

26 July 2012

Laura Locke
Team Leader - Development Assessment
Hurstville City Council
PO Box 205
Hurstville BC NSW 1481

Dear Laura

RE: FURTHER VIEW ANALYSIS

**SECTION 96(2) APPLICATION DA-2011/21 REV03 FOR MODIFICATIONS TO APPROVED MIXED USE DEVELOPMENT (EAST QUARTER, STAGE 2) - JOINT REGIONAL PLANNING PANEL REFERENCE NO. 2012SYE035
93 FOREST ROAD, HURSTVILLE (LOT 2 DP 270611)**

We refer to the above site and Section 96(2) application, Milestone's letter dated 24 July 2012 in response to Item 2 of the resolution of the Sydney East Joint Regional Panel (JRPP) meeting held on 18 July 2012 and your email dated 25 July 2012 requesting the submission of a further analysis of view impacts.

This submission provides an analysis of the view impact of the proposed two additional levels to Building A on the existing occupants within Level 12 of Building D (Stage 1) of the East Quarter development and further clarification in relation to the "Premises Standards."

Please find attached to this letter the following:

- 3D View Analysis Model prepared by Integrated Design Solutions (Attachment A).
- Advice from Colin Biggers & Paisley dated 26 July 2012 (Attachment B).

This submission and the attached 3D View Analysis Model should be read with the previously submitted letter dated 24 July 2012 to enable your preparation of a supplementary report by 3 August 2012 for further consideration by the JRPP prior to determination of this Section 96(2) application. Further, we note that the attached letter from Colin Biggers & Paisley reaffirms the Premises Standards **do not apply** to Stage 2 of the approved East Quarter development (refer to Section 2 - Premises Standards).

1. View Impacts

The Stage 1 buildings, known as Buildings C and D occupy the western end of the East Quarter development site and comprise the 12 Storey Building D and the 6 storey Building C. This Section 96(2) application proposes the inclusion of two additional residential floor levels to Building E and Building A (Stage 2) resulting in a 13 storey building for Building A. The proposed two additional floor levels to Building A will result in an increase in the maximum building height from RL 96.40 to RL 102.7.

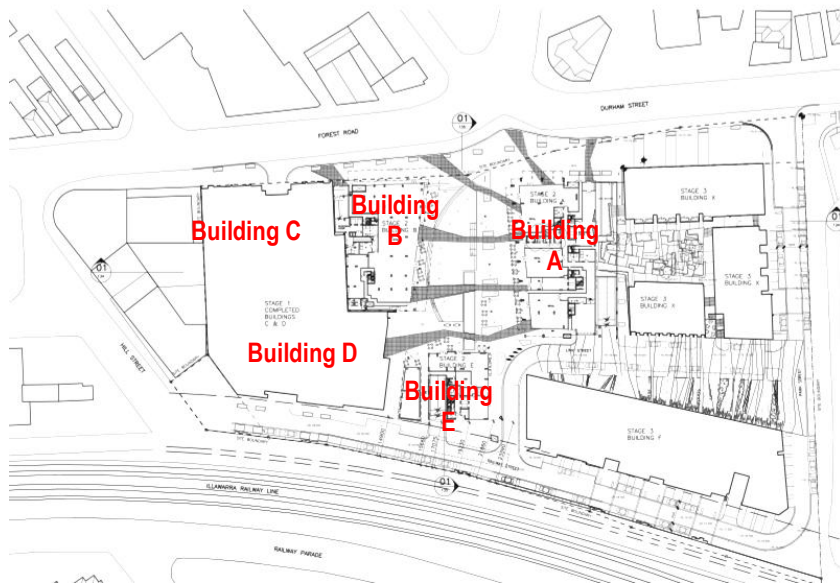


Figure 1: Location Plan – East Quarter, Buildings A and D

We note, Building A was approved (in DA-2011/21) with a total building height of RL 96.40. The proposal does not result in any additional view loss for occupants in Level 11 in Building D as Level 11 sits at RL 93.75. This further view impact assessment therefore is only required to consider the view impacts of occupants in Level 12 of Building D.

Table 1 below outlines the RLs of Buildings A and D in the East Quarter site.

