

SUBMISSION

(OBJECTING to SSD-86017721)

Application Number: SSD-86017721

Project Name: Residential development with in-fill affordable housing – 23-31 Dover Road, Rose Bay, NSW 2029

Applicant Name: Dover Street (Rose Bay) Developments Pty Ltd

28 November 2025

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This submission **OBJECTS** to the above SSDA.

The details of the reasons for this follow; reasons that are all demonstrably related to this SSDA and *Project*. Furthermore, this *Submission* makes the overall assertion that the *EIS* does NOT provide sufficient substantial and effective material to support the approval of the SSDA but simply aims to focus on enabling BOXES to be TICKED without the relevant issues being fully addressed by the *EIS*.

This *Submission* also respectfully REQUESTS that the *Minister* consider delegating to the INDEPENDENT PLANNING COMMISSION the appropriate authority to determine this SSDA and also other SSDAs in respect of LMR developments that have been declared to be of State significance where the proposed construction site is located in Rose Bay's *Fragile Area* as defined in this *Submission* (especially in or in the vicinity of the *Rose Bay Settlement Area*). The details of the reasons for this request are obvious from the contents of this *Submission* that highlights some complex and controversial characteristics of these types of SSDAs in that *Fragile Area*. The granting of the delegation requested would also enhance transparency and public trust in the NSW planning system, irrespective of whether or not Woollahra Council chooses to make a submission objecting to this SSDA.

Significantly, this SSDA is NOT a routine SSDA and, therefore, warrants and deserves careful and independent consideration.

1. PRELIMINARY OBSERVATIONS

It is necessary and appropriate to respectfully make some preliminary observations with a view to providing the reader with some perspective about what this submission is endeavouring to convey in good faith and with the expectation that any reader of it considers its contents in good faith.

The Weak Position of Individuals in the NSW Planning System

It is important to highlight that the NSW planning system's public exhibition process for SSDAs apparently now allows only **14 days** for community submissions, despite the *Project* involving a wide range of complex environmental, hydrogeological, geotechnical, cumulative-risk, and social issues. This truncated timeframe places individual persons at a significant disadvantage and raises legitimate concerns about

whether the process affords ordinary people a fair and reasonable opportunity to be heard in this important decision-making process.

This disadvantage is compounded by the practical difficulties many ordinary people experience when attempting to lodge submissions through the NSW Planning Portal, which can be challenging for ordinary members of the public to navigate and is known to pose technical access difficulties.

These things are exacerbated by the planning system's existing structural imbalance where the rules, including exhibition timeframes and processes, are set by the *Minister* and *NSW Planning*, who also determine this *SSDA*. Developers, who are typically well-resourced, professionally advised and familiar with the system are, therefore, positioned to participate effectively, while *At-Risk Vulnerable People* must attempt to prepare technically credible submissions within an unrealistically compressed period, and through a system that is not user-friendly.

This framework creates the perception that the interests of the *Proponent* are more closely aligned with those who set and administer the rules and then make the determination, while ordinary *At-Risk Vulnerable People* must rely on the hope that their hastily compiled submissions will penetrate the Portal and be actually received, let alone read and genuinely considered.

Furthermore, legitimate questions arise as to whether procedural fairness and natural justice are achievable when the rule-makers and the decision-makers are effectively the same and, in terms of goals at least, are disproportionately aligned with the developer industry of which the Developer is a part, resulting in individual ordinary *At-Risk Vulnerable People* being left to fend for themselves and without any meaningful recourse.

The Strong Position of Developers in the NSW Planning Industry

It is well known that the developer industry is mobilized and well-resourced and its acknowledged intertwining with government has enabled it to influence the formulation and content of current planning legislation, including that which relates to the *LMR*. Again this puts uninformed *At-Risk Vulnerable People* at a great disadvantage when the need arises to scrutinise development proposals that might adversely impact upon them, especially when such proposals are supported by seasoned client-focussed technical consultants who are paid by their developer client to articulate the complexities and proposed solutions to allay the fears of those *At-Risk Vulnerable People* who might be intimidated or concerned by any potential *Project* risks that might be posed or contributed to by a proposed *Basement-dependent & Profit-driven Development*.

