

14 November 2017

Secretary
Department of Planning

By email: aditi.coomar@planning.nsw.gov.au

Attention: Aditi Coomar

Re: Objection to Development Application SSD 16_7919 – 85 Carabella Street, Kirribilli

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TRANPLAN Consulting has been engaged by the local residents of 111 Carabella Street, Kirribilli to consider & respond to the Department on their behalf in respect of Development Application **SSD 16_7919** at **85 Carabella Street, Kirribilli** for the **Staged development application for a concept proposal for the redevelopment of the Loreto school campus in the south and east precincts, with detailed approval sought for works in the western precinct, as well as the vertical connectors and landscaping across the campus** (the development).

This submission is made pursuant to Section 89F(3) of the Environmental Planning & Assessment Act (the Act) 1979. The objection relates to the significant amenity impacts arising from the non-compliant nature of the development, as detailed in the following sections.

1 NORTH SYDNEY LOCAL ENVIRONMENTAL PLAN 2013

LEP 2013 sets a maximum height of 12m for the land zoned R4 High Density Residential. The proposed new Learning Hub on the “Western Precinct” (separated/setback from the common boundary with the existing residential apartment at 111 Carabella Street, Kirribilli by only approximately 3.14m) proposes a maximum height of RL 37.50 (14.5m); 2.5m above the 12m height limit which applies to this part of the campus.

This significant non-compliance with the building height demonstrates the unreasonable bulk/scale, and means that the resulting bulk/scale is highly incompatible with the context of the locality and will result in unreasonable amenity impacts on the adjacent residential properties (particularly 111 No. Carabella Street).

2 NORTH SYDNEY DEVELOPMENT CONTROL PLAN 2013

The DA & EIS report does not adequately address North Sydney Development Control Plan 2013 (NSDCP), in particular Section 3 – Non-Residential Development in Residential Zones. The NSDCP has specific objectives / controls in place for select non-residential uses including educational establishments because it recognises that *“these uses are primarily operated from large scale buildings which are often inconsistent with the scale of residential development occurring within the residential zones...and lead to additional impacts on residential amenity”*.

NSDCP 2013, Section 3 – Non-Residential Development in Residential Zones

Objectives / Controls	Comment
<p><i>3.1.1 General Objectives</i></p> <p><i>O2 does not have adverse impacts on residential amenity or environmental quality;</i></p> <p><i>O3 is in context with surrounding development;</i></p>	<p>The proposed non-compliant building height of the Learning Hub in excess of the 12m specified by the development standard will have an impact (ranging from moderate to severe) on views from the adjoining property at 111 Carabella Street, Kirribilli.</p> <p>The EIS report acknowledges that <i>“the outlook from apartment to the west of the site will experience visual impact”</i>.</p> <p>It must be noted that there is no FSR applicable to the site, and therefore it is even more critical that the development must comply with the only other principal development standard (building height) that regulate building envelope.</p> <p>Given the above, and in this particular circumstance the non-compliant building height and adverse view impact to neighbours should not be acceptable to the consent authority.</p>
<p><i>3.2.5 Noise Objectives</i></p> <p><i>O1 To ensure reasonable levels of acoustic amenity to nearby residents.</i></p> <p><i>3.2.10 Acoustic privacy</i></p> <p><i>Objective</i></p> <p><i>O1 To ensure all residents are provided with a reasonable level of acoustic privacy.</i></p> <p><i>Control</i></p> <p><i>P1 Materials with low noise penetration properties should be used where practical.</i></p> <p><i>P2 Mechanical equipment, such as pumps, lifts or air conditioners should not be located adjacent to bedrooms or living rooms of dwellings on adjoining properties.</i></p>	<p>For the Learning Hub (western precinct), the majority of plant and equipment is to be located on the western side of the roof, i.e. close as possible to the residents at 111 Carabella Street, Kirribilli. This is considered to unacceptable notwithstanding the unoriginal measures outlined in the Acoustic Report, and it is considered that the best mitigation measure is to relocate plant / equipment as far away from these sensitive receivers as possible.</p> <p>It is also noted that the Acoustic Report does not assess the potential impacts from the roof terrace in any detail. This issue is discussed further below in this submission.</p>

