposed Amendment to  
Concept Plan MP 06\_0162

# Barangaroo Central

**This report was prepared by:**

<b>Director:</b>	Paul Mitchell
<b>Associate:</b>	Lucy Langley
<b>Project Planner:</b>	Nell O'Brien
<b>Project:</b>	Concept Plan 06_0162 - Barangaroo Central Submission
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## 1. INTRODUCTION

### 1.1. Overview of the Submission

GYDE Consulting has been engaged by The Langham Hotel to review and make a submission on *Modification Application No. MP06\_0162 MOD 9* (the '*MOD 9 application*').

The MOD 9 application seeks to modify the existing Concept Plan Approval for *Concept Plan 06\_0162 - Barangaroo* (the '*Concept Plan*'), to provide for a mixed-use development at Barangaroo Central including a building envelope up to a height of RL 73.7. To align with the Concept Plan Approval modifications, the application involves proposed amendments to *State Environmental Planning Policy (State Significant Precincts) 2005* (SSP SEPP), now known as *State Environmental Planning Policy (Precincts - Eastern Harbour City) 2021* (Eastern Harbour SEPP).

This submission concludes that the MOD 9 application would introduce major and adverse development changes at Barangaroo Central and to the surrounding locality, including the state heritage significant Millers Point area. In addition, the amendments sought in the Application are of such a large scale that they cannot reasonably be classified as an amendment to MOD 9 but rather warrant a completely new application.

#### ***The key methodological error in the MOD 9 application***

A particular concern is that the MOD 9 application has erroneously identified the development that is permissible under the existing Concept Plan. This error has had the consequence that:

- the development permissible under the existing Concept Plan has been overstated; and
- consequently, the impact of the MOD 9 application when compared with the existing Concept Plan has been significantly understated.

The error infects all the specialist studies because their assessment of the impacts of the proposed modification is based on a flawed comparison. Accordingly, the MOD 9 application documentation does not accurately reflect the actual environmental impacts of the proposal, and any decision based on the MOD 9 application documentation will necessarily itself be erroneous.

In brief, the error arises from an incorrect application of the height limits in the existing Concept Plan.

The MOD 9 application assumes that:

- the existing Concept Plan approves all development up to the height limit given in the Concept Plan; and
- consequently, the existing Concept Plan authorises a massed block building form to the height specified in the Concept Plan.

Using this assumption ignores the building height and design guidelines also given in the Concept Plan which provide for buildings with modulated heights and preservation of view corridors. In other words, under the existing Concept Plan, the height limits were inextricably linked to, and based on, the design guidelines. The MOD 9 application has sought to take the benefit of the building heights, without any regard to the guidelines, meaning that the presentation of visual impacts possible under the existing controls presented in the application is grossly exaggerated. Put



another way, the MOD 9 application has treated the height limits as if they were approved building form, and then used that flawed assumption to assess the impact of the proposed development. The MOD 9 application has made no attempt, in articulating the base case, to consider what an indicative built form based on the existing height limits might look like and has had no regard to what the design guidelines would have required.

To illustrate this error, this submission provides images which compare what the Applicant says is the approved building footprint with what we believe is the correct indicative footprint likely to have been approved under the Concept Plan including reference to both the maximum permitted height and the modulated heights in the guidelines. These images are set out in Section 4.3.

### ***Key substantive impacts***

As noted above, the methodological error has meant that each technical assessment in the MOD 9 application is based on a faulty comparison. When a true comparison is adopted, the key concerns with the proposal can be summarised as follows:

- Loss of all harbour and foreshore views from The Langham Hotel and its surrounds, causing a significant reduction in the amenity of an important tourism facility and the amenity of the area generally.
- Inconsistency with well-established view sharing principles followed throughout NSW, known as the *Tenacity Principles*.
- Meaningful reduction in the quality of Sydney's tourism offering by seriously degrading the quality of one of Sydney's few internationally branded, 5-star boutique hotels- The Langham.
- Poor urban design generally, and particularly through the siting of a tall residential tower at the northern end of the precinct. This tower is proposed adjacent to the Headland Park, which directly contradicts the long-standing principle of tapering building heights towards the headland.
- Diminished amenity and perceived heritage value in the Millers Point/Observatory Hill precinct by removing important views to and from the precinct.
- Gross inconsistency with commitments, planning principles and guidelines contained in the approved Concept Plan, particularly relating to view and heritage protection. This is especially important because the Concept Plan is a high-profile planning instrument based on substantial work including the results of an international design competition.
- An unacceptable example of a NSW government agency not complying with the government's own planning rules.
- Allowing major planning decisions to be based on erroneous and inaccurate assessment documentation, raising the significant prospect that any decision based on those documents will be similarly flawed. Documents submitted with this amendment omit key aspects of the relevant planning regime and exaggerate the economic benefits of proposed housing and retail development, which largely duplicate facilities already present in the area.
- A risk of serious diminution of public trust and confidence in the state's planning system because a government agency could be seen to be seeking unreasonable variation of the government's own planning rules in this important locality.
- The Biodiversity and Conservation SEPP applies to the modification application. It recognises that Sydney Harbour and its foreshores are outstanding public assets of national significance and seeks protection, enhancement or maintenance of their values, and also notes the need to maintain public trust and

intergenerational equity in decision-making and by avoiding adverse impacts. The proposed modification has had no evident regard to any of these requirements, nor is it evident that the Applicant has sought to maintain public trust by lodging an application that is inconsistent with these fundamentally important planning controls.

- All the above outcomes being antipathetic to the public interest.

Explanation of all the above concerns is given in the body of this submission and its appendices.

## 1.2. The Site

The application refers to a portion of land at Lot 52 DP1213772, known as Blocks 5, 6 and 7 as defined by the Concept Plan and subsequent modifications.

Figure 1 below provides an aerial image of the Barangaroo Central site.



Figure 1: Barangaroo Central, subject site outlined in red.

## 1.3. Surrounding Context

The site is in Barangaroo, north-west of Sydney's central business district.

To the immediate north of the site are the public parklands of Barangaroo Reserve and Nawi Cove; valuable green open spaces at the edge of the Sydney Harbour foreshore.

To the south of the site are the commercial towers of Barangaroo South, including the prominent Crown Towers.

To the east of the site is historic Millers Point and Observatory Hill, a locality of state heritage significance containing numerous items of state and local historical value.

To the west of the site is the Sydney Harbour.

Figure 2 below provides an aerial image of the Barangaroo Central site and surrounding context.



Figure 2: Surrounding context, subject site outlined in red.

## 2. PLANNING HISTORY

### 2.1. NSW Ports Growth Plan

In October 2003, the NSW Government released the state's *Ports Growth Plan*. This document identified a pattern of decline in parts of the Sydney Harbour ports, particularly at East Darling Harbour (EDH), now renamed 'Barangaroo', and set out a case for the renewal of the area.

### 2.2. Concept Plan 06\_0162 - Barangaroo

The principles identified within the *Ports Growth Plan* formed the basis of the *Concept Plan 06\_0162 - Barangaroo* (the 'Concept Plan'). Approved in 2007, the Concept Plan outlined the future development of Barangaroo within the *East Darling Harbour State Significant Site Proposal, Concept Plan & Environmental Assessment*. This assessment report detailed strategies, guidelines and development controls to provide for the creation of an innovative and iconic precinct on Sydney Harbour, featuring recreational and mixed-use development.

In the period between 2003 and 2007, development of the Concept Plan involved rigorous analysis and testing. The principles of the Concept Plan were subject to a comprehensive investigation including a two-staged international urban design competition, extensive stakeholder and industry consultation, two phases of public exhibition, and detailed testing and refinement of land use options. The result was a well-considered Concept Plan with complementary development controls reflecting international leading practice in urban design and place-making.

#### 2.2.1. Concept Plan Strategies

The Concept Plan nominated the following key elements by which the competition winning urban design scheme supported the strategy for renewal at Barangaroo. These elements have underpinned the delivery of development at Barangaroo since its inception.

The Concept Plan Strategies comprise Section 8.0 of the *East Darling Harbour State Significant Site Proposal, Concept Plan & Environmental Assessment*, and address the site's economic, community, environment, and heritage significance. Key Concept Plan Strategies have underpinned the overall development at Barangaroo since its inception:

*"Provide the ability to create **large-floor-plate commercial buildings** that are in high demand amongst major tenant organisations and difficult to achieve within the existing city footprints."*

*"Incorporate sufficient **housing and community related infrastructure** into the precinct to reinforce the knitting of EDH into the mainstream of Sydney life and commerce. This will require the provision for **social infrastructure** as well as an extensive array of **recreational infrastructure**."*

*"Equip EDH with good **public transport links** to the airport, to other key nodes in the CBD and to the metropolitan 'cities within the city'."*

*"A new **1.4 km foreshore promenade** runs the full length of the site along the harbour edge completing the Harbour Foreshore Walk between Anzac Bridge and Woolloomooloo."*

(Source: EDH State Significant Site Proposal, Concept Plan & Environmental Assessment, Section 8.0).

Of great relevance to this submission, several key strategies of the Concept Plan relate to the intended built form of the Barangaroo Central site, as well as the preservation of significant views in the area. These key strategies include:

*“**Higher density development is to be focused towards the southern end of the site**, linking into existing higher density development at King Street Wharf and the western edge of the CBD. The scale of development will reduce towards the northern end of the site, where built form meets the Headland Park.”*

*“The design of the public domain will allow visitors to **appreciate the history of the site and new views to the surrounding heritage precinct of Millers Points**, including the sandstone cliffs and Observatory Hill.”*

*“The strategy for EDH is based on **protecting and enhancing the surrounding townscape and views**, and telling the history of EDH through the design of the public domain and public art.”*

*“The **major views** over the EDH site from the opposite headlands to Millers Point and Observatory Hill are to be **improved** with the removal of the existing stevedoring sheds and their replacement by parkland or **low scale development**. **Views from Observatory Hill to the water are retained** by the Concept Plan which maintains lower height development opposite Millers Point and Observatory Hill, with the development increasing in height further south as the site merges into the existing CBD cityscape.”*

(Source: EDH State Significant Site Proposal, Concept Plan & Environmental Assessment, Section 8.0).

#### 2.2.2. Concept Plan Design Principles, Design Requirements and Development Controls

Section 13.0 of the *EDH State Significant Site Proposal, Concept Plan & Environmental Assessment* outlines a range of design principles, design requirements and development controls that underpin the intended built form at Barangaroo. The principles ensure the Concept Plan Strategies may be achieved by setting out guidelines for future building envelopes. Figure 3 contain some of the Section 13.0 diagrams indicating built form at Barangaroo Central.

Section 13.0 was given statutory force in a number of ways:

- condition B4 required any developments to provide a comparison between the built forms proposed and explain any departure. While this did not mandate the built forms in section 13.0, it clearly established those forms as the default forms, from which any departure would need to be expressly justified. This requirement was replaced as part of MOD2 by requiring a reference to the MOD2 design guidelines. However, put in the context of the MOD 9 application, condition B4 could not be used to assume, as the application documents do, that a block of the maximum height limit would be approved; and
- condition C2 required future design excellence competitions to consider a comparison against section 13.0. Condition C2 still exists, but the reference to section 13.0 is proposed to be removed as part of this application. Presumably, this is because the MOD 9 application recognises that the proposal is entirely contrary to section 13.0. However, that implicit recognition does not extend to carrying out a proper assessment against the true base case.

