

Attachment E

Submissions

From: Andrew Woodhouse <[REDACTED]> on behalf of Andrew Woodhouse
<[REDACTED]> <Andrew Woodhouse <[REDACTED]>

Sent on: Monday, July 29, 2024 2:25:57 PM

To: DAsubmissions <dasubmissions@cityofsydney.nsw.gov.au>

Subject: D/2024/524 117 Victoria St Potts Point

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Please Register our objections as follows:

- 1 Breach of height (24.88m v 18.15m) is excessive and not justifiable.
- 2 Doesn't satisfy cross-ventilations rules.
- 3 Doesn't satisfy separation rules.
- 4 Only 18 out of 25 apartments will receive adequate solar access.
- 5 Removal of five trees is not necessary; a better design would achieve a better outcome.
- 6 Street facade proposed is objectionable and doesn't speak the same architectural language as its neighbours or the streetscape: it presents two large black holes for car access - see figure 18. This also creates a pedestrian safety hazard.
- 7 The design is therefore contrary to design excellence rules and is a detracting element in its Heritage Conservation Area; it is ugly.
- 8 Reduces occupancies from 45 apartments to 25.
This city is in a housing crisis.
Such a reduction is not in the public interest.
- 9 The DA is therefore not in the public interest generally and is contrary to s 4.15 (b), (c), (d) and (e) EP and A Act and should be refused.

Thank You

Andrew Woodhouse

Potts Point & KX Heritage Conservation Society [REDACTED]

From: Richard Bell <[REDACTED]> on behalf of Richard Bell
<[REDACTED]> <Richard Bell <[REDACTED]>>
Sent on: Thursday, August 8, 2024 10:24:17 AM
To: DASubmissions <DASubmissions@cityofsydney.nsw.gov.au>; Julia Errington <JErrington@cityofsydney.nsw.gov.au>
Subject: Submission - D/2024/524 - 117 Victoria Street POTTS POINT NSW 2011 - Attention Julia Errington
Attachments: 117 Victoria Street DA Objection October 2023.docx (8.65 MB)

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Hi Julia

With reference to the notice currently attached to 117 Victoria Street, Potts Point, NSW 2011.

Please refer to my previous submission (attached, I reinforce my **objection** to the proposed development at 117 Victoria Street, Potts Point, NSW 2011 (DA Notification: D/2023/862).

Regards

Richard

Richard Bell
2/119 Victoria Street
Potts Point, NSW 2011
Ph: [REDACTED]
E: [REDACTED]

Richard Bell
2/119 Victoria Street
Potts Point, NSW 2011

Ph:

E:

26 October 2023

DA Submissions
City of Sydney
GPO Box 1591
Sydney, NSW 2001

Attention: Julia Errington

To whom it may concern

I am writing to you regarding the proposed development at 117 Victoria Street, Potts Point
(DA reference D/2023/862)

I have reviewed the plans and documents provided and have put together the following summary as a submission **against** the development in its current design.

With reference to the frontage on Victoria Street, as depicted by their supplied photo and drawing:



Image 1

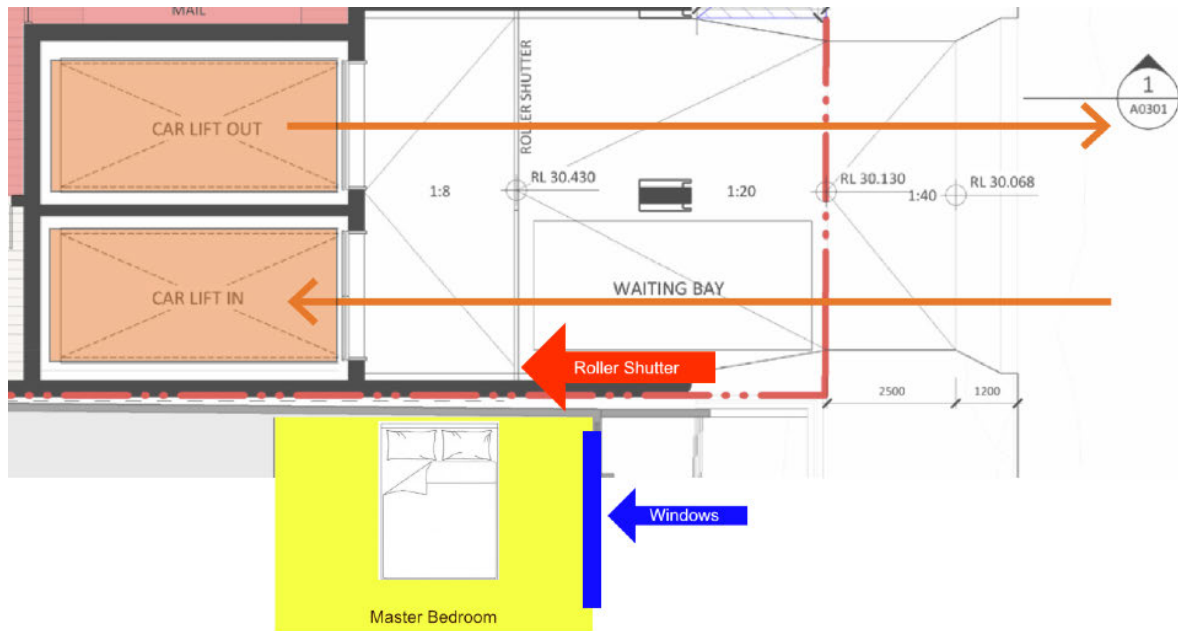


Image 2

- The proposed development will have a significant day-to-day noise impact:
 - The developer is proposing to have two car lifts and roller shutters (see images 1 and 2 above) to provide access to basement level parking. The proposed location of these is directly next to the master bedrooms for the apartments of 119 Victoria Street (as shown in image 2). Noise that will be generated from the machinery for the roller doors and of the car lifts, particularly at night, will be right next to these master bedrooms causing significant disturbance and interrupting sleep.
 - Additionally, noise and exhaust fumes from cars and particularly motorcycles waiting in the waiting bay for the car lift will be directly next to bedroom windows, (as shown above in image 2), meaning that windows can't be left open due to an increase in exhaust and noise pollution from the idling cars and motorcycles waiting for the lift.

The building should therefore not be permitted to be built so close to our existing building and the waiting bay, roller shutters and car lifts should be set further back.

- The proposed development will prevent access to maintain our heritage building - As owners, we take great pride and care in the maintenance of our building. The plan for the development will be built right up against our building (depicted in image 1), removing any reasonable access to the side of our heritage building for maintenance needs, such as painting. This will result in the gradual deterioration of our heritage building.

The building should therefore not be permitted to be built so close to our existing building to allow us to maintain our building.

- The proposed development will result in further overshadowing of our unit.

With Council recently approving the development of 30A-34 Brougham Street, Potts Point (DA reference D/2022/319) to the detriment of our building, there will further removal of light, airflow and amenities:

- The windows on the west-facing side of the Victoria Street units are the only source of natural light for the kitchen & living areas. In conjunction with the previously approved development on Brougham Street, the proposed development will have a further catastrophic impact, removing a significant amount of light for our unit. In the winter months, this will result in our unit having a significantly low level of natural light and sunshine. The studies forming the diagram below (image 3), **do not** consider the additional development that was approved on Brougham Street and the subsequent impact on us.



Image 3

- The proximity of the development, which is planned to be built much closer to our building, and the current design will block airflow through to our unit which combined with the removal of natural sunlight will increase the occurrence of mould and may subsequently lead to health issues.
- The development will result in further overshadowing which will result in decimation of the natural foliage. This in turn will have an impact on the wildlife, such as birds, bats, possums, reptiles, and other animals that are often found in the gardens.

The building should not be permitted to be built so close to our existing building to allow for some light and airflow, taking into account the already approved development on Brougham Street.

- The communal rooftop open space and reduced proximity to our building will cause excessive noise. Together with the approved development on Brougham Street as mentioned above, the rear of our block will be completely closed in (see image 4 below). With the reduced proximity of the new development to our block, noise from the communal rooftop and pool will therefore be exacerbated particularly as this area will attract groups of people and parties, causing excessive noise into the main living areas of the apartments in our block.

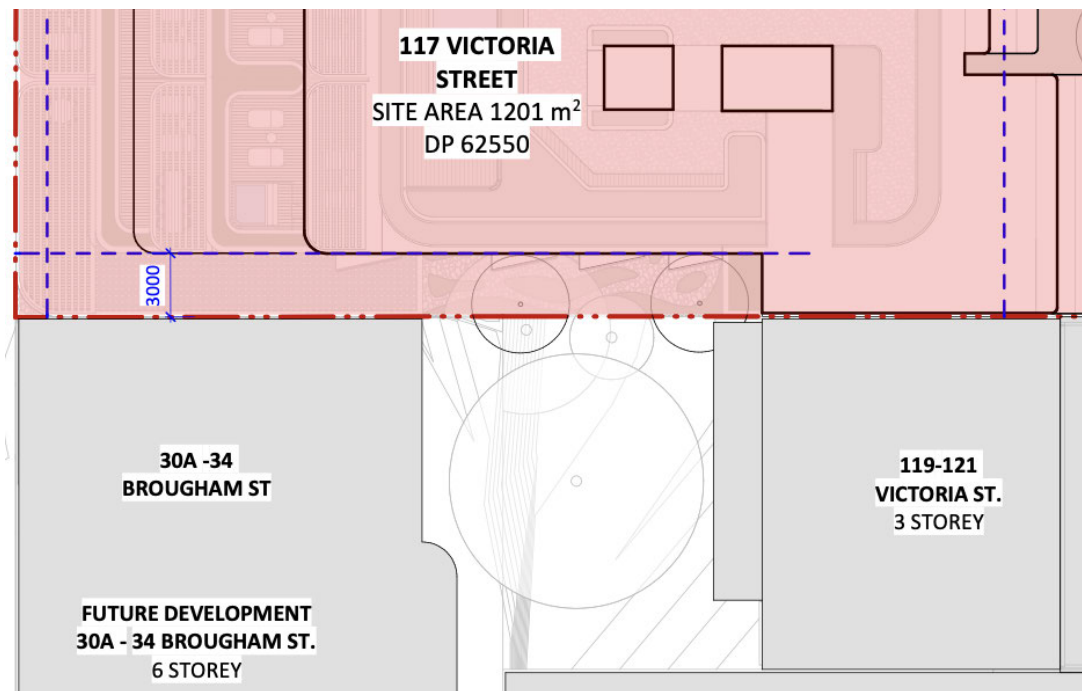


Image 4

The building should therefore not be permitted to be built so close to our existing building and there should not be a communal rooftop space and swimming pool permitted.

- The design of the proposed development does not consider the heritage designs of the area. Having a few arches as the front façade does not align it to the heritage designs of the buildings surrounding it. This design will stand out as being out of character and should be reconsidered to fit in better with the heritage designs surrounding it.

- The proposed development exceeds the legal height limit – The height restrictions exist for a reason and should be enforced. No part of the building should exceed the permissible height limit by any amount (see image 5 below).

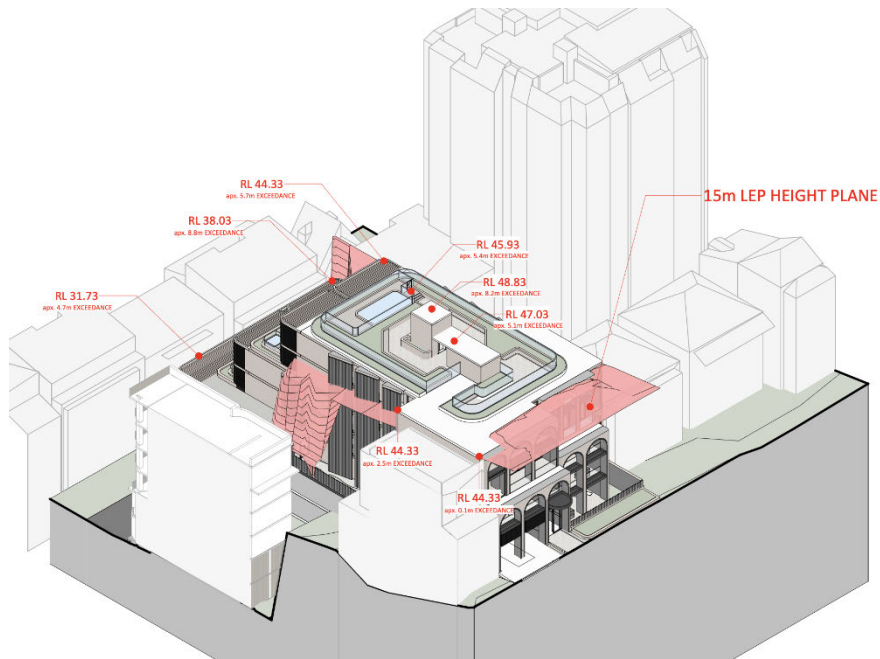
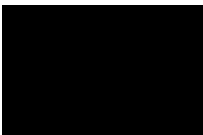


Image 5

- Risk of damage to our heritage building – The excavation and building works will pose a big risk to the structure of our heritage building and to the heritage wall in our back garden.

I strongly object to this development going ahead without amendments to the design. With the recent disappointing approval of another large development on Brougham Street (DA reference D/2022/319) that will already have a detrimental impact on our standard of living, I trust that Sydney City Council will recognise and take into consideration the further impact of the development 117 Victoria Street with regards to noise, light, and airflow on the apartments at 119 Victoria Street.

Regards



Richard Bell
 2/119 Victoria Street, Potts Point &
 Chairman – Strata Plan 15239
 119-121 Victoria Street, Potts Point

From: Mamba Durbs <[REDACTED]> on behalf of Mamba Durbs
<[REDACTED]> <Mamba Durbs <[REDACTED]>

Sent on: Monday, August 12, 2024 2:12:41 PM

To: dasubmissions@cityofsydney.nsw.gov.au

Subject: D/2024/524 117 VICTORIA STREET POTTS POINT

Caution: This email came from outside the organisation. Don't click links or open attachments unless you know the sender, and were expecting this email.

Attention Julia Errington

Hi Julia,

I note the revised DA submission for 117 Victoria Street.

My comments are as follows:

- Acoustic Privacy: surely Council would not accept a noise level from the communal rooftop and pool of RBL+5dBA which is the same as that for the external areas of licensed premises? The proposed rooftop area is immediately opposite a number of bedroom windows to the North. And restricting times of use of the area is unlikely to be enforceable.
- Building Height: The revised proposal is even higher than the previous proposal which in turn was higher than the existing building which is itself non-compliant. This is true at the centre of the site even when allowing for a 21% increase in permitted height due to the inclusion of five affordable apartments.
- Side Setback - this still insufficient and non-compliant with the ADG on both N and S boundaries.
- Excavation: the proposal includes substantial rock excavation. Despite the inclusion of the Geotechnical Report there appears to be no guarantee of monitoring and prevention of short and longer term damage to buildings on or near the site boundaries.

Regards

B. Grisdale

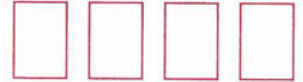
Re: D/2024/524
117 Victoria St Potts Pt, 204

CITY OF SYDNEY
THH
16 AUG 2024
RECEIVED

Mr Bill Mackay,
Managers Planning Assessment,
City of Sydney

CITY OF SYDNEY
THH
16 AUG 2024
RECEIVED

Document Services
19 AUG 2024
City of Sydney



PO Box 152,
Barrabool, NSW, 2586

Mr Bill Mackay,
Manager Planning Assessments
City of Sydney

Document Services

19 AUG 2024

City of Sydney

Dear Sir,

Re: Planning Application for 117 Victoria St, Potts Point NSW 2011

Reference no: D/2024/524

Applicant Name: ERD 1 PTY LTD

I am writing as part owner of Unit 48, 103 Victoria St, Potts Point which is adjacent to the building proposed for development by D/2024/524

When this project was first suggested I wrote (having a long association with 2 units in 103 Victoria St) pointing out the unstable nature of the rock face on which both buildings stand and the uncertain drainage channels - some dating to the 19th century - which the present application does not seem to address at both its cost and that of its neighbours. While there is a geotechnical report, how it would be actioned should any difficulties arise is unclear.

Moreover, the buildings boundaries are not compliant with Council regulations and the height of the revised proposal is even higher than the original and is also non-compliant

in terms of the streetscape, the building is out of character with Victoria St (as is, I admit, is the present building) but an earlier mistake by Council is ~~275~~ poor excuse for another one.

Of major concern for residents of 103 Victoria St, is the massive intrusion on their privacy and a rooftop pool and entertainment area. In an area where Council places restrictions and fines on businesses which breach noise and privacy regulations, it would seem ironic that it would permit the rooftop entertainment area where any restrictions would, in practice, be unenforceable.

Yours faithfully,

Peter Geoffrey Roberts

15 August 2024

My apologies for a hand-written submission but my computer has been hacked. To email might involve me in spreading viruses.

PR

From: <[REDACTED]>
Sent on: Monday, August 19, 2024 8:05:56 AM
To: City of Sydney <council@cityofsydney.nsw.gov.au>
CC: Kevin Charman <[REDACTED]> Sarah Dalton <[REDACTED]>
Donelle Wheeler <[REDACTED]> Chris Boylan <[REDACTED]> Merylyn
Baker <[REDACTED]>
Subject: D/2024/524 117 VICTORIA STREET POTTS POINT NSW 2011 WRITTEN SUBMISSION:
LETTER OF OBJECTION SUBMISSION: TULLOCH
Attachments: 117 VICTORIA 2024 WS.pdf (2.51 MB)

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Submission attached.