<p>3.2.8 Views</p> <p><i>Objectives</i></p> <p>O1 To protect and enhance opportunities for vistas and views from streets and other public places.</p> <p>O2 To protect and enhance existing views and vistas from streets and other public spaces.</p> <p>O3 To provide additional views and vistas from streets and other public spaces where opportunities arise.</p>	<p>The locality's sloping topography and proximity to (and special views and vistas) Sydney Harbour contribute to its unique character and to the amenity of private dwellings. There needs to be a balance between facilitating new development while preserving access to views. Council's DCP indicates that "when considering impacts on views, Council will generally not refuse a development application on the grounds that the proposed development results in the loss of views, where that development strictly complies with the building envelope controls applying to the subject site." Therefore, at the very least, the development must strictly comply with the building envelope controls.</p> <p>The proposed Learning Hub has a maximum height of 14.5m and any non-complying portion must step down with the topography to comply with the 12m limit and setback in accordance with the building height plane (this issue is discussed in more details below) to protect the existing vistas and views from 111 Carabella Street to Sydney Harbour.</p>
<p>3.2.12 Visual privacy</p> <p><i>Objectives</i></p> <p>O1 To ensure that adjoining residents are provided with a reasonable level of visual privacy.</p> <p><i>Provisions</i></p> <p>P5 Open entertaining spaces such as terraces, patio, gardens and the like on roof tops are generally not supported.</p> <p>P6 Despite P5 above, open spaces on roofs may be considered, but only if:</p> <p>(a) the space is designed such that there is no potential for existing or future overlooking of the space and subsequent noise and privacy issues; (b) the space is setback at least 1m from the extent of the external enclosing walls to the floor level below; and</p> <p>(c) the space does not exceed 50% of the floor area of the storey immediately below or 18m², whichever is the lesser; and</p> <p>(d) there is no other appropriate ground level space for outdoor recreation.</p>	<p>Council's DCP indicates that "open entertaining spaces such as terraces, patio, gardens and the like on roof tops are generally not supported." Therefore the proposed roof terrace should not be supported, given that it is much bigger than 18m² and that there are other outdoor & indoor recreation spaces throughout the campus. Its location will significantly compromise the amenity of the residents at 111 Carabella Street given the proximity to these sensitive receivers.</p>
<p>Quality Built Form</p> <p>3.3.1 Context</p> <p><i>Objectives</i></p> <p>O1 To ensure that the site layout and building design responds to the existing characteristics, opportunities and constraints of the site and within its wider context (adjoining land and the locality).</p>	<p>The design does not adequately respond to the existing characteristics and constraints of the site i.e. it does not step down with the topography to comply with building height limit and setback in accordance with the building height plane to minimise impacts to adjoining neighbours given the proximity to these sensitive receivers.</p>

3.3.6 Setbacks

Objectives

O1 To reinforce the characteristic pattern of setbacks and building orientation within the street. O2 To control the bulk and scale of buildings.

O3 To provide separation between buildings.

O4 To preserve the amenity of existing dwellings and provide amenity to new dwellings in terms of shadowing, privacy, views, ventilation and solar access.

Provisions

Side Setbacks

P3 Building setbacks are to comply with the requirements set out in Table B-3.4.

R4 – High Residential Density	On land with a height limit of 12m or less	1.5m; and The building must not exceed a building height plane commencing at 3.5m above ground level (existing) from side boundaries and projected internally to the site at 45 degrees (refer to Figure B-1.3).			
	On land with a height limit greater than 12m	<table border="1"> <tr> <td>1st to 3rd storey (up to 10m)</td> <td>4.5m</td> </tr> <tr> <td>Above 3rd storey (more than 10m)</td> <td>6.0m</td> </tr> </table>	1 st to 3 rd storey (up to 10m)	4.5m	Above 3 rd storey (more than 10m)
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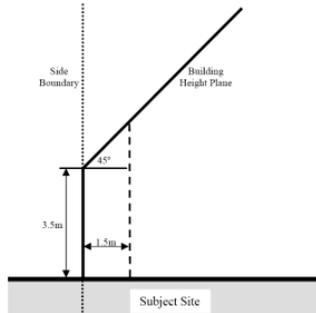


Figure B-3.1: Setback and building height plane controls for the R4 - High Density Residential zone, where the height limit is equal to 12m or less.

The Learning Hub does not comply with the side setback and building height plane (of 45 degrees inwards starting at 3.5m from NGL) DCP controls for the R4 High Density Residential zone and will have significant amenity impacts to the residents of 111 Carabella Street, Kirribilli in terms of loss of privacy, views, ventilation and daylight.

3.3.7 Form, massing & scale

Provisions

P1 The height of buildings is not to exceed that stipulated within cl.4.3 to NSLEP 2013.

The proposal results in non-compliance with the 12m limit of the development standard. Refer to detailed discussions throughout this submission.

It is also unclear if the proposal complies with other requirements of the DCP e.g. site coverage, landscaping, excavation etc. Therefore a detailed and consolidated section in the EIS is required to confirm that the proposal comply with the provisions of the DCP.