Table 1: Approved and Proposed Building Heights (RLs) of Buildings A and D within the East Quarter Site

Building Level	STAGE 1 – BUILDING D AS BUILT (Floor / Parapet Level)	STAGE 2 – BUILDING A DA-2011/21 s.96 (Rev03) – Two additional floors (Floor / Parapet Level)
Level 13	N/A	RL 98.40 / RL 102.70
Level 12	RL 96.90 / RL 103.90	RL 95.40
Level 11	RL 93.75	RL 91.80
Level 10	RL 90.60	RL 88.80

In accordance with the tests provided in the *Tenacity Consulting v Warringah Council [2004] NSWLEC 140* Land and Environment Court (Court) judgement we provide the following further analysis of the proposed addition of two floors to Building A and the resultant impact on views obtained from Building D.

Step 1: Views Potentially Affected

The first step involves an assessment of the views potentially affected. The proposed increased height of Building A will affect views to some parts of Sydney Airport (approximately 4km to the north east of the site) for occupants in Level 12 of Building D. Due to the orientation of Building D, the views of occupants in Building D are naturally to the north, north west and north east and views to the east and west are considered oblique views.

The increased building height of Building A **will not impact the views in any way of the iconic Sydney CBD skyline obtained from Level 12 of Building D**. Refer to the 3D View Analysis Model held at Attachment A.

Step 2: Where Views are Obtained

The second step is to consider from what part of the property the views are obtained. **Figure 1** below identifies all windows/sliding doors located on Level 12 of Building D that will be potentially affected by the proposed increased height of Building A.

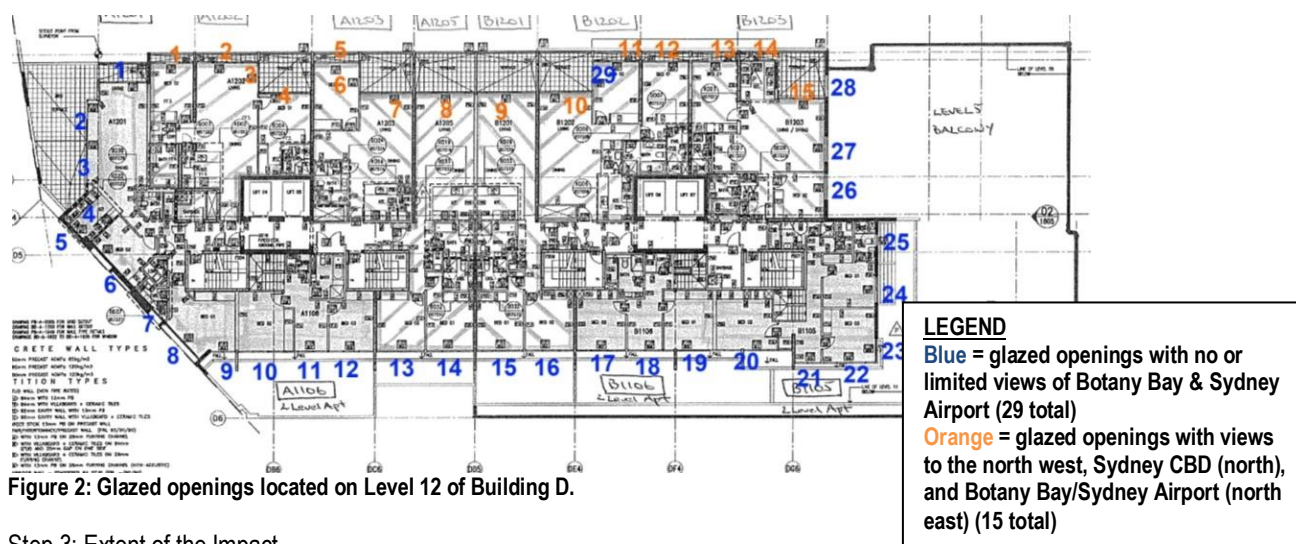


Figure 2: Glazed openings located on Level 12 of Building D.

Step 3: Extent of the Impact

The third step is to assess the extent of the impact for the whole of the property and not just the windows affected. In this instance it is relevant that we will consider the views obtained for all units on Level 12 of Building D rather than the whole property.

The extent of the potential view impact to the east as a result of the proposed increased height of Building A is limited to 6 of the 10 units on Level 12 of Building D. These units are A1202, A1203, A1205, B1201, B1202 and B1203 located on the northern side of Building D (see Figure 1).