In short, the MOD 9 application is not entitled to assume, as it does, that Section 13.0 can be ignored.



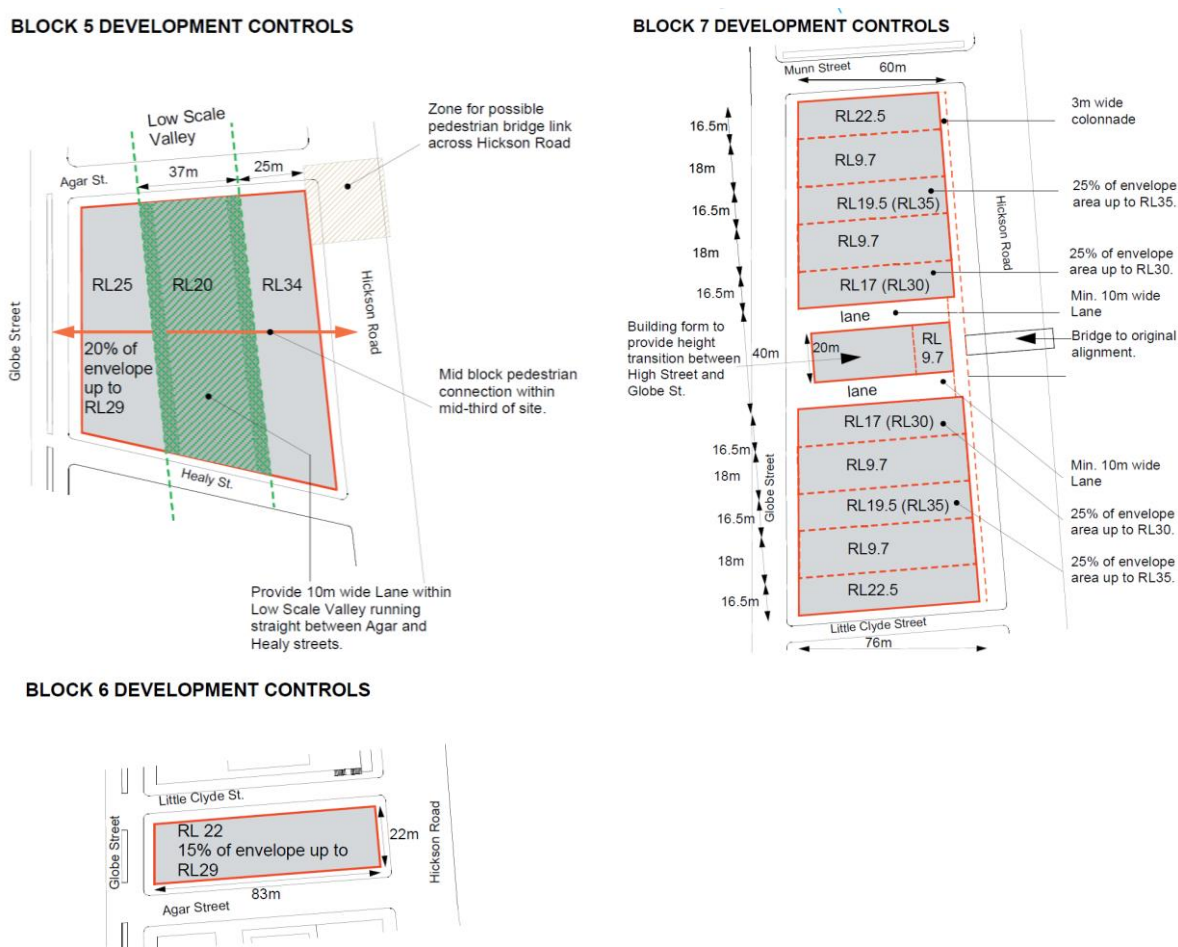


Figure 3: Section 13.0 Diagrams

Details of the Concept Plan design principles, design requirements and development controls as they relate to the indicative building envelope at Barangaroo Central may be found at Appendix 1 of this Submission Report.

### 2.2.3. Statement of Commitments

The Concept Plan was reinforced by a set of clear commitments, many of which relate directly to the future form of development at Barangaroo Central. Relevant commitments pertaining to the preservation of key views at Barangaroo Central include: “Views to Millers Point Conservation Area

38. The EDH proposal will **retain views to Observatory Hill Park from public spaces on opposite foreshores**; and retain a **panorama from Pyrmont Park around to the Harbour Bridge as seen from Observatory Hill Park** as shown within the Concept Plan and illustrated by the photomontage images included in the Heritage Impact Statement prepared by City Plan Heritage.

39. The EDH proposal will provide adequate **view corridors over and between new built form to maintain the key attributes of views from Millers Point**. The key attributes to be retained are:

- 1) views to significant tracts of the water,
- 2) the junction of Darling Harbour and the Harbour proper,
- 3) the opposite foreshores,
- 4) panoramic qualities of existing views and,
- 5) the most distinctive views to landmark structures,

as shown within the Concept Plan and illustrated by the photomontage images included in the Heritage Impact Statement prepared by City Plan Heritage.

40. The EDH proposal will retain the ability to appreciate the **Millers Point headland** and the **roofscape of terrace houses throughout Millers Point** when viewed from **public spaces on opposite foreshores**.”

98. The built form of development blocks 5, 6 and 7 inclusive will follow the **Design Principles, Design Requirements, and Development Controls as set out in Part B** and as amended by the Barangaroo Modification Report dated June 2008 prepared by MG Planning. Final designs for each development block will be prepared by development partners who will be subject to the Design Excellence Strategy.

## 2.3. Concept Plan Modifications

### 2.3.1. Consistency of the Concept Plan Principles

While there have been several subsequent modifications to the approved Concept Plan, these modifications largely involve detailed design amendments for specific sites and development proposals. Overall, the underlying principles and primary controls contained in the Concept Plan, including design principles relating to Central Barangaroo have been retained and consistently applied as development of the wider Barangaroo site has progressed. There have been no changes the permissible heights and GFA controls relating to Central Barangaroo, or the design guidelines relating to the Central Barangaroo element of the wider site.

Detailed design guidelines for Barangaroo Central have not been proposed within subsequent modifications, and the Concept Plan design principles, design requirements and development controls remain applicable.

### 3. PRINCIPAL ENVIRONMENTAL PLANNING INSTRUMENT

#### 3.1. State Environmental Planning Policy (Precincts - Eastern Harbour City) 2021

Barangaroo Central is part of the broader Barangaroo Precinct, one that is identified as being state significant in the Eastern Harbour SEPP. Chapter 2 of the Eastern Harbour SEPP applies to all state significant precincts and Appendix 5 provides the statutory development controls for the site at Barangaroo. Relevant provisions in both Chapter 2 and Appendix 5 are outlined below.

##### 3.1.1. Chapter 2 State Significant Precincts

Clause 2.1 'Aims of Chapter' provides overall guidance for future land use in state significant precincts. The Clause details the following aims:

*“(a) to facilitate the development, redevelopment or protection of important urban, coastal and regional sites of economic, environmental or social significance to the State so as to facilitate the orderly use, development or conservation of those State significant precincts for the benefit of the State,*

*(b) to facilitate service delivery outcomes for a range of public services and to provide for the development of major sites for a public purpose or redevelopment of major sites no longer appropriate or suitable for public purposes”*

(Source: Eastern Harbour SEPP, Clause 2.1).

Clause 2.6 'Relationship to other environmental planning instruments' defines the role of the Eastern Harbour SEPP relative to other planning instruments:

*“Subject to section 74(1) of the Act, in the event of an inconsistency between this Chapter and another environmental planning instrument whether made before or after the commencement of this Chapter, this Chapter prevails to the extent of the inconsistency”*

(Source: Eastern Harbour SEPP, Clause 2.6).

##### 3.1.2. This clause means that where other SEPPs also apply to Barangaroo, the Eastern Harbour SEPP will prevail in the event of any inconsistency. Appendix 5 Barangaroo Site

Appendix 5 provides planning controls specific to the site at Barangaroo. The Barangaroo Central site is zoned B4 Mixed Use and the objectives of this zone are defined as follows:

*“(a) to provide a mixture of compatible land uses,*

*(b) to integrate suitable development in accessible locations so as to maximise public transport patronage and encourage walking and cycling,*

*(c) to encourage a diverse and compatible range of activities through various means, including the following—*



- (i) commercial and retail development,*
- (ii) cultural and entertainment facilities,*
- (iii) tourism, leisure, and recreation facilities,*
- (iv) social, education and health services,*
- (v) higher density residential development,*

*(d) to incorporate contemporary urban design principles in the design of new buildings and the interpretation of their relationship with the public domain,*

*(e) to implement the principles of energy efficiency, travel demand management and other sustainable development practices as part of the development assessment process,*

*(f) to facilitate the conservation of heritage items,*

*(g) to ensure that the nuisance generated by non-residential development, such as that related to operating hours, noise, loss of privacy, vehicular and pedestrian traffic, or other factors, is controlled so as to preserve the quality of life for residents in the area”.*

(Source: Eastern Harbour SEPP, Appendix 5, Clause 8 (1)).

When considering development applications, the consent authority must “have regard” to the above objectives (Clause 7 (2)).

Furthermore, Appendix 5 identifies Height of Building and Gross Floor Area as principal development standards for the site. For Barangaroo Central, the former varies building height between RL 29-35 and the latter permits a total GFA of 47,668m<sup>2</sup> (Clause 17 and 18).

Exceptions to these standards are possible to fulfil the following objectives:

*“(a) to provide an appropriate degree of flexibility in applying certain development standards to development, and*

*(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances”.*

(Source: Eastern Harbour SEPP, Appendix 5, Clause 20 (1)).

To achieve approval of a variation to a development standard the applicant must demonstrate:

*“(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*

*(b) that there are sufficient environmental planning grounds to justify contravening the development standard.”*

(Source: Eastern Harbour SEPP, Appendix 5, Clause 20 (3)).

In making its decision about the variation request, the consent authority must be satisfied that the application justifies the contravention by demonstrating:

*“(a) the consent authority is satisfied that—*

*(i) the applicant’s written request has adequately addressed the matters required to be demonstrated by subsection (3), and*

*(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

*(b) the concurrence of the Secretary has been obtained.”*

(Source: Eastern Harbour SEPP, Appendix 5, Clause 20 (4)).

Finally, the Secretary of the Department of Planning and Environment must consider:

*“(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*

*(b) the public benefit of maintaining the development standard, and*

*(c) any other matters required to be taken into consideration by the Secretary before granting concurrence.”*

(Source: Eastern Harbour SEPP, Appendix 5, Clause 20 (5)).