Kind regards,

Bill Tulloch BSc[Arch]BArch[Hons1]UNSW RIBA Assoc RAIA
DA Objection Pty Ltd
Director
[REDACTED]

DA OBJECTION

a written submission by way of objection

BILL TULLOCH BSC [ARCH] BARCH [HONS1] UNSW RIBA Assoc RAlA
Director
DA Objection Pty Ltd

prepared for the owners

B Z BURU, APARTMENT 1, 116-118 VICTORIA STREET POTTS POINT
SARAH DALTON, APARTMENT 2, 116-118 VICTORIA STREET POTTS POINT
TONY BARRY, APARTMENT 3, 116-118 VICTORIA STREET POTTS POINT
KEVIN RUPERT CHARMAN, APARTMENT 4, 116-118 VICTORIA STREET POTTS POINT
KEVIN RUPERT CHARMAN, APARTMENT 5, 116-118 VICTORIA STREET POTTS POINT
DONELLE WHEELER, APARTMENT 6, 116-118 VICTORIA STREET POTTS POINT
CHRIS BOYLAN, APARTMENT 7, 116-118 VICTORIA STREET POTTS POINT
ANDREW SCHILLER, APARTMENT 8, 116-118 VICTORIA STREET POTTS POINT
JANET WHITFIELD, APARTMENT 9, 116-118 VICTORIA STREET POTTS POINT

HOME UNIT COMPANY: 116 VICTORIA STREET POTTS POINT PTY LTD,
REGISTERED OFFICE C/- ALLDIS & COX, 61A-65 FRENCHMANS ROAD, RANDWICK,
ADDRESS OF OPERATION OF THE COMPANY: 116-118 VICTORIA ROAD, POTTS POINT.

13 AUGUST 2024

CITY OF SYDNEY
TOWN HALL HOUSE
LEVEL 2, 456 KENT STREET
SYDNEY 2000

council@cityofsydney.nsw.gov.au

RE: D/2024/524
117 VICTORIA STREET POTTS POINT NSW 2011
WRITTEN SUBMISSION: LETTER OF OBJECTION
SUBMISSION: TULLOCH

Dear Sir,

This document is a written submission by way of objection lodged under Section 4.15 of the EPAA 1979 [the EPA Act].

I have been instructed by my clients to prepare an objection to this DA.

I have been engaged by my clients to critically review the plans and documentation prepared in support of the above development application and to provide advice in relation to policy compliance and potential residential amenity impacts.

Having considered the subject property and its surrounds and the details of the development application currently before Council, I am of the opinion that the proposal, in its present form, does not warrant support. In addition, I am of the view that amendments would need to be made to the development proposal before Council is in a position to determine the development application by way of approval.

Unless the Applicant submits Amended Plans to resolve all of the adverse amenity impacts raised within this Submission, my clients ask Council to REFUSE this DA.

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 - 6. BUILDING BULK & SCALE
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 - 8. EXCESSIVE HEIGHT OF BUILDING
 - 9. EXCESSIVE FSR
 - 10. INSUFFICIENT SETBACKS
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A. EXECUTIVE SUMMARY

The design of the proposed development does not ensure that the existing high levels of amenity to my clients' property are retained.

Having reviewed the documentation prepared in support of the application and determined the juxtaposition of adjoining properties I feel compelled to object to the application in its current form.

The proposal is considered to be inappropriate within the streetscape.

The bulk, scale, density and height of the proposed development is excessive and inconsistent with the established and desired future streetscape character of the locality.

There is no reason, unique or otherwise why a fully compliant solution to LEP and DCP controls cannot be designed on the site.

The proposed development represents an overdevelopment of the site and an unbalanced range of amenity impacts that result in adverse impacts on my clients' property.

- The proposal fails to achieve an acceptable view sharing outcome
- The proposal fails to achieve an acceptable acoustic privacy outcome
- The proposal fails to achieve an acceptable visual bulk and scale outcome
- The proposal fails to achieve an acceptable landscape outcome
- The proposal fails to achieve an acceptable traffic, access and parking outcome
- The proposal fails to achieve an acceptable flood engineering outcome
- The proposal fails to achieve an acceptable building bulk and scale
- The proposal fails to achieve an acceptable heritage, character and streetscape

The proposed development fails to meet Council's planning controls, the objectives and the merit assessment provisions relating to:

- Excessive Height of Buildings [HOB]:
 - HOB 24.88m* v 18.15m [37%] Level 08 Apartments *appears to be greater than 25m above EGL. Insufficient survey data supplied
 - HOB 21.2m: Victoria St Roof Element
 - HOB 19.0m: Victoria St Building core
 - HOB 22.9m: Lift Core
 - HOB 21.6m: Stair Core
 - HOB 21.3m: Swimming Pool
 - HOB 19.2m: Communal Open Space
- Excessive Floor Space Ratio [FSR]: exceeds 3:1
- Inadequate Side Setbacks to allow for View Sharing, and to maintain overland flood zone
- Inadequate Victoria Front Setbacks to allow for a stepping of the built form along Victoria Street, and to provide a built form relief between

- neighbouring buildings, and to provide a greater separation between the pavilions facing Victoria Street
- Insufficient 10% Deep Soil Landscape Area to Victoria Street
- Insufficient Tree Canopy to 15% of site area, particularly to Victoria Street, and within side setbacks
- Excessive excavation into the TPZ of Tree 1 Plane Tree to Victoria Street, and excessive tree pruning
- Failure to protect the proposed car lifts and the proposed basements from flood, by not providing a Minimum Driveway Crest level at RL 30.8 as advised within the Telford Flood Risk Management plan, page 6.

The proposed development:

- does not respond to or complement adjoining heritage and contributory buildings, does not respond to the topography of the site and is not in keeping with the unique character of the locality;
- fails to demonstrate a high standard of architectural design and detailing appropriate to the building type and surrounding heritage character;
- The form and external appearance of the proposed development will not improve the quality of the public domain;
- fails to appropriately address heritage issues and streetscape constraints;
- fails to provide an appropriate bulk, massing and modulation of buildings;
- is not consistent with existing street frontage height;
- does not achieve an appropriate interface at ground level between the building and the public domain;
- fails to demonstrate excellence and integration of landscape design;
- does not meet the requirements of the City's Landscape Code and does not provide 10% deep soil in a consolidated area;
- proposes heights, front setbacks and side setbacks and building setting that is inconsistent with the desired future pattern of residential development and setbacks in the block;
- fails to demonstrate 15 per cent tree canopy coverage within 10 years of completion;
- fails to provide insufficient information to determine construction impacts on existing trees adjoining the site;
- fails to demonstrate compliance with the City's Interim Flood Planning Policy and stormwater drainage;
- fails to adequately consider pedestrian, cycle, vehicular and service access and circulation requirements;
- fails to adequately address environmental impacts of overshadowing, solar access, views and visual privacy.

The site is not suitable for the proposed development pursuant to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979. The site is not considered suitable for the proposed development in terms of its size, scale and design, despite it being residential development in the zone.

Having regard to the reasons noted above, pursuant to the provisions of Section 4.15(1)(d) and Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, approval of the development application is not in the public interest. The extent of issues identified with the proposed development are such that the public's interest is not served by way of approval of the development application.

The proposed development represents an unreasonably large building design, for which there are design alternatives to achieve a reasonable development outcome on the site without having such impacts.

I contend that the proposed development under this 2024 DA has not resolved the reasons for dismissal of the 2023 DA, namely:

PRINCIPLE REASONS:

1. *The application will result in the loss of FORTY-FIVE low-cost rental dwellings and the application fails to adequately address or satisfy the Retention of Existing Affordable Rental Housing provisions prescribed by Chapter 2 Part 3 of the Housing SEPP 2021. **Comment:** The provision of FIVE x1 Bedroom apartments as Affordable Housing for 15 years is considered totally unacceptable, with a permanent loss of FORTY low-cost rental dwellings.*
2. *The proposed infill building significantly exceeds the height of buildings and floor space ratio development standards of the Sydney Local Environmental Plan (LEP) 2012. The development also exceeds the height in storeys control of the Sydney Development Control Plan (DCP) 2012 and is inconsistent with the pattern of development in the locality. **Comment:** The proposed development presents ongoing substantial non-compliance.*
3. *The proposal does not comply with several other controls for the site including building separation, setbacks, solar access, servicing, deep soil, impacts on neighbouring trees and provision of deep soil and does not achieve design excellence in accordance with Clause 6.21C of the Sydney Local Environmental Plan (LEP) 2012. **Comment:** The proposed development presents ongoing substantial non-compliance.*
4. *The applicant has submitted a Clause 4.6 variation request to seek approval in relation to the development's breach of the height of buildings and floor space ratio development standards, pursuant Clause 4.3 and Clause 4.4 of the Sydney LEP 2012. The applicant's requests are not recommended to be supported. **Comment:** The applicant's requests are not supported.*
5. *The proposed development is considered inappropriate in the current housing climate as it has not adequately addressed the loss of existing affordable housing. The proposed design and massing of the new development also inadequately responds to the site controls, site context and its surroundings, inhibits landscaping opportunities and adversely impacts upon surrounding properties. **Comment:** The proposed development presents ongoing substantial non-compliance, with the permanent loss of FORTY existing affordable housing apartments.*

REASONS FOR REFUSAL

I contend this DA be refused for the following reasons:

(A) The proposal is contrary to and fails to adequately satisfy the matters for consideration set out in Section 47(2) of Part 3: Retention of existing affordable rental housing of the State Environmental Planning Policy (Housing) 2021 (Housing SEPP) and the Guidelines for Retention of Existing Affordable Rental Housing.

(B) The application is inconsistent with the Clause 1.2(2)(e) aim of the Sydney LEP 2012 as it fails to encourage the growth and diversity of the residential population of the City of Sydney by providing for a range of appropriately located housing, including affordable housing.

(C) The application fails to satisfy the objectives of the R1 General Residential Zone of the Sydney LEP as it does not provide for the housing needs of the community and does not contribute to a variety of housing types and densities.

(D) The proposed development is in breach of the Height of Buildings development standard pursuant to Clause 4.3 of the Sydney LEP 2012 and exceeds the height in storeys control of Section 4.2.1.1 of the Sydney DCP 2012. The applicant's Clause 4.6 variation request to contravene the Height of Buildings standard has not demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances or that there are sufficient environmental planning grounds to justify contravention of the development standard.

(E) The proposed development is in breach of the Floor Space Ratio development standard pursuant to Clause 4.4 of the Sydney LEP. The applicant's Clause 4.6 variation request to contravene the Floor space ratio development standard has not demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances or that there are sufficient environmental planning grounds to justify contravention of the development standard.

(F) The proposed development is contrary to principles 1 to 9 of the design principles for residential apartment development in Schedule 9 of the Housing SEPP. The proposal provides inadequate amenity to apartments and neighbouring residential buildings and is non-compliant with multiple provisions of the ADG, including Objectives 3B, 3C, 3F, 3H, 3J, 4A, 4D, 4E, 4G, 4L, 4M, 4O, 4P, and 4W.

(G) The proposed development does not respond to or complement adjoining heritage and contributory buildings, does not respond to the topography of the site and is not in keeping with the unique character of the locality. The proposal is therefore contrary to the locality provisions of Section 2.4.3 and 2.4.7 of the Sydney DCP and the heritage provisions of Clause 5.10 of the Sydney LEP 2012 and Sections 3.9.1, 3.9.5, 3.9.6, 3.9.9 and 3.9.10 of the Sydney DCP 2012.

(H) The proposal does not meet the requirements of the City's Landscape Code and does not provide 10% deep soil in a consolidated area and is therefore non-compliant with Sections 4.2.3.5 and 4.2.3.6 of the Sydney DCP 2012.

(I) The development proposes vehicle access from the primary road frontage, does not include bicycle parking, and is contrary to the transport and parking requirements Sections 3.11.3, 3.11.6, and 3.11.11 of the Sydney DCP 2012.

(J) The proposed side setbacks and building setting is inconsistent with the desired future pattern of residential development and setbacks in the block, pursuant to Section 4.2.2 of the Sydney DCP 2012.

(K) The development does not provide appropriate amenity for residents. The development does not provide unit, private open space or communal open space in accordance with the minimum dimensions and size requirements of the ADG, and Sections 4.2.3.7, Section 4.2.3.8 and Section 4.2.3.9 of the Sydney DCP 2012. Poor outlook is also provided to bedrooms due to screening and to the lower ground unit to Victoria Street which is contrary to Section 4.2.3.10 of the Sydney DCP 2012.

(L) Inadequate information has been submitted to properly assess the application and the proposed development therefore fails to satisfy the following requirements:

(i) The application fails to satisfactorily address site contamination in accordance with Section 4.6 of the State Environmental Planning Policy (Resilience and Hazards) 2021, the Managing Land Contamination Planning Guidelines SEPP 55–Remediation of Land, Clause 7.14 Acid Sulfate Soils of the Sydney LEP 2012 and Section 3.17 of the Sydney DCP 2012.

(ii) The application provides insufficient information to determine the impacts of the proposed excavation upon the structural integrity of neighbouring buildings and the retained rock face on the adjacent site at 30A - 34 Broughan Street, pursuant to Section 3.9.13 of the Sydney DCP 2012.

(iii) Insufficient information has been supplied to determine whether the building breaches the 25m design competition process threshold. No competitive design process has been undertaken for the development and it is therefore contrary to Clause 6.21D(1) of the Sydney LEP 2012 and Section 3.3 of the Sydney DCP 2012.

(iv) The application fails to demonstrate 15 per cent tree canopy coverage within 10 years of completion, pursuant to Sections 3.5.1 and 3.5.2 of the Sydney DCP. Insufficient information has been supplied to determine construction impacts on existing trees adjoining the site which is contrary to the requirements of Section 3.5.3 of the Sydney DCP 2012 and Chapter 2 Vegetation in non-rural areas of the Biodiversity and Conservation SEPP 2021.

(v) The preliminary public art plan does not satisfy requirements for public art in accordance with the City's Interim Guidelines for Public Art in Private Developments and the development is therefore contrary to the requirements of Section 3.1.5 of the Sydney DCP 2012.

(vi) The application fails to demonstrate compliance with the City's Interim Flood Planning Policy and stormwater drainage and quality requirements and is therefore contrary to Clause 5.21 of the Sydney LEP 2012, and Sections 3.7.1, 3.7.2 and 3.7.3 of the Sydney DCP 2012.

(vii) The application fails to provide sufficient information to demonstrate that each of the proposed dwellings and neighbouring dwellings will receive the minimum 2 hours of direct sunlight to living room windows and private open space areas between 9am and 3pm on 21 June, pursuant to Section 4.2.3.1 of the Sydney

DCP 2012.

(viii) The location and design of the waste storage room and waste chutes are contrary to the waste requirements set out in the City of Sydney Guidelines for Waste Management in New Development, Section 3.11.13, Section 3.14, Section 4.2.6 of the Sydney DCP 2012.

(M) The proposed development fails to exhibit Design Excellence pursuant to Clause 6.21C of the Sydney LEP 2012 due to the following:

(i) The application fails to demonstrate a high standard of architectural design and detailing appropriate to the building type and surrounding heritage character, pursuant to Clause 6.21C(2)(a),

(ii) The form and external appearance of the proposed development will not improve the quality of the public domain, pursuant to Clause 6.21C(2)(b) and Clause 6.21C(2)(d)(x),

(iii) The proposed development detrimentally impacts on public view corridors from Victoria Street, pursuant to Clause 6.21C(2)(c),

(iv) The application fails to appropriately address heritage issues and streetscape constraints, pursuant to Clause 6.21C(2)(d)(iii),

(v) The proposed development fails to provide an appropriate bulk, massing and modulation of buildings, pursuant to Clause 6.21C(2)(d)(v),

(vi) The proposal is not consistent with existing street frontage heights, pursuant to Clause 6.21C(2)(d)(vi),

(vii) The application fails to adequately address environmental impacts of overshadowing, solar access, views and visual privacy, pursuant to the provisions outlined under Clause 6.21C(2)(d)(vii),

(viii) The application fails to adequately consider pedestrian, cycle, vehicular and service access and circulation requirements, pursuant to Clause 6.21C(2)(d)(ix),

(ix) The proposed development does not achieve an appropriate interface at ground level between the building and the public domain, pursuant to Clause 6.21C(2)(d)(xii), and

(x) The proposed development fails to demonstrate excellence and integration of landscape design pursuant to Clause 6.21C(2)(d)(xii).

(N) The development is unsatisfactory when assessed pursuant to the matters for consideration at section 4.15(1)(e) of the EP&A Act and is therefore not in the public interest.

CLAUSE 4.6 WRITTEN REQUEST

The Applicant's Clause 4.6 written request does not adequately demonstrate that the proposal achieves the relevant objectives of the development standards, or that there are insufficient environmental planning grounds to justify the extent of the proposed variations sought. The variations would result in undue visual bulk that would be inconsistent with the desired future character of the locality.

The proposed development does not satisfy the objectives of the zone or contribute to a scale that is consistent with the desired character of the locality and the scale of surrounding development.

COMPLY WITH THE PLANNING REGIME

A compliant building design would reduce the amenity impacts identified.

My clients agree with Roseth SC in NSWLEC Pafbum v North Sydney Council:

"People affected by a proposal have a legitimate expectation that the development on adjoining properties will comply with the planning regime."

The '*legitimate expectation*' that my clients had as a neighbour was for a development that would not result in very poor amenity outcomes caused directly from the non-compliance to building envelope controls.

