

JOINT REGIONAL PLANNING PANEL
(Sydney East Region)

JRPP No	2012SYE050
DA Number	671/2010/2
Local Government Area	Woollahra Municipal Council
Proposed Development	Mixed use development consisting of new retail complex containing 5 cinemas and 74 new dwellings above (s96(2) Modification)
Street Address	33 Cross Street, DOUBLE BAY
Applicant/Owner	Parissen Project X Pty Ltd/ Trust Company Ltd
Number of Submissions	83
Recommendation	Approval with Conditions
Report by	D Lukas

SECTION 96 APPLICATION ASSESSMENT REPORT

ITEM NO.	R1
DETAILS:	DA Reference No. 671/2010/2 JRPP Reference No. 2010SYE050 Address: 33 Cross Street DOUBLE BAY (Former Stamford Plaza Hotel) Lot & DP No: 1 & 793525 Side of Street: North Site Area (m²): 3675 Zoning: General Business 3(a)
APPROVED DEVELOPMENT:	Demolition of the existing building from ground floor level, retention of the basement carpark for 154 vehicles, construction of a mixed use development with retail tenancies and a five (5) cinema complex for approximately 600 people which occupies the ground and first floor levels and seven (7) levels of residential above containing 74 units (a mix of one, two and three bedrooms)*
CONSENT DATE:	13 December 2011
S96 PROPOSAL:	Internal and external modifications to the approved mixed use building. The two basement car parking levels and the first two levels containing the 5 cinemas and retail premises of the ground level and level 1 will not be altered. The external modifications include changes to the roof form, the provision of modified balconies/winter gardens to levels 2-7 and additional area to level 6 fronting Cross Street (matching the floor area for Level 6 prior to its deletion). Levels 2-7 will also be internally reconfigured to increase the number of units from 64 (as approved by the deletion of Level 6) to 74 units including 36 x 1 bedroom, 17 x 2 bedroom and 23 x 3 bedroom over the 7 level building.
TYPE OF CONSENT:	Local
APPLICANT:	Parissen Project X Pty Ltd
OWNER:	Trust Company Ltd
DATE LODGED:	02/05/2012
AUTHOR:	Mr D Lukas
CONSENT AUTHORITY	Joint Regional Planning Panel (Sydney East)

* Prior to imposition of Condition C.1 which deletes Level 6

1. RECOMMENDATION PRECIS

The proposed amendment is recommended for approval for the following reasons:

- The development remains lower in height and smaller in scale than the existing building it replaces.
- That the essence of the development approved by the JRPP is retained.
- The height, bulk and scale of the development are reasonable and expected outcomes for the site given the nature of the built form that exists and the scale of other development in the general vicinity of the site.
- The proposed development sits satisfactorily within its urban context and will not unreasonably dominate the urban environment when viewed from the perimeter of the Double Bay ‘amphitheatre’ or from Sydney Harbour.
- The proposed development does not create any detrimental impact on the amenity of adjoining property with respect to solar access, views or privacy.
- The proposed development will not significantly compromise view corridors, but will, from a broader visual perspective, become part of the general skyline of Double Bay.
- The introduction of additional housing stock in the centre assists in invigorating Double Bay as well as supporting Council’s housing targets.
- The proposed use of the site is similar to that which exists and, as such, will not give rise to additional impacts in relation to on-street car parking congestion or traffic generation.
- The proposed development is consistent with expected planning outcomes as informed by Council’s relevant planning controls.
- That in circumstances of the case and on its individual merit the granting of consent does not create a precedent for similarly scaled future development within the precinct.

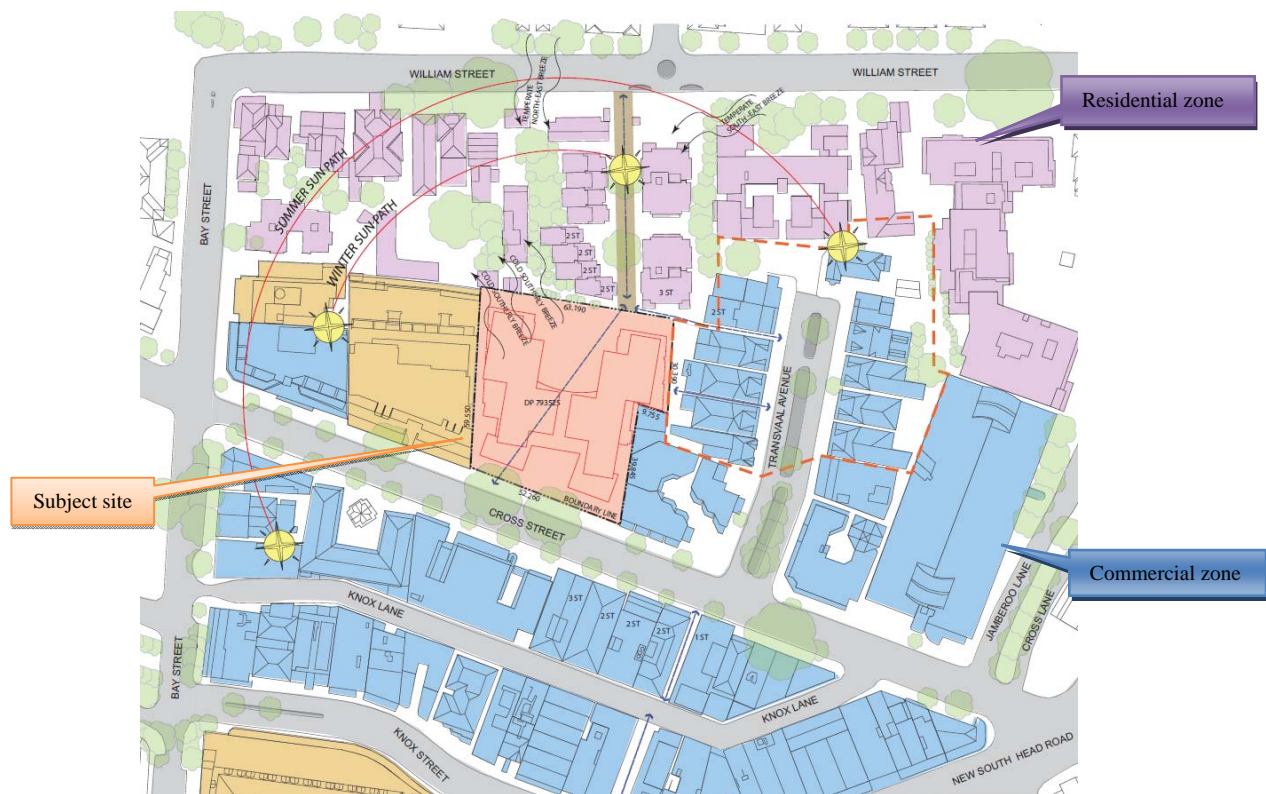
2. PROPOSAL PRECIS

The variation to the approved scheme is primarily to the upper levels of the Cross Street frontage to re-instate floor space removed by the deletion of Level 6. The development re-establishes a stepped alignment to the frontage as originally proposed that marries with existing and future development immediately adjoining.

The variation to the roof of the approved development reconfigures its shape to facilitate additional accommodation.

The variations are relatively minor having regard to the approved scheme and the amended development is in the spirit of the originally approved scheme.

3. LOCATION PLAN



4. DESCRIPTION OF APPROVED DEVELOPMENT

The original proposed development (DA 671/2010) for the site consisted of:

- Demolition of the existing 7 storey Hotel (above ground level only)
- New 9 storey mixed commercial/residential building comprising:
 - 5,472m² of commercial floor space at ground and first floor level, including retail shops and a 5 screen cinema complex (600 seats)
 - 74 new dwellings comprising (19 x 1-bedroom, 24 x 2-bedroom and 31 x 3-bedroom)
 - Existing 2 x level basement modified for 154 car parking spaces and ancillary storage area.

The Joint Regional Planning Panel (JRPP) approved DA 671/2010 on 13 December 2011 and included Condition C.1 of the development consent which alters the composition of dwelling numbers, floor space and height of the approved development and reads in part as follows:

“Modification of details of the development (s80A(1)(g) of the Act)

The approved plans and the Construction Certificate plans and specification, required to be submitted to the Certifying Authority pursuant to clause 139 of the Regulation, must detail the following amendments:

a) Level 6 being removed...”