Applications for new buildings are required to exhibit “design excellence” (Clause 19); this means a design competition must be completed as part of the application process (Clause 19 (3)(a)).

### 3.2. State Environmental Planning Policy (Biodiversity and Conservation) 2021

Chapter 10 of the Biodiversity and Conservation SEPP applies to the site as it is located within the Sydney Harbour Catchment area. The relevant aims of Chapter 10 are as follows:

*(a) to ensure that the catchment, foreshores, waterways and islands of Sydney Harbour are recognised, protected, enhanced and maintained—*

*(i) as an outstanding natural asset, and*

*(ii) as a public asset of national and heritage significance,*

*for existing and future generations,*

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

In addition, several of the SEPP's planning principles are relevant to the proposal:

- (b) the natural assets of the catchment are to be maintained and, where feasible, restored for their scenic and cultural values and their biodiversity and geodiversity,*
- (c) decisions with respect to the development of land are to take account of the cumulative environmental impact of development within the catchment,*
- (f) development that is visible from the waterways or foreshores is to maintain, protect and enhance the unique visual qualities of Sydney Harbour,*
- (g) the number of publicly accessible vantage points for viewing Sydney Harbour should be increased.*

The site also falls within the Foreshores and Waterways Area meaning the following additional planning principles are relevant:

- (a) development should protect, maintain and enhance the natural assets and unique environmental qualities of Sydney Harbour and its islands and foreshores,*
- (b) public access to and along the foreshore should be increased, maintained and improved, while minimising its impact on watercourses, wetlands, riparian lands and remnant vegetation,,*
- (d) development along the foreshore and waterways should maintain, protect and enhance the unique visual qualities of Sydney Harbour and its islands and foreshores.*

The proposed development under MOD 9 is inconsistent with relevant aims and principles of the Biodiversity and Conservation SEPP. These aims and principles have not been adequately addressed in the Applicant's Environmental Assessment Report, and as such the assessment is deficient and does not justify the proposal's inconsistency with these provisions.



The findings of a recent LEC case (*Stannards Marine Pty Ltd v North Sydney Council* [2022] NSWLEC 99) are directly relevant to the proposed modification. Here, the Court's Chief Judge noted that Sydney Harbour is 'recognised as...a public asset of national and heritage significance', at [179], and citing Biscoe J. said that 'Sydney Harbour is one of the most beautiful harbours in the world', at [185], and that the Sydney Harbour SREP (now part of the Biodiversity and Conservation SEPP) 'attributes significance to Sydney Harbour as a whole and looks to its protection, enhancement and maintenance as an outstanding natural asset and a public asset of national and heritage significance for existing and future generations', at [186], with the REP giving the harbour 'unique legal status' and making the 'public trust' and principle of intergenerational equity key considerations, at [187], with the latter imposing a duty on the present generation to 'avoid adverse impacts', at [189].






The subject modification application has paid no evident regard to any of these principles. It does not 'protect' 'enhance' or 'maintain' the amenity or values of the harbour and its foreshores, disregards its heritage values and puts private interests above those of the public. In doing this, the Applicant, a NSW government agency, has had little regard for its duties with respect to protecting public trust and intergenerational equity.

### 3.3. Central Barangaroo, Existing Planning Controls

The existing planning controls are built on commitments to taper the density of development from high to low moving northwards cross the precinct, and to maintain views to and from the Millers Point heritage area by setting building heights below the roofs of the terrace houses and confining development to a narrow band away from the foreshore. While there have been modifications to the original Concept Plan, including a reduction in the number of street blocks from eight to seven, the key original controls have been maintained (refer Table 1).

*Table 1: Summary of existing planning controls*

PLANNING CONTROL (EXISTING)	APPLICATION TO SITE	
Zoning	<b>B4 Mixed Use</b>	<i>Eastern Harbour SEPP:</i> 
Maximum Height of Building (HOB)	<b>RL 34 (Block 5),</b> <b>RL 29 (Block 6)</b> <b>RL 35 (Block 7)</b>	<i>Eastern Harbour SEPP:</i> 
Maximum Gross Floor Area (GFA)	<b>29668m<sup>2</sup> (Block 5),</b> <b>3000m<sup>2</sup> (Block 6),</b> <b>15000m<sup>2</sup> (Block 7)</b>	<i>Eastern Harbour SEPP:</i>

PLANNING CONTROL (EXISTING)	APPLICATION TO SITE	
		 <p>Maximum Gross Floor Area (m<sup>2</sup>)</p> <ul style="list-style-type: none"> <li>1,927</li> <li>3,000</li> <li>3,500</li> <li>15,000</li> <li>18,908</li> <li>23,320</li> <li>29,668</li> </ul>
Heritage	The site is located to the immediate west of Heritage Conservation Areas of state and local significance, as well as a large number of general heritage items.	<p><i>State Heritage Register:</i></p>  <p><i>City of Sydney LEP:</i></p>  <p>  Conservation Area - General   Item - General         </p> <p><i>Eastern Harbour SEPP:</i></p>

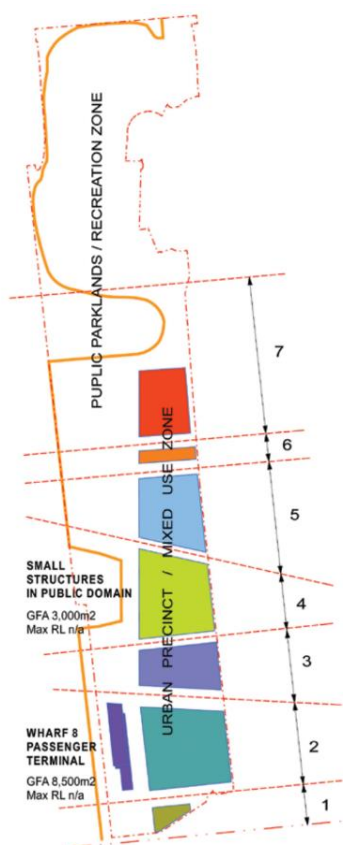
PLANNING CONTROL (EXISTING)	APPLICATION TO SITE	
		

### 3.4. Indicative Building Envelope

The Barangaroo Central site is comprised of Blocks 5, 6 and 7 as detailed in the Concept Plan and subsequent modifications, and as shown in Figure 4 below. However, as noted above, in order to determine an indicative building envelope, it is not sufficient to simply apply the height limits across the entire site. This would be an unrealistic approach which, among other things, ignores the key design guidelines upon which the existing Concept Plan was based.

We have developed an indicative building envelope more appropriately by having regard to the relevant planning constraints and design principles. Analysis provided in Appendix 1 outlines the applicable controls and reasonable assumptions that have been used to determine an indicative envelope for the Barangaroo Central site.

*Figure 4: Development Blocks (Concept Plan Modification 3).*



### 3.5. Photomontages showing the key methodological error

Having regard to the key methodological error in the MOD 9 application documents, the photomontages provided by the developer as they relate to the approved Concept Plan are erroneous at best, and likely highly misleading. We have obtained photomontages prepared on behalf of the Langham Hotel by Digital Line to illustrate the approved building envelope of the Barangaroo Central site as viewed from neighbouring sites and based on the approved

Concept Plan design principles and controls and subsequent amendments.

Refer to Appendix 1 for details of the applicable controls and reasonable assumptions that have been used to determine this indicative envelope.

The following images show, on one side, photomontages of the indicative approved envelope based on what we believe to be the appropriate planning assumption, and on the other side, photomontages provided by the developer from similar vantage points.

They make clear the difference between the respective “base cases” from which to assess the impact of MOD 9 and show graphically how dramatically the MOD 9 application has overstated the extent of the current approved development.





*Figure 5: Indicative Approved Building Envelope.  
Level 2 of The Langham Hotel, facing west (Source:  
Digital Line).*



*Figure 6: Indicative Approved Building Envelope.  
Level 3 of The Langham Hotel, facing west (Source:  
Digital Line).*

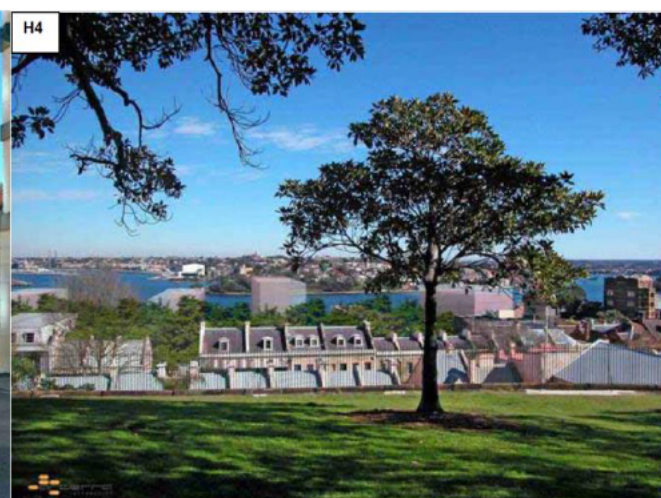


*Figure 7: Applicant's misrepresentative view impact assessment of the approved Concept built-form viewed from the  
Langham Hotel roof level (Source: AECOM View Impact Assessment December 2021)*



Figure 8: Indicative Approved Building Envelope. Peacock Point, facing east (Source: Digital Line).

Figure 9: Applicant's misrepresented building envelope approved by the Concept Plan (Source: AECOM View Impact Assessment December 2021)





*Figure 10: View Impact assessment images provided as part of the Concept Approval Heritage Report (Source: City Plan Heritage Impact Assessment Attachment B (September 2006) prepared by Arterra Interactive)*

## 4. PROPOSED AMENDMENT

### 4.1. Amendments to the Eastern Harbour SEPP and mapping

The subject of this submission is the proposed amendment to the Eastern Harbour SEPP and the proposed MOD 9 amendments to the Concept Plan Approval of *Concept Plan 06\_0162 - Barangaroo* (the 'Concept Plan').

The proposed amendment to the Eastern Harbour SEPP is seeking to amend the maps and written instrument provisions as follows which is outlined in the Explanation of Intended Effect prepared by Urbis (December 2021).

#### 4.1.1. Land Zoning

The modification seeks to amend the site's Land Zoning map by:

- Extending the southern boundary of Block 5 further south to encroach into land zoned RE1 Public Recreation.
- Subsequently extend the B4 Mixed Use zone boundary to the south, aligning with the expanded Block 5 boundary.

A comparison of the existing and proposed Land Zoning maps is provided in Figure 11 and Figure 12 below.



Figure 11: Existing Land Zoning



Figure 12: Proposed Land Zoning

#### 4.1.2. Height of Buildings

The modification seeks to amend the site's Height of Buildings map by:

- Extending the southern boundary of Block 5 further south.
- Revising the boundary lines delineating Blocks 5, 6 and 7.

- Increasing the maximum height of buildings within each development block as outlined in Table 2 below.