My clients wish to emphasise the fact that my clients take no pleasure in objecting to their neighbour's DA.

The proposed DA has a deleterious impact on the amenity of their property caused by the DA being non-compliant to controls.

Council and NSWLEC Commissioners regularly concede that development standards and building envelopes provide for maximums and that there is no entitlement to achieve those maximums.

It does seem unreasonable that the Applicants wish to remove my client's amenity to improve their own, and is proposing non-compliant outcomes that would seriously adversely affect my clients' amenity.

Council's development controls relating to managing building bulk and scale are designed to ensure that buildings are consistent with the height and scale of the desired character of the locality, are compatible with the height and scale of surrounding and nearby development, respond sensitively to the natural topography and allow for reasonable sharing of views and visual amenity.

Council's DCP with respect to the locality, requires that development respond to the natural environment and minimise the bulk and scale of buildings. The proposed development in its current form does not achieve this and provides inadequate pervious landscaped area at ground level.

The proposal does not succeed when assessed against the Heads of Consideration pursuant to section 4.15 of the Environmental Planning and Assessment Act, 1979 as amended. It is considered that the application, does not succeed on merit and is not worthy of the granting of development consent.

FUNDAMENTAL PRINCIPLES OF DESIGN EXCELLENCE

The proposed development fails the fundamental principles of design excellence in terms of:

- Context and local character
- Built form, scale and public domain, urban design response
- Density
- Landscape integration
- Architectural expression, in terms of excessive built form
- Amenity impacts on neighbours

The proposed development fails to exhibit Design Excellence pursuant to Clause 6.21C of the Sydney LEP 2012 due to the following:

(i) The application fails to demonstrate a high standard of architectural design and detailing appropriate to the building type and surrounding heritage character, pursuant to Clause 6.21C(2)(a),

(ii) The form and external appearance of the proposed development will not improve the quality of the public domain, pursuant to Clause 6.21C(2)(b) and Clause 6.21C(2)(d)(x),

(iii) The proposed development detrimentally impacts on public view corridors from Victoria Street, pursuant to Clause 6.21C(2)(c),

(iv) The application fails to appropriately address heritage issues and streetscape constraints, pursuant to Clause 6.21C(2)(d)(iii),

(v) The proposed development fails to provide an appropriate bulk, massing and modulation of buildings, pursuant to Clause 6.21C(2)(d)(v),

(vi) The proposal is not consistent with existing street frontage heights, pursuant to Clause 6.21C(2)(d)(vi),

(vii) The application fails to adequately address environmental impacts of overshadowing, solar access, views and visual privacy, pursuant to the provisions outlined under Clause 6.21C(2)(d)(vii),

(viii) The application fails to adequately consider pedestrian, cycle, vehicular and service access and circulation requirements, pursuant to Clause 6.21C(2)(d)(ix),

(ix) The proposed development does not achieve an appropriate interface at ground level between the building and the public domain, pursuant to Clause 6.21C(2)(d)(xii), and

(x) The proposed development fails to demonstrate excellence and integration of landscape design pursuant to Clause 6.21C(2)(d)(xii).

INCOMPLETE INFORMATION

The proposed development is incapable of consent, as there is a substantial list of incomplete information that has yet to be provided. I refer Council to Section C of this submission - *Contentions that relate to Insufficient Information*

RE-NOTIFICATION

If any Amended Plan Submission is made by the Applicant, and re-notification is waived by Council, my clients ask Council to inform them immediately by email of those amended plans, so that my clients can inspect those drawings on the Council website.

MODIFICATIONS SOUGHT

My clients ask Council to seek modifications to this DA as the proposed development does not comply with the planning regime, by non-compliance to development standards, and this non-compliance leads directly to my clients' amenity loss.

Section D of this submission titled '*Request for amended plans to be submitted to better address impacts upon adjoining properties*', addresses the amendments that my clients seek to better resolve their amenity issues.

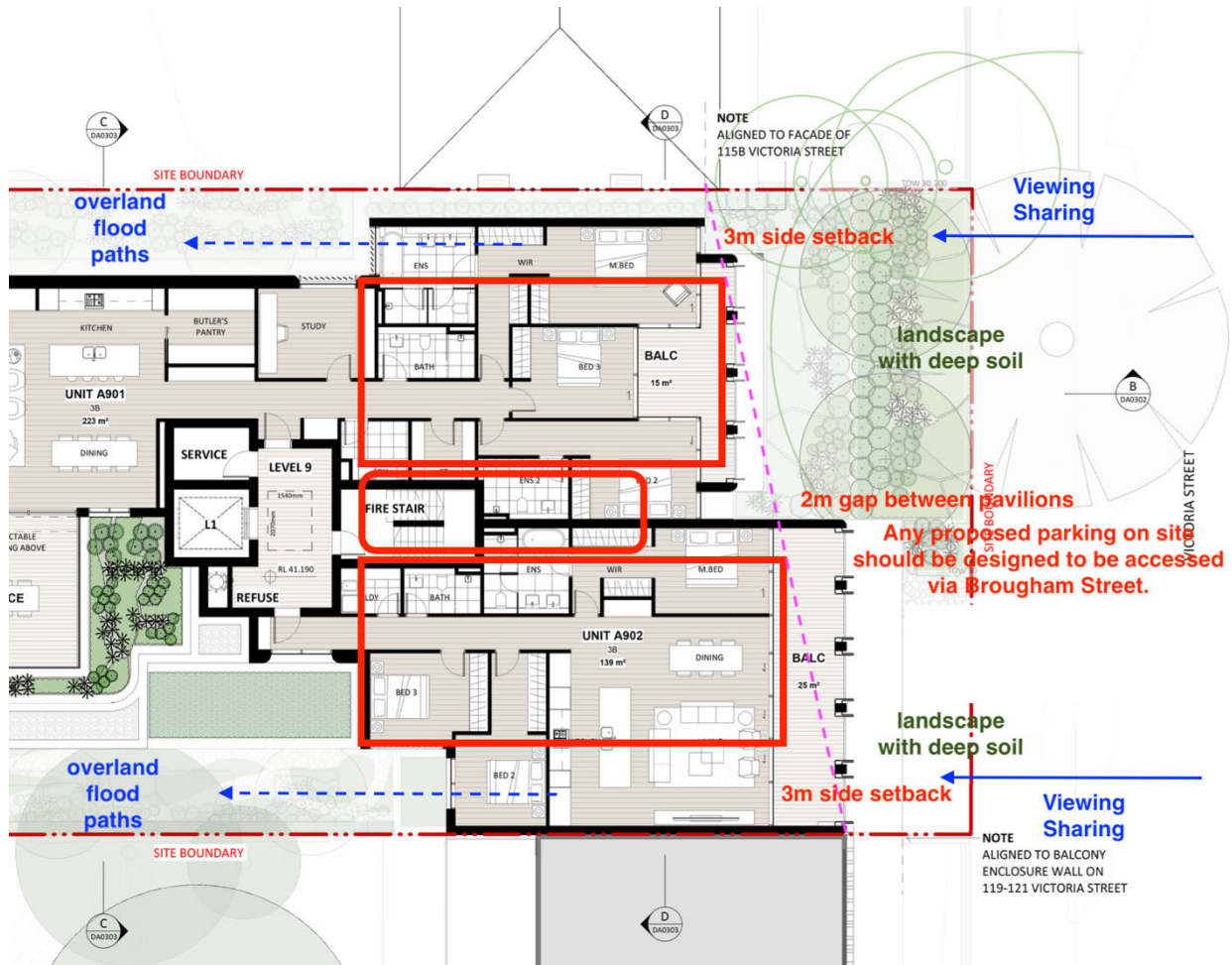
My clients ask for the following amendments:

- Reduce the built form facing Victoria Street:
 - Side Setbacks 3m
 - Front Setback: align with neighbouring setbacks
 - Two Pavilions: with centre recess
 - Height: Level 06 to be lowered to match levels of Victoria Street, with four levels above at 3.15m storey heights.

- Any proposed parking on site should be designed to be accessed via Brougham Street.
- No excavation in the front setback zone, to allow for a continuous deep soil zone along Victoria St for deep soil planting and to better protect Tree 1
- Unacceptable Adverse Acoustic Privacy Impacts from the incomplete consideration of the roof top terrace: RBL + 5dBA as proposed by the Applicant is considered unacceptable. This should be reduced to RBL + 2dBA, with access restricted to daylight hours only
- Unacceptable Adverse Acoustic Privacy Impacts from the incomplete consideration of the operation of the car lifts, mechanical roller shutter, and

additional street traffic: RBL + 2dBA must be the maximum limit, with access transferred away from Victoria Street

- o Unacceptable Adverse Engineering Impacts: Increased Flood Risks due to closure of overland flood zone in the existing side setback zones. Provide 3m setback to maintain overland flood path



Unless the Applicant submits Amended Plans to resolve all of the adverse amenity impacts raised within this Submission, my clients ask Council to REFUSE this DA, in accordance with Section E 'Reasons for Refusal' of this submission.

B. CONTENTIONS THAT THE APPLICATION BE REFUSED

1. CONTRARY TO AIMS OF LEP

The proposal is contrary to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as it fails to satisfy the aims under the LEP.

The application is inconsistent with the Clause 1.2(2)(e) aim of the Sydney LEP 2012 as it fails to encourage the growth and diversity of the residential population of the City of Sydney by providing for a range of appropriately located housing, including affordable housing.

- The proposal fails to protect residential amenity, has excessive building bulk and fails to manage environmental constraints.
- The development compromises amenity impacts on neighbours
- The development is not compatible with the desired future character of the locality in terms of building height and roof form.
- The development does not minimise the adverse effects of the bulk and scale of buildings

2. CONTRARY TO ZONE OBJECTIVES

The proposal is contrary to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as it fails to satisfy the objectives of the zone of the LEP.

The application fails to satisfy the objectives of the R1 General Residential Zone of the Sydney LEP as it does not provide for the housing needs of the community and does not contribute to a variety of housing types and densities.

- The proposal is of a bulk and scale which is inconsistent with development in this location and therefore fails to achieve the desired future character of the neighbourhood.
- The development has not been designed to be in harmony with the natural environment and does not have a high visual quality presentation to the streetscape
- The development compromises amenity impacts on neighbours
- To provide for the housing needs of the community within a low-density residential environment.
- To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment
- The proposed development will not be of an acceptably low density and scale that is integrated with the landform and landscape and will have an unacceptable visual impact on the aesthetic values of the area.

3. INCONSISTENT WITH THE PROVISIONS OF CLAUSE 4.6 EXCEPTIONS TO DEVELOPMENT STANDARDS

The proposed development is in breach of the Height of Buildings development standard pursuant to Clause 4.3 of the Sydney LEP 2012 and exceeds the height in storeys control of Section 4.2.1.1 of the Sydney DCP 2012. The applicant's Clause 4.6 variation request to contravene the Height of Buildings standard has not demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances or that there are sufficient environmental planning grounds to justify contravention of the development standard.

The proposed development is in breach of the Floor Space Ratio development standard pursuant to Clause 4.4 of the Sydney LEP. The applicant's Clause 4.6 variation request to contravene the Floor space ratio development standard has not demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances or that there are sufficient environmental planning grounds to justify contravention of the development standard.

Council cannot be satisfied that under clause 4.6 of the LEP seeking to justify a contravention of the development standard that the development will be in the public interest because the proposed development is inconsistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

- o The applicant's written request has not adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, or that there are sufficient environmental planning grounds to justify contravening the development standard to the extent proposed.
- o The proposed development will not be in the public interest because it is inconsistent with the objectives of the height of buildings development standard or the objectives in the zone to provide for residential development of a low density and scale integrated with the landform and landscape.

There is nothing in the written request's consideration of the relationship between the proposal and the zone objectives which might provide sufficient environmental planning grounds for the breach.

The test is concerned with establishing sufficient environmental planning grounds to justify a contravention, something more than compliance or consistency with zone and development standard objectives must be sought.

The Applicant seeks to vary the height of buildings development standard.

The request relies upon the first way identified by Preston CJ in Wehbe. The first way in Wehbe is to establish that the objectives of the standard are achieved.

My clients contend that the variation has not responded to the objective of the maximum building height standard and given adequate reasoning why compliance is unreasonable or unnecessary.

My clients contend that:

- The written request does not establish that the development is consistent with the objectives of the standard as the proposal does not reasonably share public and private views.
- The written request does not establish that the development is consistent with the character compatibility objectives of the height standard in terms of FSR, maximum building height, number of storeys and wall height.

Furthermore, and in simple terms, I contend that:

- The development compromises amenity impacts on neighbours
- The development does not minimise visual impact
- the impacts are not consistent with the impacts that may be reasonably expected under the controls;
- the proposal's height and bulk do not relate to the height and bulk desired under the relevant controls;
- the area has a predominant existing character and are the planning controls likely to maintain it;
- the proposal does not fit into the existing character of the area;
- the proposal is inconsistent with the bulk and character intended by the planning controls;
- the proposal looks inappropriate in its context

The objectives of the standard have not been met.

The bulk and scale of the proposed development is inappropriate for the site and locality.

Strict compliance with the maximum building height is reasonable and necessary in the circumstances of this case.

In summary, the proposal does not satisfy the requirements of clause 4.6 of LEP 2014.

The variation of the standard would not be in the public interest because it would set a precedent for development in the neighbourhood, such that successive exceedances would erode the views enjoyed from other similar properties.

The proposed development is inconsistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

4. NON-COMPLIANCE WITH THE HOUSING SEPP – DESIGN QUALITY OF RESIDENTIAL APARTMENT DEVELOPMENT

On 15 March 2024 the NSW Government published the *State Environmental Planning Policy Amendment (Housing) 2024*. This document revised the transitional provision set out in section 8(1) of Schedule 7A of the Housing SEPP.

A new provision applies the new Chapter 4 ('Design of residential apartment development') of the Housing SEPP to any development application or modification

application, including those lodged before 14 December 2023. This provision is section 8(2A) of Schedule 7A of the Housing SEPP.

Chapter 4 of the Housing SEPP.

- The relevant design quality principles in schedule 9 of the Housing SEPP.
- The provision (formerly clause 6A of SEPP 65) overriding some aspects of development control plans is now section 149 of the Housing SEPP.

The proposed development is contrary to principles 1 to 9 of the design principles for residential apartment development in Schedule 9 of the Housing SEPP. The proposal provides inadequate amenity to apartments and neighbouring residential buildings and is non-compliant with multiple provisions of the ADG, including Objectives 3B, 3C, 3F, 3H, 3J, 4A, 4D, 4E, 4G, 4L, 4M, 4O, 4P, and 4W.

SCHEDULE 9 DESIGN PRINCIPLES FOR RESIDENTIAL APARTMENT DEVELOPMENT

The proposal is inconsistent with the design quality principles of the HOUSING SEPP; Schedule 9 Design Principles for Residential Apartment Development. I contend that the proposed development fails to accord with:

Context and Neighbourhood Character

The resultant bulk, form and scale of the amended proposal will be inconsistent with and unsympathetic to the adjacent sites and neighbourhood. The proposal fails to respond to the surrounding context and neighbourhood character.

Built Form and Scale

The bulk and scale of the proposed new building are excessive. The proposal will not achieve an appropriate built form that fits into its context.

Density

The density is inappropriate to the site and its context.

Landscape

The proposed development does not present a positive image and contextual fit of well-designed development by contributing to the landscape character of the streetscape and neighbourhood. The proposed development does not enhance the development's environmental performance by retaining positive natural features

Amenity

The proposed development does not present good amenity outcomes for neighbours, including loss of solar, view, and privacy

Aesthetics

The proposal does not respond to or reinforce the existing local context and results in a built form which is excessive in bulk and scale.

APARTMENT DESIGN GUIDE

The proposed development does not accord with the *Apartment Design Guide*. Concern is expressed relating to the non-compliance to the controls, the objectives, and the failure to reduce the amenity impacts to neighbours on privacy, solar, view, and visual bulk.

The development does not provide appropriate amenity for residents. The development does not provide unit, private open space or communal open space in accordance with the minimum dimensions and size requirements of the ADG, and Sections 4.2.3.7, Section 4.2.3.8 and Section 4.2.3.9 of the Sydney DCP 2012. Poor outlook is also provided to bedrooms due to screening and to the lower ground unit to Victoria Street which is contrary to Section 4.2.3.10 of the Sydney DCP 2012.

The proposed development is inconsistent with the design criteria detailed in the Apartment Design Guide in particular:

- 2A Primary Controls
- 2B Building Envelopes
- 2C Building Height
- 2D FSR
- 2E Building Depth
- 2F Building Separation
- 2G Street Setbacks
- 2H Side & Rear Setbacks
- 3A Site Analysis
- 3B Orientation
- 3C Public Domain Interface
- 3D Communal & Public Open Space
- 3E Deep Soil Zones
- 3F Visual Privacy
- 3G Pedestrian Access & Entries
- 3h Vehicle Access
- 3J Bicycle & Car Parking
- 4A Solar & Daylight Access
- 4B Natural Ventilation
- 4C Ceiling Heights
- 4D Apartment Size & Layout
- 4E Private Open Space & Balconies
- 4F Common Circulation & Spaces
- 4G Storage
- 4H Acoustic Privacy
- 4J Noise & Pollution
- 4K Apartment Mix
- 4L Ground Floor Apartments
- 4M Facades
- 4N Roof Design

- 4O Landscape Design
- 4P Planting on Structures
- 4Q Universal design
- 4R Adaptive Reuse
- 4S Mixed Use
- 4T Awnings & Signage
- 4U Energy Efficiency
- 4V Water Management & Conservation
- 4W Waste Management
- 4X Building Maintenance

5. HERITAGE CONSERVATION CONCERNS

The proposal is contrary to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as it fails to provide adequate heritage conservation outcomes, presenting non-compliant envelope controls that are visible from the heritage items, including:

- 101-115 Victoria St
- 109 Victoria St
- 111 Victoria St
- 113-115A Victoria St
- 116-118 Victoria St
- 119-121 Victoria St
- 120-124 Victoria St
- 123-125 Victoria St

The proposed development does not respond to or complement adjoining heritage and contributory buildings, does not respond to the topography of the site and is not in keeping with the unique character of the locality. The proposal is therefore contrary to the locality provisions of Section 2.4.3 and 2.4.7 of the Sydney DCP and the heritage provisions of Clause 5.10 of the Sydney LEP 2012 and Sections 3.9.1, 3.9.5, 3.9.6, 3.9.9 and 3.9.10 of the Sydney DCP 2012.