This had the effect of reducing the overall height of the new development to 8 storeys and reducing the dwelling numbers to 64.

The JRPP, being the determining authority, in its recommendation resolved... *“The Panel accepts a reduced level of non-compliance with the height control and a reduced increase over the height of the existing building.”*

5. DESCRIPTION OF PROPOSED DEVELOPMENT

The proposed development modifies the layout and composition of the dwellings on Levels 2-7 of the approved mixed use development. Dwelling numbers increase from 64 to 74 and comprises of 36 x 1, 17 x 2 and 23 x 3 bedroom dwellings.

The modification proposes additional floor space to the Cross Street frontage to facilitate a stepped design similar to what was originally considered prior to approval and prior to the imposition of Condition C.1, being the deletion of Level 6. The modification includes variation to some balconies and winter gardens and an increase in building height by 475mm to the roof and 750mm to the lift over-run.

The height of the lift over-run of the proposed building, being its highest point, is 2.48m lower than the lift over-run of the existing building. The floor space of the proposed building is 2,124m² less than the building it replaces.

The basement car park and commercial/retail uses at ground and first floor, including the cinemas, are maintained as approved.

6. SUMMARY

Reasons for Report	Primary Issues	Submissions
To assist the Regional Panel in determining the development application; and, to permit the Council to make a submission to the Regional Panel.	<ul style="list-style-type: none">• Height• Floor Space• Design• Non-compliance with Council controls• Impacts on public and private amenity• Visual Impact	<ul style="list-style-type: none">• 1 submission <i>supporting</i> the development• 83 submissions <i>opposing</i> the development

7. DESCRIPTION OF SITE OF LOCALITY



Physical features
The site is located on the northern side of Cross Street, Double Bay, one property removed to the west of the Transvaal Avenue intersection.
The site has an area of 3675m ² , a frontage to Cross Street of approximately 52m, an average depth of approximately 65m and a rear boundary width of approximately 63m.
The site is afforded with multiple pedestrian links in the form of right-of-ways at ground floor level. To its eastern side

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<p>there are 2 links between Nos.8 & 10 and Nos.16 & 18 Transvaal Avenue. To the north is a pedestrian link over the partly Council owned Galbraith walkway which links through to William Street. To the west is a pedestrian link through the Georges Centre which is currently closed off.</p> <p>Vehicular access to the existing basement car park is afforded to the west via a right-of-way through the basement level of the adjoining property at No.45 Cross Street, known as the Georges Centre.</p>
<p>Topography</p> <p>The site is relatively level with a difference in height of approximately 800mm from front to back.</p> <p>The site is devoid of landscaping due to the existing built form however there are 2 significant and established street trees (Figs) immediately in front of the site on Cross Street.</p>
<p>Existing buildings and structures</p> <p>On the site is an existing 7-storey building with an existing approved use as a Hotel which currently caters for special/private functions. To Cross Street is a porte-cochere which leads into the reception area of the Hotel that leads up to the function rooms/restaurant/bars at first floor level and also to the suites above.</p> <p>There is public access provided to the eastern side of the Cross Street frontage which leads through to an enclosed circular retail mall that is not currently in use. This mall is provided with pedestrian links through to the Georges Centre on its western side as well as to the Galbraith walkway and Transvaal Avenue links on its north and east sides respectively.</p> <p>The existing commercial component of the building, including the function/dining/restaurant uses of the hotel, is of rectangular configuration which terminates with a parapet building form, appearing as a podium level 3 storeys in height. The hotel suites are above and setback from the podium base and are of rectangular configuration with a central open court. The hotel suites also terminate in a parapet form 4 storeys in height above the podium base. From Cross Street, the podium level is some 10metres in height and the upper parapet level to the hotel suites is some 22.08metres in height measured from footpath level.</p> <p>The podium base of the existing building is constructed to its east and west boundaries, setback approximately 3metres from the Cross Street boundary and between 1.8-2m from the rear northern boundary.</p> <p>The suites above are setback approximately 12m from the Cross Street boundary. To the rear, the suites have a splayed setback from the northern boundary ranging between 2.5m to 13m from its western to eastern end respectively. The suites are also diagonally splayed from its east and west boundary ranging up to 5m from its eastern side and up to 8metres on its western side.</p> <p>The roof comprises a mixture of structures and levels and includes lift over-run (highest point at 29.43m), plant rooms, fire stairs, gym and a swimming pool.</p>
<p>Environment</p> <p>The subject site forms part of the northern edge of the Double Bay Commercial centre. Immediately adjoining the northern boundary is a residential precinct of medium density development zoned 2(b) under the WLEP1995.</p> <p>The pedestrian link to Galbraith walkway is flanked by a townhouse style development on its western side and residential flat building on its eastern side, being 2 and 4 storeys in height respectively. To the west of the 2-storey townhouse development, adjoining the western end of the northern boundary, are the rear private open spaces of single dwellings with frontages to William Street.</p> <p>Immediately adjoining the northern end of the eastern boundary is the rear of single storey federation cottages with frontages to Transvaal Avenue which form part of a Heritage Conservation Area. Immediately adjoining the southern end of the eastern boundary is a 2-storey commercial development with an open style plaza that occupies the Cross Street and Transvaal Avenue corner. This development is constructed to its western boundary and immediately adjoins the subject site.</p> <p>Immediately adjoining the western boundary is a mixed use development, 6 storeys in height, comprising of retail at ground level with a mezzanine level over. A pedestrian link through to the subject development site is provided through the ground floor retail level on its eastern side which is currently closed off. Above the commercial component of this adjoining development are residential dwellings. A communal open space is provided to the rear of the complex which includes a swimming pool. A shared driveway on the western side of the Cross Street frontage of this development provides access to a basement carpark level that also provides a right-of-way for vehicles through to the subject sites basement carpark levels.</p> <p>Double Bay is sited on the southern edge of Sydney Harbour. The surrounding area is relatively level and sits at the base of a large natural amphitheatre which leads up to the ridges of Darling Point, Edgecliff and Bellevue Hill. The immediate area is characterised by development ranging in height between 1-7 storeys with a variety of uses such as residential, commercial, retail, offices, schools and places of public entertainment.</p>

8. PROPERTY HISTORY

Current use
The building on the site was previously used as a Hotel including retail and office tenancies at ground floor level.
Previous relevant applications
<p><i>Development Application No.88/176</i> was approved on 28 November 1988 for the building that currently occupies the site. Of pertinence is Condition Nos.2 & 40 which requires the provision of 223 car parking spaces on site. Due to the physical constraints of the site to provide the required parking spaces a monetary contribution was paid to Council in lieu of the provision of 50 car parking spaces.</p> <p>The existing built form which currently occupies the site has remained relatively unchanged since the original approval. There have been numerous applications for minor alterations to the existing built form as well as for the fitout and change of use to various tenancies to the retail component at ground floor level. These applications are irrelevant to the scope of the development that is the subject of this report.</p> <p>Since this original approval, the site was the subject of a development application made by Ashington Management Pty Ltd to which the provisions of Part 3A (Major infrastructure and other projects) of the Environmental Planning and Assessment Act 1979 applied. The application was lodged with the Department of Planning (Reference: MP08_100) which proposed demolition of the existing building to ground floor level, retention and reconfiguration of the existing basement carpark and construction of a mixed use development consisting of a 3-5 storey podium level with a 6 storey tower in the north-west corner, a 14 storey tower plus plant level above in the south-west corner and a 11 storey tower plus plant level above in the south-east corner that fronted Cross Street.</p> <p>Council's submission to the Minister, who was the consent authority for the development, concluded as follows:</p> <p><i>The Ashington development proposal is not in the public interest and must be refused. The proposal, in its building bulk and height, is grossly excessive and overwhelmingly inconsistent with the permitted height in the Double Bay Centre. Furthermore the proposal does not comply with the spirit or intent of the local planning controls. Community feedback during exhibition of the proposal overwhelmingly indicates public opposition to the development. This public opinion only serves to reinforce the community vision to preserve the Centre and its village character. The development proposal seeks substantial private gains at the expense of other private lands, the public domain and the broader public interest. It is a significantly compromised development outcome for the Double Centre that, if approved, will have a long term detrimental impact on the character of the Centre and public amenity within and surrounding Double Bay.</i></p> <p>The Minister refused the application on 28 September 2009 for the following reasons</p> <ol style="list-style-type: none"> <i>1. The height, bulk and scale of the tower elements are incompatible with the character of the Double Bay Centre. The tower elements will dominate the immediate surrounds and will contribute negatively to the immediate and local context of the Double Bay Centre.</i> <i>2. The tower elements will result in unacceptable visual impact in terms of height and bulk.</i> <i>3. The proposal will have an unacceptable impact on the amenity of the adjoining properties, particularly on the northern boundary of the site. The proposal will create unacceptable amenity impacts in relation to noise and privacy.</i> <i>4. The proposal will create an unacceptable impact on the Transvaal Heritage Conservation Area as identified in the Woollahra Local Environmental Plan 1995.</i> <i>5. The proposal does not satisfactorily justify the inconsistencies with the floor space ratio and height controls identified in the Woollahra Local Environmental Plan 1995 and Woollahra Double Bay Centre DCP 2002.</i> <i>6. The proposal is not in the public interest. The impacts of the tower elements on the character of the locality are not outweighed by any potential public benefit resulting from the piazza and public domain improvements (including pedestrian linkages).</i> <p>Development Application 671/2010 was approved by JRPP on 13 December 2011 and involved the demolition of the existing building from ground floor level, retention of the basement carpark for 154 vehicles, construction of a mixed use development with retail tenancies and a five (5) cinema complex for approximately 600 people which occupies the ground and first floor levels and six (6) levels of residential above containing 64 units (a mix of one, two and three bedrooms). Refer to Section 4 of this report.</p> <p>There are no other relevant applications pertinent to the assessment of the subject application.</p>
Requests for additional information
No additional information requested.
Amended Plans/Replacement Application
Not applicable.
Court Appeals
No appeal has been lodged.