Table 2: Proposed modifications to Height of Buildings map

DEVELOPMENT BLOCK	EXISTING HEIGHT	PROPOSED HEIGHT
Block 5	RL 34	RL 14.95 RL 15 RL 19.45 RL 21.5 RL 23.2 RL 31.2 RL 33.75 RL 35 RL 38.7 RL 42.45 RL 44.5
Block 6	RL 29	RL 20.65 RL 35 RL 38.5 RL 38.7
Block 7	RL 35	RL 15 RL 20.65 RL 21.5 RL 35 RL 38.5 RL 73.7

A comparison of the existing and proposed Height of Buildings maps is provided in Figure 13 and Figure 14 below.

A notable feature of the proposed modification is that there are very detailed height limits proposed at different areas of the site. This contrasts with the existing Concept Plan which has only one height limit for each block. The developer is clearly seeking to lock in detailed height limits in the MOD 9 application in a way that was not done for the original Concept Plan application.



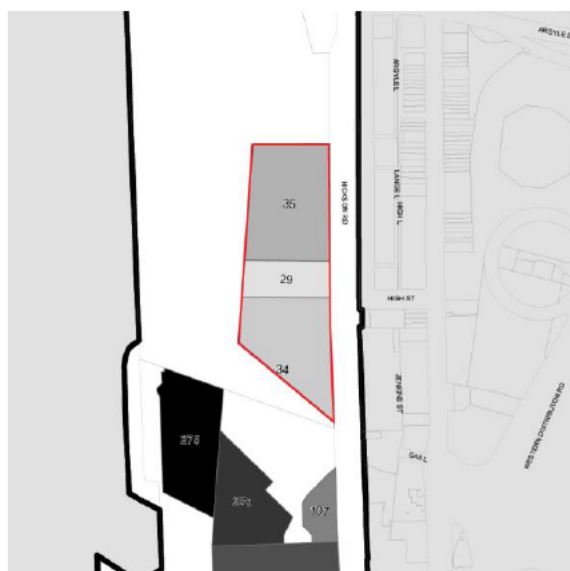


Figure 13: Existing Height of Buildings



Figure 14: Proposed Height of Buildings

#### 4.1.3. Gross Floor Area

The modification seeks to amend the site's Gross Floor Area map by:

- Extending the southern boundary of Block 5 further south.
- Allocating a combined maximum 'above ground gross floor area' of 116,189m<sup>2</sup> across Blocks 5, 6 and 7 as outlined in Table 3 below.
- Allocating a combined maximum 'below ground gross floor area' of 28,166m<sup>2</sup> within an identified 'Area 1' which encompasses the proposed Central Barangaroo basement footprint beneath Blocks 5, 6 and 7 and extending west a maximum of 25 metres beneath Harbour Park.

Table 3: Proposed Modifications to Gross Floor Area map

DEVELOPMENT BLOCK	EXISTING GFA (M <sup>2</sup> ) ABOVE GROUND	PROPOSED GFA (M <sup>2</sup> ) ABOVE GROUND
Block 5	29,668	116,189
Block 6	3,000	
Block 7	15,000	
	EXISTING GFA (M <sup>2</sup> ) BELOW GROUND	PROPOSED GFA (M <sup>2</sup> ) BELOW GROUND
Block 5, 6, 7 and Harbour Park	N/A	28,166

A comparison of the existing and proposed Gross Floor Area maps is provided in Figure 15 and Figure 16 below.

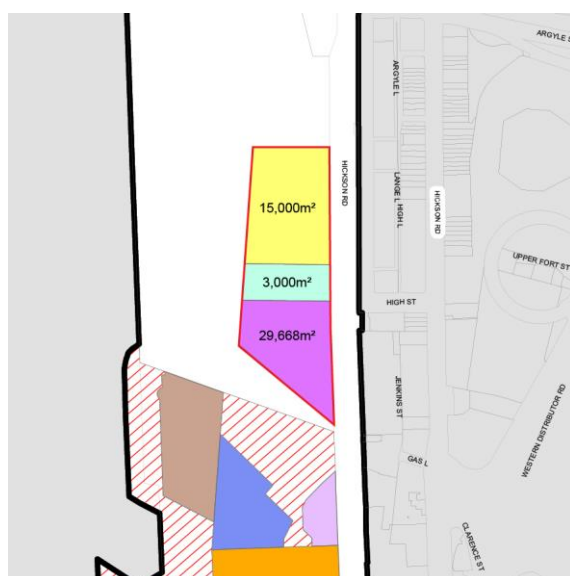


Figure 15: Existing Gross Floor Area

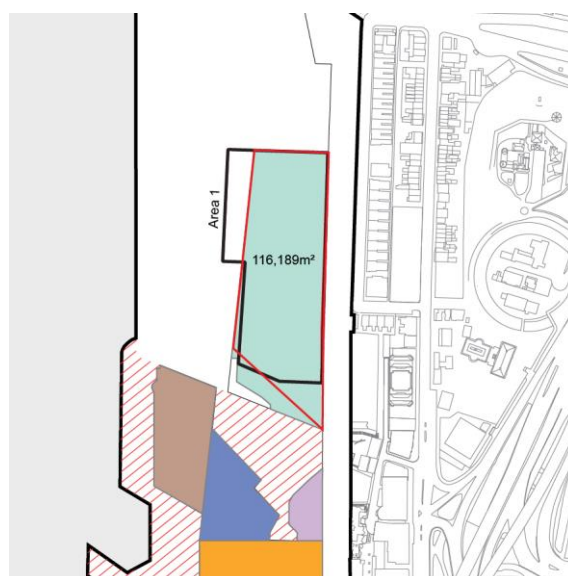


Figure 16: Proposed Gross Floor Area

#### 4.1.4. Development Below Ground Level

The modification seeks to amend the written instrument to insert Clause 23A, Appendix 9 as follows:

*“23A Development below ground level in Zone RE1*

*(1) This clause applies to development—*

*(a) that is entirely below ground level (existing) on land in Zone RE1 Public Recreation (the Public Recreation Zone), and*

*(b) that is for a purpose that may be carried out in a zone that adjoins the Public Recreation Zone.*

*(2) Despite any other provision of this Plan relating to the purposes for which development may be carried out, development consent may be granted to development to which this clause applies if the consent authority is satisfied that—*

*(a) the carrying out of the development is desirable due to compatible land use planning, infrastructure capacity and other planning principles relating to the efficient and timely development of land, and*

*(b) the development will not have any significant adverse effects on the environment and will not prevent any land within the Public Recreation Zone being used for recreational purposes.”*

This amendment has been proposed to enable the construction of a basement (which will contain gross floor area for

retail uses) at Central Barangaroo. The basement is proposed to extend up to 25 metres from the western boundary of Blocks 5, 6 and 7 within land zoned RE1 Public Recreation.

#### 4.1.5. Building Overhangs and Façade Articulation map

The modification seeks to introduce a new 'Building Overhang and Façade Articulation' map that identifies areas within Central Barangaroo where a building may extend beyond the Block boundary. The proposed control would allow for a maximum 3m building overhang and 650mm façade articulation zone above ground level.

The modification also seeks to amend the written instrument to insert Clause 17A, Appendix 9 as follows:

*"17A Height of buildings for certain land in Barangaroo*

*Despite clause 17, the maximum building height (RL) shown on the Height of Buildings Map may extend to the land identified on the Building Overhang and Façade Articulation Map, but only if the consent authority is satisfied that the extension comprises:*

- a) A building overhang up to 3m wide located above ground level; and/ or*
- b) Façade articulation elements up to 650mm wide above ground level."*

The proposed Building Overhang and Façade Articulation map is provided below.

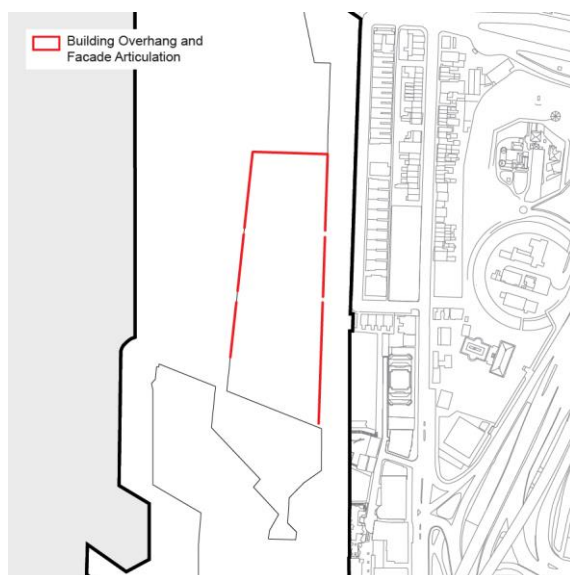


Figure 17: Proposed Building Overhang and Façade Articulation map

#### 4.2. Proposed Changes to the written instrument

The modification proposes a number of changes to the written instruments including:



- reference the Environmental Assessment Report prepared by Urbis (December 2021),
- changes to reflect the reconfiguration of Block 5 and reduction in the Hickson Park area,
- increased GFA,
- references to the new Urban Design Report for Central Barangaroo prepared by Hassell (December 2021)
- deletion of the requirement to demonstrate that views will be retained from i. Millers Point and Observatory Hill to the western part of Sydney Harbour; and ii. from Block Y to the Sydney Harbour Bridge and the Opera House, instead placing the MOD 9 proposed building envelopes as the baseline for impact assessment
- deletion of reference to the Section 13.0 Built Form Indicative Built Forms in condition C2.

#### 4.3. Proposed Building Envelope

The modification proposes a building envelope for Blocks 5, 6 and 7 that varies in height from RL 14.95 up to RL 73.7.

The proposed controls define a building envelope that features no setbacks from block boundaries, but instead enables a 3m overhang and additional 650mm façade articulation zone across the majority of the northern, eastern and western facades. These additions to the building would further increase the significant bulk of the proposed developable envelope.

Figure 18 and Figure 19 below provide an image of the building envelope as proposed.