3 BUILT FORM

3.1 BUILDING ENVELOPE

Generally, building envelope is determined by compliance with controls such as FSR, building height, building plane, setbacks etc. Its purpose is to provide an envelope within which development may occur to minimise impacts to the natural & built environment.

FSR and building envelope controls should work together and **both** controls and/or their objectives should be met. Even if a development is within the maximum FSR, that is not a reason to exceed other building envelope controls e.g. height. If it were, the building envelope control would be unnecessary. This principle was established by Commissioner Annelise Tuor in *PDE Investments No 8 Pty Ltd v Manly Council [2004] NSWLEC 355*.

Given the absence of a FSR control for the site, it is even more critical that the development must comply with the sole principal development standard (building height) that regulate building envelope.

However, the new Learning Hub proposes a maximum height of RL 37.50 (14.5m) exceeding the maximum height by 2.5m; maximum height of 12m applies to this part of the campus (land zoned R4 High Density Residential).

One of the objectives of the R4 zone is “*to ensure that a reasonably high level of residential amenity is achieved and maintained*”, and it is clear that this land use objective is not achieved as the proposed non-complying height and failure to step down to follow the topography will unreasonably impact on residential amenity. The development also does not achieve the objectives of Clause 4.3 of *NSLEP 2013* (refer to the Table on the next page), and therefore the variation to the development standard should not be supported.

The significant non-compliance with the building height demonstrates the unreasonable bulk/scale, and means that the resulting built form of the proposed Learning Hub is highly incompatible with the context of the locality and will result in unreasonable amenity impacts on the adjacent residential properties (particularly No. 111 Carabella Street), and is an overdevelopment of the site.

Clause 4.3 Building Height development standard

Objectives	Comment
<p><i>(b) to promote the retention and, if appropriate, sharing of existing views</i></p>	<p>The development does not achieve the objective. The proposed non-compliant building height of the Learning Hub will have an impact (ranging from moderate to severe) on views from the adjoining property at 111 Carabella Street, Kirribilli. The EIS report acknowledges that <i>“the outlook from apartment to the west of the site will experience visual impact”</i>.</p> <p>As mentioned previously, the absence of a FSR control for the site means full compliance with the building height development standard/objective is even more critical to ensure an appropriate building envelope is achieved.</p> <p>Given the above, and in this particular circumstance the non-compliant building height and adverse view impact to neighbours should not be acceptable to the consent authority.</p>
<p><i>(d) to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings</i></p>	<p>The development does not achieve the objective. The Learning Hub also does not comply with the side setback and building height plane (of 45 degrees inwards starting at 3.5m from NGL) DCP controls for the R4 High Density Residential zone and will have significant amenity impacts to the residents of 111 Carabella Street, Kirribilli in terms of loss of privacy (and also views, ventilation and daylight).</p> <p>Furthermore, the majority of the Learning Hub’s plant and equipment is to be located on the western side of the roof, i.e. close as possible to the residents at 111 Carabella Street, Kirribilli. This is considered to unacceptable notwithstanding the unoriginal measures outlined in the Acoustic Report, and it is considered that the best mitigation measure is to relocate plant / equipment as far away from these sensitive receivers as possible. It is also noted that the Acoustic Report does not assess the potential impacts from the roof terrace in any detail. This issue is discussed further below in this submission.</p> <p>Council’s DCP indicates that <i>“open entertaining spaces such as terraces, patio, gardens and the like on roof tops are generally not supported.”</i> Therefore the proposed roof terrace should not supported, given that it is much bigger than 18m² and that there are other outdoor & indoor recreation spaces throughout the campus. Its location will significant compromise the visual/acoustic privacy of the residents at 111 Carabella Street given the proximity to these sensitive receivers.</p>

<p><i>(e) to ensure compatibility between development, particularly at zone boundaries</i></p>	<p>There are inherent incompatibility and conflicts between sensitive residential use and schools (particularly large schools like Loreto which is a combined primary & secondary school). Hence, Council has specific provisions in the DCP (Section 3 – Non-Residential Development in Residential Zones) to minimise impacts from this conflicts.</p> <p>The proposed height of the development is considered to be incompatible with the residential neighbour and does not achieve the objective because it does not comply with the specific provisions in the DCP. The building height and need to be lowered and setback further to provide a building that is more compatible with adjoining residential building.</p>
<p><i>(f) to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area</i></p>	<p>The proposed height and envelope of the development is considered to be incompatible with the residential neighbour and does not achieve the objective since it does not comply with the development standard of the LEP and specific provisions in the DCP.</p>

As indicated above, the development also does not achieve the objectives of Clause 4.3 of *NSLEP 2013*, and therefore the variation to the development standard under Clause 4.6 should not be supported as it is unreasonable and unnecessary in the circumstances of this site.

