

30 March 2026

By email:
information@planning.nsw.gov.au

Minister for Planning and Public Spaces

Dear Sir

**Objection to SSD-93020230 on behalf of Chris Shaw and Rhae Hooper of 73 Muston St
Property: 40-48 Redan Street, Mosman NSW 2088**

Our ref: CHR856-00001

Introduction

- 1 We act for Chris Shaw and Rhae Hooper who occupy 73 Muston Street, Mosman (**Property**), which lies to the west and upslope of 40-48 Redan Street (the **Site**), adjacent to the Site across Redan Lane.
- 2 We refer to development application SSD-93020230 (the **SSDA**), which seeks consent for the demolition of existing structures and construction of a part ten- and part five-storey residential flat building comprising 53 residential dwellings (including 11 affordable dwellings), and two levels of basement car parking. The SSDA relies on the provisions of Chapter 6 (Low and Mid Rise Housing) (**LMRH**) of the *State Environmental Planning Policy (Housing) 2021* (NSW) (**Housing SEPP**) which came into force on 28 February 2025.
- 3 Our clients have asked us to submit their objection to the SSDA, to describe the significant and specific, likely adverse impacts upon their amenity as a consequence of the development proposed under the SSDA. In particular our clients' primary concerns include the following:
 - a) The obliteration of iconic water views to the Sydney Heads and Harbour, which they currently enjoy (the loss of which is described as "devastating"), and
 - b) Excessive height bulk and scale of the proposed development which will be wholly acontextual, and which represents a significant and excessive overdevelopment of the Site;
 - c) Adverse impacts upon the heritage values and significance of existing locally listed items within the vicinity of the Site, and

- d) Loss of general amenity and unacceptable impacts upon our clients' current enjoyment of their Property, including loss of solar access and sky views, significant overlooking and adverse privacy and visual impacts.
- 4 In support of this objection, our client has retained these experts to prepare the following reports, which are **appended** hereto:
- a) Mr John McFadden who has addressed the adverse view loss and amenity impacts to the Property in his report dated 30 March 2026 (**Planning Report**) at **Annexure A**; and
 - b) Ms Vanessa Holtham who has addressed the adverse heritage impacts to the property in her report dated 30 March 2026 (**Heritage Report**) at **Annexure B**, and
 - c) Sydney Surveyors who have addressed the point-to-point distances between the Site and Spit Junction Town Centre in their survey dated 26 November 2025 (**Survey**) at **Annexure C**.

Location of our client's Property relative to the Site

- 5 Our client's Property, which is directly adjacent to the Site across Redan Lane, sits within Zone R3 Medium Density Residential under the *Mosman Local Environmental Plan 2012 (MLEP)*.
- 6 Our client currently enjoys iconic views to the Sydney Heads and Harbour, across over the Property's frontage to Redan Lane, and across the Site. From the primary living spaces and private open space areas (particularly the rear deck) of our client's Property, our clients currently enjoy extensive views to Sydney Harbour foreshores and landforms and multiple close, middle distance and views to distant land/water interfaces. This includes views to the waters and sands of Balmoral Beach, and the iconic landforms of Middle Head, North Head, and the open sea through the Heads. The Applicant asserts in its Environmental Impact Statement dated 27 February 2026 (**EIS**) that the Site falls within the 'low and mid rise housing inner area' under section 163 of the Housing SEPP (in order to overcome the development standards in the MLEP so it can take advantage of the LMRH provisions under Chapter 6 of the Housing SEPP as they relate to building height and floor space ratio). In so doing, the proposed development is of a bulk and scale that will result in devastating view loss impacts on the iconic views our clients currently enjoy and will also adversely impact the heritage values of the area, and the amenity of our clients' Property.

7 Both our clients' Property and the Site are located in the Balmoral Townscape area under the Mosman Development Control Plan 2012-2014 (**Mosman DCP**), which is characterised by steeply sloping topography, vegetation, and its relationship with the Harbour and the Headlands. Our clients submit that the development proposed under the SSDA has had absolutely no regard for the nuances of the existing character of the Balmoral Townscape area, as evidenced by its crude and imposing bulk and scale.

Application of the LMRH Policy – Distance to Town Centre

8 The Applicant has incorrectly identified the Site as being within the 'low and mid rise housing inner area' under the LMRH Policy, which commenced under Chapter 6 of the *State Environmental Planning Policy (Housing) 2021 (Housing SEPP)*.

9 Under the s 163 of the LMRH Policy, A "low and mid rise housing inner area" means: land within 400m walking distance of land identified as "Town Centre" on the Town Centres Map, which in this case is Spit Junction Town Centre.