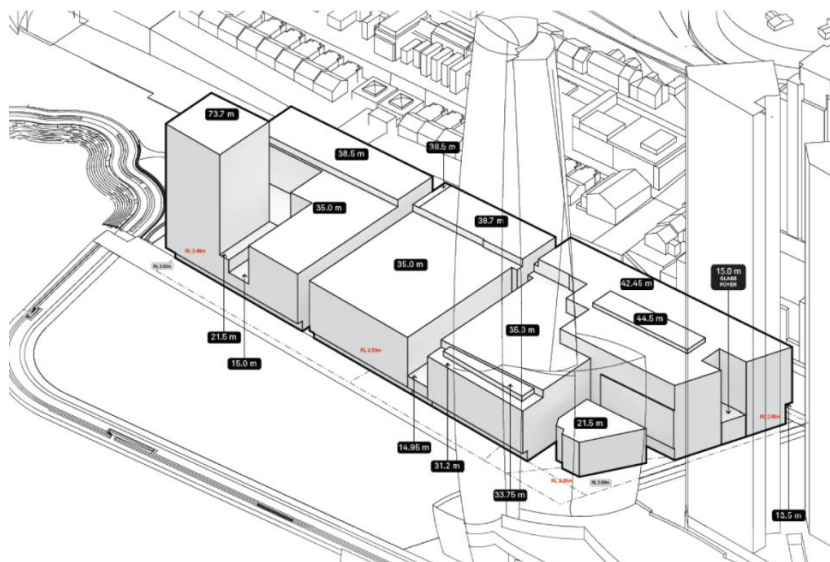
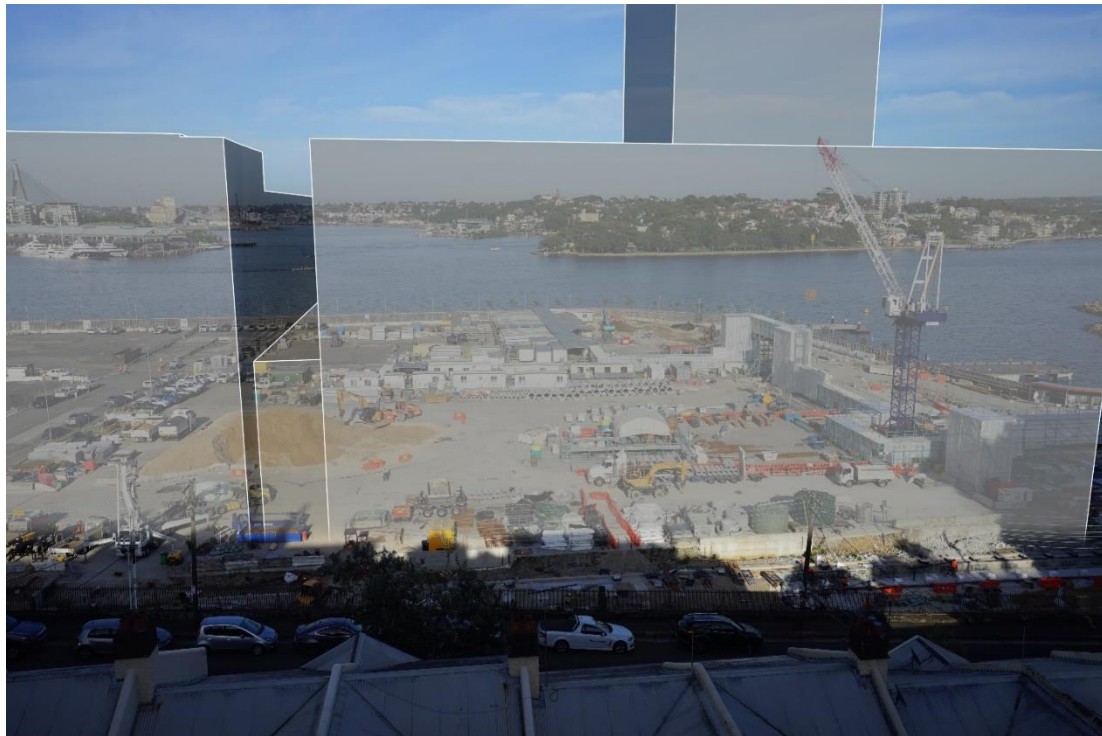


Figure 18: Proposed Building Envelope, Axonometric View

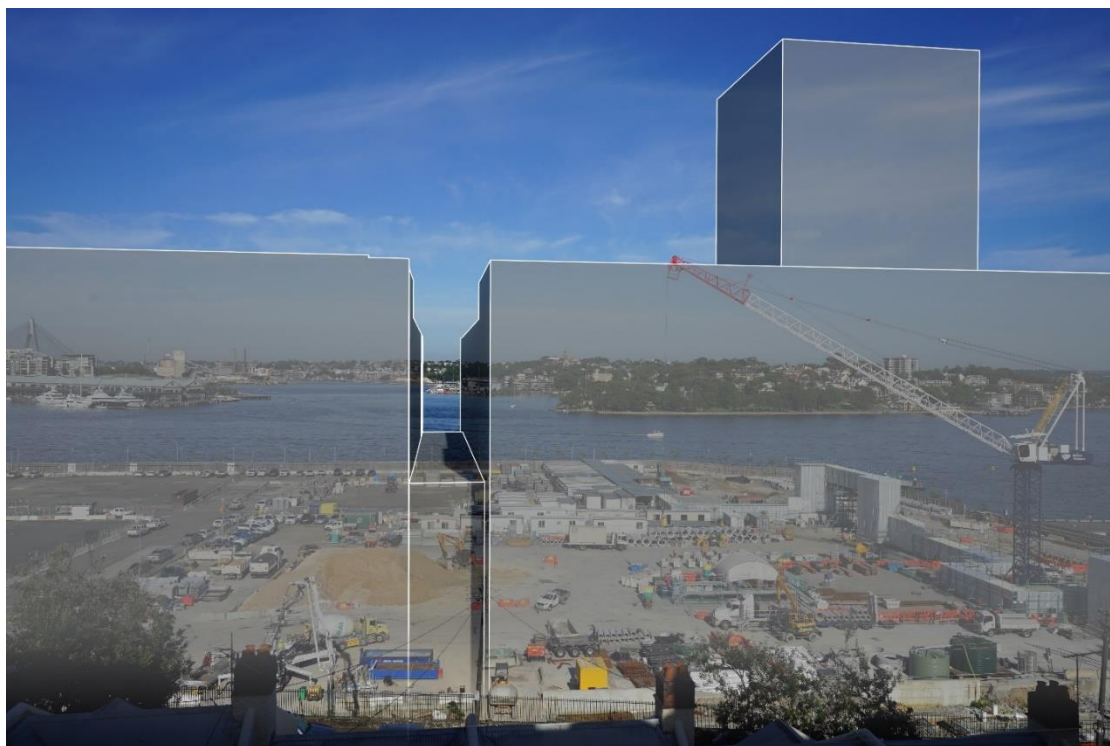


The proposed building envelope would significantly alter the character of the surrounding area, imposing sizeable bulk and scale upon a context that currently consists of low density, heritage significant urban development leading to wide public spaces, and open harbour and foreshore views.

The photomontages provided in Figure 20 and Figure 21 illustrate the relative impact the MOD 9 proposed building envelope would have upon characteristic views from the Langham Hotel to the harbour.



*Figure 20: Proposed Building Envelope. Level 3 of The Langham Hotel, facing west (Source: Digital Line).*



*Figure 21: Proposed Building Envelope. Level 2 of The Langham Hotel, facing west (prepared by Digital Line).*

Furthermore, the proposed building envelope would significantly diminish public views throughout the surrounding Millers Point area and from neighbouring foreshores.

The photomontage provided in Figure 22 illustrates the impact the proposed building envelope would have upon characteristic views from neighbouring foreshores.





*Figure 22: Proposed Building Envelope. Peacock Point, facing east (Source: Digital Line).*

## 5. KEY CONCERNS

As noted earlier, the application seeks consent for modifications to the approved Concept Plan and the Eastern Harbour SEPP, as it pertains to the site at Barangaroo Central. This change to the planning provisions would be the first part of a staged application process for the site, with a subsequent competitive design process and detailed development application to follow.

From our review of the application the following matters of concern are evident.

### 5.1. Approved Building Envelope and the key methodological error

As noted above, the key methodological error is that the modification application erroneously represents the form of the approved building envelope at Barangaroo Central by presenting a uniform maximum permissible building height and ignoring the wide range of design principles, design requirements and development controls that are given in the approved Concept Plan (Section 13.0 of the *EDH State Significant Site Proposal and Concept Plan*). These guiding principles and development controls articulate the building envelope of Blocks 5, 6 and 7 in contrast to the uniform overall maximum building height given in the Eastern Harbour SEPP. The design principles and controls did not envisage that the building envelope would maximise the permissible heights across the entire floorplate and provided for wide laneways as outlined in Appendix A of this submission. For example, the design controls envisaged that only 15% of Block 6 envelope would be up to RL29 and only 20% of the Block 5 envelope would be up to RL29. The design controls for Block 7 envisaged a variable and articulated height to allow view corridors through the building rising from RL9.7 to a maximum of RL35.

The anticipated rise and fall of the approved building envelope is clearly shown in the view impact assessment undertaken as part of the Heritage Report prepared for the original concept approval.

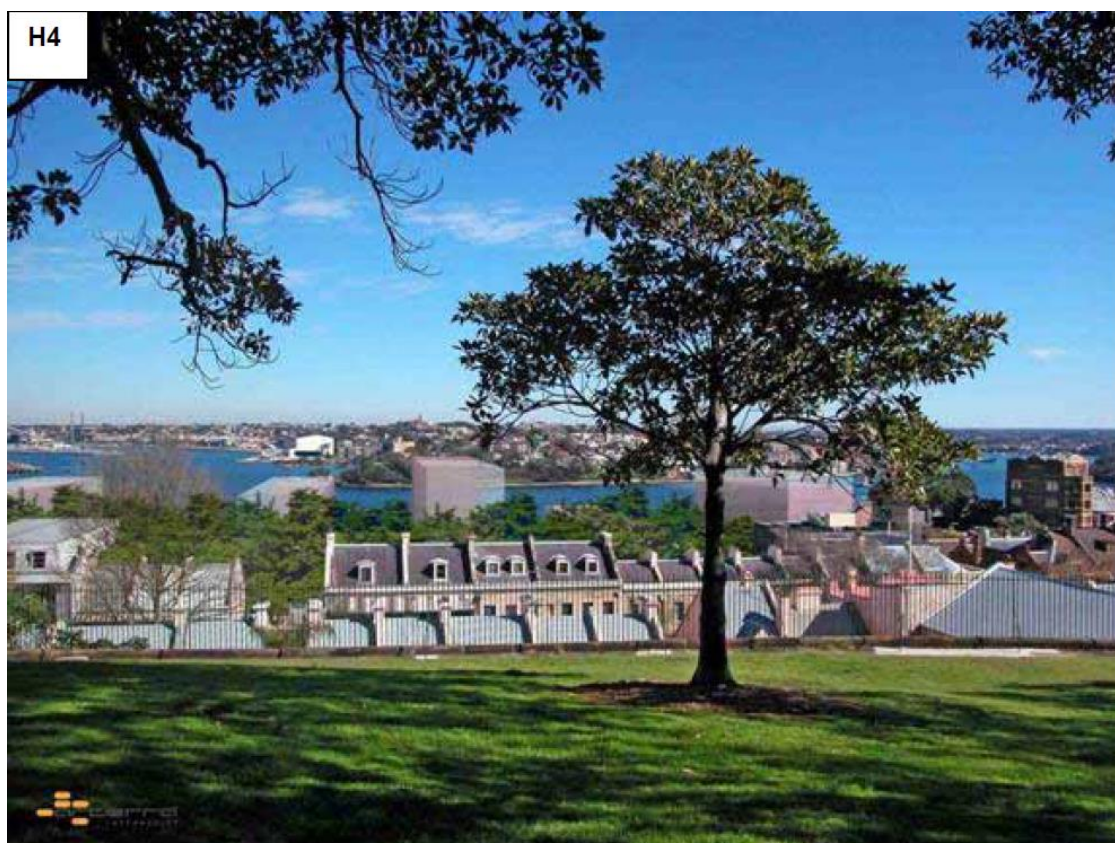


Figure 23: View from Observatory Hill of approved Concept building envelope (Source: City Plan Heritage Impact Assessment Attachment B (September 2006), prepared by Arterra Interactive)





