

OUR REF: 18005

4 June 2021

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**Attention: Mr Wilson Perdigao**

Dear Wilson,

## RESPONSE TO SUBMISSIONS NOS. 19-27 CROSS STREET, DOUBLE BAY (DA 321/2020)

Thank you for the opportunity to provide amended plans and additional material for the Development Application (DA 321/2020) for the proposed demolition of the existing building and construction of a shop-top housing development at Nos. 19-27 Cross Street, Double Bay.

The proposed works will provide an appropriate scale with consideration to the multi-storey 'InterContinental Hotel Double Bay' on the western adjacent side, and the approved and new mixed-use developments to the southern side of Cross Street. The large ground floor plaza will ensure appropriate separation from the Transvaal Avenue Heritage Conservation Area (HCA) whilst providing a lively space for public circulation and outdoor dining. The development will provide a mix of retail/business uses and residential accommodation that serves the community's needs. The unit mix will support a range of lifestyles and abilities, with the incorporation of adaptable units and parking spaces.

In this letter we will respond to the public submissions received by Council. This letter is to be read in conjunction with the Schedule of Changes Letter and Response to Council Assessment Report Letter, also prepared by GSA Planning; the amended architectural plans; and accompanying consultant material.

### 1.0 RESPONSE TO SUBMISSIONS

A total of seven submissions were received in response to the DA. It appears as though several of the submissions have misunderstood the site and relevant controls. In light of the amendments to the proposal, several of the key issues raised in the submissions have now been addressed. The key matters raised in the submissions are summarised as follows:

- Height and Floor Space Ratio (FSR);
- Solar Access;
- Privacy;
- Setbacks;
- Apartment Design Guide (ADG);
- Parking; and
- Acid Sulfate Soils and Groundwater.

To assist your assessment, these matters will be individually responded to below.

## 1.1 Height and Floor Space Ratio (FSR)

Various comments included in the submissions claimed that the height and FSR non-compliances were excessive and stated that the Clause 4.6 requests should not be accepted by Council. A number of the submissions also expressed concerns regarding the reduction in commercial floor space when compared to the existing building.

### Height

Council's LEP prescribes a 14.7m maximum height for the site. The amended six-storey development will result in a maximum 2m reduction compared to what was originally proposed, and includes setbacks at Level 4 and 5 to provide a four storey street wall to Cross Street. This is considered appropriate in the given context, will integrate well into the existing and future streetscape and will ensure continued solar access to the public domain. The proposed height is also similar to recent approvals on Cross Street including as Nos. 16-18 Cross Street, Nos. 20-26 Cross Street and Nos. 28-34 Cross Street; and is significantly less than the InterContinental Hotel Double Bay, located adjacent to the site.

The submission received from the Double Bay Residents' Association imply the height and scale of the adjoining hotel is less relevant to consider given it was approved prior to WLEP 2014, however it is an existing built form which is a key element in the Cross Street streetscape and should be considered with regard to future development. Further, there is a claim that the Transvaal Avenue HCA is a 'separate zone' to which the proposal does not provide a transition to, which is incorrect. It is not a separate zone, but rather a conservation area. In any case, the proposed massing of the built form allows an open north-facing plaza to provide separation and transition from the proposed building to the terraces to the north. This results in a superior outcome in comparison to a DCP compliant building envelope which would result in a taller solid wall to the adjoining terrace, with practically no transition between the two built forms or the HCA to be readily seen by pedestrians. In addition, the reduction in height and scale in the amended scheme will improve solar access to surrounding development and the public domain.

Further discussion in relation to the height being consistent with the objectives of the clause and zone, and sufficient environmental planning grounds, are contained in the Clause 4.6 Application to Vary a Development Standard submitted with the DA. The key arguments contained in the Clause 4.6 stated, inter alia:

- *The proposed height facilitates a development consistent with the planning objectives of the area and density of the B2 Local Centre Zone;*
- *The proposed alterations and additions above the height control will be compatible with nearby and future development;*
- *The increased height will improve the capacity and potential of the site, whilst maintaining amenity for nearby development; and*
- *The proposal improves the site in accordance with Object (c) of the Environmental Planning and Assessment Act 1979, to "promote the orderly and economic use and development of land".*

Accordingly, the variation to the height standard is, in our opinion, appropriate in this particular case, will provide amenity to adjacent development and the public domain, and has sufficient environmental planning grounds to be accepted by Council.