I agree with Council's earlier considerations:

Heritage

Victoria Street Frontage

There is a steep escarpment below Victoria Street offering views across to the Central Business District. The site is located between heritage items to the north and south along Victoria Street and the existing building has generous side setbacks from these items. This allows views to and around the items from the street as well as across the site towards the city skyline. These views contribute to the streetscape character.

Any development on this site should be respectful of the adjoining heritage items and give consideration to the through site views and views to and from the heritage items. Further attention should be given to more appropriate side boundary setbacks to maintain the city view lines.

The rise of the Victoria Street built form over the Brougham Street built form is highly visible from The Domain and adds to the character of this HCA. It follows the line of the sandstone cliff face. The proposal should relate to the topography of the site. Consideration should be given to maintaining and enhancing a more stepped built form to reinforce that rise and acknowledge the line of the cliff face. View Impact Analysis should be undertaken.

Brougham Street frontage

The Brougham Street streetscape is dominated by a sandstone cliff face which continues through the site. This is a highly visible and adds to the character of the street and the HCA. Section 3.5.1 and 4.2.3.5 of the Sydney DCP 2012 requires the retention of natural landscape features such as cliff faces and rocky outcrops. The existing building is appropriately sited to reduce excavation of the cliff face.

The proposed building extends fully to the northern and southern site boundaries and does not retain existing exposed cliff faces. Additionally, the proposal includes extensive excavation into the escarpment. The proposal is required to be amended to retain increased visibility of the cliff face on site and minimise excavation to the cliff. The proposed Brougham Street frontage should also be reduced in height and scale to better respect the scale of the existing building at 30A – 34 Brougham Street

The proposal is required to be amended to retain increased visibility of the cliff face on site and minimise excavation to the cliff. The proposed Brougham Street frontage should also be reduced in height and scale to better respect the scale of the existing building at 30A – 34 Brougham Street

The proposed development does not conserve the environmental heritage of the local area and does not conserve the heritage significance of the adjacent heritage items including settings and views.

The proposal is inconsistent with the objectives of the LEP and DCP.

- The development application should be refused because approval of the proposal will have an adverse and unacceptable impact on the heritage significance of the building the subject of the application, and on the character and significance of the Conservation Area pursuant to the LEP.
- The application results in adverse impacts on the heritage significance of the the Conservation Area due to its failure to satisfy the heritage requirements of the LEP as well as the heritage requirements of the DCP.
- The proposed excavation is considered excessive resulting in a detrimental impact on the subject heritage items and the surrounding areas, pursuant to the LEP as well as the requirements of the DCP.
- The application results in a built form which is not subservient to the heritage items. The proposed development has multiple non-compliances to numerical standards and controls.
- The proposed development would have a detrimental impact upon the characteristics features of the heritage item resulting in a massing that is likely to overwhelm the heritage items contrary to the provisions within the LEP and DCP.
- The overall bulk of the proposal is not sympathetic to the proportions and architectural character of the neighbouring heritage items.
- The current application will have significant impacts upon the heritage values of the existing building.

The proposed development does not conserve the environmental heritage of the local area and does not conserve the heritage significance of the adjacent heritage items including settings and views.

6. BUILDING BULK & SCALE

The proposed development should be refused due to its excessive bulk and scale and its failure to comply with the numerical standards and controls.

The application will result in an unacceptable loss of visual amenity from adjoining private properties. and from the public domain including the foreshore.

The loss of visual amenity is due to the excessive bulk and scale of the proposed development.

The breaches of the building envelope will result in both an adverse visual impact when viewed from private and public domains.

The numerical non-compliances result in a cumulative impact, that increases the built form, resulting in an overdevelopment of the site.

The proposal will present excessive bulk and scale that is not representative of the type of development anticipated by the zone or the applicable controls.

The proposal will result in unreasonable bulk and scale for the type of development anticipated in the zone.

The proposal does not step down with the topography of the site.

The proposal does not allow for enough landscaping to suitably reduce the bulk and scale of the development.

The proposal does not provide adequate articulation of the built form to reduce its massing.

The proposal fails to encourage good design and innovative architecture to improve the urban environment.

The proposal fails to minimise the visual impact of development when viewed from adjoining properties and streets.

7. CHARACTER & STREETScape

The proposal is contrary to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as it fails to provide adequate streetscape outcome, presenting non-compliant envelope controls that are visible from the street.

The proposed development is inconsistent with the provisions relating to the desired future character. The proposal, due to its excessive bulk, its impact on the amenity of adjoining properties and users of the public domain, its poor relationship with the

subject property and the environment is inconsistent with the objectives with the desired future character provisions of the locality.

The proposed development will have unacceptable impacts upon the amenity of neighbours' property, specifically with regard to visual bulk impact.

The proposed development should be refused due to its excessive bulk, scale and resulting impacts upon the amenity of adjoining properties and the character of the surrounding locality.

The proposal does not meet the streetscape character and key elements of the precinct and desired future character.

The proposal is excessive in scale, has adverse impacts on the visual amenity of the environment, does not positively contribute to the streetscape in terms of an adequately landscaped setting. The proposal is visually dominant, and is incompatible with the desired future townscape area character.

The development has excessive bulk and scale and fails to comply with development standards set out LEP, resulting in a building which has unacceptable adverse impacts on neighbouring properties and the locality.

The non-compliant building envelope will lead to unacceptable visual bulk impact to neighbours.

The multiple non-compliances arising from the proposed upper floor level and the non-compliant setbacks indicates that the proposed development cannot achieve the underlying objectives of this control, resulting in an unacceptable building bulk when viewed from adjoining and nearby properties.

The development presents an inappropriate response to the site and an unsatisfactory response to the desired future character of the area.

The proposed development should be refused because it is incompatible with the desirable elements of the current character of the locality and is inconsistent with the standards and controls:

- The design of the proposal does not recognise or complement the desirable elements of the subject site's current character.
- The proposal does not employ a building form that relates to the landform as it does not step down with the slope of the site.
- The proposal offers little visual relief of the resultant building bulk. Such building bulk is not compatible in scale with adjacent and surrounding development.
- The proposal will present as a large building with insufficient building articulation and landscaping to break up and visually reduce the building bulk.
- The proposal will not appear as low density and, therefore, does not achieve consistency or compatibility with the general built form within the locality or the R2 zone. The development does not present as detached in style with distinct building separation and areas of landscaping.

8. EXCESSIVE BUILDING HEIGHT

The proposal is contrary to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as it fails to comply with the building height development standard under the LEP.

The proposed development should be refused due to its excessive height and failure to comply with the *Height of Buildings* set out in the LEP, and in particular:

- The proposed development, by virtue of its height and scale, will not be consistent with the desired character of the locality
- The development will not be compatible with the height and scale of surrounding and nearby development.

The development application should be refused because the proposed building height is excessive and does not comply with the objectives or controls in the LEP in circumstances where the written request made pursuant to clause 4.6 of the LEP in relation to the contravention of the development standard is inadequate and should not be upheld. The submitted written variation request under cl.4.6 of the LEP seeking to justify the contravention of the height of buildings development standard is not well-founded having regard to the requirements of cl.4.6(3) and 4.6(4)(a)(i) of LEP.

The proposal is inconsistent with the objectives of the Height of Buildings development standard pursuant to LEP.

- The development compromises amenity impacts on neighbours
- The development does not minimise visual impact
- The development is not compatible with the desired future character of the locality in terms of building height and roof form.
- The development does not minimise the adverse effects of the bulk and scale of buildings

The adverse impacts of the proposed development, including on the amenity of neighbouring property and public property, are directly attributable to the exceedance of the height of buildings development standard.

The proposal is inconsistent with the LEP as there is a public benefit in maintaining the Height of Buildings development standard in this particular case.

The proposed portion of the building above the maximum height is not 'minor'. The building does not adequately step down the slope.

In respect of the overall height control, I have considered the applicant's Clause 4.6 and I consider that, in this instance, they have not been able to establish an argument to support their assertion that it is unreasonable and unnecessary to comply with the control.

My clients submit that the submission fails on the basis of the assessment against the objectives of clause 4.3, as well as the environmental planning grounds set out. Additionally, I consider that the development does not comply with the land use objectives.

In respect of the proposed development, I submit that the built form, which also incorporates other substantial non-compliant breaches will have negative impacts on the amenity of neighbours as well as have significant impacts in respect of visual intrusion. Additionally, there is nothing provided for in this development that seeks to minimise the adverse effects of bulk and scale of the building.

My clients have reviewed the responses to these objectives in the applicant's Clause 4.6 and do not consider they satisfy the objectives. My clients strongly refute their arguments.

In respect of the compatibility test, unsurprisingly the applicant completely ignores multiple considerations dealing with the understanding of the site in respect of its topography, how it is viewed from neighbouring properties as well as the lack of compatibility with its form and articulation.

My clients contend that the proposal fails to adequately demonstrate that compliance with each standard is unreasonable or unnecessary nor that there are sufficient environmental planning grounds to justify contravening each of the standards. Variation of the development standards is not in the public interest because the proposed development is not consistent with the objectives of each development standard nor the objectives of the zone. The proposed development has not sought adequate variations to development standards. The proposal is excessive in bulk and scale, and is inconsistent with the desired future character of the area resulting in adverse impacts on the streetscape. The proposal results in an unacceptable dominance of built form over landscape. The proposal fails to minimise the adverse effects of bulk and scale resulting in adverse amenity impacts.

The proposed development should be refused due to its excessive visual impact and impacts on the character of the locality, adjoining properties and the surrounding environment.

The form and massing of the proposal does not appropriately respond to the low-density character of the surrounding locality

The form and massing of development is also inconsistent with the provisions of the DCP which prescribe that new development should complement the predominant building form in the locality.

The proposal would not recognise or protect the natural or visual environment of the area, or maintain a dominance of landscape over built form. The proposal has not been designed to minimise the visual impact on the surrounding environment.

In *Veloshin*, [*Veloshin v Randwick Council* 2007], NSW LEC considered Height, Bulk & Scale. *Veloshin* suggest that Council should consider:

“Are the impacts consistent with impacts that may be reasonably expected under the controls? For non-complying proposals the question cannot be answered unless the difference between the impacts of a complying and a non-complying development is quantified.”

The impacts are not consistent with the impacts that would be reasonably expected under the controls.

In Project Venture Developments v Pittwater Council (2005) NSW LEC 191, NSW LEC considered character:

"...whether most observers would find the proposed development offensive, jarring or unsympathetic in a streetscape context, having regard to the built form characteristics of development within the site's visual catchment".

The non-compliant elements of the proposed development, particularly caused from non-compliant excessive heights would have most observers finding *'the proposed development offensive, jarring or unsympathetic'*.

The planning controls are not limited to preventing offence and the like; and are concerned with establishing a certain physical and landscape character. In this instance I am not convinced that there are strong environmental planning grounds to justify a contravention of the scale proposed.

The proposed development should be refused due to its excessive bulk and scale and its failure to comply with the LEP development standard

The main LEP standards that control bulk have been exceeded;

- The written request is not well-founded as it does not satisfactorily demonstrate: *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case* because it does not achieve consistency with the objectives of the R2 zone or the objectives of the equivalent development standard contained within clause 4.4 of the LEP; and *that there are sufficient environmental planning grounds to justify contravening the development standard* because the provided justification is insufficient and disagreed with.
- The proposal will present excessive bulk and scale that is not representative of the type of development anticipated by the zone or the applicable controls.
- The proposal does not comply with requirement set out within the DCP, as it does not step down with the topography of the site
- The proposal does not comply with requirement set out within the DCP as it does not allow for enough landscaping to suitably reduce the bulk and scale of the development.
- The proposal does not comply with requirement set out within the DCP as it does not provide adequate articulation of the built form to reduce its massing.
- The proposal is inconsistent with the following objectives of the DCP: *To encourage good design and innovative architecture to improve the urban environment; and To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.*

9. EXCESSIVE FSR

The proposal is contrary to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as it fails to comply with the FSR development standard under the LEP.

The proposed development should be refused due to its excessive gross floor area and the associated impacts on the character of the locality and the amenity of adjoining properties.

The calculations of GFA and FSR appear incorrect, as zones that should have been included within GFA calculations appear not to be included within the calculation. I ask Council to check these matters.

The development application should be refused as the proposal exceeds the development standard prescribed by the LEP and it has not been supported by a request to vary pursuant to clause 4.6 of the LEP.

The proposal is inconsistent with the objectives of the zone and is inconsistent with the objectives relating to FSR set out in cl. 4.4 of LEP.

- o The development compromises amenity impacts on neighbours
- o The development does not minimise visual impact
- o the development is not compatible with the desired future character of the area in terms of building bulk and scale
- o there is no balance between landscaping and built form; the built form dominates the landscape
- o the bulk and scale of the development results in adverse effects on adjoining development and the locality.

No consideration of urban design, land topography, surrounding building forms, articulation and roof forms have been undertaken to provide for a full understanding of the desired future character.

The adverse impacts of the proposed development, including on the amenity of neighbouring property, are directly attributable to the exceedance of the FSR development standard.

My clients contend that the proposal fails to adequately demonstrate that compliance with each standard is unreasonable or unnecessary nor that there are sufficient environmental planning grounds to justify contravening each of the standards. Variation of the development standards is not in the public interest because the proposed development is not consistent with the objectives of each development standard nor the objectives of the zone. The proposed development has not sought adequate variations to development standards. The proposal is excessive in bulk and scale, and is inconsistent with the desired future character of the area resulting in adverse impacts on the streetscape. The proposal results in an unacceptable dominance of built form over landscape. The proposal fails to minimise the adverse effects of bulk and scale resulting in adverse amenity impacts.

My clients contend that an assessment of height, bulk and scale under *Veloshin v Randwick Council* [2007] NSWLEC 428 that:

- o the impacts are not consistent with the impacts that may be reasonably expected under the controls;
- o the proposal's height and bulk do not relate to the height and bulk desired under the relevant controls;
- o the area has a predominant existing character and are the planning controls likely to maintain it;

- the proposal does not fit into the existing character of the area;
- the proposal is inconsistent with the bulk and character intended by the planning controls;
- the proposal looks inappropriate in its context
- The development compromises amenity impacts on neighbours
- The development does not minimise visual impact

In terms of the assessment of height, bulk and scale, the non-compliant elements of the proposed development, particularly caused from non-compliant built form, would have most observers finding *'the proposed development offensive, jarring or unsympathetic'*.

10. INSUFFICIENT SETBACKS

The proposed development should be refused as it is significantly non-compliant with setback of the DCP.

- Side
- Front
- Rear

The proposed development does not provide appropriate setbacks. This leads to inconsistency with the character of the area and unreasonable amenity impacts.

The proposed side setbacks and building setting is inconsistent with the desired future pattern of residential development and setbacks in the block, pursuant to Section 4.2.2 of the Sydney DCP 2012.

The proposal is inconsistent with the objectives of the DCP.

The non-compliance fails:

- To reduce amenity impacts on neighbours
- To provide opportunities for deep soil landscape areas.
- To ensure that development does not become visually dominant.
- To ensure that the scale and bulk of buildings is minimised.

The proposed development results in an encroachment beyond the prescribed building envelope. This non-compliance is indicative of an unacceptable built form and contributes to the severe amenity loss.

I note that flexibility in relation to DCP controls may be acceptable where the outcomes of the control are demonstrated to be achieved. In this case, the control is unable to do so because:

- The design cannot achieve the desired future character as demonstrated earlier in this submission; and,
- The width and height of the design is significantly overbearing in relation to the spatial characteristics of the natural environment, and the confronting presentation to the waterway is not sensitive to this important visual catchment.

- By virtue of the unmitigated height breach and extensive building envelope breach, it is not possible to say that the bulk and scale of the built form has been minimised.
- View loss results from the non-compliant design and a reasonable and equitable sharing of views is not achieved.

The proposal will result in an unsatisfactory scale of built form that will be disproportionate and unsuitable to the dimensions of the site and neighbouring residential development.

The height and bulk of the development will result in unreasonable impacts upon the amenity of neighbouring properties with regard to visual dominance.

The excessive built form of the proposal results in a development where the building mass becomes visually dominant and imposing, particularly when viewed from the visual catchment of neighbouring properties

The cumulative effect of the non-compliances with setback and other development standards result in an over development of the site with the site being not suitable for the scale and bulk of the proposal.

11. INADEQUATE LANDSCAPE AMENITY

The proposal is contrary to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as it fails to provide adequate landscape amenity.

The proposal does not meet the requirements of the City's Landscape Code and does not provide 10% deep soil in a consolidated area and is therefore non-compliant with Sections 4.2.3.5 and 4.2.3.6 of the Sydney DCP 2012.