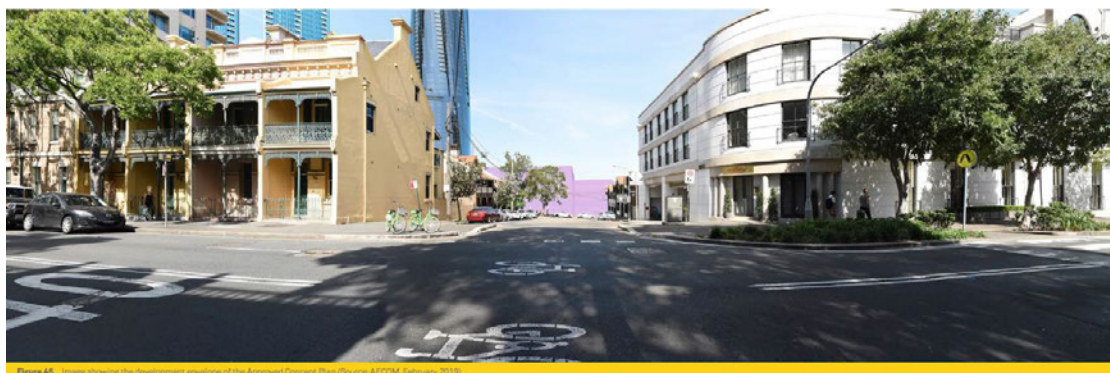
*Figure 24: View from Observatory Hill of approved Concept building envelope (Source: City Plan Heritage Impact Assessment Attachment B (September 2006), prepared by Arterra Interactive)*





*Figure 25: View along Hickson Road of the approved concept plan (Source: City Plan Heritage Impact Assessment Attachment B (September 2006), prepared by Arterra Interactive))*

The approved envelope assessed as part of the Applicant's view impact assessment does not take into account these Design Principles and Controls when demonstrating the approved built form to assess the impact of the proposed MOD 9 built form.



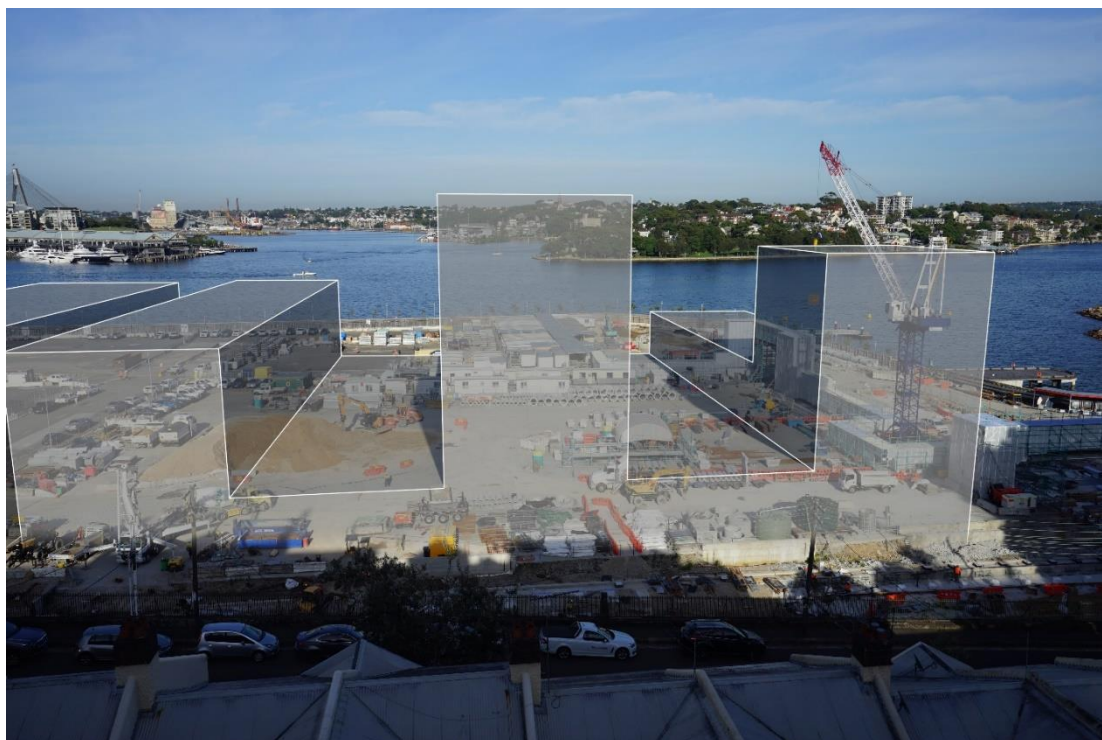
*Figure 26: Applicants misrepresentation of the Concept Plan approved form, viewed from Kent St, along High St to Hickson St (Source: AECOM December 2021)*



*Figure 27: Applicant's misrepresentative view impact assessment of the approved concept-built form viewed from the Langham roof level (Source: AECOM 10-12-2021)*

Figure 28 and Figure 29 below detail the indicative building envelope at Barangaroo Central as detailed by the approved Concept Plan and as misrepresented by the MOD 9 application.

The true relative comparison is that set out in section 5.4.



*Figure 28: Indicative Building Envelope at Barangaroo Central, facing west, as detailed in the approved Concept Plan (prepared by Digital Line).*



*Figure 29: Indicative Building Envelope of Barangaroo Central, facing east as detailed in the current approved*



*Concept Plan (prepared by Digital Line).*

The key methodological error results in an understatement of the impacts of MOD 9. In and of itself, this is a serious error and warrants re-assessment. However, as set out in the following sections, the error infects all aspects of the MOD 9 application and renders these assessments wholly unreliable.

## 5.2. Subsequent validity of technical assessments

The key reports most seriously infected by the error are:

- a. Environmental Assessment Report
- b. Explanation of Intended Effect
- c. Urban Design Report
- d. View and Visual Impact Report
- e. Heritage Assessment and Impact Statement
- f. Design Excellence Strategy

These should be re-done and re-submitted so that they provide an accurate assessment of the true impacts of the MOD 9 application. At present, the MOD 9 application is inaccurate, misleading and inadequate.

## 5.3. Misuse of s75W of the Environmental Planning and Assessment Act 1979

The Applicant relies on the MOD 9 application submitted in March 2014 and the provisions of s75W in relation to the environmental assessment documentation submitted, which are the subject of the submission. As outlined in advice received from Sparke Helmore (Appendix 4), the proposed changes sought by the current proposal do not constitute an amendment because of the substantial scale of the variation sought meaning that the correct approach would be preparation of a fresh modification application.

## 5.3 Inconsistency with Biodiversity and Conservation SEPP

As explained in Section 3.2 the Sydney Harbour REP, now part of the above SEPP, applies to the modification application. The SEPP recognises that Sydney Harbour and its foreshores are outstanding public assets of national significance that warrant protection, enhancement or maintenance, as well as protection of the public trust and intergenerational equity in decision-making, particularly by avoiding adverse environmental impacts. The proposed modification has had no evident regard to any of these requirements, nor is it evident that the Applicant has sought to maintain public trust by lodging an application that is inconsistent with these requirements.

## 6. IMPACTS

Given the key methodological error, the assessment of the relative impacts of the MOD 9 application compared to the approved Concept Plan cannot be relied on.

What is required is an assessment of the true impacts of the MOD 9 application, unaffected by the error. In the following sections, we discuss some of these impacts which are significantly greater than suggested by the developer.

### 6.1. Loss of all harbour and foreshore views

The building envelope that would be permissible under MOD 9 removes all harbour and foreshore views from The Langham Hotel and its surrounds in the following ways:

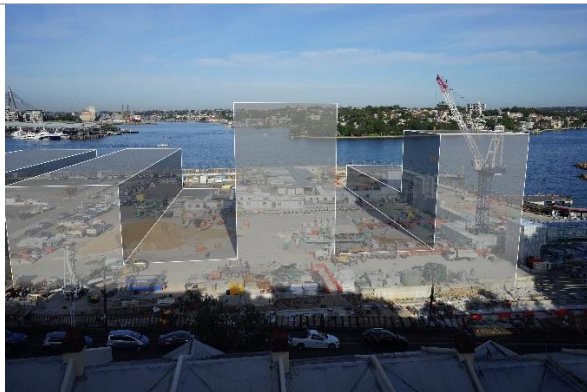
- a. The proposed building envelope significantly exceeds the modulated heights given in the Concept Plan and removes all view corridors to the harbour and foreshores. When compared to the approved Concept Plan accurately, the result would be a significant decline in the amenity of The Langham Hotel and its surrounds and the quality of the tourism offering that The Langham provides.
- b. The proposed envelope would obstruct views that are currently available from the Millers Point locality, and which support the overall success of the area's high quality recreational, commercial and tourism offerings. Inadequate view sharing would result in an inconsistency with the Mixed Use zone objective to "provide for a compatible range of activities" within the Precinct.
- c. MOD 9 has not adequately addressed the view sharing principles given in *Tenacity Consulting v Warringah Council [2004] NSWLEC 140*. This authority provides a four-step assessment process to be used when making planning decisions with respect to view sharing. The proposal would not adequately address the concept of "view sharing" as it would unreasonably and significantly remove high value, iconic, water and foreshore views.
- d. The *View and Visual Impact Assessment* submitted with the MOD 9 application inadequately and incorrectly addresses view loss impacts. As explained in Section 5.4.2 of this Submission, the *View and Visual Impact Assessment* provides an inaccurate depiction of the 'currently approved' building envelope which ignores the design principles and guidelines in the Concept Plan. As such, the comparative exercise contained within the *View and Visual Impact Assessment* is erroneous and should not be used in decision-making.