### FSR

Council's LEP prescribes a maximum FSR of 2.5:1 which amounts to a maximum GFA of 3,335m<sup>2</sup>. The proposal has been amended to offer a reduced GFA of 136m<sup>2</sup> (from original DA 4,796m<sup>2</sup> to amended scheme 4,660m<sup>2</sup>), and reduction to FSR from 3.59:1 to 3.49:1. The reduced departure from the FSR standard is appropriate in the context as it is similar to recent approvals in the area, including Nos. 16-18 Cross Street, Nos. 20-26 Cross Street and Nos. 28-34 Cross Street; is significantly less than that of the InterContinental Hotel; and will provide sympathetically-designed retail and residential space.

In response to the objections received citing the FSR is not consistent with the objective of the standard, does not provide sufficient environmental planning grounds, and the massing does not align with the DCP, we reiterate that the amended design has taken into consideration the bulk and scale in relation to the Transvaal Avenue HCA and Cross Street streetscape. The reduction in FSR, including pulling back the northern building line further from the adjoining terrace, increasing the upper level setbacks to Cross Street, and an overall reduction in the building bulk, will enhance visual curtilage to the HCA and provide greater amenity and solar access to surrounding development and the public domain in comparison to the originally proposed scheme.

Further discussion in relation to the FSR being consistent with the objectives of the clause and zone, and sufficient environmental planning grounds, are contained in the Clause 4.6 Application to Vary a Development Standard submitted with the DA. The key arguments contained in the Clause 4.6 stated, inter alia:

- *The proposed FSR facilitates a development consistent with the planning objectives and density of the area;*
- *The proposed FSR will facilitate a development that is compatible in bulk and scale with nearby and future development;*
- *The additional FSR will improve the capacity and potential for the site, whilst maintaining amenity for nearby development; and*
- *The proposal improves the site in accordance with Object (c) of the Environmental Planning and Assessment Act 1979, to “promote the orderly and economic use and development of land”.*

Accordingly, the variation to the FSR standard is, in our opinion, appropriate in this particular case, will provide amenity to adjacent development and the public domain, and has sufficient environmental planning grounds to be accepted by Council.

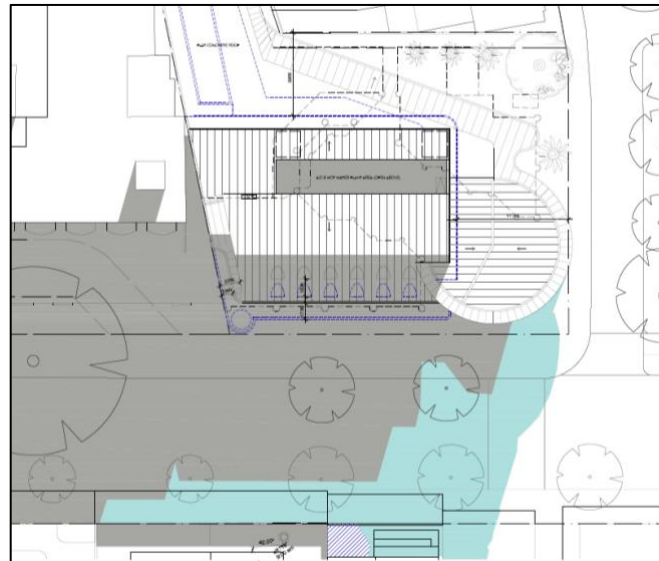
### **Commercial Floor Space**

Some submissions raised concerns regarding the reduction of commercial floorspace. The existing development included ground-floor retail and first-floor retail and office space. The amended floor plans propose a total retail floor space of 617m<sup>2</sup> across 4 separate tenancies and a plaza at the ground floor level. By providing high-quality retail floor space with tenancies directly addressing Cross Street and the thoughtfully designed plaza which includes outdoor dining, the proposal will contribute to Double Bay’s vibrant street life, activate the streetscape and maintain solar access, whilst providing quality residential accommodation at the levels above. Increasing residential accommodation is a key consideration as per the Greater Sydney Commission’s ‘Eastern City District Plan’, to which the proposal responds.