10 The SSDA proceeds on the assumption within the EIS and the Transport Impact Assessment prepared by JMT Consulting and dated 27 February 2026, that the development is within a "low and mid rise housing inner area" pursuant to s 163 of the Housing SEPP, in order to gain the associated building height benefits under s 175 of the LMRH Policy. For the Site to be afforded the additional building height under s 175, it **must**, as a jurisdictional requisite, be within 400m walking distance of Spit Junction Town Centre.

11 Our clients submit that the Applicant has failed to show whether the Site is within 400m walking distance of a "Town Centre" and further, that the Applicant's survey is insufficient.

12 The Applicant alleges that the route proposed in the Applicant's EIS which follows Redan Lane north from the Site, heads west along Almora Street, crosses Almora Street at the junction with Muston Street, and heads north along Muston Street before bearing west to reach the corner of Spit Junction Town Centre, demonstrates the safe "walking distance" under Schedule 10 of the Housing SEPP. That definition provides:

13 **walking distance** means the shortest distance between 2 points measured along a route that **may be safely walked by a pedestrian** using, as far as reasonably practicable, public footpaths and pedestrian crossings. [our emphasis]

- 14 Our clients submit that the route put forward by the Applicant in its EIS does not satisfy the definition of a *walking distance that may be safely walked by a pedestrian using....public footpaths and pedestrian crossings*, under the Housing SEPP because:
- a) Redan Lane cannot be safely walked. There is no footpath on Redan Lane at present, meaning a pedestrian must walk on the road. Many residents park their cars along the Lane, leaving barely more than the width of one car for traffic to pass through in both directions, and through which any pedestrian must walk to pass through the Lane.
 - b) The crossing of Almora Street at the junction with Muston Street is neither safe, nor does it reasonably make use of public footpaths and pedestrian crossings. The footpaths on either side of Almora Street run parallel to the road, with no breaks in the kerb which indicate a safe crossing of Almora Street. These footpaths cross several quiet side streets until they reach the pedestrian crossing at the top of Almora Street at the junction with Military Road. This is the only safe crossing of Almora Street anywhere between the Site and the Spit Junction Town Centre, and must be used where reasonably practicable.
- 15 It should also be noted that the Applicant's route for calculating the walking distance differs between the EIS as described above, and its Transport Impact Assessment (**TIA**) prepared by JMT Consulting dated 27 February 2026. JMT Consulting in the TIA adopts Redan Street (rather than Redan Lane) as the appropriate start of its walking distance measurement, but then otherwise follows a similar route to that of the EIS, crossing Almora Street at an unsafe location. According to the TIA, the walking distance along this route is 394.7m to Spit Junction Town Centre.
- 16 Our clients have retained Sydney Surveyors to properly measure the safe walking distance from the Site to Spit Junction Town Centre. The **enclosed** Survey at **Annexure C** shows that the actual walking distance, using safe pedestrian access points, measured between the edge of the Site and the edge of Spit Junction Town Centre is **469.8m**. In particular, the route shown on the Survey makes use of the pedestrian crossing at the top of Almora Street, adjacent to Military Road, and does not make use of Redan Lane, so is therefore consistent with the definition of *walking distance* under the Housing SEPP.
- 17 The Department should not that the seminal case on walking distance, *Ritchie v Hills Shire Council* [2018] NSWLEC 1376, supports our position that stretches of a proposed route that require a pedestrian to walk on the hard shoulder of the road, with no footpath or pedestrian crossings, do not accord with the definition of walking distance under the

Housing SEPP. In this case it was found that though two points may be within 400m of each other, if the route between them is neither safe nor reasonably practicable, then it is not the correct route for the purposes of determining walking distance.

- 18 As the walking distance between the Site and the nearest Town Centre is greater than 400m, the Site is not in a low and mid rise housing inner area and the development proposed under the SSDA is therefore, not permissible. It is a jurisdictional prerequisite that any proposal seeking to benefit from the building height and floor space ratio benefits afforded by Chapter 6 of the Housing SEPP, must first demonstrate that the Site is within 400m of the nearest Town Centre. The Applicant has failed to meet this prerequisite.