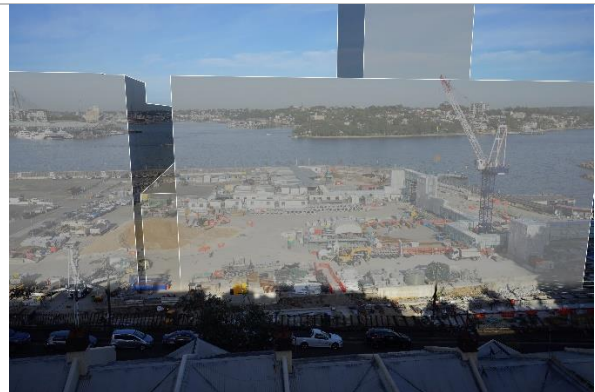
*Figure 30: Applicant's misrepresented building envelope as approved by the Concept Plan (Source: AECOM View Impact Assessment December 2021)*



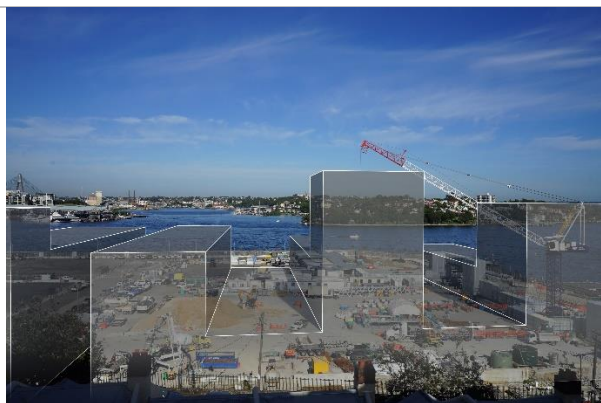
*Figure 31: Applicant's building envelope massing of the MOD 9 proposal (Source: AECOM View Impact Assessment December 2021)*



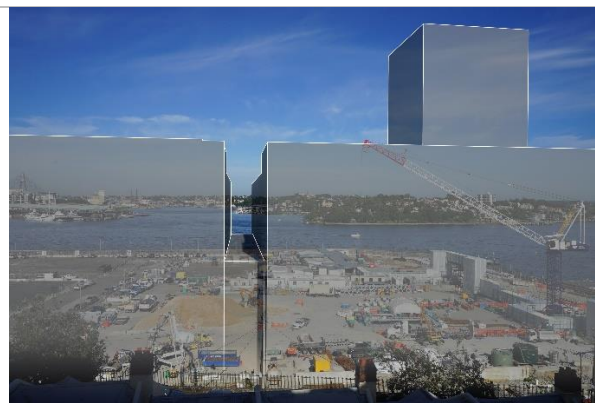
*Figure 32: View impact assessment of the approved concept plan, considering the Design Principles and Controls provided by the Concept Plan October 2006 (prepared by Digital Line)*



*Figure 33: View impact assessment of the proposed MOD 9 building envelope as view from the Langham Hotel (prepared by Digital Line)*



*Figure 34: View impact assessment of the approved concept plan, considering the Design Principles and Controls provided by the Concept Plan October 2006 (Prepared by Digital Line)*



*Figure 35: View impact assessment of the proposed MOD 9 building envelope as view from the Langham Hotel (prepared by Digital Line)*



*Figure 36: View impact assessment of the approved Concept Plan (prepared by Digital Line)*



*Figure 37: View impact assessment of the proposed MOD 9 building envelope (prepared by Digital Line)*

## 6.2. Degradation of hotel and resultant tourism impacts

The MOD 9 application would remove valuable views from key businesses in Millers Point, degrading the environmental quality of the area and causing adverse economic and tourism impacts upon the locality.

- a. As explained in Heritage Report prepared by GBA Heritage provided at Appendix 2, the proposal will impact Millers Point and the precinct as a cultural tourism. This tourist precinct stimulates the City's economy through economic impacts associated with domestic and international visitation, service delivery, visitor expenditure, and job generation. A report by Albert Stafford (Appendix 3) concluded that raising height limits as proposed



would result in significant direct and indirect economic losses for the area over the next ten years, including a potential -\$340 million drop in direct economic output and -\$858 million in lost visitor spend.

In particular, the proposal removes harbour views from The Langham Hotel. The Langham is one of Sydney's few, truly boutique 5-star, internationally branded hotels and the view loss from the proposal would result in significant economic losses for the hotel, which currently attracts visitors to the locality and provides high-quality accommodation, with key offerings that include iconic Sydney and water views. As outlined in Appendix 3, raising height limits at Barangaroo Central to block the harbour view lines from The Langham Hotel would result in a potential revenue loss of -\$4.4 million from declining room bookings and -\$578,000 from declining function room bookings in the first year alone.

### 6.3. Diminution of heritage values

The MOD 9 application does not adequately respond to the heritage significance of the setting and would likely adversely impact adjacent or nearby items of heritage significance.

- a. The proposal does not appropriately consider the impact of the proposed building envelope upon the broader historic cultural landscape of Millers Point. Heritage significance in the setting includes three heritage conservation areas of state heritage significance:
  - the Millers Point and Dawes Point Village Precinct,
  - the Millers Point and Dawes Point Conservation Area, and
  - the Walsh Bay Wharves Precinct.

Within these heritage conservation areas are numerous individual items of state and local heritage significance.

- b. As outlined in the attached Appendix 2, the proposed building envelope would adversely impact the significance of the numerous heritage items and heritage conservation areas in the vicinity of the site, in addition to the broader historic cultural landscape, as identified by GBA Heritage. Of note, the proposed works are of a bulk and scale that would detract from the integrity of the historic cultural landscape of Millers Point. Of note, the proposed works are of a bulk and scale that would detract from the integrity of the historic cultural landscape of Millers Point and would obstruct key public and private views, vistas and sightlines of historical significance.

### 6.4. Obstruction of views to/from Millers Point and Observatory Hill

MOD 9 would unreasonably obstruct historically significant and protected public views and degrade the visual amenity of the setting when viewed from surrounding vantage points.

- a. The proposed building envelope is of a bulk and scale that exceeds the height controls of the Eastern Harbour SEPP, resulting in the unreasonable obstruction of significant views to and from the historic precinct of Millers Point and Observatory Hill.
- b. It is noted that the *Statement of Commitments* has, since inception, retained assurances that future development would be controlled to ensure preservation of certain key public view corridors to and from the

locality. As outlined in the following, the proposed building envelope entirely disregards these long-standing protective controls, which have been explicitly developed to respect the unique and highly valuable significance of the Millers Point context.

- c. Commitment 57 and Commitment 58 ensure that “views from public spaces on opposite foreshores to Observatory Hill Park will be retained”, including “panoramas from Pymont Park around to the Harbour Bridge from Observatory Hill Park”. The proposed building envelope would introduce a substantial tower into the northern portion of the Barangaroo Central site, which would obstruct historic views of Observatory Hill from opposite foreshores and disrupt the panoramic quality of views from Observatory Hill.
- d. Commitment 59 of the *Statement of Commitments* ensures that,
  - “view corridors over and between new built form are to maintain the key attributes of views from Millers Point. The key attributes to be retained are:
    - views to significant tracts of the water,
    - the junction of Darling Harbour and the Harbour proper,
    - the opposite foreshores,
    - panoramic qualities of existing views and,
    - the most distinctive views to landmark structures.”

The substantial bulk and scale of the proposed envelope would devastatingly obstruct each of these key attributes from various locations across Millers Point.

- e. Commitment 61 of the *Statement of Commitments* ensures that “future development within the Barangaroo site is to retain the ability to appreciate the Millers Point headland and the roofscape of terrace houses throughout Millers Point when viewed from public spaces on opposite foreshores”. Despite this commitment, the unreasonable bulk and scale of the proposed building envelope would entirely obscure views of Millers Point’s roofscape of terrace houses from some opposite foreshores.

## 6.5. Poor urban design and inconsistency with the Concept Plan

The MOD 9 application fails to take into consideration the design principles, design requirements and development controls of the approved Concept Plan and proposes a building envelope that demonstrates poor urban design and adversely impacts the surrounding context.

- a. The MOD 9 proposal inaccurately details as the baseline situation a built form envelope described as a ‘*solid massing...which provides minimal articulation in built form*’. This representation is substantially inconsistent with the detailed urban design principles and controls set out by the approved Concept Plan.
- b. In failing to consider the carefully developed design requirements of the Concept Plan, the MOD 9 amendments propose a building envelope of a bulk and scale that seeks to maximise yield to the degradation of the site’s urban design quality and its surrounding context.

Maximising yield under any development standard is not guaranteed, and any proposed development is required to manage relevant constraints and impacts. The MOD 9 proposal fails to deliver the intended urban

design outcomes for the locality: instead, exceeding height and GFA, adversely impacting significant views, reducing solar access, reducing public open space and degrading the amenity of the wider setting.

The MOD 9 proposal exhibits an overall disregard for the carefully considered built form controls that have been established to ensure development at Barangaroo Central provides urban design outcomes appropriate for the setting. The applicant's Urban Design Report (Hassell December 2021) erroneously states that there are currently no design principles or controls applicable to the Central Barangaroo site.

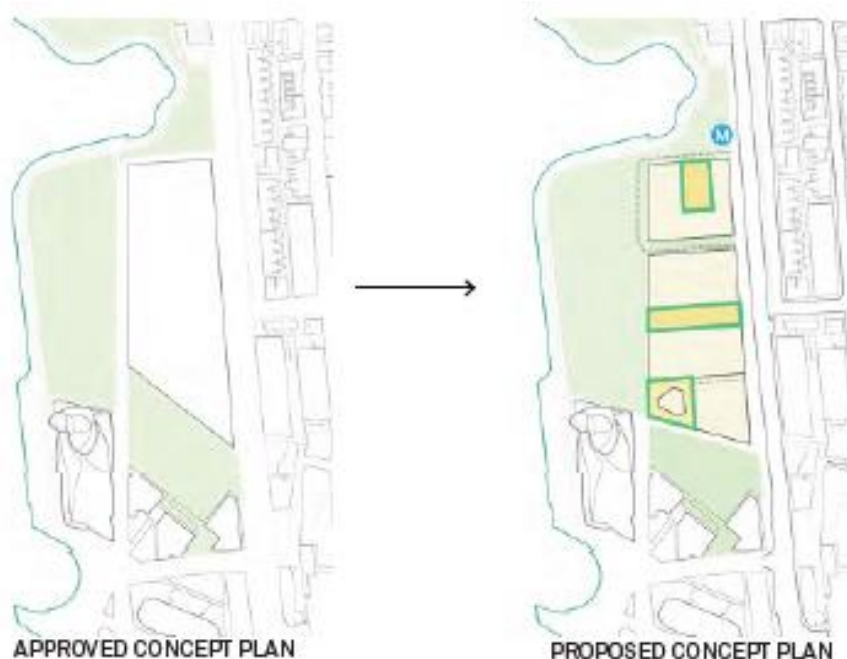


Figure 38: Applicant's urban design analysis of the existing approved Concept Plan and proposed built form (Source: Urban Design Report prepared by Hassell December 2021)

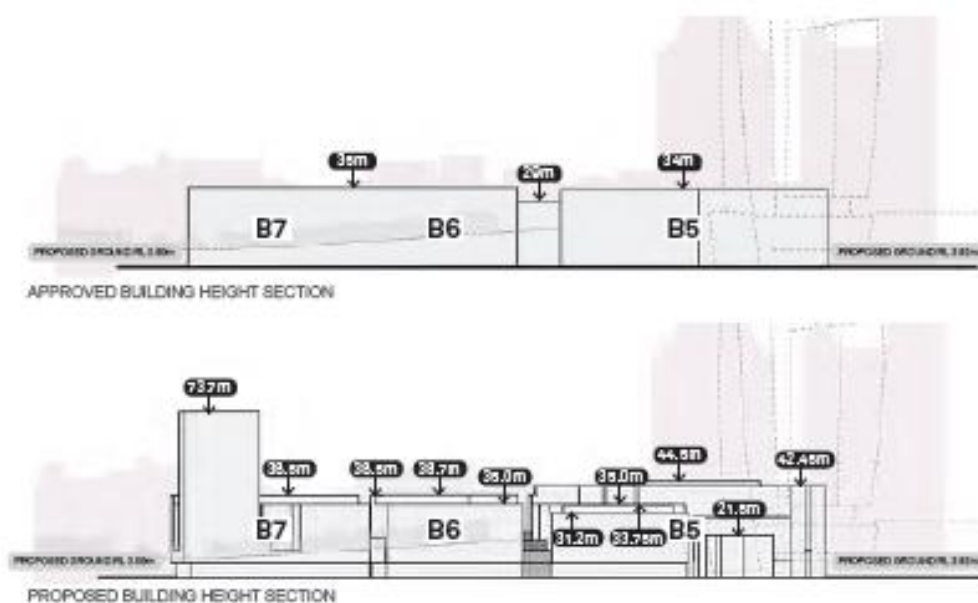


Figure 39: Applicants urban design analysis of the height sections approved under the current Concept Plan and proposed height section by MOD 9 (Source: Urban Design Report prepared by Hassell December 2021)