The Awkward and Untenable Position of Assessment Officers

These problems are again compounded by the fact that those public sector advisers and assessment officers who make recommendations to *consent authorities* are often deprived of the ability to express informed, impartial and good faith recommendations because of the sheer volume and complexity of what is placed before them and the concern of their superiors to ensure that the imperatives of their

political masters are expeditiously delivered. This also has often led to the assessment process being reduced to a “box ticking” exercise that derogates from careful thought being applied to the relevant risks posed by development applications.

The Shortcomings of Professional and Consultant Reports.

Again, the technical advice provided and complexly worded opinions expressed by professionals and consultants in reports (especially *Client-focussed Consultant Reports*) prepared by them to support the developer clients who pay them must be viewed with a degree of prima facie scepticism; especially when livelihoods might depend on repeat business, and such reports are invariably qualified and circumscribed by disclaimer clauses and variable assumptions and limitations that erode the usefulness of those reports.

2. GLOSSARY OF ABBREVIATIONS

For this *Submission*, and solely for the purpose of trying to aid an easier reading and understanding of it without the need for constant repetition, the following meanings are offered on an indicative basis only: -

“Applicant” or “Proponent” or “Developer” means Dover Street (Rose Bay) Developments Pty Limited and the relevant developer that facilitated its creation.

“At-Risk Vulnerable People” means any or all of those who own residential property and/or live in residential property in or in the vicinity of or near the *Rose Bay Settlement Area* (thereby rendering them to be vulnerable and unsafe members of the Rose Bay community, as contemplated by Regulation 3(b) and Regulation 142(c) of the *Housing SEPP*), irrespective of whether or not they have a full understanding of the risks associated with the construction of a *Basement-dependent & Profit-driven Development* that may result in adverse impacts on them and/or the residential property they own and/or live in; and whose apprehension or fears, assuming a full awareness of those risks by them, would be likely to be regarded by a reasonable observer as being rational and not fanciful.

“Basement-dependent & Profit-driven Development” generally means any development project that is proposed for a *Fragile Area* where that development project involves the construction of one or more multi-storied residential flat building(s) that include excavation for and the placement of below ground deep structures, such as deep basements and car parks and the like, beneath any such building; this *Project* is a *Basement-dependent & Profit-driven Development*.

“Client-focussed Consultant Report” generally means a hydrogeological and/or geotechnical report from technically expert and duly qualified and skilled consultants and/or professionals that are not an *Independent & Just Consultant Report*.

“consent authority” means the person or body that at law has the role of determining the DA in respect of the *Project*.

“DA” or “SSDA” means State Significant Development Application number SSD-86017721 for the site at 23-31 Dover Road, Rose Bay lodged in respect of the Project.

“EIS” means the **Environmental Impact Statement** prepared by Urbis Ltd and dated 27 October 2025 for the *Applicant* in respect of the *Project*, and placed on public exhibition on 18 November 2025

“EP&A Act” means the *Environmental Planning and Assessment Act, 1979*

“Fragile Area” generally means those lands, in or in the vicinity of or near the *Rose Bay Settlement Area*, especially encompassing, though not confined to, those lands fronting, and/or near, low-lying and mostly flat Rose Bay streets in reasonably close proximity to Rose Bay beach, including Rose Bay streets such as Dover Road, Wilberforce Avenue, Albemarle Avenue, Newcastle Street, Richmond Road, Norwich Road, and Collins Avenue.

“Housing SEPP” means *NSW State Environmental Planning Policy (Housing) 2021*

“Impacted Rose Bay Residents” means those property owners and resident of Rose Bay located in or near or in the vicinity of the *“Rose Bay Settlement Area”*

“Independent & Just Consultant Report” generally means a peer reviewed hydrogeological and/or geotechnical report from expert and duly qualified and skilled consultants and/or professionals that guarantees that a proposed *Basement-dependent & Profit-driven Development* does not have the potential to adversely impact, and/or pose adverse implications for, the *Fragile Area’s* groundwater environment and soil conditions in the short term and long term; and that acknowledges that other *Basement-dependent & Profit-driven Developments* are likely to occur in, and/or be proposed for, Rose Bay in concentrated numbers and in close proximity to each other and to the proposed *Project* and that the magnitude and adverse impacts and implications from such *Basement-dependent & Profit-driven Developments* have the very real potential to be significant when the *Basement-dependent & Profit-driven Developments* are aggregated and considered from a cumulative perspective; and where such a report does not contain any disclaimers, assumptions and limitations that directly or indirectly derogate from the stated guarantee.