The application fails to demonstrate 15 per cent tree canopy coverage within 10 years of completion, pursuant to Sections 3.5.1 and 3.5.2 of the Sydney DCP. Insufficient information has been supplied to determine construction impacts on existing trees adjoining the site which is contrary to the requirements of Section 3.5.3 of the Sydney DCP 2012 and Chapter 2 Vegetation in non-rural areas of the Biodiversity and Conservation SEPP 2021.

The proposal does not provide for adequate landscape area according to the controls.

Variations to the controls cannot be allowed as the proposal does not meet the objectives of the clause.

The combined footprint of the proposed development and existing development prevent the inclusion of adequate deep soil area and volume for substantial planting to assist in mitigating the bulk and scale of the proposal, maintaining the character of the locality and minimising impacts to adjoining properties.

The proposed development is inconsistent with the provisions of biodiversity protection, flora and fauna habitat enhancement, and wildlife corridor. There is insufficient

information provided to ensure that the proposal will not detrimentally impact native vegetation and habitat.

The proposal fails:

- To enable planting to maintain and enhance the streetscape.
- To conserve and enhance indigenous vegetation, topographical features and habitat for wildlife.
- To provide for landscaped open space with dimensions that are sufficient to enable the establishment of low-lying shrubs, medium high shrubs and canopy trees of a size and density to mitigate the height, bulk and scale of the building.
- To enhance privacy between buildings.
- To accommodate appropriate outdoor recreational opportunities that meet the needs of the occupants.
- To provide space for service functions, including clothes drying.
- To facilitate water management, including on-site detention and infiltration of stormwater.

Council's DCP with respect to the locality, requires that development respond to the natural environment and minimise the bulk and scale of buildings. The proposed development in its current form does not achieve this and provides inadequate pervious landscaped area at ground level.

I have significant concerns:

- Major incursion into the SRZ & TPZ of Neighbours Trees. The proposed structure is likely to result in a significant loss of root volume of this tree, potentially making these trees unviable for retention.
- Major incursion into the SRZ & TPZ of Trees to be retained. The proposed structure is likely to result in a significant loss of root volume of this tree, potentially making these trees unviable for retention.
- Limited deep soil space provided for large replacement tree species. The tiered/terraced deep soil areas located around the perimeter of the development provide an insufficient area and volume of soil for root growth for the large replacement tree species that are specified on the submitted Landscape plan. This decreases the probability that the species will grow to their full dimensions and therefore decreases their potential to provide maximum amenity. A smaller and restricted root spread also increases the potential chances of whole tree failure at maturity.
- Lack of small to medium sized trees included in the planting scheme. The existing planting plan consists of low groundcovers, shrubs and large tree species. Small to medium sized trees included in the proposal is likely to greatly increase green amenity and screening to residents within the property and on neighbouring properties.
- The Landscape Area drawings do not fully accord with the Architectural drawings. Areas shown that are deep soil are in fact: Heavily excavated zones; Zones less than 1m wide; Paved zones according to the architectural plans; Overhanging structures in the setback zone

12. TRAFFIC, ACCESS & PARKING

The proposal is contrary to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as traffic, access and parking issues do not accord with the DCP provisions.

The development proposes vehicle access from the primary road frontage, does not include bicycle parking, and is contrary to the transport and parking requirements Sections 3.11.3, 3.11.6, and 3.11.11 of the Sydney DCP 2012.

I agree with Council's earlier considerations:

The proposal for vehicle access to the basement via Victoria Street is not supported. Clause 3H1 of the ADG and 3.11.11 of the Sydney DCP 2012 require car parking to be designed to be accessed from secondary streets where available.

Any proposed parking on site should be designed to be accessed via Brougham Street.

Service vehicle parking spaces are required to be provided in accordance with the requirements of Schedule 7.8 and Section 3.11.13 of the Sydney DCP 2012. Further, clear plans for bicycle parking in accordance with Australian Standard AS2890.3 and Section 3.11.3 of Sydney DCP 2012 are required to be submitted.

My clients are concerned that the proposed garage:

- Any proposed parking on site should be designed to be accessed via Brougham Street.
- Provides insufficient car parking spaces
- Is built without adequate side setback;
- Is built within the front setback zone, taking away the opportunity for deep soil planting

The proposed traffic and parking arrangement, including the proposed car lift, car stacker and the associated turntable, driveway and sight splay are unsatisfactory.

- To minimise conflicts among mechanical parking systems, a traffic signal system should be incorporated and installed at both basement and ground level to give priority to vehicles entering the car park.
- Swept path diagrams indicate restricted movements for vehicles accessing and egressing from the car lift and identify several encroachments into adjacent structures.

Vehicle Access & Parking

All internal driveways and vehicle parking space must be designed and constructed to comply with the relevant section of AS 2890 (Off-street Parking standards).

With respect to this, the following revision(s) must be undertaken;

Dimensioned plans for the parking area including the driveway width and parking spaces width are to be submitted to Council's traffic engineer for review to confirm that parking bays and the driveway widths are appropriately sized.

Vehicular Swept Paths

Vehicular manoeuvring swept path plots should be provided for review by Council's traffic engineer.

The plots to be prepared using traffic engineering software such as Autotrack/Autoturn, for a B85 car entering and egressing the most constraint spaces in a forward direction and for a B99 passing a B85 vehicle inside the carpark. The drawings must be compliant with Australian/New Zealand Standard AS/NZS 2890.1:2004 - Parking facilities - Off-street car parking.

SEPP HOUSING: CAR PARKING AND TRAFFIC SAFETY

The proposed development should be refused because it does not provide satisfactory car parking and will result in unacceptable traffic safety impacts.

The proposed development provides an inadequate amount of parking for:

- Residential Spaces
- Visitor Parking
- Bicycle Parking
- Disability

The proposed development provides an inadequate space for delivery vehicles for:

- Garbage Collection
- Removalists Vans
- Emergency Vehicles

I contend that there are multiple other concerns:

- It has not been demonstrated by swept path analysis that satisfactory two-way passing of vehicles can be achieved at the proposed vehicle access onto the street having regard for the narrow carriageway width of the street, which includes parallel parking along both kerbsides, as per Appendix B of AS 2890.4-2004.
- Sight Lines at the Entry unacceptable
- Single Service Bay that is sized only for Courier Vans and Utilities is unacceptable. There is no capacity to accommodate deliveries or servicing on-street. An off-street loading bay giving access to a Small Rigid Vehicle is the minimum requirement.
- Head Clearance above Accessible Parking, Loading/Service Bays and Basement Ramp have not been dimensioned, to accord with AS 2890.
- Proposed Vehicle Crossing has not been shown.
- 6m @ 1:20 not shown at entry
- Inadequate details of the proposed basement traffic signals control system have not been provided. Waiting Bays not marked. Access for B99 vehicles past B85 vehicles occupying the waiting bays not demonstrated.

- Queuing Analysis not provided to prevent vehicle encounters on the access point to the car lifts.
- The location for the proposed intercom and security card detector is not provided.
- Critical Parking Spaces has not been demonstrated by swept path plots for a B85 vehicle as required by AS 2890.1.

Demolition Traffic Management Plan

As a result of the site constraints, limited vehicle access and parking, a Demolition Traffic Management Plan (DTMP) shall be prepared by an suitably accredited person and submitted to and approved by the Council Traffic Team prior to commencing any demolition work.

Due to heavy traffic congestion throughout the area, truck movements will be restricted during the major commuter peak times being 8.00-9.30am and 4.30-6.00pm.

The DTMP shall be prepared in accordance with relevant sections of Australian Standard 1742 – “Manual of Uniform Traffic Control Devices”, RMS’ Manual – “Traffic Control at Work Sites”.

Implementation of Demolition Traffic Management Plan

All works and demolition activities are to be undertaken in accordance with the approved Demolition Traffic Management Plan (DTMP). All controls in the DTMP must be maintained at all times and all traffic management control must be undertaken by personnel having appropriate TfNSW accreditation. Should the implementation or effectiveness of the DTMP be impacted by surrounding major development not encompassed in the approved DTMP, the DTMP measures and controls are to be revised accordingly and submitted to Council for approval. A copy of the approved DTMP is to be kept onsite at all times and made available to the accredited certifier or Council on request.

Construction Traffic Management Plan

As a result of the site constraints, limited vehicle access and parking, a Construction Traffic Management Plan (CTMP) and report shall be prepared by a TfNSW accredited person and submitted to and approved by the Council Traffic Team prior to issue of any Construction Certificate.

Due to heavy traffic congestion, truck movements will be restricted during the major commuter peak times being 8.00-9.30am and 4.30-6.00pm. Truck movements must be agreed with Council's Traffic and Development Engineer prior to submission of the CTMP.

The CTMP shall be prepared in accordance with relevant sections of Australian Standard 1742 – “Manual of Uniform Traffic Control Devices”, RMS’ Manual – “Traffic Control at Work Sites”.

Implementation of Construction Traffic Management Plan

All works and construction activities are to be undertaken in accordance with the approved Construction Traffic Management Plan (CTMP). All controls in the CTMP must

be maintained at all times and all traffic management control must be undertaken by personnel having appropriate TfNSW accreditation. Should the implementation or effectiveness of the CTMP be impacted by surrounding major development not encompassed in the approved CTMP, the CTMP measures and controls are to be revised accordingly and submitted to Council for approval. A copy of the approved CTMP is to be kept onsite at all times and made available to Council on request.

13. IMPACTS UPON ADJOINING PROPERTIES: ADVERSE VIEW SHARING IMPACTS

The proposal is contrary to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as it fails to achieve an appropriate view sharing outcome to neighbours.

The proposal is inconsistent with the objectives of the DCP.

The development application should be refused as it results in unacceptable view loss from adjoining and nearby residential dwellings.

- The proposal is inconsistent with objectives of the DCP regarding views;
- The proposal is inconsistent with objective and controls of the DCP regarding views and view sharing;
- The proposal is inconsistent with the DCP, as the proposal fails under the fourth Tenacity Step, *Point 2 - If there is a non-compliance, then even a moderate impact may be considered unreasonable, or* The proposal is inconsistent with the DCP, as the proposal fails under the fourth Tenacity Step, *Point 3 [a]: For complying proposals: (a) "whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours to bring about impact"*.
- The application documentation has failed to accurately and comprehensively consider and document view loss impacts on affected neighbours;
- The proposal is inconsistent with the Land and Environment Court Planning Principle contained in *Tenacity Consulting v Warringah Council* and in particular the "fourth step" regarding the reasonableness of the proposal in circumstances whether a more skilful design could reduce the impact on views of neighbours.
- The proposal is inconsistent with the decision made by NSWLEC Commissioner Walsh in *Furlong v Northern Beaches Council [2022] NSWLEC 1208* in considering that if a more skilful design could be achieved arriving at an outcome that achieved '*a very high level of amenity and enjoy impressive views*', and the proposal had not taken that option, then a proposal had '*gone too far*', and must be refused.

I contend that the question to be answered is whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact upon views of neighbours.

I contend that the view impact is considered above a moderate impact from the respective zones within the property given the significant proportion of the views which are impacted. The aspect is considered whole, prominent views, which are certainly worthy of consideration and at least partial protection. The proposal to remove the

vast majority of these views is considered overall to be above a moderate view impact.

Certified Height Poles have not been erected.

View Impact Assessment has not been undertaken from my client's property.

View impact photomontages prepared in accordance with the Land and Environment Court policy on the use of photomontages have not been prepared.

I consider that my clients' view loss is greater than moderate.

For proposed developments where there is the potential for view loss from nearby or adjoining properties, consideration must be given to the view sharing principles detailed in the judgement handed down by the NSW Land and Environment Court under *Tenacity Consulting v Warringah Council*.

In relation to principle four of this judgement (being the 'assessment of the reasonableness of the proposal that is causing the impact'), it is considered that a development which complies with all planning controls would be deemed more reasonable than one that is non-compliant. The proposal, as it currently stands, presents numerous non-compliances to the planning controls listed under the LEP and DCP. This brings into question as to whether a more 'skilful' (or sensitive) design would achieve an improved and acceptable outcome, and as such allowing for an acceptable level of view sharing.

In this instance, it must be strongly recommended that the proposed upper floor and other parts of the non-compliant envelope is redesigned to respond to, and address, principle four of *Tenacity Consulting v Warringah Council*, which would provide the Applicant with a similar amenity while also reducing the view impact to an acceptable level on adjoining properties.

In this instance, alternative design outcomes are encouraged to appropriately and satisfactorily address the four-part assessment of *Tenacity Consulting v Warringah Council*.

The proposed development when considered against the DCP and the NSW Land and Environment Court Planning Principle in *Tenacity Consulting Pty Ltd v Warringah Council (2004) NSWLEC* will result in an unacceptable view impact and will not achieve appropriate view sharing.

The proposed development will result in unacceptable additional view impacts. The view impact is greater than moderate when considered against the *Tenacity* planning principle. The view impact could reasonably be avoided by a more considered design that retains the amenity of the proposal, whilst limiting the impact upon the neighbouring property.

The built form proposed blocks highly valued items or whole views as defined in *Tenacity* terms.

The proposed development will unreasonably obstruct views enjoyed by my clients' property from highly used rooms and from entertainment balconies, resulting in inconsistency with the requirements and objectives of the DCP.

The proposed development has not considered the strategic placement of canopy trees to avoid further view loss impacts upon existing view corridors.

The Applicant has not provided an adequate View Impact Assessment which details the extent to which existing water views from my clients' property, and other impacted dwellings, are obstructed under the current proposal. The existing documentation accompanying the application is insufficient to undertake a detailed analysis of the proposal against the relevant DCP and NSWLEC guidelines.

The proposal may also cause potential view loss of the water views from the public road, and may cause potential view loss from other neighbours who have not been notified of this DA.

The SEE has not considered the loss of street view loss from the public domain. The impact on public domain views has not been assessed by the applicant. I refer to *Rose Bay Marina Pty Limited v Woollahra Municipal Council 2013 NSWLEC 1046*. My clients contend that the public domain street view will be completely lost.

VIEW SHARING & NSWLEC TENACITY CONSULTING V WARRINGAH COUNCIL 2004

The DCP Controls on View Sharing refers to outcomes that all new development is to be designed to achieve a reasonable sharing of views available from surrounding and nearby properties.

The DCP Outcomes on View Sharing refers to a reasonable sharing of views amongst dwellings. Views and vistas from roads and public places to water, headland, beach and/or bush views are to be protected, maintained and where possible, enhanced.

The DCP states that the proposal must demonstrate that view sharing is achieved through the application of the Land and Environment Court's planning principles for view sharing, and references the NSWLEC Planning Principle defined *within Tenacity Consulting v Warringah Council 2004*

In *Tenacity*, [*Tenacity Consulting v Warringah Council 2004*], NSW LEC considered Views. *Tenacity* suggest that Council should consider:

"A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable."

The development breaches multiple planning controls and is unreasonable.

My clients contend that the impact on views arises as a result of non-compliance with one or more planning controls, and the view loss from the highly used rooms and decks is considered unreasonable.

APPLICATION OF TENACITY PLANNING PRINCIPLE

I have been unable to consider the impact of the proposal on the outward private

domain views from my clients' property.

Height poles and montage view loss analysis has yet to be provided by the Applicant.

An assessment in relation to the planning principle of Roseth SC of the Land and Environment Court of New South Wales in *Tenacity Consulting v Warringah* [2004] NSWLEC 140 - Principles of view sharing: the impact on neighbours (*Tenacity*) is made, on a provisional basis ahead of height poles being erected by the Applicant.

The steps in *Tenacity* are sequential and conditional in some cases, meaning that proceeding to further steps may not be required if the conditions for satisfying the preceding threshold is not met.

STEP 1 VIEWS TO BE AFFECTED

The first step quoted from the judgement in *Tenacity* is as follows:

The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (eg of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, eg a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.

An arc of view is available when standing at a central location in the highly used zones including entertainment decks, highly used rooms, and private open spaces on my clients' property.

The proposed development will impact upon expansive water views, and water views in which the interface between land and water is visible. The views include whole views.

The composition of the arc is constrained over the subject site boundaries, by built forms and landscape. The central part of the composition includes the subject site. Views include scenic and valued features as defined in *Tenacity*. The proposed development will take away views for its own benefit. The view is from my clients' highly used rooms towards the view. The extent of view loss exceeds moderate and the features lost are considered to be valued as identified in Step 1 of *Tenacity*.

STEP 2: FROM WHERE ARE VIEWS AVAILABLE

This step considers from where the affected views are available in relation to the orientation of the building to its land and to the view in question. The second step, quoted, is as follows:

The second step is to consider from what part of the property the views are obtained. For example, the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting

views is often unrealistic.

The views in all cases are available across the boundary of the subject site, from standing and seated positions. An arc of view is available when standing at highly used zones on my clients' property.

In this respect, I make two points: My clients have no readily obtainable mechanism to reinstate the impacted views from my clients' high used zones if the development as proposed proceeds; and all of the properties in the locality rely on views over adjacent buildings for their outlook, aspect and views.

VIEW LOSS IMPACTS
ALL DEVASTATING OUTCOMES





STEP 3: EXTENT OF IMPACT

The next step in the principle is to assess the extent of impact and the locations from which the view loss occurs.

Step 3 as quoted is:

The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from

kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.

As I rate the extent of view loss is above moderate in my opinion the threshold to proceed to Step 4 of Tenacity is met.

STEP 4: REASONABLENESS

The planning principle states that consideration should be given to the causes of the visual impact and whether they are reasonable in the circumstances.