The *Tenacity* Court case acknowledges view impacts can be assessed quantitatively, however it is usually more useful to assess the view loss qualitatively. In this regard, the view impact is considered to be acceptable from a qualitative perspective as the panoramic views (out to the north west, north and north east) currently enjoyed by the occupants on Level 12 in Building D which include the iconic Sydney CBD skyline will be retained. The view loss of the proposal occurs to the east as shown in Attachment A, out to parts of Sydney Airport and this is considered acceptable in context of the significant views retained.

Step 4: Reasonableness of the Impact

The fourth and final step outlined in the planning principle is to assess the reasonableness of the proposal that is causing the impact. The proposal seeks to increase the height of Building A in conjunction with Building E consistent with the overall scale of the East Quarter site. The height increase is considered acceptable as the modified development provides an appropriate built form outcome, which provides a positive impact in context of the setting of the site and streetscape presentation.

In summary, the minor degree of view impact to the east on existing occupants in Building D resulting from the two proposed floors on Building A is considered acceptable for the following reasons:

- The panoramic views to the north, north west and north east which include iconic views of the Sydney CBD skyline and Bondi Junction currently enjoyed from Building D **will not be affected** in any way by the proposed two additional floor levels to Building A (refer to Attachment A).
- Views east to Botany Bay and to Sydney Airport impacted by the proposed increased height of Building A are oblique views and not considered highly valuable or iconic in comparison to the views retained which include the Sydney CBD skyline. We note partial views of Sydney Airport will be maintained. It is further noted that Building E, located directly east of Building D, and approved at a greater height would always have impacted the directly easterly view in this staged development.
- The affected units already have high amenity district views to the north west and north to the Sydney CBD skyline.
- Only views from the units on the northern side of Level 12 in Building D are affected, with no impacts on views from the western and southern ends of the building.

2. Premises Standards

We refer to the discussion between the Panel and Council Officers at the JRPP Meeting on 18 July regarding the applicability of the Premises Standards to Stage 2 of the approved East Quarter development.

The attached letter dated 26 July 2012 prepared by Colin Biggers & Paisley after clarifying project particulars with Mr Mike Wynn-Jones (held at Attachment B), reaffirms that the Premises Standards do not apply to Stage 2 of the East

Quarter development (DA-2011/21) and further, that the reference to the Disability Discrimination Act 1992 *"has no bearing on the issue of whether the Premises Standards apply to the Stage 2 works of the East Quarter project."*

CONCLUSION

This letter provides further clarification regarding view impacts of the proposal on the existing occupants in Stage 1 of the East Quarter development and should be read in conjunction with Milestone's letter dated 24 July 2012.

This further assessment demonstrates that the revised scheme for Stage 2 in context of the additional height to Building A maintains the highly valued iconic Sydney CBD skyline views (north), as well as views to the north west and north east including Bondi Junction and part of Sydney Airport obtained from the top floor of Building D. The proposed envelope will therefore not result in any unacceptable view loss for Stage 1 buildings when assessed using the planning principle set out by the Court.

Given the environmental planning merits of the revised proposal and the significant public benefits of the project, we have no hesitation in recommending approval of the proposal.

If you require any clarification of this matter or any further analysis please do not hesitate to contact me.

Yours sincerely

Milestone (AUST) Pty Limited



Lisa Bella Esposito

Director

Encl.

ATTACHMENT A

**3D VIEW ANALYSIS MODEL FROM BUILDING D PREPARED BY INTEGRATED DESIGN
SOLUTIONS**



Sydney Tower – Approx
North East direction
from Building D

Proposed Building B
(11 Storeys)

Proposed
Building A
(13 Storeys)

ATTACHMENT B

ADVICE FROM COLIN BIGGERS & PAISLEY DATED 26 JULY 2012

Our Ref: AFP.103418



26 July 2012

Attention Mr Colin Sim
East Quarter Hurstville Pty Limited
Unit B1005
Vantage East Quarter
1 Jack Brabham Drive
HURSTVILLE NSW 2220

Dear Sir

East Quarter Hurstville Pty Limited
JRPP No. 2012SYE035
DA No. 11/DA-21 REV03
Section 96(2) modification to Stage 2

We refer to the above modification application relating to Stage 2 of the East Quarter project, currently before the JRPP, and to the issue of whether the "Premises Standards" should apply, as recommended in the Council officer's report prepared for the Panel, dated 18 July 2012.