9. REFERRALS

9.1 The following table contains particulars of internal referrals.

Referral Officer	Comment	Annexure
Urban Design	Satisfactory - “.. <i>There are no significant adverse impacts</i> ”	2
Development Engineer + Traffic Engineer	No additional commentary required	N/A
Heritage Officer	No additional commentary required	N/A
Fire Safety Officer	No comments provided reiteration of original conditions	N/A
Environmental Health Officer	No comments provided reiteration of original conditions	N/A
Trees & Landscaping	No additional commentary required	N/A

9.2 The following table contains particulars of external referrals.

The *New South Wales Police Force* under the Memorandum of Understanding – Crime Prevention Through Environmental Design (CPTED) and *Sydney Water* under the provisions of Sydney Water Act 1994 provided comments on the original scheme. These comments included recommended conditions that were applied and from part of the development consent.

These recommended conditions continue to apply to the amended scheme.

The extent of work being considered is relatively minor and no further comment from these bodies is required.

10. ASSESSMENT UNDER SECTION 96

10.1 S96(2) Other modifications

The proposed modifications have some form of impact on the amenity of adjoining property owners and the environment. Accordingly, the proposal falls under the ambit of Section 96(2).

10.2 Substantially the same development

The proposed modification relates to aspects of the approval. The proposed modification is relative to the scope of the approved works. Accordingly, the proposal is substantially the same development to that which was originally approved, thus satisfying the relevant criteria prescribed by the Act.

ENVIRONMENTAL ASSESSMENT UNDER S.79C

The relevant matters for consideration under section 79C of the *Environmental Planning and Assessment Act 1979* are assessed under the following headings:

11. RELEVANT STATE/REGIONAL INSTRUMENTS AND LEGISLATION

11.1 SEPPs

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 ("BASIX") applies to the development. The original development application was accompanied by a BASIX Certificate committing to environmental sustainability measures. These measures were imposed by standard conditions prescribed by clause 97A of the *Environmental Planning & Assessment Regulation 2000*.

The SEPP also applies to the amended scheme. The application was accompanied by an amended BASIX Certificate with reference No.345349M_05 committing to environmental sustainability measures. These revised measures supersede those imposed by the original conditions of the development consent. Should development consent be issued, the conditions referencing the environmental sustainability measures will be required to reference the revised certificate.

State Environmental Planning Policy No. 55

Under clause 7 (1) (a) of State Environmental Planning Policy No. 55 – Remediation of Land, consideration has been given as to whether the land is contaminated. An assessment of the *Initial site evaluation* provided by the applicant indicates the land does not require further consideration under clause 7 (1) (b) and (c) of SEPP 55.

State Environmental Planning Policy No.65

The provisions of the SEPP apply to the proposed modification. The provisions require a design verification statement from a qualified designer verifying that:

- *They designed, or directed the design, of the modification of the residential flat development, and;*
- *The residential flat development, as modified, achieves the design quality principles set out in Part 2 of State Environmental Planning Policy No 65—Design Quality of Residential Flat Development, and;*
- *The modifications do not diminish or detract from the design quality, or compromise the design intent, of the development for which the development consent was granted.*

The application included a Design Verification Statement from Andrew Andersons the Principal Director of PTW Architects that satisfies the above stated criteria.

In addition, Council's Urban Design Planner has reviewed the amended design whilst having regard to the provision of the SEPP and has recommended approval of the amended scheme (**see Annexure 2**).

The assessment of the original proposal pursuant to the provisions of Part 2 – 10 Design Quality Principles concluded that the proposal satisfied this prescribed criteria. The amended design, which alters the composition and layout of dwellings between Levels 2-7 but does not significantly alter the approved building envelope, also satisfies the design principles prescribed by the SEPP for the reasons stated in the original report.

11.2 REPs

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The development is located on a relatively level and flat site that is partially obscured from the waterway and the foreshores by existing development and landscaping. The subject site is not a land/water interface development but notwithstanding, Division 2 of the SREP prescribes matters for consideration for interrelationship of waterway and foreshore uses as well as maintenance, protection and enhancement of views.

The amended development does not extend above the surrounding hills of the locality as seen from the harbour, thereby forming a part of the urban landscape as seen in context to its backdrop. Within the visual catchment from the harbour there are other developments of equal or higher built form than the subject development. These other built forms include multi-storey developments along New South Head Road, Edgecliff, Darling Point and Double Bay that extend well above the height of the proposed building as seen from the Harbour. In this regard, the development is not an anomaly within its urban context but rather another variable building form related to this established built environment.

The proposal has no detrimental impact on wetlands or cause pollution or siltation of the waterway. It will not detrimentally impact on existing vegetation or drainage patterns and will not obstruct vistas of the waterway from the public domain.

The proposal satisfies the relevant criteria prescribed by the SREP.

12. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 1995

12.1 Compliance Table

Site Area: 3,675m ²	Existing	Approved	Proposed	Control	Complies
Site Area (m ²) Lot Frontage (m)	>930 >21	>930 >21	>930 >21	930 21	YES
Floor Space Ratio (m ²)**	<i>5.32:1</i> <i>(19,545)</i>	<i>4.44:1</i> <i>(16,331)*</i>	<i>4.74:1</i> <i>(17,421)</i>	2.5:1 (9,188)	<i>NO</i>

* Figures revised to include Condition C.1 which deletes Levels 6 of the original development (Level 6 Floor Area - 1,862m²)

** The floor space ratio has been calculated according to the current applicable GFA definition prescribed by Schedule 1 of WLEP 1995.

12.2 Aims and objectives of WLEP 1995 and zone (Clause 8(5))

The development satisfies the relevant objectives of the Plan. The development is permissible within the zone and satisfies the relevant aims and objectives prescribed for the zone.

12.3 Site area and frontage requirements (Clause 10B)

The proposal remains compliant with the minimum Site Area and Frontage development standards and satisfies the relevant objectives of the standard.

12.4 Floor space ratio (Clause 11)

The original development exceeded the statutory development standard. The applicant submitted a SEPP 1 objection to seek variation of that standard. The objection advanced by the applicant was well founded and the proposal was found to satisfy the relevant aims and objectives of the standard. The proposed modifications to the approved development also fail to comply with the development standard. A SEPP 1 Objection does not apply to a Section 96 Application however the determining authority must have regard to the provisions of Section 79C of the EPA and Act 1979.