The controls require that new development is to be designed to achieve a reasonable sharing of views available from surrounding and nearby properties and must demonstrate that view sharing is achieved through the application of the Planning Principles established in the NSW Land and Environment Court case *Tenacity Consulting v Warringah Council*.

In *Tenacity* Step 4 is described as below:

The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.

In *Balestriere v Council of the City of Ryde* [2021] NSWLEC 1600 NSWLEC Commissioner Walsh said in relation to the Fourth Step in *Tenacity*:

There are three different aspects to the fourth Tenacity step, concerned with assessing the reasonableness of the impact, which I summarise as follows:

Point 1 - Compliance, or otherwise, with planning controls.

Point 2 - If there is a non-compliance, then even a moderate impact may be considered unreasonable.

Point 3 - For complying proposals: (a) "whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours to bring about impact", and (b) "if the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.

In relation to Principal four set down in the *Tenacity* decision ('Assessment of the reasonableness of the proposal that is causing the impact'), it is considered that a development which complies with all planning controls would be deemed more reasonable than one that is non-compliant. The proposal as it currently stands presents numerous non-compliances to LEP and DCP controls, with a massive non-compliance to FSR, which questions whether a more 'skilful' (or sensitive) design would achieve an improved and acceptable outcome. Further exploration of an alternative design outcome which would include the amendments mentioned within this submission is therefore necessary to satisfactorily address the Planning Principles established in the NSW Land and Environment Court case.

I contend that the view impact results in a greater than moderate impact from the respective zones within the property given the significant proportion of the views which are impacted. The views are certainly worthy of consideration and substantial protection.

The proposal to remove the vast majority of these views is considered overall to be a greater than moderate view impact and I contend that the proposal therefore fails on NSWLEC *Tenacity* Step 4 Reasonableness.

In respect to Point 3, NSWLEC Commissioner Walsh in Furlong v Northern Beaches Council [2022] NSWLEC 1208 referenced Wenli Wang v North Sydney Council [2018] NSWLEC 122, in considering that if a more skilful design could be achieved arriving at an outcome that achieved 'a very high level of amenity and enjoy impressive views', then a proposed development has gone too far, and must be refused.

As the proposed development does not comply with outcomes and controls, that are the most relevant to visual impacts, greater weight would be attributed to the effects caused.

In my opinion the extent of view loss is considered to be greater than moderate, in relation to the views from my clients' highly used zones of my clients' dwelling. The view is from a location from which it would be reasonable to expect that the existing view, particularly of the view that could be retained especially in the context of a development that does not comply with outcomes and controls. The private domain visual catchment is an arc from which views will be affected as a result of the construction of the proposed development. The proposed development will create view loss in relation to my clients' property. The views most affected are from my clients' highly used zones and include very high scenic and highly valued features as defined in *Tenacity*. Having applied the tests in the *Tenacity* planning principle I conclude that my clients would be exposed to a loss greater than moderate from the highly used rooms. The non-compliance with planning outcomes and controls of the proposed development will contribute to this loss. Having considered the visual effects of the proposed development envelope, the extent of view loss caused would be unreasonable and unacceptable.

The proposed development cannot be supported on visual impacts grounds. The proposal incorporates a significant departure from controls, which helps contain building envelope. Additionally, the siting of the proposed development and its distribution of bulk does not assist in achieving view sharing objectives. Where the diminishing of private views can be attributed to a non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. My assessment finds that view sharing objectives have not been satisfied.

The above non-compliance will give rise to unreasonable amenity impacts upon the adjoining properties. In this instance, the proposal is not considered to achieve compliance with this control.

There are architectural solutions that maintain my clients' view. I identify the precise amendments necessary to overcome this loss.

As noted by his Honour, Justice Moore of the Court in *Rebel MH Neutral Bay Pty Ltd v North Sydney Council* [2018] NSWLEC 191 (*Rebel*),

“the concept of sharing of views does not mean, for the reasons earlier explained, the creation of expansive and attractive views for a new development at the expense of removal of portion of a pleasant outlook from an existing development. This cannot be regarded as “sharing” for the purposes of justifying the permitting of a non-compliant development when the impact of a compliant development would significantly moderate the impact on a potentially affected view”.

The same unreasonable scenario in *Rebel* applies to the current DA. The proposed breaching development will take away views from my clients' property (and possibly other adjoining properties) to the considerable benefit of the future occupants of the proposed development. This scenario is not consistent with the principle of View Sharing enunciated by his Honour, Justice Moore in *Rebel*. The adverse View Loss from my clients' property is one of the negative environmental consequences of the proposed development. The proposed development cannot be supported on visual impacts grounds.

These issues warrant refusal of the DA.

My clients ask Council to request that the Applicant position 'Height Poles/Templates' to define the non-compliant building envelope, and to have these poles properly measured by the Applicant's Registered Surveyor. The Height Poles will need to define: All Roof Forms, and all items on the roof, Extent of all Decks, Extent of Privacy Screens. Height Poles required for all trees. The Applicant will have to identify what heights and dimensions are proposed as many are missing from the submitted DA drawings.

In conclusion, as the development proposed will impact views from my clients' property, the erection of height poles is required to allow an accurate assessment of view impact. The height poles should provide a delineation to identify any elements of the proposed built form that breaches the envelope controls of height and setbacks.

My clients contend that the proposed development when considered against the DCP and the NSW Land and Environment Court Planning Principle in *Tenacity Consulting Pty Ltd v Warringah Council* (2004) NSWLEC will result in an unacceptable view impact and will not achieve appropriate view sharing.

My clients contend that the proposal is contrary to Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979* in that it does not satisfy the view sharing controls of the DCP.

14. IMPACTS UPON ADJOINING PROPERTIES: ACOUSTIC PRIVACY

The proposal is contrary to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as it will have unacceptable impacts upon the amenity of neighbours' property, specifically with regard to acoustic privacy.

The proposal is inconsistent with the objectives of the DCP.

The proposed development should be refused as it will have unacceptable impacts upon the amenity of my clients' property, specifically with regard to acoustic privacy.

- o Unacceptable Adverse Acoustic Privacy Impacts from the incomplete consideration of the operation of the car lifts, mechanical roller shutter, and additional street traffic: RBL + 2dBA must be the maximum limit, with access transferred away from Victoria Street
- o Unacceptable Adverse Acoustic Privacy Impacts from the incomplete consideration of the roof top terrace: RBL + 5dBA as proposed by the Applicant is considered unacceptable. This should be reduced to RBL + 2dBA, with access restricted to daylight hours only

15. IMPACTS UPON ADJOINING PROPERTIES: ENGINEERING

FLOOD CONCERNS

The proposal is contrary to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as it fails to provide adequate flood protection.

- o Unacceptable Adverse Engineering Impacts: Increased Flood Risks due to closure of overland flood zone in the existing side setback zones

The proposed development has not been designed to mitigate flood impacts to the subject site and adjoining land. The applicant has not provided adequate modelling to satisfy Council that the high hazard risk of flood and the severe risk to life has been appropriately reduced or addressed. In addition, the applicant has not provided sufficient information to enable a complete and proper assessment of the flood impacts on the site and adjoining properties.

The application fails to demonstrate compliance with the City's Interim Flood Planning Policy and stormwater drainage and quality requirements and is therefore contrary to Clause 5.21 of the Sydney LEP 2012, and Sections 3.7.1, 3.7.2 and 3.7.3 of the Sydney DCP 2012.

16. PUBLIC INTEREST

Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not within the public's interest.

The development is unsatisfactory when assessed pursuant to the matters for consideration at section 4.15(1)(e) of the EP&A Act and is therefore not in the public interest.

The proposed development is not in the public interest as the development is inconsistent with the scale and intensity of development that the community can reasonably expect to be provided on this site by nature of the applicable controls. The development does not represent orderly development of appropriate bulk, scale or amenity impact in the locality and approval of such a development would be prejudicial to local present and future amenity as well as desired future character and therefore is not in the public interest.

The proposed development is contrary to the provisions of relevant environmental planning instruments, development control plans and design guidelines. The proposed development represents numerous non-compliances and inconsistencies with State and Council policy. No circumstances exist that would justify the non-compliances and inconsistencies with these policies.

C. CONTENTIONS THAT RELATE TO INSUFFICIENT & INADEQUATE INFORMATION

The applicant has not submitted sufficient and/or adequate information under Part 6, Division 1 Clause 54 of the EPA Regulation 2000 to enable a reasonable assessment under the applicable legislation.

The application lacks sufficient detail to make an informed assessment particularly with respect to determining the extent of the following matters and the relationship and impact to adjoining neighbours.

Inadequate information has been submitted to properly assess the application and the proposed development therefore fails to satisfy the following requirements:

(i) The application fails to satisfactorily address site contamination in accordance with Section 4.6 of the State Environmental Planning Policy (Resilience and Hazards) 2021, the Managing Land Contamination Planning Guidelines SEPP 55–Remediation of Land, Clause 7.14 Acid Sulfate Soils of the Sydney LEP 2012 and Section 3.17 of the Sydney DCP 2012.

(ii) The application provides insufficient information to determine the impacts of the proposed excavation upon the structural integrity of neighbouring buildings and the retained rock face on the adjacent site at 30A - 34 Broughan Street, pursuant to Section 3.9.13 of the Sydney DCP 2012.

(iii) Insufficient information has been supplied to determine whether the building breaches the 25m design competition process threshold. No competitive design process has been undertaken for the development and it is therefore contrary to Clause 6.21D(1) of the Sydney LEP 2012 and Section 3.3 of the Sydney DCP 2012.

(iv) The application fails to demonstrate 15 per cent tree canopy coverage within 10 years of completion, pursuant to Sections 3.5.1 and 3.5.2 of the Sydney DCP. Insufficient information has been supplied to determine construction impacts on existing trees adjoining the site which is contrary to the requirements of Section 3.5.3 of the Sydney DCP 2012 and Chapter 2 Vegetation in non-rural areas of the Biodiversity and Conservation SEPP 2021.

(v) The preliminary public art plan does not satisfy requirements for public art in accordance with the City's Interim Guidelines for Public Art in Private Developments and the development is therefore contrary to the requirements of Section 3.1.5 of the Sydney DCP 2012.

(vi) The application fails to demonstrate compliance with the City's Interim Flood Planning Policy and stormwater drainage and quality requirements and is therefore contrary to Clause 5.21 of the Sydney LEP 2012, and Sections 3.7.1, 3.7.2 and 3.7.3 of the Sydney DCP 2012.

(vii) The application fails to provide sufficient information to demonstrate that each of the proposed dwellings and neighbouring dwellings will receive the minimum 2 hours of direct sunlight to living room windows and private open space areas between 9am and 3pm on 21 June, pursuant to Section 4.2.3.1 of the Sydney

DCP 2012.

(viii) The location and design of the waste storage room and waste chutes are contrary to the waste requirements set out in the City of Sydney Guidelines for Waste Management in New Development, Section 3.11.13, Section 3.14, Section 4.2.6 of the Sydney DCP 2012.

CONSTRUCTION AND DEMOLITION - TRAFFIC MANAGEMENT PLAN

Not submitted.

VIEW IMPACT ANALYSIS

The Applicant has not provided an adequate View Impact Analysis which details the extent to which existing water views from my clients' property are obstructed under the current proposal, from the proposed built form and the proposed trees, to accord with DCP controls and NSWLEC planning principles

My clients ask Council that after amended plans are submitted to reduce the building envelope below building height, wall height, and all envelope controls, to request that the Applicant position 'Height Poles/Templates' to define the non-compliant building envelope, and to have these poles properly measured by the Applicant's Registered Surveyor. The Height Poles will need to define: All Roof Forms, and all items on the roof, Extent of all Decks, Extent of Privacy Screens. Height Poles required for all trees. The Applicant will have to identify what heights and dimensions are proposed as many are missing from the submitted DA drawings.

EXISTING AND FINISHED GROUND LEVELS

Spot levels and contour lines from the Registered Surveyors drawings have not been transferred to the proposed DA drawings of plans, sections, and elevations to enable an assessment of height and the relationship and impact to adjoining neighbours. Neighbour's dwellings have not been accurately located on plans, sections and elevations, including windows and decks, to enable a full assessment of the DA.

SURVEY.

Details of neighbouring/surrounding properties, including window/door openings to determine if there will be any privacy, overshadowing or amenity impacts. Registered Surveyors levels transferred to all DA drawings. Incomplete dimensioning on DA plans, and incomplete levels on all elevations to all elements. Council should note that spot survey levels and contour lines from the Registered Surveyors drawings have not been adequately transferred to the proposed DA drawings of plans, sections, and elevations to enable an assessment of height and the relationship and impact to adjoining neighbours. Neighbour's dwellings have not been accurately located on plans, sections and elevations, including windows and decks, to enable a full assessment of the DA. The plans and documentation are misleading as they do not clearly portray the true extent of works proposed. The plans include inaccuracies and inconsistencies and insufficient information has not been provided in order to enable a detailed

assessment, including incomplete dimensional set-out and incomplete levels on drawings to define the proposed building envelope. There is incomplete analysis provided including view loss, solar loss and privacy loss. I ask Council to request that the applicant superimpose the Registered Surveyors plan detail with all spot levels and contours onto the Roof Plan, with all proposed RLs shown, so that a full assessment can be made on HOB.

EXTERNAL PLANT

Details of all external plant and equipment including air conditioning units/condensers. Air conditioning units to the façade, roof or balconies of the building will not be acceptable.

D. REQUEST FOR AMENDED PLANS TO BE SUBMITTED TO BETTER ADDRESS IMPACTS UPON ADJOINING PROPERTIES

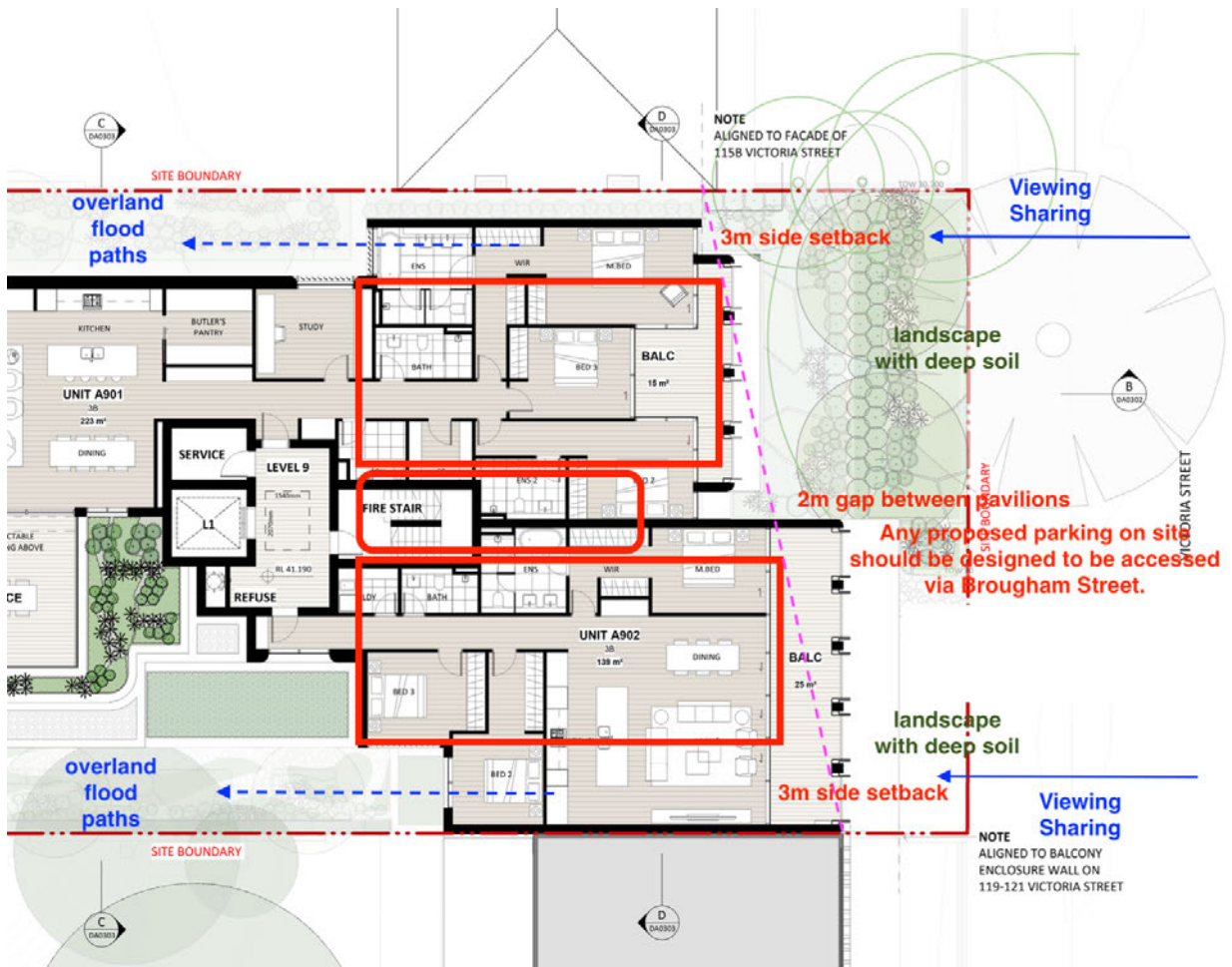
A compliant building design would reduce the amenity impacts identified.

Prepare and submit further supporting information and amendments to the assessing officer directly addressing the issues.