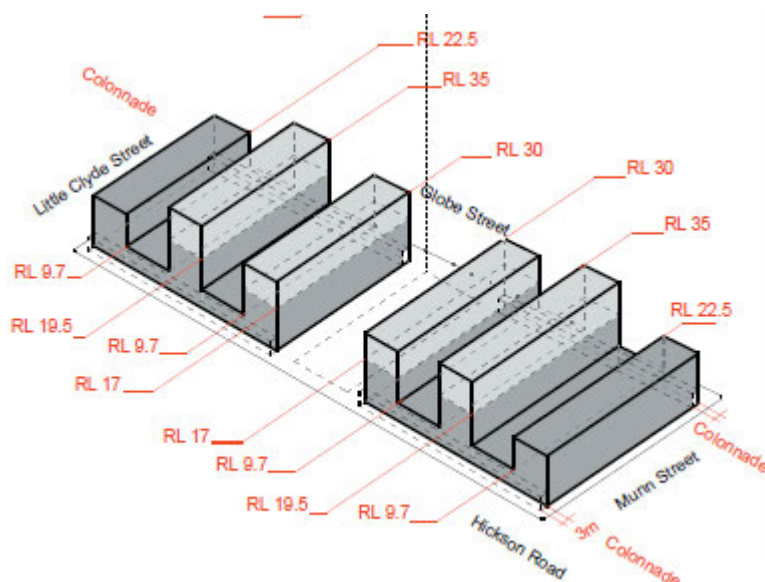


Figure 40: Block 7 built form as envisaged by the approved Concept Plan Design Principles and Controls (Source: EDH Part B Concept Plan October 2006)

## 6.6. Weak justification for residential tower

The residential tower proposed at the northern end of Barangaroo Central is an overdevelopment of the site which does not adequately respond to its setting, and which is poorly justified by the *Environmental Assessment* provided with the MOD 9 application.

- a. Details of the proposed building envelope and residential tower appear to reflect a design seeking to maximise yield at the expense of numerous adverse impacts. The design does not adequately take into account its setting nor attempt to mitigate subsequent impacts.
- b. The proposed residential tower location represents a very poor urban design outcome for the entire Barangaroo site, the Millers Point precinct and the wider context of the Sydney Harbour foreshore. MOD 9 proposes a tower reaching a height of RL 73.7 to the northernmost portion of the Barangaroo Central site. The design is of a vastly inappropriate scale within the context of a low-density, historically-valuable built environment and public parklands.
- c. Furthermore, this northernmost location is in direct conflict with a number of design principles and commitments detailed throughout the approved Concept Plan, which requires development at Barangaroo to “reduce towards the northern end of the site, where built form meets the Headland Park”. The approved Concept Plan envisages a tapering in height from south to north Barangaroo as shown in Figure 41. The northernmost location exacerbates concerns of overshadowing and adversely impacts public amenity and views.

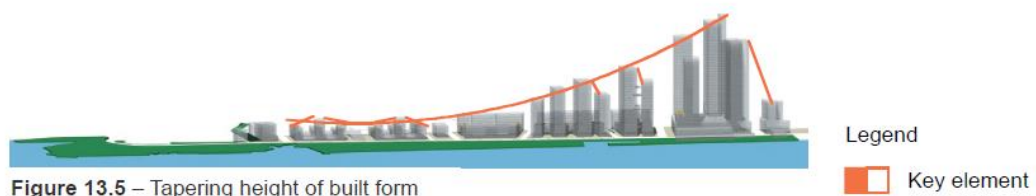


Figure 41: Concept Plan illustration of the height tapering envisaged within the Barangaroo precinct (Source: Part B Concept Plan prepared by EDG October 2006)

- d. The *Environmental Assessment* submitted with the MOD 9 application provides a weak justification for such an inappropriately large and poorly located tower form, which significantly varies the principles of the approved Concept Plan. The *Environmental Assessment* cites the ability to construct a “landmark, architecturally distinctive building which will exhibit a high quality design and act as a marker to the Central Barangaroo precinct and Barangaroo Station” as justification for the tower form. In reality the proposed building is simply an unremarkable rectangular tower that is out of context and has excessive bulk and height.
- e. No justification is given to support the need and increased quantum of residential floorspace. This justification is crucial given the proposed residential tower results in MOD 9 seeks an increase of nearly doubling the

existing height control under the Eastern Harbour SEPP. The supporting *Housing Strategy for Central Barangaroo* does not propose any affordable housing provision on site (as has been provided in other parts of the Barangaroo precinct). Instead, the proposed public benefit to support the new residential tower would be provided through monetary contributions to 'cultural infrastructure, and charity donations to Homes for Homes'. Similarly, the proposed retail space does not add economic benefit to the locality, it merely duplicates retail facilities that are already present at Barangaroo.


#### 6.7. Inadequate stakeholder consultation and indifference to stakeholder concerns

The MOD 9 application has proceeded to the point of exhibition despite inadequate and indifferent stakeholder consultation.

- a. The Applicant has documented the consultation undertaken in relation to MOD 9 in the *Consultation Report* prepared by Elton/WSP. The consultation undertaken has primarily been with other government agencies, with limited local and community consultation, with only the Walsh Bay Precinct Management Association consulted and responses documented within the Consultation Report.
- b. The development of the MOD 9 application proceeded without consultation with neighbouring stakeholders, including with The Langham Hotel, a property located to the immediate east of the subject site and a stakeholder likely to experience significant impacts from the subject site's development.
- c. The Applicant has exhibited indifference to stakeholder concerns raised throughout the development of MOD 9. Attempts to engage with the proponent on 2 May 2022 were declined. Consultation only occurred remotely and after the proposal was finalised leaving no possibility that stakeholder concerns could be addressed.
- d. Furthermore, the MOD 9 public consultation includes misleading information and erroneous representations of the approved building envelope (refer to Section 5.4.1 of this Submission Report). For these reasons the consultation undertaken has not provided a basis for stakeholders to be properly informed about the application, nor enabled the making of well-informed submissions.
- e. Effective public consultation of this proposal has been significantly compromised by the exhibition processes adopted. The MOD 9 application documents are contained within the outdated Major Projects website, which is challenging to navigate. The exhibition page itself is confusing, directing visitors to the 'new' website, which does not contain content related to the *Concept Plan 06\_0162 – Barangaroo* project.



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Barangaroo (formerly East Darling Harbour)

Barangaroo Concept Plan (Mod 9)

EA Exhibition

The Section 75W modification application seeks approval to increase the total permissible gross floor area (GFA) within Barangaroo from 602,354 sqm to 708,041 sqm and for the following changes to Central Barangaroo (Blocks 5, 6 and 7):

- (1) increase the maximum GFA from 47,688 sqm to 144,355 sqm (including 116,189 sqm of above ground GFA and 28,166 sqm of below ground GFA)
- (2) increase the minimum community uses GFA from 2,000 sqm to 2,800 sqm
- (3) allocate up to 18,000 sqm of GFA for The Cutaway within Barangaroo Reserve (previously unallocated)
- (4) increase the area of Block 5 by relocating the boundary to the south and reducing the size of Hickson Park
- (5) modify the road network, including the removal of vehicular traffic from Barangaroo Avenue north of Barton Street adjacent to Blocks 5 and 6 with controlled service vehicle access only, and converting Barton Street to a permanent street connecting Barangaroo Avenue with Hickson Road, servicing the wider Barangaroo precinct
- (6) modify the approved building envelopes of Blocks 5, 6 and 7 including additional height, block alignments, additional GFA and flexible allocation of GFA across the blocks
- (7) introduce Design Guidelines for Central Barangaroo to guide future detailed proposals
- (8) amend the State Significant Precincts SEPP to support the proposed modifications to Central Barangaroo.

Other assessments against this site:

- Concept Plan 06\_0162 - Barangaroo (Part3A)
- MP 06\_0162 MOD 1 (Part3AMod)
- MP 06-0162 MOD 2 (Commercial floorspace) (Part3AMod)
- MP 06-0162 MOD 3 (Headland Park and Northern Cove) (Part3AMod)
- DA 109-11-2009 Temporary Walkway, Amenities and Signage (Part4)
- MP10\_0022 - Demolition and site establishment works (Part3A)
- MP06\_0162 MOD 4 (Hotel development, additional GFA and Height) (Part3A)
- 11\_0002, Construction of residential buildings R8 and R9, Barangaroo (Part3A)
- MP06\_0162 MOD 5 Barangaroo Concept Plan (Part3AMod)
- MP06\_0162 (MOD 6) Barangaroo Concept Plan (Part3AMod)
- MP06\_0162 MOD 8 - Modifications to Barangaroo Concept Plan (Part3AMod)
- Modification to Concept Plan 06\_0162 MOD7 - Barangaroo (Part3AMod)
- MP 06\_0162 MOD 10 - Modifications to Barangaroo Concept Plan and Amendment to State Environmental Planning Policy (State Significant Precincts) 2005 (Part3AMod)
- MP 06\_0162 MOD 11 - Modifications to Barangaroo Concept Plan (Part3AMod)

**Attachments & Resources**

- Request for DGRs (1)
- Director-General's Requirements (1)
- Modification Application (28)

**Key dates and other information**

Job Status

EA Exhibition

Project is currently on public exhibition and opportunity for public submissions is available

## 6.8. Gross inconsistency with planning controls and adverse effect on public interest including applicant being the Crown

Finally, the MOD 9 application exhibits gross inconsistencies with relevant planning principles and general planning processes, and this is unacceptable given the role of the Crown as applicant.

- a. To protect the public interest the Crown, as the proponent, has a special responsibility to follow and be seen to be following the state's planning rules. The variations sought in this application are considerable and inconsistent with prior high profile public commitments. The application has not properly addressed the responsibilities created because of these factors and this is antipathetic to the public interest.
- b. Particular characteristics of this application create a risk of a significant decline in public trust in the state's planning system. The characteristics in question are the Crown as applicant, the substantial variations sought,

and their adverse impacts and inconsistency with planning guidelines and public commitments. Diminished trust in the planning system would be antipathetic to the public interest.