Notwithstanding the numerical non-compliance, the proposal is considered to satisfy the relevant objectives of the standard because:

- The proposed development results in a reduction in Gross Floor Area of 2,124m² over the existing building
- The proposal results in an superior architectural form than what presently exists
- The amendments retain the potential for the development to reinvigorate the commercial centre both economically and socially by introducing a cinema complex and providing additional accommodation catering to a broad demographic
- The development results in an improved streetscape outcome compliant with the envisaged envelope controls as perceived from Cross Street
- The proposal retains the removal of the multiple driveways on Cross Street and introduction of an active retail front, awning and open pedestrian link reactivate the street front thus satisfying the desired future character objectives prescribed for the Commercial Centre
- The scale, bulk and height of the proposed building is smaller than the existing building it replaces

- The built form is consistent with the built form character of developments in the vicinity of the site as seen from a broader panoramic viewpoint.

12.5 Other Clauses:

Clause 19 HFSPA: The proposal satisfies the provisions of Clause 19(2).

Clause 24 Land adjoining public open space: The proposal satisfies the provisions of Clause 24(2).

Clause 25 Water, wastewater and stormwater: The proposal satisfies the provisions of Clause 25(1) and (2).

Clauses 27 Development in the vicinity of heritage items, heritage item group, heritage conservation areas, archaeological sites or potential archaeological sites: The subject building is not listed on the State Heritage Register, has not been identified as a heritage item, is not a potential heritage item nor is it within the vicinity of a heritage item.

The subject building is not in a heritage conservation area but is adjacent to the Transvaal Avenue Conservation Area which contains a significant group of single storey semi-detached Federation cottages.

The massing of the existing building and the massing of the proposed development have a similar visual relationship as seen from the adjoining conservation area. The proposed development provides an improved architectural form to Transvaal Avenue over what presently exists. The development, being setback more than 30metres from the nearest cottage façade, will not be visually detrimental to the character elements of the cottages and in particular, to their fine detailed facades. The backdrop to these cottages would be no worse than existing.

The proposal satisfies the provisions of Clause 27.

13. DRAFT AMENDMENTS TO STATUTORY CONTROLS

There are no relevant draft amendments applicable to this site or the development.

13. DEVELOPMENT CONTROL PLANS

13.1 Double Bay Centre Development Control Plan 2002

Preliminary (Part 1)

The objectives of the DCP are listed in Part 1.5. The original proposal was assessed against and found to satisfy these stated objectives.

The amended proposal retains the essence of the original scheme with the exception being the removal of Level 6. The original development application report concluded that the proposal satisfied the objectives of the Double Bay DCP and the amended proposal, likewise, also satisfies the stated objectives of this DCP.

Understanding the context (Part 2)

The amended proposal is similar in height and scale to the approved development and remains contextually compatible with the existing built form.

Urban structure (Part 3)

- **Key objectives and strategies**

The original proposal was found to satisfy the prescribed objectives and strategies of this DCP. The amended proposal likewise also satisfies the prescribed objectives and strategies of this DCP.

Street character (Part 4)

- **Cross Street**

The strategy for the northern side of Cross Street is to unify the presentation of the built form by incorporating a street wall design.

The amended proposal maintains a street wall design up to Level 4 with Level 5 being setback from its front. This built form is compliant with the intent of the envelope controls prescribed by the DCP.

Built form envelopes: Control drawings (Part 5)

- **Ground and first floor levels**

The amended proposal does not alter the approved building envelope for the ground and first floor levels.

Levels 3-5

The approved building envelope for levels 3-5 will essentially be retained with the exception of the infill of balconies on the eastern elevation (for units 3E3 & 4E3) and reconfiguration of centrally located units provided with winter gardens capable of being enclosed with bi-fold doors. The proposed winter gardens in some cases permit increased floor area for the centrally located units without increasing the approved building envelope.

Levels 6-8

These levels of the development are outside the prescribed envelope controls of the DCP. Notwithstanding, the envelope at levels 6, 7 & 8 are increased to Cross Street consistent with stepped building form of the original design, albeit at a level lower. The rear northern end is retained as approved which includes the removal of Level 6

The following table provides the setbacks of the upper levels from the boundaries:

Setbacks (m)	Approved*	Proposed	Control
Levels 6/7/8/9 - Front setback (South) - Rear setback (North) - Side setback (East) - Side Setback (West)	7.5/11.5/15.5/20 3.5/6.5/6.5/10 1.5/1.5/1.5/4.5 3/3/3/3	7.5/11.5/18/- 3.5/6.5/10/- 1.5/1.5/1.5/- 3/3/3/-	No controls applicable

* Figures do **NOT** include Condition C.1 which deletes Levels 6 of the original development

Development controls (Part 6)

- **Use**

The approved retail and cinema use on the ground and first floor and residential on the upper levels is retained.

The proposal satisfies the relevant criteria prescribed by the DCP.

- **Building envelopes**

	Approved	Proposed	Control	Complies
Occupiable Area (m) - Levels 1-2 (%) - Levels 3-5	100% 100%	No change No change	100% 100%	YES YES
Continuous build-to-line to Cross Street (Level 1-4)	100%	No change	100%	YES
Built form envelopes (m) Levels 1-2 - Front setback - Rear setback Levels 3-5 - Rear setback (Level 3/4/5) - Front setback (Level 3/4) - Front setback (Level 5) - Side setbacks = East (Level 3/4/5) = West (Level 3/4/5)	3 <i>1.8 & 25</i> <i>3.5/3.5/3.5</i> 3 5.5 <i>1.5/1.5/1.5</i> 3/3/3	No change No change No change No change No change No change/ <i>1.5/1.5</i> No change	3 6.5 & 12 6.5/9.5/25 3 5.5 3/3/3 3/3/3	YES <i>NO/YES</i> <i>NO/NO/NO</i> YES YES <i>NO/NO/NO</i> YES/YES/YES
Max. building depth for Levels 3-5 in metres or min. 80% of dwellings provided with cross ventilation	>80%	62%	15.6 or Min. 80%	NO
Minimum ceiling height (metres)	2.7	No change	2.7	YES

The proposed amendments do not alter the approved envelope for levels 1-5 with the exception of the infill of balconies on the eastern elevation. The new floor area aligns with the setback of the approved building form on its eastern side. The proposed development satisfies the principle of this control which is to provide “*appropriate and consistent building forms...*”

No change is proposed to the rear residential winged design to its northern side.

All dwellings have habitable rooms with a minimum floor-to-ceiling height of 2.7metres compliant with the control.

The DCP prescribes that a minimum of 80% of dwellings within a development must be provided with cross-ventilation. The amended scheme provides 62% of dwellings compliant with this control.

Though the development is numerically non-compliant with this control every habitable room in every dwelling in the development will be naturally ventilated. Furthermore, 91% of the dwellings within the complex are provided with fenestration that is directly accessible to open space and/or with an outlook.

The majority of dwellings are provided with appropriately sized balconies and fenestration with an outlook towards the Harbour, the Transvaal Avenue Conservation area or over Cross Street. Though not all dwellings will be provided with direct access to sunlight the dwellings will have a good level of amenity and provide variation of housing stock to appeal to a broader demographic that satisfies the principles of SEPP 65.

The proposal satisfies the objectives of these controls which is... *Promote building forms that allow natural day light, natural ventilation and privacy between dwellings.*

- **Height**

Site Area (3,675m ²)	Existing**	Approved*	Proposed	Control	Complies
Max. building height levels measured from existing ground level (m)	7 (22.08 Parapet) (29.43 Lift)	8 (26.2 Roof)	7 (26.675 Roof) (26.95 Lift)	5 (16.5)	NO

* Figures revised to include Condition C.1 which deletes Levels 6 of the original development (Level 6 slab to slab height of 3.2m)

** Existing Ground Level is RL 3.25

The existing building exceeds the height control both in the amount of levels and in lineal measurement.

The approved building with the imposition of Condition C.1 deleting Level 6 effectively reduced its height by 3.2m (slab to slab height). The proposed modification results in an increase to the roof level by 475mm and the lift overrun by 750mm. The increased height to the roof is a direct result of the additional accommodation on the upper most level. The additional floor area has necessitated the modified roof design.