The EIS report also cited Clause 42 of *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017* which states that: ‘*Development consent may be granted for development for the purpose of a school that is State significant development even though the development would contravene a development standard imposed by this or any other environmental planning instrument under which the consent is granted*’.

Firstly, it is considered that the wording of Clause 42 is intended for new schools, instead of alterations/additions to an existing school, and therefore it is not applicable to this DA. Secondly, the Education SEPP only came into force on 1 September 2017 and is still in its infancy, and therefore will have “teething problems”. If the application of Clause 42 is indeed intended for all schools-related DAs (new and/or existing), the “capture-all” wording of this provision without any checks and balances is considered highly problematic and will likely lead to significant conflicts with residential uses.

3.2 RESPONSE TO TOPOGRAPHY

The common planning /design practice dictate that developments should step down and respond to topography. Despite the steep sloping nature of the site, the development has not been stepped down to adequately respond to the topography of the land. The subsequent non-compliances and amenity impacts on adjacent residential properties suggest that a redesign is required.

Given the above, the current proposal should not be supported as it will set an undesirable precedence for future developments in the locality and the LGA.

4 PLANNING PRINCIPLES

4.1 VIEW SHARING

111 Carabella Street is a three-storey apartment building with windows on its eastern elevation and is located adjacent to the site's western boundary. Apartments with east and north-eastern aspects will have moderate to severe impacts because the proposed development does not step with the sloping topography of the site and does not comply with building envelope controls.

The planning principle for considering the acceptability of the impact of a proposed development on the views enjoyed from private property in the vicinity of the development was set out by the NSW Land & Environment Court's Senior Commissioner, Dr John Roseth, in the case of *Tenacity Consulting v Warringah (NSWLEC 140 – 2004)* and was adopted through the LEC collegiate process or the derivation of such principles. In assessing this case, Dr Roseth set out the following:

The notion of view sharing is invoked when a property enjoys existing views and a proposed development would share that view by taking some of it away for its own enjoyment. (Taking it all away cannot be called view sharing, although it may, in some circumstances, be quite reasonable.) To decide whether or not view sharing is reasonable, I have adopted a four-step assessment.

The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (e.g. 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, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.

Applying the above principles to 111 Carabella Street, it is considered that the existing view of the harbour as highly desirable and what most people would describe as wonderful/scenic as the views are of Sydney Harbour with whole view i.e. interface between land and water and are therefore highly valued, and is currently available from various windows/apartments (including side-views from easterly aspect apartments).

The EIS suggests that apartments orientated towards the north-east with unencumbered views towards the Harbour and Kurraba Point will remain largely unaffected by the proposal. That statement is only true if losing up to 50% of existing views means "largely unaffected". However, it is considered that an unbiased opinion

would not categorise a 50% loss as largely unaffected. Refer to Pictures and Figures below for more details.

27 *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.*

Refer to Pictures and Figures below for more details. All photos were taken from various rooms / locations of 111 Carabella Street e.g. living, kitchen, bedrooms, study/dining) and from standing position and therefore there is a reasonable expectation that views can be retained.

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28 *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.*

Refer to Pictures and Figures below for more details. It is considered that the impact would be severe to devastating as view loss range from 50% to 100%. In addition to the loss of scenic views, there would also be severe loss of privacy (refer to discussions throughout this submission). The application's EIS also does concede that "the extent of the view loss could be considered to be moderate to severe using the qualitative ratings recommended in *Tenacity*."

29 *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.*

The EIS cites the following reasons for justifying the non-compliances and ensuing adverse amenity impacts (our responses in **black**):

- *The view is over a side boundary; For some apartments, this side view is from living areas where views/amenity is most valued. For some other apartments, loss views are not side-views but from harbour front windows.*
- *The view is not iconic and is a distant view; Views are considered scenic, highly valued and various ranges.*

- **The view would be lost even if a complying envelope was proposed: and In some cases, impacts are directly due to non-complying envelope e.g. W21 & W22. Refer to Pictures and Figures below for more details.**
- **There would be a significant impact to the space proposed within the building and the quality and quantity of teaching space that is proposed. The benefit of providing the new education space for the benefit of many generations of students to come is considered to outweigh the benefit of retaining a partial view across a side boundary. The many generations of students to come can benefit from new education space which is compliant with planning controls to minimise adverse impacts to the many generations of residents to come who will live in these apartments, and retain some reasonable level of residential amenity. Intergenerational equity is a core principle of ecological sustainable development practice.**

Overall, in terms of the reasonableness of the proposal, the proposal breaches the Local Environmental Plan's height control by 2.5m or 21% and does not comply with the other major DCP planning controls e.g. height plane/setback, building envelope. In our opinion, the proposal significantly and unreasonably reduces the amenity / views enjoyed by the neighbour and therefore are not consistent with the intent and controls of Planning Instruments and Council's development controls.