We have reviewed the Council officer's report and have considered the issues raised in respect of the Premises Standards. In summary, we do not entirely understand the reasoning process underpinning the Council's recommendation that the Premises Standards should apply. In our view, the Premises Standards do not apply to the current application. We make the following brief observations regarding the matter:

1. The "Standards" or the "Premises Standards" - formally known as the *Disability (Access to Premises - Buildings) Standards 2010* - were introduced by the Commonwealth on 15 March 2010. The Premises Standards, in the form of an access code, were ultimately adopted in BCA 2011. That version of the BCA came into effect on 1 May 2011.
2. As you are aware, the applicable version of the BCA for any given development is the version in force as at the date the application for the construction certificate is made (clauses 98(3) and 145 of the EPA Regulations). The Stage 2 construction certificates for the East Quarter project were applied for prior to 1 May 2011. Therefore, BCA 2010 is the applicable version for the project. On that basis, the Premises Standards do not apply.
3. The foregoing is also consistent with the terms of the Premises Standards themselves. For example, section 2.1(1) of the Premises Standards provide that the Premises Standards apply to a "new building" or the new part of a building. For the purposes of the Premises Standards, a development is considered a "new building" if an "application for approval for its construction is submitted, on or after 1 May 2011, to the competent authority in the State or Territory where the building is located." It follows, again, that an application for approval of a building that pre-dates 1 May 2011 does not constitute a "new building" for the purposes of the Premises Standards and, consequently, the Premises Standards do not apply to Stage 2 of the East Quarter project.

T 61 2 8281 4555
F 61 2 8281 4567
E law@cbp.com.au
I www.cbp.com.au

Level 42, 2 Park Street
Sydney NSW 2000
Australia
ABN 38 941 300 979

GPO Box 214
Sydney 2001
Australia
DX 280 Sydney

**Colin Biggers
& Paisley**
Melbourne & Sydney
ADVOC network member

4. The reference to the decision of *Cooper v Coffs Harbour City Council* in the Council officer's report has no application either factually or at law, and is not a relevant consideration. This is based the following:
 - (a) The decision was handed down in 2000 and relates to the pre-Premises Standards regime. It is within this context that a breach of the *Disability Discrimination Act 1992* (Cth) (**DDA**) by Council was determined by the Court;
 - (b) The decision involved a Council that was found to have contravened section 122 of the DDA, on the basis that it had not made all reasonable inquiries to ascertain whether an applicant's claim of "unjustifiable hardship" could be supported. The decision has no bearing on the issue of whether the Premises Standards apply to the Stage 2 works of the East Quarter project.

There are two further points to note:

5. Can an applicant for a construction certificate provide the certifying authority with further information? The EPA Act and the EPA Regulation do not prevent an applicant from providing additional design documentation to a certifying authority prior to the determination of the application. Clause 140 of the EPA Regulation characterises this as forming part of the "consideration" process prior to the determination of the original application, rather than a new application.
6. Can an application to amend a construction certificate, arising as a consequence of an amended development approval, be made without invoking the provisions of the current version of the BCA and, as a consequence, the Premises Standards?
 - (a) In our view, nothing prevents the a person who has made an application for a construction certificate or the beneficiary of a construction certificate from applying to the PCA to modify either the application or the construction certificate. This is clearly contemplated by clause 148 of the EPA Regulation (see also the comments of Justice Talbot in *Marvan Properties Pty Limited & Anor v Randwick City Council* [2005] NSWLEC 9 at [21]);
 - (b) The process of modification does not, in our view, constitute an "application" for a construction certificate under clauses 98(3) and 145 of the EPA Regulation. Rather, it constitutes an application to modify an existing construction certificate application.

The above advice does not exclude the obligation to address the important issue of access and accessibility. On the contrary, what it means is that the applicable disability and access standards for the Stage 2 works are those set out in BCA 2010 and related provisions set out in the Hurstville DCPs, as addressed in the applicant's Access and Adaptable Housing Statement of Compliance, prepared by Accessible Building Solutions.

If you wish to discuss this matter further, please do not hesitate to contact our office.

Yours faithfully



Anthony Perkins
Partner
Email: afp@cbp.com.au
Direct Line: +61 (02) 8281 4606