There is no change to the approved Reduced Levels of the approved scheme as amended by Condition C.1 of the development consent which deletes Level 6.

The principle which underpins this control states: *“Encourage buildings to achieve the heights along the street and lane frontages described by the control drawings.”*

The proposed development above level 5 will continue to be setback from its primary street front and continues to recess as its height increases. The effect of this stepped building form ensures that the overall height of the development will not be readily discernible from footpath level from in and around the vicinity of the Cross Street frontage. The overall height of the proposed modifications will be 2.48m less than the height of the existing building, being the lift over-run, and 2.75m less than the maximum height of the original scheme.

The increase in height to that part of the roof and lift to the uppermost level is indented from the main building envelope below and will only be visible from a broader perspective. The proposed change to the roof and lift is an increase of 0.3% to the overall height of the approved building.

The assessment of the height of the original scheme was considered satisfactory for the reasons discussed in the original assessment report presented to the JRPP. Given that the maximum height of the proposed amendments are 2.75m lower than the original scheme and lower than the building it replaces, it is also concluded that the height is satisfactory.

- ***Building articulation***

	Approved	Proposed	Control	Complies
Levels 3-5 building articulation area				
- East	<i>Part up to 40%</i>	<i>Part up to 40%</i>	40%	<i>NO</i>
- West	Up to 40%	Up to 40%	40%	YES
- South	Up to 40%	Up to 40%	40%	YES

The DCP prescribes that the front of the development may be provided with articulation zones in order “*to achieve high quality architectural resolution, open space that overlooks the street and environmental amenity for the dwellings.*”

The articulation to the street front up to Level 5 complies with the criteria prescribed by the DCP.

The infill of balconies with habitable floor space on the eastern elevation will not significantly reduce the level of articulation to the Transvaal Avenue elevation.

The proposed amendments will ensure the building continues to be well articulated and satisfy the intent of this control.

- ***Setbacks***

The front, side and rear setbacks up to Level 5 will not be altered by the proposed modifications. The front setback of the upper levels, that is, Levels 6-8, will recess from the compliant built form to Cross Street similar to the approved stepped design. The side and rear setbacks of the upper levels will be maintained as approved.

The proposed amendments satisfy the intent of the controls.

- ***Architectural resolution***

The proposed amendments satisfy the relevant criteria prescribed by the DCP.

- ***Roof design***

The proposed altered roof satisfies the relevant criteria prescribed by the DCP.

- ***Heritage + contributory character***

The proposed amendments will satisfy the relevant criteria prescribed by the DCP.

- ***Awnings***

The proposed amendments will not alter the approved awning.

- ***Arcades, walkways and courtyards***

The proposed amendments will not alter the approved pedestrian link from Cross Street through to an open landscaped area which links onto the Galbraith Walkway to the rear. The gate and access restrictions to the Galbraith Walkway imposed by conditions of the development consent continue to apply.

- ***Outdoor eating***

The proposed amendments will not alter the approved outdoor eating areas. The outdoor eating areas form a part of the retail use and will be the subject of a separate development application.

- ***Signage and advertising***

The proposed amendments will not alter the approved signage and advertising. The cinema and retail uses and associated signage will be the subject of separate development application.

- ***Visual privacy***

There is no proposed change to the commercial component of the development or access thereto. The visual privacy impacts associated with the retail and cinema uses were assessed in the original assessment report and considered to satisfy the requirements of this control and its objectives.

The assessment on visual privacy is limited to the residential component of the amended development and the subsequent implications on adjoining property and units within the complex as follows:

Adjoining residential

The original development included screening devices and/or planters of sufficient depth to mitigate overlooking or inhibit sightlines to the private open space and internal habitable areas of adjoining development. These measures were applied to protect the privacy of the residential precinct to the north, the rear of current commercial properties and potential residential use to the east and the residential complex to the rear of the Georges Centre adjoining to the west.

The originally proposed privacy measures were inconsistently applied and any conflict in the application of privacy measures was corrected by Condition C.1 of the development consent.

The amended scheme, which includes the removal of the originally proposed Level 6, has altered the composition and orientation of some of the dwellings and the privacy measures. The principles originally applied by condition should be extended to address the amended scheme in the following instances:

- That part of the balcony west of the living room to dwelling 4S1 was required by condition to remain non-trafficable to restrict sightlines into the balcony and internal living area of the residential dwelling immediately adjoining to the west. This condition continues to apply.
- A planter or privacy screen being provided to the northern end of the east facing terrace to dwelling 4S5 to inhibit downward sightlines.

These privacy measures are recommended to be applied by **Condition C.1**. The original privacy measures that were implemented by this condition continue to apply to the amended scheme but will be required to be varied to include the deletion of Level 6 and the changes that are the subject of this application.

The variation to the composition of units includes alteration to the use of balconies which were previously accessed from a bedroom and now attached to the living room of units located on its western and eastern side (unit references W5 and E5). On the western side, there are no habitable rooms or any openable windows on the adjoining development immediately opposite the balconies. The privacy of residents immediately adjoining will be maintained. On the eastern side, the planters attached to the balconies match the depth of other previously approved planters, including those modified by condition, which inhibit downward sightlines into the open space of the commercial properties.

The additional dwelling to the uppermost level will be centrally located. Though there will be increased use associated with the increased density, the dwelling and its balconies are setback more than 25metres from any adjoining residential property and elevated approximately 22m above their ground level. This separation mitigates any detrimental impact on the privacy of adjoining residents.

Subject to condition, the proposal satisfies the principle of this control which is to...*protect the privacy of adjacent residential neighbourhoods.*

Subject residential

The dwellings within the approved complex were provided with screening devices, planters or orientated to mitigate direct overlooking of their private open space or internal habitable areas. The amended scheme, which includes the removal of the originally proposed Level 6, has altered the composition and orientation of the dwellings. The principles originally applied by conditions should be extended to address the amended scheme in the following instances:

- A privacy screen 1.8m in height be provided to the southern side of the balcony to the 1 x Bedroom dwellings on the western side of the complex identified as W5.
- The north facing fenestration to the dwellings identified as 3S1, 3S6, 4S1 and 5S1 shall be fitted with fixed and obscure glazing to a height up to 1.7m above finished floor level
- The balcony west of the living room to dwelling 4S1 shall be non-trafficable

These privacy measures are recommended to be applied by **Condition C.1**. The original privacy measures that were implemented by this condition continue to apply to the amended scheme but will be required to be varied to include the deletion of Level 6 and the changes that are the subject of this application.

Subject to condition, the proposal satisfies the principle of this control which is to...*ensure residential apartments and private open spaces have adequate visual privacy.*

- ***Acoustic privacy***

There is no proposed change to the approved commercial component of the development or access thereto. The acoustic impacts associated with the retail and cinema uses were assessed in the original assessment report and found to satisfy the requirements of this control and its objectives.

The assessment on acoustic privacy is limited to the residential component of the amended development and the subsequent implications on adjoining property and units within the complex as follows:

Adjoining Residential

The level of noise generated from the residential use of the development represents a significant acoustic improvement for adjoining residents from the current commercial use of the site as a hotel.

The variation to balcony sizes and dwelling composition will not cause any detrimental impact on the aural privacy of adjoining residents given the size, setback and elevation of the open

space together with the recommended screening measures as discussed above. Furthermore, the residential component of the development is an expected use within the zone.

Subject to condition, the proposal satisfies the principle of this control which is to...*protect the acoustic privacy of residential neighbours adjacent to the centre.*

Subject residential dwellings

Fenestration and balconies within the subject development are either provided or recommended to be provided with privacy screens and/or planters or are appropriately positioned so that they provide a reasonable level of acoustic privacy for the subject residents.

The developer also has the option of installing double glazed fenestration to provide a high standard of acoustic comfort for the bedrooms of the dwellings. Notwithstanding this, the proposed dwellings have been appropriately designed and located having regard to the location of adjoining noise sources.