The neighbours at 111 Carabella Street enjoys views to the harbour / bays which carry scenic values. The proposed development does not reasonably maintain existing view corridors from the neighbouring dwelling and the view loss will be from various areas of the apartments including the living/dining rooms, which are heavily used area of the household. The proposal has made little an attempt to preserve an equitable amount of views for the surrounding properties as far as is practicable and reasonable, so that a reasonable level of views is retained for the residents of 111 Carabella Street.



Picture 1 – Existing view of the harbour, forests & sky from inside the Living room (Ref W7 on View Analysis plans)*

**Pictures were taken during extremely inclement weather. Views during good weather days will likely be more scenic.*

It is also noted that views represented in the View Analysis plans somewhat underrepresent actual views from apartments.



*Picture 2 – Existing view of the harbour, forests & sky from inside the Living room (Ref 10 on View Analysis plans)**



Picture 3 – Existing view of the harbour, forests & sky from inside the bedroom/study (Ref W21 on View Analysis plans)

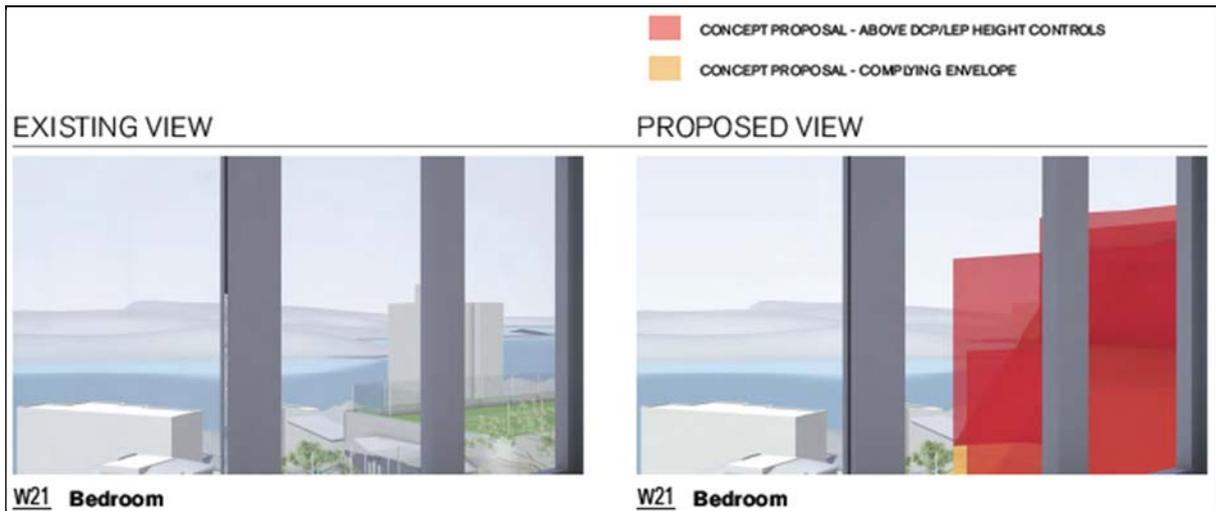


Figure 1 – Before & After from W21 on View Analysis plans*

*Note the significant impact of the non-compliant proposal; about a 50% reduction of views



Picture 4 – Existing view of the harbour, forests & sky from inside the bedroom room (Ref W23 on View Analysis plans)



Figure 2 – Before & After from W23 on View Analysis plans*

*Note 1: The significant impact of the proposal (compliant or not); about a 50% reduction of views.

*Note 2: The impact of the proposal to the 2 apartments above i.e. W21 & 22 is similar; about a 50% reduction of views, but is due to the non-compliance. Refer to Figure 3 below.



Figure 3 – Before & After from W21 & W22 on View Analysis plans



Picture 5 – Existing view of the harbour, forests & sky from inside the extended living / dining room (Ref W26 on View Analysis plans)



Figure 4 – Before & after comparison from W26 *

*Note 1: The significant impact of the proposal (compliant or not); about a 50% reduction of views.