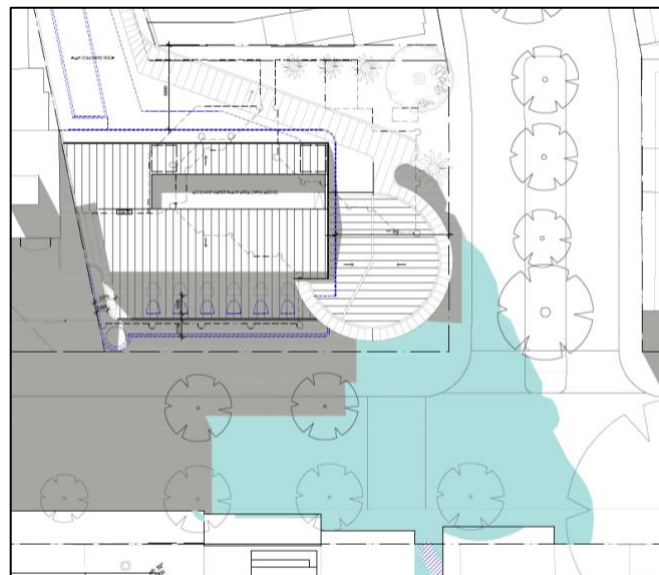
## **1.2 Solar Access**

Several of the submissions raise concerns regarding solar access to the proposed plaza, surrounding buildings and the public domain. One submission seems to have misunderstood Council’s shadow diagram requirements and suggests that the shadow diagrams submitted with the DA are insufficient.

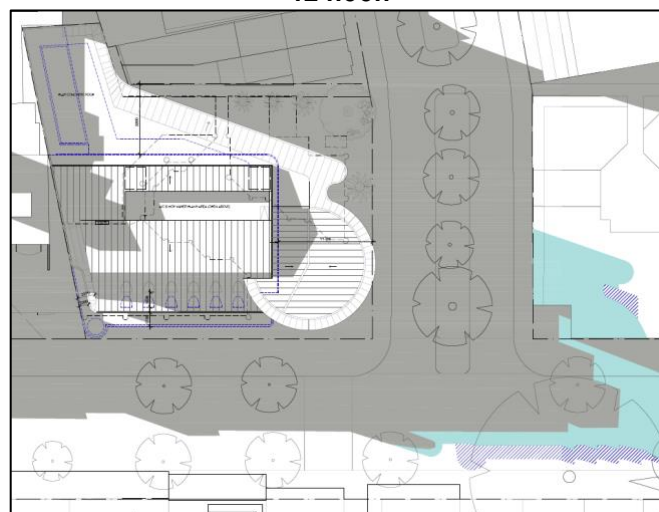
Council’s DCP states that solar access should be preserved to the footpath on the southern side of Cross Street and that development should comply with the control drawings to ensure adequate solar access to neighbouring properties. The proposal has been designed to maximise solar access to the north-facing plaza, the southern side of Cross Street and neighbouring properties. As per the shadow diagrams below, solar access will be maintained to the ground floor plaza and the neighbouring properties on Transvaal Avenue. Solar access is generally maintained to the southern side of Cross Street. With the increased setback to the upper levels, an amended roof form and a reduction in overall building height included in the amended plans, solar access to the southern side of Cross Street will be increased when compared to the original DA scheme (see **Figure 1** on the following page). Solar access is further discussed in the SEE submitted with the DA.



9am






12 noon



3pm

Source: Luigi Rosselli Pty Ltd  
**Figure 1: Shadow Diagrams**

LEGEND	
	existing shadows
	additional shadows
	reduction in overshadowing by proposed modifications

The shadow diagrams submitted with the DA include horizontal and vertical shadows cast at the winter solstice (June 21) at 9am, 12pm and 3pm, as per Council's DA Guide. Further, hourly sun eye diagrams between 9am and 3pm have been prepared by the architect.