Subject to condition, the proposal satisfies the principle of this control which is to...*ensure adequate acoustic privacy to residential apartments and private open spaces in the centre.*

- ***Landscaped open space***
No resultant or proposed change to the approved scheme.
- ***Private open space***

	Approved	Proposed	Control	Complies
Min. private open space (m ²)				
- Small dwelling	<8 for 4 dwellings	<8 for 9 dwellings	8	NO
- Medium dwelling	<12 for 2 dwellings	<12 for 4 dwellings	12	NO
- Large dwelling	>16	>16	16	YES
Min. permissible depth (m)	>1.8	>1.8	1.8	YES

A total of 13 of the 74 dwellings are provided with insufficient private open space according to the requirements of the DCP.

The extent of non-compliance with the prescribed size of the open space is relatively minor and is a result of the definition of small and medium dwellings. Notwithstanding the numerical discrepancy, the majority of balconies for the dwellings are provided with an outlook over Cross Street, and/or Sydney Harbour or the Transvaal Avenue Conservation Area. These dwelling have a good level of amenity and provide variation of housing stock to appeal to a broader demographic satisfying the principles of SEPP 65.

The proposal nevertheless satisfies the intent of the design principle which is to “*ensure every dwelling ...has direct access to private open space.*”

The balance of the proposed development satisfies the relevant criteria prescribed by the DCP.

- ***Energy efficiency and conservation***
The application has been accompanied by an amended BASIX Certificate and an ABSA Assessors Certificate ensuring the design of the development, together with its finishes, satisfies current building legislation for energy efficient development.

The conditions of the development consent that reference the BASIX Certificate and ABSA Certificate will need to be modified to reflect the amended certificates (**see recommendation**).

The proposal satisfies the relevant objectives of the DCP.

- **Natural daylight and ventilation**

The DCP repeats the control requiring a minimum of 80% of dwellings within a development must be provided with cross-ventilation. As discussed, the amended scheme provides 62% of dwellings compliant with this control.

As previously discussed, all the dwellings will have a good level of amenity with habitable rooms naturally ventilated and naturally lit. The variation of housing stock also satisfies the principles of SEPP 65.

The proposal satisfies the objectives of this controls which is.. *buildings should be designed to achieve natural ventilation and ...naturally lit habitable rooms.*

- **Solar access**

	Approved	Proposed	Control	Complies
Hours of solar access to southern footpath of Cross Street between 12pm and 2pm in mid-winter	Preserve Solar Access	Preserve Solar Access	Preserve Solar Access	YES
Hours of solar access to habitable rooms and private open space of adjoining properties between 9am and 3pm in mid-winter	>4	>4	4	YES
Hours of solar access to habitable rooms and private open space of development between 9am and 3pm in mid-winter	<i>23 of 74 dwellings with <3</i>	<i>28 of 74 dwellings with <3</i>	3	<i>NO</i>

The development is located to the south of the adjoining residential precinct and as such, maintains solar access to the private open space and habitable living areas of these residential properties.

Immediately adjoining the eastern boundary is a commercial area that currently contains no residential dwelling and forms the rear of the Transvaal Avenue Heritage Conservation Area. To the rear of these cottages is their open space, which immediately adjoins the subject site. Due to the orientation of the subject and these adjoining sites, any compliant building envelope limits solar access to these existing rear facing open spaces. Notwithstanding, solar access to these open spaces is maintained from 9am to 12pm, being 3hours, on June 22. Though non-compliant with the control by 1 hour, the main contributing factor which causes the non-compliance is the orientation of the sites. Furthermore, the actual additional impact on these open spaces is negligible. Nevertheless, the proposal satisfies the principle of this control which is *to minimise overshadowing of adjoining properties.*

Immediately adjoining to the west are the dwellings and communal open space of the residential component of the Georges Centre at No.45 Cross Street. All private open spaces and fenestration of these dwellings is provided with solar access from 11am to 3pm on June 22, compliant with the prescribed controls.

The setback of the upper levels of the development from Cross Street maintains solar access to the footpath on the southern side of Cross Street from 12pm to 2pm on June 22 in accordance with the requirements of the control.

The amended proposal minimises overshadowing of adjoining property and public accessible space, thus satisfying the principles of these controls.

Due to the orientation of some of the dwellings, they have limited amount of solar access which results in a non-compliance with the numerical control. The original assessment concluded that the dwellings are provided with appropriately sized balconies and fenestration with an outlook over the Harbour, Cross Street or the Transvaal Conservation area. The dwellings will be

afforded with a good level of amenity and provide variation of housing stock that satisfies the principles of SEPP 65.

The amended scheme maintains the level of amenity afforded to the dwellings and satisfies the intent of the control.

- ***Glazing***

The proposal satisfies the relevant criteria prescribed by the DCP.

- ***Water conservation***

The amended Sustainability Report submitted with the application indicates the proposal will be provided with alternate water supplies for reticulation of reclaimed water, rainwater storage and re-use and grey water storage and reuse.

The proposal satisfies the principles of this control.

- ***Stormwater and pollution minimisation***

The proposal satisfies the relevant criteria prescribed by the DCP subject to standard conditions.

- ***Waste minimisation***

The proposal satisfies the relevant criteria prescribed by the DCP.

- ***Environmentally sustainable building materials***

An amended Sustainability Report was submitted with the application that provides ESD initiatives for the development with recommendations for appropriate materials and finishes to maximise efficiency with regard to heating and ventilation.

The proposal satisfies the relevant criteria prescribed by the DCP.

- ***Geotechnology and hydrogeology***

No resultant or proposed change to the approved scheme.

- ***Pedestrian access and mobility***

No resultant or proposed change to the approved scheme.

- ***On-site parking***

The assessment of the original proposed mixed commercial and residential complex, including the cinemas, indicated that it has a car parking demand similar to the existing Hotel use.

A summation of the impact on car parking of the original proposal concludes:

- *Public car parking in the centre will be able to meet demand because peak cinema usage will mostly occur after business hours*
- *Double Bay is served with three public car parks and excellent public transport services*
- *The potential for traffic conflict from the existing combined access driveway from the Georges Centre will be reduced as the number of parking spaces allocated to the existing basement level will be reduced*
- *Retail, restaurant and cinema trips to the centre will overlap, and*
- *The basement will be capable of accommodating the parking demand associated with the retail and residential uses.*

The basement car park is provided with 154 car parking spaces. The original assessment recommended that **132 car parking spaces** are allocated to the residential component of the development, including visitor parking, with the balance of **22 car parking spaces** allocated to

the staff of the commercial component of the development. Condition I.13 of the development consent enforces these requirements.

Condition C.1 of the development consent requires the deletion of Level 6 which varies the dwelling numbers within the development and subsequently varies the composition of car parking spaces within the basement car park. The resultant loss of 10 dwellings from Level 6 (ie. 3 x 3 Bedroom, 5 x 2 Bedroom and 2 x 1 Bedroom) results in a reduction of 16 car parking spaces based on the car parking generation rate prescribed by this DCP.

The amended proposal restores the number of dwellings within the residential component of the development to that originally assessed however varies the composition of dwelling sizes. The variation to the composition of dwellings subsequently varies the number of car parking spaces based on the car parking generation rate.

A practical approach was applied in the original development with the allocation of car parking spaces within the existing basement. Access to the basement is provided via a shared driveway and easement through the Georges Centre adjoining. It would be impractical to open the basement level for general parking as accessing and traversing the basement levels would cause conflict between residents and the public. Likewise, managing the restricted access gate on Cross Street will cause traffic and pedestrian conflict. In this regard, it is recommended the additional parking spaces resulting from the varied composition of dwelling numbers be allocated to the residential component of the development.

The original assessment summarised in part above concluded that the basement car park and the surrounding road network could cater for the proposed mixed use development. The amended proposal, based on the car parking generation rate, is a less intensive form of development than that originally assessed.

The commercial centre remains capable of accommodating the car parking generated by the development which is further assisted by the reduction in car parking generation as a result of this amended scheme.

The development consent is recommended to be varied to reflect the car parking space allocation as mentioned above (**see Condition I.13**).

- ***Vehicular access***

No resultant or proposed change to the approved scheme.

- ***Site facilities***

For the development to function the following facilities are required to be provided:

Loading

No resultant or proposed change to the approved scheme.

Garbage (Residential)

No resultant or proposed change to the approved scheme.

Garbage (Commercial)

No resultant or proposed change to the approved scheme.

Garbage (General)

No resultant or proposed change to the approved scheme.

Mailboxes

No resultant or proposed change to the approved scheme.