*Note 2: The significant impact of the proposal (compliant or not); about a 50% reduction of views also applies to the 2 apartments above i.e. W24 & 25

*Note 3: The room is also an extended living room/dining room, **not a bedroom** as indicated on the View Analysis plans

4.2 ASSESSING IMPACT ON NEIGHBOURING PROPERTIES

The revised planning principle for assessing impact on neighbouring properties was established in *Davies v Penrith City Council [2013] NSWLEC 1141* by Senior Commissioner Tim Moore. The planning principles (in *italics*) for assessing impact on neighbouring properties are reproduced below, with our **comments in green**:

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?

The current proposal results in breach with the building envelope controls and will result in unnecessary and unacceptable loss of iconic views, loss of daylight, and loss of visual/acoustic privacy for the neighbours.

How reasonable is the proposal causing the impact?

The non-compliances are evidence that the proposal is unreasonable and poorly design with maximum regard to private commercial interests (e.g. the applicant is indicating that no Section 94 contributions / VPA are payable/applicable to a State Significant Project with a CIV of \$97,697,500) and minimal regard to neighbours and the interests of the public and contrary to Section 79C(1)(e) of the Environmental Planning & Assessment Act.

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

The building envelope should be reduced which will reduce the overall envelope to a compliant building height/plane and setback. This will also eliminate the amenity impacts to neighbours. It should be noted that the maximum height/envelope for a site provides guidance for development; site/local constraints, amenity for adjoining

neighbours and public interest dictate what the reasonable height/envelope attainable is i.e. do not build to the limit (or exceed the limit in this case) if it is going to adversely impact neighbours.

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?

This is a matter for the project architect and applicant to review and consider. The non-compliances are a good indication that the proposal is unreasonable and poorly design with maximum regard to private commercial interests and minimal regard to neighbours and the interests of the public and contrary to Section 79C(1)(e) of the Environmental Planning & Assessment Act.

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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?

The impacts are a direct result of non-compliances with development legislation / planning controls.

4.3 PROTECTION OF VISUAL PRIVACY

The proposal's roof terrace on top of the Learning Hub (without detailing adequate design and/or management measures) will likely result in significant loss of visual and acoustic privacy to the northern neighbours at No. 111 Carabella Street.

In addition to non-compliance with Council's development objectives & controls, the DA is also contrary to the NSW Land & Environment Court's planning principles for protection of visual privacy, which were established by Senior Commissioner Dr John Roseth in *Meriton v Sydney City Council [2004] NSWLEC 313* and some are reproduced below (in *italics*), with our **comments in green**:

When visual privacy is referred to in the context of residential design, it means the freedom of one dwelling and its private open space from being overlooked by another dwelling and its private open space. Most planning instruments and development control plans acknowledge the need for privacy, but leave it to be assessed qualitatively.

*Generalised numerical guidelines such as above, need to be applied with a great deal of judgment, taking into consideration **density, separation, use and design**. The following principles may assist:*

*The ease with which privacy can be protected is inversely proportional to the **density** of development. At low-densities there is a reasonable expectation that a dwelling and some of its private open space will remain private. At high-densities it is more difficult to protect privacy.*

One of the objectives of the R4 zone is "to ensure that a reasonably high level of residential amenity is achieved and maintained", and it is clear that this land use

objective is not achieved as the proposed non-complying height and failure to step down to follow the topography will unreasonably impact on residential amenity.

The Learning Hub also does not comply with the side setback and building height plane (of 45 degrees inwards starting at 3.5m from NGL) DCP controls for the R4 High Density Residential zone, and other specific provisions in the DCP (Section 3 – Non-Residential Development in Residential Zones).

Therefore loss of privacy due to non-compliances with Planning Principles established by the Court, Council's LEP/DCP, poor design and inconsiderate planning is unacceptable.

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*Privacy can be achieved by **separation**. The required distance depends upon density and whether windows are at the same level and directly facing each other. Privacy is hardest to achieve in developments that face each other at the same level. Even in high-density development it is unacceptable to have windows at the same level close to each other. Conversely, in a low-density area, the objective should be to achieve separation between windows that exceed the numerical standards above. (Objectives are, of course, not always achievable.)*

Privacy can be achieved primarily through complying with planning provisions and also considerate planning & clever design, to protect the visual and acoustic privacy of the adjoining neighbour and its private open space and living areas.

The cumulative impact of the non-compliant bulk/scale of the building combined with the new rooftop terrace will result in significant loss of visual and acoustic privacy for the adjacent neighbours from overlooking/noise directly onto their living areas & private open spaces.