Accordingly, the proposal will provide solar access to the ground floor plaza and maintain solar access to neighbouring properties on Transvaal Avenue. The amended plans will improve solar access to the southern side of Cross Street when compared to the original DA scheme to provide appropriate solar access to the public domain.

### 1.3 Setbacks

The submission from the Double Bay Resident's Association raises concerns regarding setbacks to Cross Street and Transvaal Avenue.

The DCP prescribes a 3m setback to Transvaal Avenue and 3.5m setback to Cross Street at ground floor level, and an additional 1.8m to both streets at upper levels. Balconies must also project no further than 1.2m into the front setback. Council's nominated setback controls in the Assessment Report appear to differ from these, so for clarity we include an excerpt from D5.5.7 of the Double Bay DCP below, to be read in conjunction with Control Drawing 3 of the DCP:

*Ground floor: Zero front setback to Bay Street. 3m setback on Transvaal Avenue except for Nos. 18-20 which must be setback to align with adjoining cottages in the HCA. 3.5m on Cross Street between Bay Street and Transvaal Avenue.*

*Levels 2-5: Setbacks to match ground floor except at the corner of Cross Street and Transvaal Avenue as illustrated. Balconies on levels 3 and 4 can project 1.2m into the setback, except balconies on level 4 if it is the top level.*

While the proposal does not achieve these numerical controls, the built form and setbacks respond to the existing, new and approved built forms along Cross Street, and the size, shape and context of the corner site. The departure from the setback control is largely due to the curved portions of the façade which create an important book end to the eastern part of Cross Street, and a soft line of separation between the proposal and the Transvaal Avenue HCA. Nevertheless, the proposal has been amended to reduce the Level 4 and 5 Cross Street setback with a further reduction in GFA overall.

The curved elements of the façade contribute to the streetscape, will maintain public and neighbouring amenity, and their undulating form will soften the rectilinear shape of the InterContinental Hotel. Accordingly, in our opinion, departure from the setback controls is appropriate in this instance and will produce a more desirable outcome than if the proposal was to strictly comply.

### 1.4 Apartment Design Guide (ADG)

In their submission, the Double Bay Resident's Association suggest that the proposal does not meet a number of design guidelines in the Apartment Design Guide (ADG). However, it appears that they have misunderstood the nature of the site and the relevant controls. The design guidelines discussed in their submission include building separation, cross ventilation and environmental performance.

#### **Building Separation**

Under Objective 3F, for the first four levels, the ADG prescribes a minimum building separation from buildings to rear or side boundaries of 6m for habitable rooms and balconies, and 3m for non-habitable rooms. For levels five to eight, the ADG prescribes a minimum of 9m for habitable rooms and balconies and a minimum of 4.5m for non-habitable rooms. The objective of this design criteria is to ensure visual privacy is achieved.



The submission from the Double Bay Residents Association claims that the proposal does not comply with this building separation control on the Cross Street and Transvaal Avenue boundaries. However, as the subject site is a corner lot, both Cross Street and Transvaal Avenue are considered front boundaries and the design criteria does not apply. Nonetheless, both Cross Street and Transvaal Avenue provide more than adequate separation between the proposal and neighbouring sites.

To the north, the proposal provides setbacks ranging predominantly from 1.075m to 9.60m. Despite this variation, direct sightlines are avoided through the use of privacy screens and balconies face the rear of adjoining properties. Nonetheless, properties along Transvaal Avenue to the north are all commercial uses.

Furthermore, when addressing Objective 3F, Council's Urban Design Referral Response states:

*The proposal provides adequate setbacks and separation distances between habitable areas on the subject site and the neighbouring properties to achieve visual privacy.*

Accordingly, adequate building separation is provided between the proposal and neighbouring sites to ensure visual privacy is achieved.