Laundry Facilities

Each dwelling is provided with a laundry.

- ***Concessions for cultural facilities (Part 6.8.1)***

The proposed cinema is according to the DCP considered to be a cultural facility.

The DCP prescribes concessions for building envelopes with the exception of height and FSR requirements.

The concessions for setbacks were applied to the Cinema component of the development only.

No further concessions apply to the residential component of the development.

13.2 Car parking DCP 2011

The assessment of the original proposal concluded that the existing basement car park, the loading zones on Cross Street and the road network can cater for the proposed development.

The amended proposal does not alter the layout or composition of the basement car park and remains as originally approved.

13.3 Woollahra Access

The proposal remains fully accessible to people with a disability and complies with the relevant requirements of the BCA as well as Australian Standard AS1428.2.

The proposal provides satisfactory access within the building in accordance with the requirements prescribed by the DCP.

13.4 Other DCPs, codes and policies

- **Section 94A Contributions Plan 2011**

A **Section 94A** Contribution applied to the original development and was imposed via a condition of the development consent.

Pursuant to the provisions of the Plan, a further contribution is not required.

14. APPLICABLE REGULATIONS

The proposal complies by condition with Australian Standard AS 2601-1991: *The demolition of structures*.

The proposal also complies by condition with the relevant provisions of the Building Code of Australia which includes the upgrade of the existing car park basement levels. These requirements and conditions continue to apply to the amended scheme.

15. THE LIKELY IMPACTS OF THE PROPOSAL

15.1 Views

The Double Bay Centre DCP has no control or criteria for consideration in relation to view loss except for a reference in the objectives which is “*to encourage view sharing*”. Notwithstanding, the impact on views is a relevant consideration under Section 79 of the Environmental Planning and Assessment Act 1979. In assessing view impact, the Land & Environment Court, in *Tenacity Consulting Pty Ltd v Warringah Council* (2004), adopted planning principle for assessing view impacts.

These planning principles were applied in the assessment of the original development that was presented to the JRPP for determination. The summation of the original assessment concluded:

“The degree of the view impacts is not unreasonable in this circumstance and the proposal would satisfy the criteria set out by the Court.”

In response to the advertising/notification of the amended proposal, residents up to and on the ridge that surrounds Double Bay have again raised concern regarding view loss. In assessing the reasonableness of the proposal that is causing the view impact the following points are made:

- The scale, bulk and height of the amended proposal are less than that originally proposed.
- The view assessment of the original proposal concluded the planning principles established by the Court were satisfied.
- The scale, bulk and height of the amended proposal are less than the original proposal and are similar to the existing building that is to be demolished.
- The amended proposal does not result in any detrimental impact on existing views.

In light of the above points, it is considered that the proposed s96 application represents a significant improvement on the original proposal which satisfied the view loss principles in *Tenacity Consulting v Warringah Council* (2004).

The proposed modified floor area of Level 7 necessitates a change to the roof form resulting in an increase of the approved building height by 475mm (roof) and 750mm (lift overrun). The additional impact associated with the increase will be negligible when viewed from properties up to and on the ridge that surrounds Double Bay.

The proposed modifications satisfy the intent of Condition C.1(a) imposed by JRPP despite the increased height. Furthermore, the degree of the view loss is not unreasonable and thereby satisfies the criteria set out by the Court.

15.2 General

The original landscape plan, which included references to swimming pool on the uppermost level, will need to be amended to relate to the amended scheme. A new landscape plan and the reference to the original swimming pool notation is included in the recommendation (**see Condition C.1**).

All other likely impacts of the proposal have been considered elsewhere in the report or are not considered significant to warrant further assessment.

16. THE SUITABILITY OF THE SITE

The site is suitable for the proposed development subject to compliance with the recommended conditions.

17. SUBMISSIONS

The proposal was advertised and notified in accordance with Council's Advertising and Notifications DCP for 14 days from 16 May 2012 to 30 May 2012. Due to a technical error in the notification process, the proposal was re-advertised and re-notified in accordance with Council's Advertising and Notifications DCP for 14 days from 15 June 2012 to 29 June 2012. At the time of completing this report, there were 83 submissions received. A detailed list of submissions is attached as **Annexure 3**.

The following issues were raised in the submissions against the proposed development:

- *Non-compliance with the relevant planning controls*
- *Over-development of the site*
- *Too high*
- *Too big*
- *Poor architectural form*
- *Loss of views*
- *Loss of privacy*
- *Development will create the beginnings of another Kings Cross*
- *Increase in traffic congestion*
- *Increased overshadowing*
- *Spoil the amenity of the Double Bay character*
- *Privacy screening measures have not been observed*
- *Restrict conversion of commercial component to residential use*
- *Development will result in an increase risk of depression and mental illness*
- *Return Hotel use*
- *Increase by stealth to original scheme by continual amendments*
- *Drawings show outdoor dining for Cinema patrons thus impacting on neighbouring residential amenity*
- *Precedence*
- *Misleading and insufficient information submitted*

The issues raised have been addressed under the relevant heads of consideration in the report. Other issues raised have been addressed as follows:

The objectors raised the following issues:

- **Precedence**

A number of resident submissions included reference to the non-compliances with Council's controls and the subsequent *precedence* approving a non-complying development creates.

In this case there are particular and unique circumstances relating to the scale, height and bulk of the existing building which lead to a conclusion that strict application of controls would not be consistent with the objectives of the EPA Act as specified in s.5(a)(i) and(ii). These unique circumstances do not apply in the same way to other sites within the Double Bay commercial centre. Therefore, approval of this application does not create a precedent for the approval of similarly scaled developments on other sites.

- **Misleading and insufficient information submitted**

All necessary information has been submitted in accordance with Council's requirements in order to enable the determining authority to make an informed and accurate determination of the application.

- **Conversion of Commercial component including Cinema use to residential**

There are no enforceable restrictions or controls applicable that would prohibit the applicant from proposing a change to the use of the development should approval be granted.

The mechanism available to amend any approved development application is provided under Section 96 of the Environmental Planning and Assessment Act 1979. Any amendment must relate to aspects of the approved development and is required to be relative to the scope of the approved works. The criteria in determining an amended design is that it must be *substantially the same development to that which was originally approved*.

Should any amended design not satisfy the criteria prescribed by Section 96, a new development application would need to be submitted. The new development application would be considered on its merits and assessed against the relevant considerations prescribed by Section 79C of the Environmental Planning and Assessment Act 1979.

While there are no planning mechanisms available to ensure that the cinemas are maintained there are a number of factors which indicate that, if approval is granted and the cinemas are constructed, they are likely to be maintained. These factors are that:

- The building has been purpose designed to accommodate the cinemas
- The cinemas cannot be readily converted for retail, residential or commercial uses
- Significant costs would be involved in re-engineering the building to remove the cinemas
- A cinema operator is ready to lease the space and operate the cinemas
- The cinema operator has undertaken detailed market studies to confirm the viability of the cinema operation.

- **Development should revert back to hotel use**

There is no legal requirement to reinstate the existing hotel use.

- **Development will create the beginnings of another Kings Cross**

This is not a relevant consideration under Section 79 of the Environmental Planning and Assessment Act 1979.

- **Development will result in an increase risk of depression and mental illness**

This is not a relevant consideration under Section 79 of the Environmental Planning and Assessment Act 1979.

- **Increase by stealth to original scheme by continual amendments**

There is no requirement in the Environmental Planning and Assessment Act 1979 that restricts or limits the applicant from lodging a Section 96 Applications to amend the original approved scheme. Each application that is to be submitted must be assessed on its merits against the relevant considerations prescribed by the Act.

- **Drawings show outdoor dining for Cinema patrons thus impacting on neighbouring residential amenity**

The application that is the subject of this report does not show any change to the commercial component of the development, being the ground and first floor retail and cinema complex. The use of the retail space and cinema complex will be the subject of separate development applications. The use of the commercial spaces are retained as originally approved and as restricted by the conditions of the development consent which continue to apply.