Devastating View Loss Impacts

- 19 We have been asked to draw to the Department's particular attention, the existing view loss planning principles in the context of the provisions of Chapter 6 of the Housing SEPP (and by reference to the view sharing principles in *Tenacity Consulting v Warringah Council* [2004] NSWLEC 140 (*Tenacity*)) which are not overridden by any application of the non-discretionary development standards to the Site under Chapter 6 of the Housing SEPP.
- 20 Whilst the provisions of the LMRH controls under the Housing SEPP override the development standards under the MLEP, that does not mean that the consent authority can ignore any assessment of merit issues, which in this case arise as a direct result of the proposal's excessive bulk and scale. The SSDA makes plain that the LMRH provisions result in a building form which is entirely inappropriate for the Site and its setting, as evidenced by the nature and extent of the significant adverse amenity impacts that will arise upon our client's Property, and not least because of the resultant devastation of iconic views therefrom.
- 21 Accordingly, and even if the proposal under the SSDA complies with the non-discretionary development standards under the Housing SEPP (which it does not), the consent authority must assess, as a mandatory consideration, the impact of the proposed development on views from our client's Property by reference to the view sharing principles in *Tenacity*. Our client submits that, for the reasons that follow, and as articulated in the Planning Report, the proposal under the SSDA has had no regard to any view sharing principles.
- 22 The planning report at **Annexure B**, contains at pages 22 and 23, some view loss montages prepared by view loss expert Ms Pam Walls. Thos montages clearly show

that the development proposed under the SSD has had scant regard to the Tenacity View Sharing Principles and also show the extent of the view loss from our clients Property. Which will clearly be devastating. Our clients submit that the SSD contains no analysis of the view loss impacts of affected properties, arising from the loss of land and water interface views at Balmoral Beach. Indeed, Figures 17 of the Planning report make it plain that the Applicant in fact intends to wholly obliterate those views.

23 The Visual Impact Assessment (**VIA**) prepared in support of the SSDA by URBIS and dated February 2026, has not conducted a thorough view loss assessment from our client's property, as it has done for some neighbouring properties, but nonetheless lists the impact to our client's Property as "moderate to devastating".

24 Mr McFadden, in his Planning Report explains that the small sliver of views from the Property saved by the SSDA, is negligible when compared to the utterly devastating impact of the views lost by the enormous scale of the building on either side of that sliver. Mr McFadden concludes on p24 that:

Our clients' main living area and outdoor deck is orientated towards east and with the presence of a 10-storey building on a 0m setback in Redan Lane, our clients' amenity will be significantly reduced. When combined with the cumulative impacts of surrounding developments that are currently under Appeal in the NSWLEC, the proposal will have an overbearing impact on the amenity of 73 Muston Street – which could potentially be reduced if the proposal respected the applicable planning controls under the Housing SEPP

Adverse Heritage Impacts

25 The Site directly adjoins the heritage item at 36 and 38 Redan Street, to the south, which are listed in the NSW Heritage Inventory, and is within the immediate vicinity of the locally listed heritage item at 52 Almora Street.

26 The Applicant's Heritage Impact Statement (**HIS**) provided by Urbis contains errors, and the SSDA is therefore unsupportable on heritage grounds.

27 Section 164 of the Housing SEPP provides that the LMRH Policy 'applies to the whole of the State, **other than** the following - ... (d) land that is a heritage item or on which a heritage item is located'.

28 At page 9 of her Heritage Report at **Annexure B**, Vanessa Holtham notes that the Applicant's HIS asserts that 'the presence of a heritage item on or near a site does not prevent the LMR controls from applying' and that 'heritage conservation areas and individually listed heritage items are not used as exclusion criteria'. These statements directly conflict with section 164 of the Housing SEPP. As such, our clients submit the

HIS cannot be relied upon to give an accurate representation of the heritage impacts of the SSDA.

- 29 The heritage provisions contained in the MLEP, Mosman DCP and Apartment Design Guide (**ADG**) must be considered by the consent authority in its assessment of the SSDA.
- 30 At pages 18 and 19 of her Report, Ms Holtham lists her conclusions as to the reasons the SSDA must be refused on heritage grounds. In particular, with respect to the adjacent heritage items at 36 and 38 Redan Street, she points out that the SSDA proposes works on, and the partial destruction of those heritage items.
- 31 In Ms Holtham's opinion, the extent of the development will 'unequivocally detrimentally' impact upon the heritage values and context of adjacent heritage items, and the proposal under the SSDA totally disregards the existing context (noting that the Applicant's HIS misrepresents developments that have not been approved at 48-50 Almora Street and 65 Muston Street when asserting that the proposed development is appropriate in context).
- 32 Ms Holtham concludes, at page 18 (in addition to the point raised above) that:
- a) The construction of the proposed garage opening where there are no other road openings because of the heritage item (being Redan Street), will sever the continuity of the Redan Street item,
 - b) Proposed changes to the streetscape presentation of Redan St will adversely affect the heritage significance of Mosman and the local area,
 - c) The proposed development will dwarf the heritage items at No.36 & No.38 Redan Street, creating unacceptable overlooking impacts,
 - d) The proposed development is wholly inconsistent with the character of the streetscape, and the sloping topography means the inconsistency is visible from throughout Mosman, and
 - e) The amalgamation of 6 sites to accommodate the development proposed under the SSDA is contrary to the subdivision patterns of the area, and that of the heritage items at 36 & 38 Redan Street.