### **Cross Ventilation**

In their submission, the Double Bay Resident's Association suggests that the proposal does not comply with Objective 4B-3 for cross ventilation. The design criteria for Objective 4B-3 states that at least 60% of apartments should be naturally ventilated in the first nine storeys. The proposal will provide natural ventilation to 61% of all units and therefore, complies with the design criteria and objective.

### **Environmental Performance**

Under Objective 4D-2 of the ADG, habitable room depths are limited to a maximum of 2.5m x the ceiling height; and open plan layouts are to have a maximum habitable room depth of 8m from a window.

In their submission, the Double Bay Residents Association states that the media room on the western side of Level 5 exceeds the requirement. However, the media room is dual purpose as both a media room and study and includes a hallway. Therefore, the media room itself complies with the relevant control.

Open plan layouts generally comply with the relevant design criteria apart from a small portion of the kitchen which serves as an entry to the pantry. Accordingly, the departure from the design criteria is considered acceptable in this instance. Furthermore, when discussing the proposal's compliance with the environmental performance design criteria, Council's Urban Design Referral Response stated that 'The proposal meets the minimum requirements under the ADG'.

Accordingly, the proposal is in accordance with the ADG, and slight variations to building separation and environmental performance are considered minor and acceptable in this instance.

## **1.5 Parking**

A number of submissions raised concerns regarding the proposed number of parking spaces, claiming that the proposed retail parking was insufficient.

The proposal includes two levels of basement parking with a loading bay, 8 retail spaces (including one adaptable), 4 residential visitor spaces, and 39 residential spaces. This is an improvement when compared to the existing building which does not provide any formal parking spaces onsite. The proposal is also located approximately 50m from a public carpark at which there was a previous contribution for 30 parking spaces.

The provision of 8 retail spaces in addition to the existing public carpark will provide ample parking spaces, reduce the demand for on-street parking and result in a more desirable outcome when compared to the existing.

## 1.6 Acid Sulfate Soils and Groundwater

The submission from the Double Bay Resident's Association discusses contamination, acid sulfate soils and groundwater changes on the site. The submission suggests that the Preliminary Site Investigation was not sufficient for consent to be granted and that the proposed basement may result in cracking to adjoining properties.

A Preliminary Site Investigation for Contamination was prepared by Douglas Partners and submitted with the DA. This report stated that the potential for significant contamination to be present on the site was low and that upon further investigation and if required, an acid sulfate soil management plan could be implemented. This was supported in Council's Environmental Health Referral Response.

The Geotechnical and Groundwater Investigation by Douglas Partners submitted with the DA states, inter alia:

*This report has discussed various geotechnical aspects of the proposed development and has outlined appropriate construction methods, monitoring requirements, and design parameters. Similar basements have been constructed in Sydney without significant impacts to surrounding properties. It is considered that the basement could be designed and constructed without adverse impacts to surrounding properties.*

Furthermore, in terms of the proposed basement's impact on adjoining properties, Council's Development Engineer Referral Response states:

*Council's Technical Services has no objections to the proposed excavation on technical grounds.*

Accordingly, the proposal is considered acceptable in terms of acid sulfate soils, and structural impacts to adjoining properties in both the reports submitted with the DA and in Council Officer Referral Responses.

## 2.0 CONCLUSION

The proposed minor amendments to the retail tenancies, upper floor units, roof form and height and lift overrun will result in increased solar access to the southern side of Cross Street, additional space for public circulation and outdoor dining in the plaza and a reduced bulk and scale.

This letter responds to the seven submissions received by Council for DA 321/2020. A number of these submissions appear to have misunderstood the site and its relevant controls. The proposal has been designed to remain consistent in scale, form, proportions and setbacks with nearby existing and approved developments, including the new six-storey developments at Nos. 16-18 Cross Street, Nos. 20-26 Cross Street, and approval at Nos. 28-34 Cross Street. The amended plans will provide additional solar access to the southern side of Cross Street, increase setbacks on Levels 4 and 5, and will reduce GFA.

We trust this information is of some assistance to you. If you require further information, please do not hesitate to contact our office on 9362 3364.

Yours faithfully,



George Karavanas  
**MANAGING DIRECTOR**