Reduce the proposed development as follow:

1. REDUCTION OF BUILT FORM

- Reduce the built form facing Victoria Street:
 - Side Setbacks 3m
 - Front Setback: align with neighbouring setbacks
 - Two Pavilions: with centre recess
 - Height: Level 06 to be lowered to match levels of Victoria Street, with four levels above at 3.15m storey heights.
- Any proposed parking on site should be designed to be accessed via Brougham Street.
- No excavation in the front setback zone, to allow for a continuous deep soil zone along Victoria Street for deep soil planting and to better protect Tree 1
- Unacceptable Adverse Acoustic Privacy Impacts from the incomplete consideration of the roof top terrace: RBL + 5dBA as proposed by the Applicant is considered unacceptable. This should be reduced to RBL + 2dBA, with access restricted to daylight hours only
- Unacceptable Adverse Acoustic Privacy Impacts from the incomplete consideration of the operation of the car lifts, mechanical roller shutter, and additional street traffic: RBL + 2dBA must be the maximum limit, with access transferred away from Victoria Street
- Unacceptable Adverse Engineering Impacts: Increased Flood Risks due to closure of overland flood zone in the existing side setback zones. Provide 3m setback to maintain overland flood path



E. REASONS FOR REFUSAL

My clients ask Council to refuse the DA as the proposal is contrary to the Environmental Planning and Assessment Act:

PRINCIPLE REASONS:

- 1. The application will result in the loss of FORTY-FIVE low rental dwellings and the application fails to adequately address or satisfy the Retention of Existing Affordable Rental Housing provisions prescribed by Chapter 2 Part 3 of the Housing SEPP 2021.*
- 2. The proposed infill building significantly exceeds the height of buildings and floor space ratio development standards of the Sydney Local Environmental Plan (LEP) 2012. The development also exceeds the height in storeys control of the Sydney Development Control Plan (DCP) 2012 and is inconsistent with the pattern of development in the locality.*
- 3. The proposal does not comply with several other controls for the site including building separation, setbacks, solar access, servicing, deep soil, impacts on neighbouring trees and provision of deep soil and does not achieve design excellence in accordance with Clause 6.21C of the Sydney Local Environmental Plan (LEP) 2012.*
- 4. The applicant has submitted a Clause 4.6 variation request to seek approval in relation to the development's breach of the height of buildings and floor space ratio development standards, pursuant Clause 4.3 and Clause 4.4 of the Sydney LEP 2012. The applicant's requests are not recommended to be supported.*
- 5. The proposed development is considered inappropriate in the current housing climate as it has not adequately addressed the loss of existing affordable housing. The proposed design and massing of the new development also inadequately responds to the site controls, site context and its surroundings, inhibits landscaping opportunities and adversely impacts upon surrounding properties.*

REASONS FOR REFUSAL

I contend this DA be refused for the following reasons:

(A) The proposal is contrary to and fails to adequately satisfy the matters for consideration set out in Section 47(2) of Part 3: Retention of existing affordable rental housing of the State Environmental Planning Policy (Housing) 2021 (Housing SEPP) and the Guidelines for Retention of Existing Affordable Rental Housing.

(B) The application is inconsistent with the Clause 1.2(2)(e) aim of the Sydney LEP 2012 as it fails to encourage the growth and diversity of the residential population of the City

of Sydney by providing for a range of appropriately located housing, including affordable housing.

(C) The application fails to satisfy the objectives of the R1 General Residential Zone of the Sydney LEP as it does not provide for the housing needs of the community and does not contribute to a variety of housing types and densities.

(D) The proposed development is in breach of the Height of Buildings development standard pursuant to Clause 4.3 of the Sydney LEP 2012 and exceeds the height in storeys control of Section 4.2.1.1 of the Sydney DCP 2012. The applicant's Clause 4.6 variation request to contravene the Height of Buildings standard has not demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances or that there are sufficient environmental planning grounds to justify contravention of the development standard.

(E) The proposed development is in breach of the Floor Space Ratio development standard pursuant to Clause 4.4 of the Sydney LEP. The applicant's Clause 4.6 variation request to contravene the Floor space ratio development standard has not demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances or that there are sufficient environmental planning grounds to justify contravention of the development standard.

(F) The proposed development is contrary to principles 1 to 9 of the design principles for residential apartment development in Schedule 9 of the Housing SEPP. The proposal provides inadequate amenity to apartments and neighbouring residential buildings and is non-compliant with multiple provisions of the ADG, including Objectives 3B, 3C, 3F, 3H, 3J, 4A, 4D, 4E, 4G, 4L, 4M, 4O, 4P, and 4W.

(G) The proposed development does not respond to or complement adjoining heritage and contributory buildings, does not respond to the topography of the site and is not in keeping with the unique character of the locality. The proposal is therefore contrary to the locality provisions of Section 2.4.3 and 2.4.7 of the Sydney DCP and the heritage provisions of Clause 5.10 of the Sydney LEP 2012 and Sections 3.9.1, 3.9.5, 3.9.6, 3.9.9 and 3.9.10 of the Sydney DCP 2012.

(H) The proposal does not meet the requirements of the City's Landscape Code and does not provide 10% deep soil in a consolidated area and is therefore non-compliant with Sections 4.2.3.5 and 4.2.3.6 of the Sydney DCP 2012.

(I) The development proposes vehicle access from the primary road frontage, does not include bicycle parking, and is contrary to the transport and parking requirements Sections 3.11.3, 3.11.6, and 3.11.11 of the Sydney DCP 2012.

(J) The proposed side setbacks and building setting is inconsistent with the desired future pattern of residential development and setbacks in the block, pursuant to Section 4.2.2 of the Sydney DCP 2012.

(K) The development does not provide appropriate amenity for residents. The development does not provide unit, private open space or communal open space in accordance with the minimum dimensions and size requirements of the ADG, and Sections 4.2.3.7, Section 4.2.3.8 and Section 4.2.3.9 of the Sydney DCP 2012. Poor outlook is also provided to bedrooms due to screening and to the lower ground unit to Victoria Street which is contrary to Section 4.2.3.10 of the Sydney DCP 2012.

(L) Inadequate information has been submitted to properly assess the application and the proposed development therefore fails to satisfy the following requirements:

(i) The application fails to satisfactorily address site contamination in accordance with Section 4.6 of the State Environmental Planning Policy (Resilience and Hazards) 2021, the Managing Land Contamination Planning Guidelines SEPP 55–Remediation of Land, Clause 7.14 Acid Sulfate Soils of the Sydney LEP 2012 and Section 3.17 of the Sydney DCP 2012.

(ii) The application provides insufficient information to determine the impacts of the proposed excavation upon the structural integrity of neighbouring buildings and the retained rock face on the adjacent site at 30A - 34 Broughan Street, pursuant to Section 3.9.13 of the Sydney DCP 2012.

(iii) Insufficient information has been supplied to determine whether the building breaches the 25m design competition process threshold. No competitive design process has been undertaken for the development and it is therefore contrary to Clause 6.21D(1) of the Sydney LEP 2012 and Section 3.3 of the Sydney DCP 2012.

(iv) The application fails to demonstrate 15 per cent tree canopy coverage within 10 years of completion, pursuant to Sections 3.5.1 and 3.5.2 of the Sydney DCP. Insufficient information has been supplied to determine construction impacts on existing trees adjoining the site which is contrary to the requirements of Section 3.5.3 of the Sydney DCP 2012 and Chapter 2 Vegetation in non-rural areas of the Biodiversity and Conservation SEPP 2021.

(v) The preliminary public art plan does not satisfy requirements for public art in accordance with the City's Interim Guidelines for Public Art in Private Developments and the development is therefore contrary to the requirements of Section 3.1.5 of the Sydney DCP 2012.

(vi) The application fails to demonstrate compliance with the City's Interim Flood Planning Policy and stormwater drainage and quality requirements and is therefore contrary to Clause 5.21 of the Sydney LEP 2012, and Sections 3.7.1, 3.7.2 and 3.7.3 of the Sydney DCP 2012.

(vii) The application fails to provide sufficient information to demonstrate that each of the proposed dwellings and neighbouring dwellings will receive the minimum 2 hours of direct sunlight to living room windows and private open space areas between 9am and 3pm on 21 June, pursuant to Section 4.2.3.1 of the Sydney DCP 2012.

(viii) The location and design of the waste storage room and waste chutes are contrary to the waste requirements set out in the City of Sydney Guidelines for Waste Management in New Development, Section 3.11.13, Section 3.14, Section 4.2.6 of the Sydney DCP 2012.

(M) The proposed development fails to exhibit Design Excellence pursuant to Clause 6.21C of the Sydney LEP 2012 due to the following:

(i) The application fails to demonstrate a high standard of architectural design and

detailing appropriate to the building type and surrounding heritage character, pursuant to Clause 6.21C(2)(a),

(ii) The form and external appearance of the proposed development will not improve the quality of the public domain, pursuant to Clause 6.21C(2)(b) and Clause 6.21C(2)(d)(x),

(iii) The proposed development detrimentally impacts on public view corridors from Victoria Street, pursuant to Clause 6.21C(2)(c),

(iv) The application fails to appropriately address heritage issues and streetscape constraints, pursuant to Clause 6.21C(2)(d)(iii),

(v) The proposed development fails to provide an appropriate bulk, massing and modulation of buildings, pursuant to Clause 6.21C(2)(d)(v),

(vi) The proposal is not consistent with existing street frontage heights, pursuant to Clause 6.21C(2)(d)(vi),

(vii) The application fails to adequately address environmental impacts of overshadowing, solar access, views and visual privacy, pursuant to the provisions outlined under Clause 6.21C(2)(d)(vii),

(viii) The application fails to adequately consider pedestrian, cycle, vehicular and service access and circulation requirements, pursuant to Clause 6.21C(2)(d)(ix),

(ix) The proposed development does not achieve an appropriate interface at ground level between the building and the public domain, pursuant to Clause 6.21C(2)(d)(xii), and

(x) The proposed development fails to demonstrate excellence and integration of landscape design pursuant to Clause 6.21C(2)(d)(xii).

(N) The development is unsatisfactory when assessed pursuant to the matters for consideration at section 4.15(1)(e) of the EP&A Act and is therefore not in the public interest.

The proposal is contrary to Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* in that the plans and documentation are misleading as they do not clearly portray the true extent of works proposed. The plans include inaccuracies and inconsistencies and insufficient information has been provided in order to enable a detailed assessment. Dimensions to boundaries have not been shown in all locations of all proposed built elements. Levels on all proposed works have not been shown.

The proposal is contrary to Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* in that the proposal would not satisfy the matters for consideration under Biodiversity & Conservation SEPP 2021 and Resilience & Hazards SEPP 2021

The proposal is contrary to Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* in that it will have an adverse impact through its bulk, scale and siting on the built environment, and through lack of landscape provision, and adverse impact on the natural environment. The proposed development will have a

detrimental impact on the visual amenity of the adjoining properties by virtue of the excessive building bulk, scale and mass of the upper floor and its associated non-compliant envelope.

The site is not suitable for the proposal pursuant to Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979* in that this area of the site is unsuitable for a development of such excessive bulk and scale.

The proposals are unsuitably located on the site pursuant to Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*.

The proposal does not satisfy Section 4.15(1)(d) of the *Environmental Planning and Assessment Act 1979* in that the proposal does not adequately address the amenity of neighbours

The proposal is contrary to the public interest pursuant to Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*. The proposed development is not in the public interest as the development is inconsistent with the scale and intensity of development that the community can reasonably expect to be provided on this site by nature of the applicable controls. The development does not represent orderly development of appropriate bulk, scale or amenity impact in the locality and approval of such a development would be prejudicial to local present and future amenity as well as desired future character and therefore is not in the public interest. The proposed development will have a detrimental impact on the amenity of adjoining residential properties, and for this reason is contrary to the public interest.

F. CONCLUSION

The proposed development is not consistent with the intent of the LEP standards and DCP controls as they are reasonably applied to the proposal.

The variations to LEP standards and DCP controls are considered unreasonable in this instance. The cumulative effect on these non-compliances causes considerable amenity loss to my clients' property.

The development will not sit well within the streetscape with non-compliance to LEP standards and DCP controls causing considerable concern. In this regard, the proposal is considered excessive in bulk and scale and would be considered jarring when viewed from the public domain.

Commissioner Moore revised the NSWLEC planning principle for assessing impacts on neighbouring properties within *Davies v Penrith City Council* [2013] NSWLEC 1141

"The following questions are relevant to the assessment of impacts on neighbouring properties:

How does the impact change the amenity of the affected property? How much sunlight, view or privacy is lost as well as how much is retained?

How reasonable is the proposal causing the impact?

How vulnerable to the impact is the property receiving the impact? Would it require the loss of reasonable development potential to avoid the impact?

Does the impact arise out of poor design? Could the same amount of floor space and amenity be achieved for the proponent while reducing the impact on neighbours?

Does the proposal comply with the planning controls? If not, how much of the impact is due to the non-complying elements of the proposal?"

I contend that the proposed development severely impacts my clients' property, and in terms of amenity, there is excessive sunlight, view or privacy loss. The loss is unreasonable. My clients' property is not vulnerable to the loss that is presented. The loss arises out of poor design, either through non-compliance to envelope controls or poorly located built form.

It is considered that the proposal is inappropriate on merit and unless amended plans are submitted, this DA must be refused for the following reasons:

- The application has not adequately considered and does not satisfy the various relevant planning controls applicable to the site and the proposed development.
- The proposed development is incompatible with the existing streetscape and development in the local area generally.
- The proposed development will have an unsatisfactory impact on the environmental quality of the land and the amenity of surrounding properties.
- The site is assessed as unsuitable for the proposal, having regard to the relevant land use and planning requirements.

It is considered that the public interest is not served.

The proposed development does not follow the outcomes and controls contained within the adopted legislative framework.

Having given due consideration to the matters pursuant to Section 4.15 of the Environmental Planning and Assessment Act, 1979 as amended, it is considered that there are multiple matters which would prevent Council from granting consent to this proposal in this instance.

The proposed development represents an overdevelopment of the site and an unbalanced range of amenity impacts all of which would result in adverse impacts on my clients' property. Primarily,

- o The development compromises amenity impacts on neighbours
- o The development does not minimise visual impact

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- o Inconsistent with the zone objectives of the LEP
- o Inconsistent with the aims of the LEP
- o Inconsistent with the objectives of the DCP
- o Inconsistent with the objectives of the relevant EPIs
- o Inconsistent with the objects of the EPAA1979

The proposed development does not satisfy the appropriate controls. Furthermore, the proposal would result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community, and is therefore not in the public interest. The proposal therefore must be refused. It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have not been satisfactorily addressed.

I ask that if Council in their assessment of this application reveals unsupported issues, which prevent Council from supporting the proposal in its current form, and writes to the applicant describing these matters, I ask for that letter to be forwarded to me.

My clients trust that Council will support my clients' submission and direct the proponent to modify the DA plans, as outlined above. My clients ask Council Officers to inspect the development site from my clients' property so that Council can fully assess the DA.

It is requested that Council inform both myself, and my clients directly, of any amended plans, updates or Panel meeting dates. My clients request that they present to the Panel, should the DA proceed to the LPP.

Unless the Applicant submits Amended Plans to resolve all of the adverse amenity impacts raised within this Submission, my clients' ask Council to REFUSE this DA.

Yours faithfully,



Bill Tulloch BSc [Arch] BArch [Hons1] UNSW RIBA Assoc RAIA
Director
DA Objection Pty Ltd
PO Box 440 Mona Vale NSW 1660

From: 2011 Residents Association Inc <[REDACTED]> on behalf of 2011 Residents Association Inc <[REDACTED]>
Sent on: Monday, August 19, 2024 11:18:28 PM
To: dasubmissions@cityofsydney.nsw.gov.au
CC: 2011 Residents Association Inc <[REDACTED]>
Subject: Submission re D/2024/524 - 117 Victoria Street Potts Point NSW 2011
Attachments: submission-da-117-victoria-st-2011ra-16aug24.pdf (308.34 KB)

Caution: This email came from outside the organisation. Don't click links or open attachments unless you know the sender, and were expecting this email.

Dear DA Submissions,

Please find attached (as a PDF file) the submission of the 2011 Residents' Association regarding D/2024/524 - 117 Victoria Street Potts Point NSW 2011.

Regards,

Carole Ferrier
Convenor
2011 Residents' Association



2011 Residents' Association Inc.

ABN 78 862 101 665

Unit 35, 117 Victoria Street

Potts Point NSW 2011

16 August 2024

Council of the City of Sydney

Dear DA Submissions,

Submission re D/2024/524 - 117 Victoria Street, Potts Point

<https://eplanning.cityofsydney.nsw.gov.au/Pages/XC.Track/SearchApplication.aspx?id=2385276>

We are a residents' action group that advocates for residents and businesses in the 2011 postcode area covering Potts Point, Elizabeth Bay, Rushcutters Bay and Woolloomooloo. We have led and supported campaigns for increased public transport, to preserve the historic streetscapes of the neighbourhood, to improve public amenity, and in support of many community projects.

Our members live in the 2011 postcode area and have history here. We have seen our area grow and thrive, but we have also seen it challenged. Throughout all, we have maintained our strong advocacy role to protect and improve the safety and amenity for all who live in, work in, and visit the 2011 postcode.

The 2011 Residents' Association objects to the above-mentioned DA for the same reasons that we objected to a very similar DA for the same address in October 2024, namely:

1. Inappropriate and unsympathetic streetscape design
2. Razing a perfectly liveable building to replace it with 'luxury apartments'

3. Removal of an existing building, that is home to families and low-income earners, during a time of unprecedented housing crisis

- 1.