Reasons for the Adverse View Loss and Heritage Impacts

Excessive Height

- 33 The devastating view loss impacts on our client's Property arise from the proposed height of the development the subject of the SSDA, which exceeds the 'bonus' provisions for height under the LMRH inner area controls. The LMRH inner area controls themselves do not apply to the Site, as it is beyond 400m walking distance from Spit Junction Town Centre, and so the height of the building as proposed is wholly inappropriate for the Site. The scale, bulk, form, setbacks, landscaping of the proposed development are highly unsympathetic to the established character of the area in the vicinity of the Site.
- 34 The development proposes to further breach the overall building height under the Housing SEPP, proposing heights up to 33.4m. A variation to the wall plate height found in clause 4.3A of MLEP which is 7.2m is also proposed. Separate clause 4.6 variation requests MLEP have been submitted to justify these proposed height breaches. However our clients consent that those requests are unfounded and should not be upheld.
- 35 Despite the provisions of section 175 of the Housing SEPP, the Applicant is asking the consent authority to approve a part ten-storey proposal under the SSDA, which has significant adverse amenity impacts upon our client's Property and upon development in the vicinity of the Site.

Amenity and Character of the Area

- 36 Our clients submits that the consent authority must assess the view loss from their Property, by reference to the *Tenacity* Principles.
- 37 The consent authority must also have regard to the resultant, adverse amenity impacts by reference to the relevant and mandatory provisions of the MLEP and the EPA Act.
- 38 Objectives of instruments relevant to view sharing that are mandatory relevant considerations, are contained in:
- a) Section 1.3(g) of the EPA Act, which object is:
to promote good design and amenity of the built environment,
 - b) The last objective of Zone R3 Medium Density Residential in the MLEP, which is:
To encourage residential development that has regard to local amenity and, in particular, public, and private views.
 - c) Clause 4.3(1)(a)(i) of the MLEP, which objectives required the sharing of public and private views.

- d) Clause 4.3A(1A) (a) of the MLEP, which implores proponents to have specific regard to view sharing.
- e) Clause 6.4 of the MLEP, which implores minimisation of the visual impact of development to and from Sydney Harbour.
- f) Section 3(e) of the Housing SEPP, which sets out one of the principles of the Policy, which is to minimise *adverse climate and environmental impacts of new housing development*.

39 Despite the Applicant's assertions to the contrary in the SSDA does not address any of these objectives in any meaningful way and as such, our client submits that the consent authority simply cannot determine the SSDA without further detail as to the extent to which the proposal will actually affect the amenity of the Property and development in the immediate vicinity thereof.

40 The EIS does NOT properly consider the impact of the views from our client's property, unlike other surrounding properties which have been given a full visual assessment from pages 46-57 of the Applicant's VIA.

41 Further section 20(3) of the Housing SEPP contains a requirement for the consent authority to consider whether the residential development design is compatible with the desirable elements of the character of the local area or for precincts undergoing transition, the desired future character of the precinct. Given the newness of the LMHR provisions, they have not yet had any effect on the precinct. Those developments which the Applicant referred to at 48-50 Almora Street and 65 Muston Street, have not been approved at this stage. One is the subject of Land and Environment Court Proceedings, under which it may be refused, and the other is not yet the subject of an application.

42 Therefore, our clients submit that the consent authority must consider whether the design is compatible with the local area's character. Clearly the design is wholly incompatible for the reasons set out above and as attended to in the expert reports appended to this objection letter.

Conclusion

43 Despite its reliance on the low and mid rise housing inner area building height bonuses, the SSDA fails to demonstrate that the Site falls within the low and mid rise housing inner area, which is a jurisdictional prerequisite and so the proposed development is not permissible. The proposed development is entirely incompatible with the character

of Mosman and Balmoral Townscapes, deeply damages local heritage, and will devastate the amenity of and views from our client's Property. For the reasons set out above, our clients submit that the SSDA must be refused.

Yours faithfully

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