18. CHANGES TO CONDITION C.1

The amended proposal has incorporated some of the design changes required by Condition C.1 of the development consent. These design changes will require variation to the original condition to reflect the current amended scheme which is itemized in part as follows:

- Condition C.1(a) – Level 6 has been removed from the amended plans. Original Condition C.1(a) has been deleted.
- Condition C.1(f) – The triangular shaped balconies on the eastern elevation of levels 6 & 7 have been deleted. Original Condition C.1(f) has been deleted.
- Condition C.1(g) – This condition has been modified as level 8 has been removed (refer to Condition C.1(e)).
- Condition C.1(h) – This condition has been modified to specify Unit number 4S1. The intent of the condition to delete the trafficable area west of the living room remains unchanged.
- Condition C.1 (k) – This condition has been modified to require the applicant to submit a new landscape plan to Council for approval prior to CC. The intent of this condition was to remove the swimming pools from the original landscape plan which remains unchanged.

The balance of the terms of Condition C.1 remains (**see Recommendation**).

19. CONCLUSION - THE PUBLIC INTEREST

After an assessment of the development against the relevant considerations under s79C of the *Environmental Planning and Assessment Act 1979*, State Environmental Planning Policy 65, Woollahra Local Environmental Plan 1995 and the Double Bay Centre Development Control Plan 2002 it is concluded that the proposed development would satisfy the objectives of those controls and would be an appropriate development for the site.

20. DISCLOSURE STATEMENTS

Under S.147 of the Environmental Planning and Assessment Act, 1979 there have been no disclosure statements regarding political donations or gifts made to any councillor or gifts made to any council employee submitted with this development application by either the applicant or any person who made a submission.

21. RECOMMENDATION: Pursuant to Section 80(1) of the Environmental Planning and Assessment Act, 1979

THAT the Joint Regional Planning Panel, as the consent authority, modify Development Application 671/2010 for the demolition of the existing building from ground floor level, retention of the basement carpark for 154 vehicles, construction of a mixed use development with retail tenancies and a five (5) cinema complex for approximately 600 people which occupies the ground and first floor levels and six (6) levels of residential above containing 64 units (a mix of one, two and three bedrooms) on land at 33 Cross Street Double Bay, in the following manner:

1. Add the following condition(s) to the Development Consent:

A.3a Approved Plans and supporting documents

Those with the benefit of this consent must carry out all work and maintain the use and works in accordance with the plans and supporting documents listed below as submitted by the Applicant and to which is affixed a Council stamp “Approved DA Plans” unless modified by any following condition. Where the plans relate to alterations or additions only those works shown in colour or highlighted are approved.

Reference	Description	Author/Drawn	Date(s)
203.2/1, 203.3/1, 203.4/1, 204/1, 205/1, 206/1, 208/1, 302/1, 303/1 & 400/1	Architectural Plans	PTW Architects	30.03.2012
345349M_05	BASIX Certificate	Department of Planning	28.03.2012
610.11271-R1 Revision 01	Thermal Comfort Assessment	SLR Consulting Australia Pty Ltd	28.03.2012

Note: Warning to Accredited Certifiers – You should always insist on sighting the original Council stamped approved plans. You should not rely solely upon the plan reference numbers in this condition. Should the applicant not be able to provide you with the original copy Council will provide you with access to its files so you may review our original copy of the approved plan.

Note: These plans and supporting documentation may be subject to conditions imposed under section 80A(1)(g) of the *Act* modifying or amending the development (refer to conditions which must be satisfied prior to the issue of any *Construction Certificate*.)

Standard Condition: A5

2. Amend the following condition(s) of the Development Consent:

C.1 Modification of details of the development (s80A(1)(g) of the Act)

The *approved plans* and the *Construction Certificate* plans and specification, required to be submitted to the *Certifying Authority* pursuant to clause 139 of the *Regulation*, must detail the following amendments:

- The fixed vertical angled louvres as depicted on SK drawing No.971 shall be provided to all fenestration and to the western side of balconies on the western elevation between Level 3 and 7 inclusive that are positioned forward of any north facing fenestration at No.45 Cross Street.
- The privacy screen fence to the western boundary on Level 2 shall be extended to the northern end of the northern balcony.
- All fenestration to the eastern elevation immediately adjoining the Transvaal Avenue cottages shall be provided with screening devices as depicted on SK drawing 970.
- The planters to the balconies to the north east corner shall be increased in width to 1500mm on their eastern side.
- The planter to the western side of Level 7 shall have a minimum depth of 1.5metres.
- The balcony west of the external wall of the living room to dwelling 4S1 shall be non-trafficable.

- g) A secured access gate, 1.8metres in height, shall be provided to the rear of the landscaped open space to limit access to the Galbraith walkway.
- h) The awning to Cross Street shall be extended to its east and west boundary. The extended awning shall be non-trafficable.
- i) An amended landscape plan shall be submitted for Levels 2-7, which must remove reference to the swimming pools, and must be approved by Council's Trees and Landscape Officer.
- j) A privacy screen 1.8m in height shall be provided to the southern side of the balcony to the dwellings on the western side of the complex identified as W5.
- k) The north facing fenestration to the dwellings identified as 3S1, 3S6, 4S1 and 5S1 shall be fitted with fixed and obscure glazing to a minimum height of 1.7m above finished floor level.
- l) A privacy screen 1.8m in height or a planter 1.5m in depth is to be provided on the northern side of the eastern terrace to dwelling 4S5.

Note: The effect of this condition is that it requires design changes and/or further information to be provided with the *Construction Certificate* drawings and specifications to address specific issues identified during assessment under section 79C of the *Act*.

Note: Clause 146 of the *Regulation* prohibits the issue of any *Construction Certificate* subject to this condition unless the *Certifying Authority* is satisfied that the condition has been complied with.

Note: Clause 145 of the *Regulation* prohibits the issue of any *Construction Certificate* that is inconsistent with this consent.

Standard Condition: C4

C.3 BASIX commitments

The *applicant* must submit to the *Certifying Authority* *BASIX Certificate* No.345349M_05 with any application for a *Construction Certificate*.

Note: Where there is any proposed change in the BASIX commitments the applicant must submit of a new *BASIX Certificate* to the *Certifying Authority* and Council. If any proposed change in the BASIX commitments are inconsistent with development consent (See: Clauses 145 and 146 of the *Regulation*) the applicant will be required to submit an amended development application to *Council* pursuant to section 96 of the *Act*.

All commitments in the *BASIX Certificate* must be shown on the *Construction Certificate* plans and specifications prior to the issue of any *Construction Certificate*.

Note: Clause 145(1)(a1) of the *Environmental Planning & Assessment Regulation* 2000 provides: "A certifying authority must not issue a construction certificate for building work unless it is satisfied of the following matters: (a1) that the plans and specifications for the building include such matters as each relevant BASIX certificate requires,"

Standard Condition: C7

H.1 Fulfillment of BASIX commitments – Clause 154B of the Regulation

All BASIX commitments must be effected in accordance with the BASIX Certificate No.345349M_05.

Note: Clause 154B(2) of the *Environmental Planning & Assessment Regulation* 2000 provides: "A *certifying authority* must not issue a final occupation certificate for a BASIX affected building to which this clause applies unless it is satisfied that each of the commitments whose fulfilment it is required to monitor has been fulfilled."

Standard Condition: H7

I.1 Maintenance of BASIX commitments

All BASIX commitments must be maintained in accordance with the BASIX Certificate No.345349M_05.

Note: This condition affects successors in title with the intent that environmental sustainability measures must be maintained for the life of development under this consent.
Standard Condition: I7

I.13 Provision for off-street car parking

The owner and occupier, in compliance with AS/NZS 2890.1:2004: Parking facilities off-street car parking, must maintain access to off-street parking as follows:

(Mixed Commercial/Residential)	Number of spaces
1 x Bedroom dwellings (36 dwellings)	1 space per dwelling (Total 36)
2 x Bedroom dwellings (17 dwellings)	1.5 spaces per dwelling (Total 26)
3 x Bedroom Dwellings (23 dwellings)	2 spaces per dwelling (Total 46)
Residential + Visitor Parking	24 spaces
Commercial (Retail and Cinema staff only)	22 Spaces

This condition has been imposed to ensure adequate on site parking is maintained.

Standard Condition: I4

Mr Dimitri Lukas
SENIOR ASSESSMENT OFFICER

Mr David Waghorn
TEAM LEADER

ANNEXURES

1. Plans and elevation
2. Urban Design Planner Referral response
3. List of submissions