Victoria Street, Potts Point has struggled - mostly successfully - for decades to maintain a balance between maintaining its valuable heritage streetscape that immortalises the history of the area, and moving forward with the realities of modern living.

A walk down Victoria Street encompasses not just the pride of Victorian residential architecture, but the history of the area's political and social struggles for justice, such as the historical trade union Green Bans of the 1970s. Victoria Street, Potts Point is, in many ways, a living museum, admired by visitors and fiercely protected by residents.

The current residential building at 117 Victoria Street is not, it must be admitted, a grand relic of the age of Victorian architecture in Sydney, but it nonetheless has a significant story to tell as part of the overall streetscape of Potts Point.

Designed by Sydney architect Henry Haber and constructed around 1965, it is a fine example of the simple post-war design that was, even back then, focussed on providing a basic home to struggling and low-income families; Council's own archive records show the amount of care and detail that went into the design and construction of the building. It is a perfect example of its time, and of its generation.

<https://archives.cityofsydney.nsw.gov.au/nodes/view/778128>

The building that is proposed to replace it is, sadly, of the modern 'cookie cutter' variety that is out of sympathy with, and adds little to, the existing streetscape, and will in all likelihood have a negative impact by introducing yet more cars on to the street and into the neighbourhood, despite the reduction in the actual numbers of apartments, because the current residents are for the most part users and supporters of public transport, and not car owners

- 2.

The current residential building at 117 Victoria Street is still doing its job after more than 50 years. It comprises 44 residential flats which are occupied mostly by workers in the local service industries (hospital staff, restaurant and hospitality industry staff, emergency

services workers, defense personnel, etc.) and rented by them at a modestly priced rentals which they can afford.

The building is also home to long-term, 'low-to-no income' residents (e.g. elderly and on pension incomes) who have lived there for years, and who are dependent on critical local amenities such as their local doctors and hospital specialists, as well as the support of their local neighbourhood community that has been built up over years of residence.

It is perfectly liveable, structurally sound, and home to current residents at a reasonable rental.

The building still has years of productive life left in it. To demolish this whole building and replace it with another would require at least two years of noise and dust and would go against every principle of the sustainable economy which all political parties profess to support.

The proposed replacement building will comprise just 25 apartments of a luxury nature to be sold and/or rented at much more expensive prices. This will mean a great loss of affordable housing for people working in the service industries which are such a large part of the Kings Cross, Potts Point and Darlinghurst economy. Are these workers expected to move far away to new homes in suburbs in outer Sydney and commute to and from at the start or end of each shift in the very early or very late hours?

To raze the existing building for no other reason than 'development' or 'progress', ignores the impact that this will have on real people and families.

3.

Open any newspaper, or watch any news program, and you will find that that the most talked-about local issue is the housing crisis around the country, but particularly in Sydney where it is now almost impossible for working people on average incomes to strive to own their own home. Equally alarming is the threat to the low-income rental market, which has seen rents spiral out of control and out of reach for most people on fixed or low incomes. So the focus of many local, state and federal governments is now, rightly, on efforts to solve this problem, and arrange the provision of low-cost, affordable housing for low-income residents.

The residential building at 117 Victoria St does just that: it has provided secure homes for low-income earners and pensioners for many years, a total of 44 homes in a mixture of studios, 1-bedroom and 2-bedroom flats that are close to shops, supermarkets, doctors, hospitals, public transport, Police, and Council resources such as the Library and

Community Centre; and, probably most importantly of all, it houses their community of friends and neighbours.

The proposed development would demolish that essential housing and replace it with just 25 proposed 'luxury apartments' - in other words, it would slash the residential amenity that currently exists by half! This is unacceptable in the current economic climate.

Ask yourselves: where will the low-income earners and pensioners go when their home of many years at 117 Victoria Street is demolished? They will certainly not be in the running for the new 'luxury apartments' in Sydney's current overpriced real estate market.

Some may, tragically, even end up homeless, on the streets or - perhaps in a best case scenario - in boarding houses, many of which, though, have dubious reputations and limited resources and amenities. We don't want to see **any** long-term Potts Point residents go through this, particularly when their existing home at 117 Victoria Street is just that: *their home*.

The 2011 Residents' Association urges Council to reject this DA proposal.

Yours faithfully,

Carole Ferrier

Convenor

2011 Residents' Association

<https://2011residentsassociation.org.au/>

From: <[REDACTED]>
Sent on: Monday, August 19, 2024 2:37:16 PM
To: dasubmissions@cityofsydney.nsw.gov.au
Subject: D/2024/524 - Attention Julia Errington

Caution: This email came from outside the organisation. Don't click links or open attachments unless you know the sender, and were expecting this email.

Dear Julia,

Our objections to DA D/2023/862 in the petition from Potts Point residents sent to you on 26 October 2023, still apply.

The new DA (D/2024/524) does not address these issues satisfactorily – in fact the noise issue from the proposed pool and recreation area is worse in the new DA as the non-compliant height at the centre of the site is even worse than the previous DA.

Thank you

Residents of 101A/101B/103/105/107/109/111/113/115 Victoria St
Potts Point

From: Joanne Greene <[REDACTED]> on behalf of Joanne Greene <[REDACTED]> <Joanne Greene <[REDACTED]>

Sent on: Wednesday, August 21, 2024 3:06:27 PM

To: DAsubmissions@cityofsydney.nsw.gov.au

Subject: D/2024/524

Caution: This email came from outside the organisation. Don't click links or open attachments unless you know the sender, and were expecting this email.

Dear Julia

I would like to refer to my communication in respect to the previous DA expressing my concerns.

It appears that my concerns have not been addressed at all, in fact I note that the height of the building in the centre of the site is even higher than proposed in the original DA.

In respect to the excavation work I note that this work has also been increased.

I would appreciate my concerns be brought to the attention of the relevant council authorities.

Thanking you.

Sincerely, Joanne Greene.

88/103 Victoria street
Potts Point.

Telephone [REDACTED]).

From: Brad Quaglino <[REDACTED]> on behalf of Brad Quaglino <[REDACTED]> <Brad Quaglino <[REDACTED]>
Sent on: Wednesday, August 21, 2024 4:16:45 PM
To: dasubmissions@cityofsydney.nsw.gov.au
Subject: D/2024/524 - 117 Victoria Street POTTS POINT NSW 2011 - Attention Julia Errington

Caution: This email came from outside the organisation. Don't click links or open attachments unless you know the sender, and were expecting this email.

Hi DA,

I trust this message finds you well. I am writing to express my strong objection to the proposed height increase outlined in the development proposal D/2024/524, primarily due to concerns regarding potential view loss as a result of the suggested changes. The proposed deviation from the current regulations and guidelines could significantly impact the visual landscape and compromise the enjoyment of my property which is located at 103 Victoria Street with views looking directly at 117 Victoria Street. My main concern is new breaches to height added to the building which is non-compliant including the rooftop and lift shaft. The lift shaft would be a direct view blocking the district views from the apartment. Extending the already non-compliant current structure top floor which was a small breach in the front of the building to now almost a whole additional floor to the proposed building. I object to any more volume of new building above the non-compliant height and any increase for additional height non-compliant height.

My objection is grounded in the profound value I place on the unobstructed view that currently enhances the appeal of my property. The proposed height increase has the potential to impede this view, which has been an integral aspect of the property and a significant consideration in my decision to invest in this location. As such, any alteration that threatens this aspect would substantially diminish the overall value and appeal of my property.

Please see the attached for reference

Current - circled breach in black

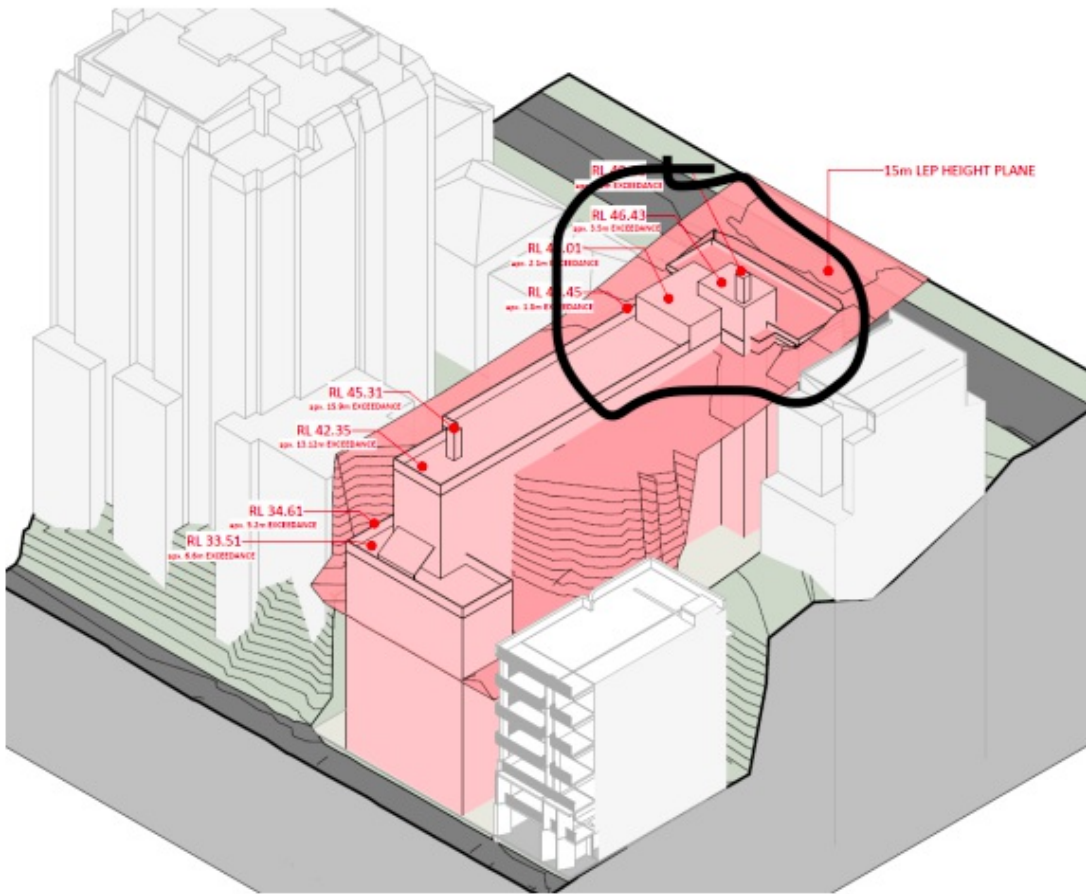
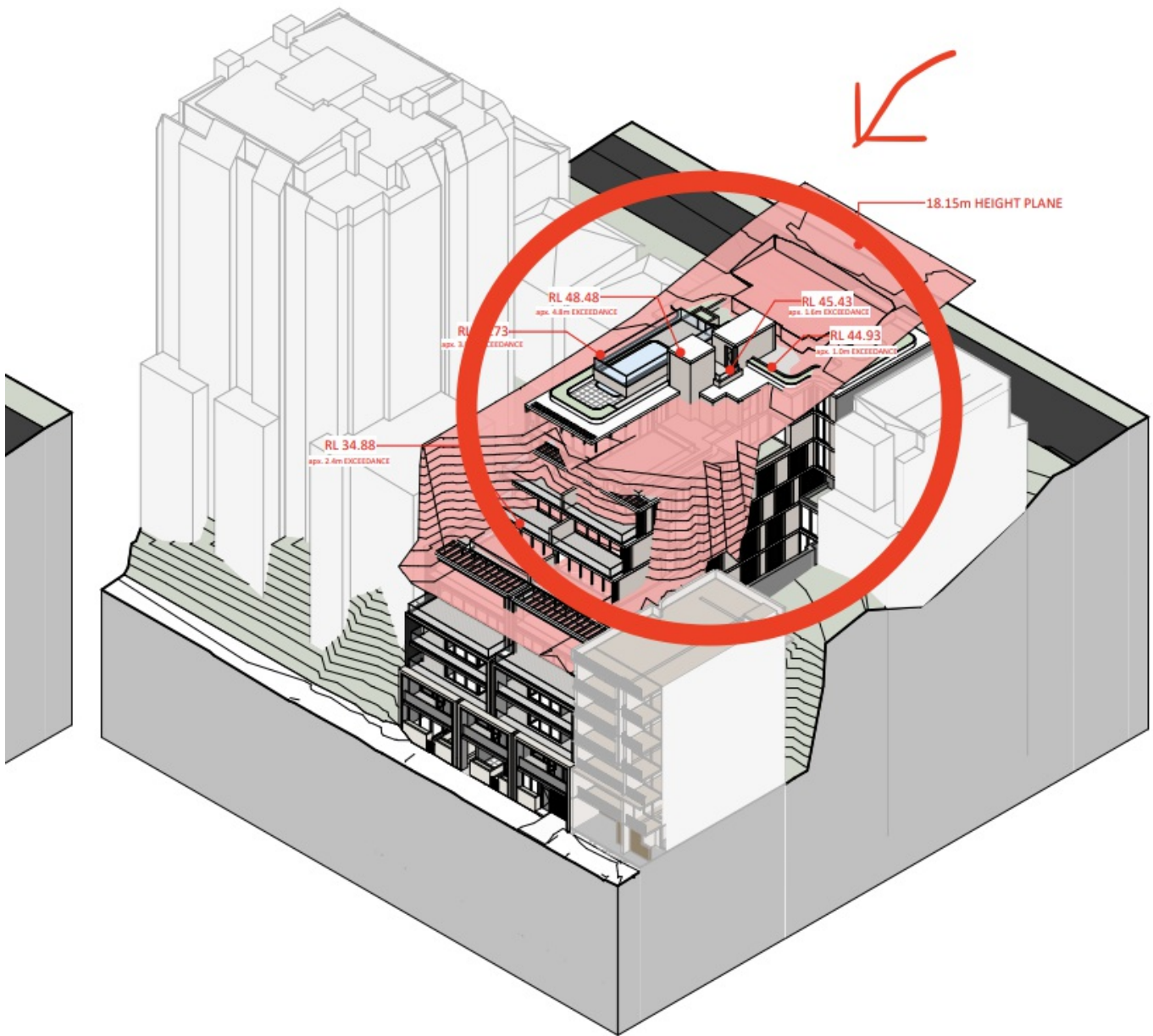


Figure 18 Height blanket diagrams of existing building

Proposed - circled my objection to increasing non-compliant height and volume of non-complaint height to block views in Red below



Thank you for taking my feedback into consideration.

Brad Quaglino
Property Owner 103 Victoria Street

From: Julia Errington <JErrington@cityofsydney.nsw.gov.au> on behalf of Julia Errington <JErrington@cityofsydney.nsw.gov.au> <Julia Errington <JErrington@cityofsydney.nsw.gov.au>>
Sent on: Wednesday, August 21, 2024 5:17:46 PM
To: DAsubmissions <DAsubmissions@cityofsydney.nsw.gov.au>
Subject: OBJECTION to D/2024/524 117 Victoria Street Potts Point, 2011

Please register as a submission to D/2024/524. Thanks!

From: James Woodford <[REDACTED]>
Sent: Wednesday, August 21, 2024 3:26 PM
To: Julia Errington <JErrington@cityofsydney.nsw.gov.au>
Subject: Fwd: OBJECTION to D/2024/524 117 Victoria Street Potts Point, 2011

Caution: This email came from outside the organisation. Don't click links or open attachments unless you know the sender, and were expecting this email.

Hi there Julia - I received the below email, which I assume applies to last year's DA application.

I also wish to oppose the new DA. I am the owner of Unit 1/115a Victoria Street, Potts Point, NSW 2011.

While I consider the new DA to be an improvement, I firmly believe the new proposal will have a severe impact on my apartment. My greatest concern is that there will only be a one metre space between 117 Victoria Street and 115 Victoria Street. This will greatly diminish the amount of light that will be available to the only window I have on the south side of my apartment. This window is into my living space and so will lead to a significant loss of solar access and amenity. I believe that the current distance between the buildings should be retained and that it would be extremely unfair for me to lose any more of the minimal light into my living room that I currently enjoy.

I also believe that the increased footprint of the proposal at 117 Victoria Street at the rear will diminish the afternoon sun able to access the only window I have on the western side of my apartment - again into my living space.

I also currently have a filtered view of Centrepoint Tower and St Mary's Cathedral which I believe will be taken away by this construction and has not been taken into account in the DA.

I also am concerned about the diminishment of privacy from proposed verandas overlooking my courtyard on the street frontage and believe further efforts should be undertaken to ensure my privacy in the courtyard is preserved.

Finally, while putting five units into a pool of affordable housing for 15 years is an improvement on the initial application, I do not think the housing situation in Sydney will be anything other than worse in 15 years. The building is currently 100 per cent affordable housing and the current proposal will reduce the pool of affordable apartments in the area.

Thank you for considering my submission,

Yours faithfully, James Woodford

----- Forwarded message -----

From: Planning Systems Admin <planningsystemsadmin@cityofsydney.nsw.gov.au>
Date: Wed, 21 Aug 2024 at 12:00 PM
Subject: Determination Notice - Refused - D/2023/862
To:

We refer to your submission about the above application. The matters you raised were considered when we assessed the application.

The application has been refused. You can view the assessment report and notice of determination by entering the application number or address on the [City of Sydney's website](#).

The notice of determination contains reasons the application was refused.

If you have any queries, contact the assessing officer whose details are in the notice of determination on the [City of Sydney's website](#).

Kind regards

Planning Assessment Unit



cityofsydney.nsw.gov.au



The City of Sydney acknowledges
the Gadigal of the Eora Nation as the
Traditional Custodians of our local area.

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