*The **use** of a space determines the importance of its privacy. Within a dwelling, the privacy of living areas, including kitchens, is more important than that of bedrooms. Conversely, overlooking from a living area is more objectionable than overlooking from a bedroom where people tend to spend less waking time.*

The high-density Learning Hub, intense nature of school operations, increased student capacity & the new rooftop terrace will directly overlook the private open spaces and living areas of the neighbours.

*Overlooking of neighbours that arises out of poor **design** is not acceptable. A poor design is demonstrated where an alternative design, that provides the same amenity to the applicant at no additional cost, has a reduced impact on privacy.*

The development is a combination of poor design and overdevelopment of the site, and will adversely impact the neighbour's level of residential amenity through excessive loss of visual/acoustic privacy to the neighbour's private living/private spaces, as well as and loss of daylight due to excessive building envelope.

4.4 ACCESS TO SUNLIGHT

The planning principle for considering the adequacy of solar access was set out by the NSW Land & Environment Court's Senior Commissioner, Tim Moore, in the case of *The Benevolent Society v Waverley Council [2010] NSWLEC 1082* and was adopted through the LEC collegiate process or the derivation of such principles. In assessing this case, SC Moore set out the following principles (with our **comments in green**):

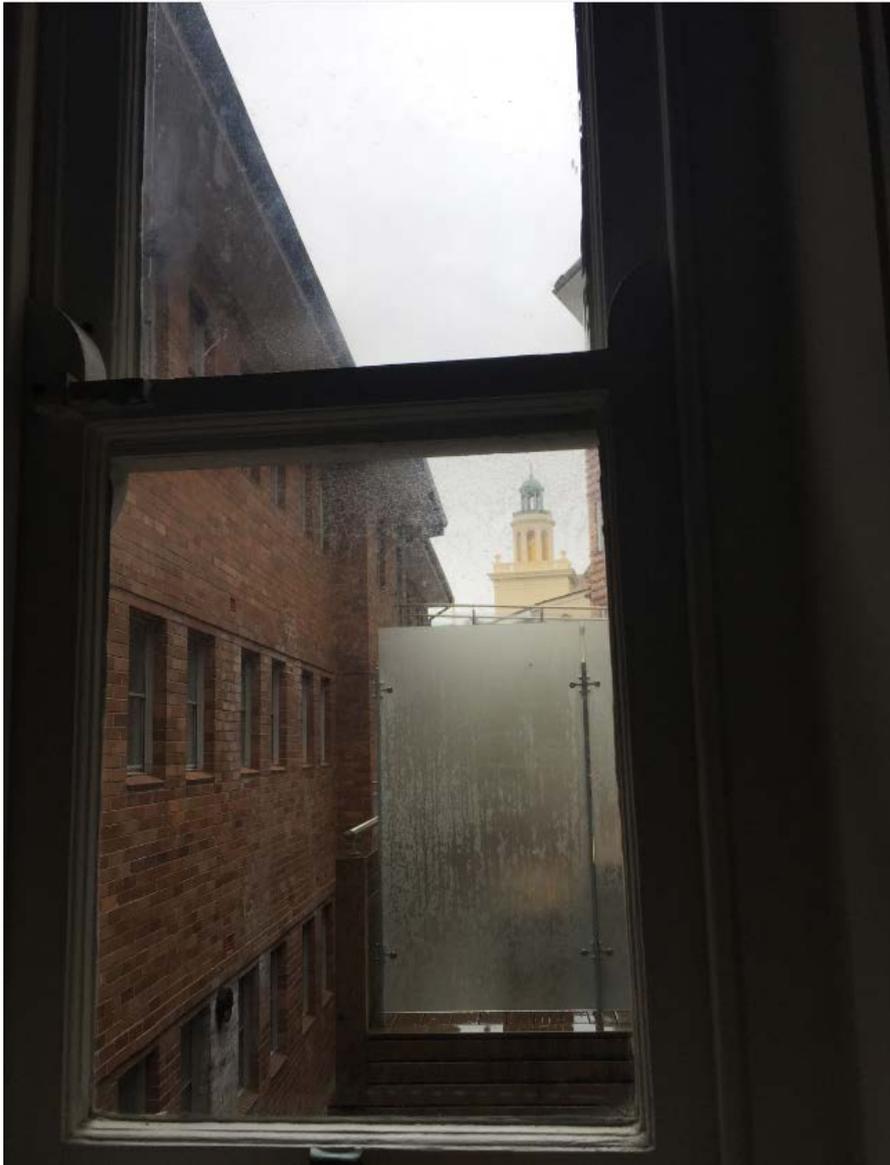
Note: In this case, the northern neighbours at 111 Carabella Street are concerned with loss of daylight rather than sunlight. It is considered that the applicability of the planning principles are interchangeable between daylight and/or sunlight.

The ease with which sunlight access can be protected is inversely proportional to the density of development. At low densities, there is a reasonable expectation that a dwelling and some of its open space will retain its existing sunlight. At higher densities sunlight is harder to protect and the claim to retain it is not as strong.

There is a reasonable expectation that development will comply with planning legislation and controls to ensure that the neighbour's and their internal living areas & private open space will retain as much daylight as possible.

The amount of sunlight lost should be taken into account, as well as the amount of sunlight retained.

The development's non-compliant bulk/scale is poorly designed, and will result in significant loss of existing daylight for the neighbours, with the deterioration amplified towards the lower apartments.



Picture 6 – Existing access to daylight from inside the kitchen (Ref W17 on View Analysis plans)*



Figure 5 –Before & After from W17 on View Analysis plans

Overshadowing arising out of poor design is not acceptable, even if it satisfies numerical guidelines. The poor quality of a proposal's design may be demonstrated by a more sensitive design that achieves the same amenity without substantial additional cost, while reducing the impact on neighbours.

The proposed Learning Hub is poorly designed (evident by failure to satisfy planning controls & objectives) without regard to its position & context relative to the neighbours.

In areas undergoing change, the impact on what is likely to be built on adjoining sites should be considered as well as the existing development.

Changes can be anticipated but there is a reasonable expectation that developments will comply with planning controls to mitigate adverse impact to neighbours, particularly in this context of this site/locality.

5 OUTDOOR ROOF TERRACE

As mentioned throughout in this submission, the Acoustic Report does not assess the potential impacts from the roof terrace in any detail. There is also no Plan of Management to clearly specify measures to manage (and whose responsibility it is to manage such measures) issues such safety/security, loitering, noise/nuisance and other anti-social behaviour.

6 TRAFFIC / PARKING

The EIS estimate that 90% of school staff drive to work and park in or around the campus, corresponding to a total demand of 162 parking spaces. With 100 spaces available for school staff (80 of which are located on-site, and 20 of which are provided off-site in the nearby Royal Sydney Yacht Squadron). This results in a total actual shortfall of 62 staff vehicles which has to be accommodated by the surrounding streets.

Furthermore, the school proposes to introduce an additional 100 students, or a total of 1,200 students and 182 staff. This will result in significant increase to traffic congestion and safety issues for drop-offs/pick-up around the local area and exacerbate the existing traffic / parking problem, particularly during peak morning/afternoon periods. Refer to Pictures below for more details regarding existing traffic / parking problem.



Picture 7 – Corner Carabella/Bligh St looking south-east (1)



Picture 8 – Corner Carabella/Bligh St looking south-east (2)



Picture 9 – Corner of Carabella/Fitzroy looking north-west (1)



Picture 10 – Corner Carabella/Bligh St looking south-east (2)



Picture 11 – Corner Carabella/Bligh St looking south-east

7 STUDENT AND STAFF NUMBERS

Loreto Kirribilli currently caters for years K – 12, with a total of 1,080 students enrolled and 180 staff. It is understood that there is an existing approval in place for up to 1,100 students.

The school proposes to introduce an additional 100 students; a 10% increase to the existing approval) and also two additional staff to the site, resulting in a total of 1,200 students and 182 staff. However, little / no reference was made to the existing consent and the rationale of that consent's limitation on the current student capacity, which may have been based on existing traffic congestion and safety issues for drop-offs/pick-up around the local area and significant parking problems for residents due to the significant shortfall of parking for staff.

8 CONCLUSION

Given that there are significant planning issues (non-complying building envelope) associated with the proposed Learning Hub and the ensuing significant amenity impact upon the local residents, particularly the apartment at 111 Carabella Street, the proposal is not in the interest of the public pursuant to Section 79C(1)(e) of the Environmental Planning & Assessment Act (the Act) 1979.

We sincerely request that the Department review the non-merit of the application and require the applicant to amend the design, given the current proposal's significant amenity impact due to its non-compliant nature and maximum regard to private commercial interests and no regard to neighbours and the interests of the general public.

It is anticipated that the Department may arrange a time to visit the site to appreciate the significant amenity impacts that the development would have upon the neighbours. The contact details of the representative of the residents at 111 Carabella Street, Kirribilli is:

Jackson Gatenby

Email: jackson.gatenby@gmail.com

Phone: 0425 043 213

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If you have any questions regarding this submission, please do not hesitate to contact TRANPLAN Consulting.

Yours faithfully,



David Tran *B. Planning (Hon)*

Principal Planner