“LMR” means the Low and Mid-Rise Housing Policy and related legislation and regulation introduced in 2025 by the NSW Government under the Housing SEPP, and includes the related NSW Government’s in-fill Affordable Housing policy

“Minister” means the NSW Minister for Planning and Public Spaces.

“NSW Planning” means NSW Department of Planning, Housing and Infrastructure.

“Project” means the Residential development with in-fill affordable housing – 23-31 Dover Road, Rose Bay that is the subject of this *SSDA*.

“Proposal” means the proposal in respect of the *Project*.

“Resilience and Hazards SEPP” means the NSW *State Environmental Planning Policy (Resilience and Hazards) 2021*.

“Rose Bay Settlement Area” means that area of land mapped and identified in Figure 2 of Chapter E2 Stormwater, Flood and Geotechnical Risk Management (last amended on 2 December 2024 and contained in Woollahra Development Control Plan 2015); said Figure 2 being reproduced in Part A of the *Schedule*.

“SEARs” means the *Industry Specific Secretary’s Environmental Assessment Requirement* for this SSDA issued on or about 13 June 2025.

“Schedule” means the schedule in, and forming a part of, this *Submission*.

“Submission” means this submission in respect of the *Project*, including the *Schedule* and other material it references and/or to which it refers.

“Woollahra Council” means Woollahra Municipal Council and includes its officers and contractors.

3. EIS’s JUSTIFICATION FOR THE PROJECT: SOME OBSERVATIONS

(Ref: Section 7 of the EIS)

For the sake of convenience, this part of the *Submission* applies the same headings used in Section 7 of the *EIS*.

Project Design (Ref. Section 7.1 of the EIS)

Despite the *EIS*’s claims to the contrary, the design of the *Project* has NOT “been carefully considered to minimise potential impacts.” If that were true then, at a minimum, the two (2) below ground basement levels of the *Project* building would have been eliminated and every attempt would have been made to ensure that excavation was kept to a minimum, so as not to disturb and wet any acid sulfate soils and so as not to penetrate existing groundwater levels; thereby substantially eliminating the risk of the *Project* contributing to the adverse alteration of the current hydrogeological and geotechnical status quo in Rose Bay, especially having regard to the *Project*’s proximity to the well documented and mapped *Rose Bay Settlement Area*.

The *Project*’s claimed provision of 15% affordable housing is not true when the normal lifecycle of such a building is conservatively considered to be in the order of 60 years (but can extend many years beyond that). However, even taking that conservative estimate and given that the affordable housing being provided is assured for only a period of 15 years, this means that only 25% of that claimed 15% affordable housing component is what, in fact, is being provided by the *Project*; in reality a miniscule 3.75% of the available lifecycle years for affordable housing and 96.25% for luxury apartments with coastal views. Therefore, the claimed provision of 15% affordable housing is an illusion and simply not true.

In return for a 3.75% affordable housing contribution (or even less if the building's estimated normal lifecycle is increased), the *Developer* has been handsomely gifted the enormous concessions allowed by the NSW Government under its generous *LMR*.

On the other hand, the various *At-Risk Vulnerable People* (both relevant property owners and residents) are left to ponder their plight created by the uncertain detrimental outcomes they will face from the adverse alteration of the current hydrogeological and geotechnical *status quo* in Rose Bay. This is especially so in the context of the many development inspired damage incidents (both reported and unreported) that have already occurred in Rose Bay and Double Bay through groundwater interference and construction excavations and that have not been highlighted in this *EIS*.

Strategic Context (Ref. Section 7.2 of the EIS)

Although the *Project* is claimed to be “consistent with the strategic framework and has been considered against key government and Council documents”, in substance there is little that can be described as strategic about it.

The facilitation of additional housing (including affordable housing, especially at levels far less than claimed) cannot genuinely be claimed as strategic because the other side of the equation has effectively been ignored by government, both at the state and local level; namely, the various *At-Risk Vulnerable People* (both property owners and residents) who are left exposed to heightened risks and without any meaningful recourse being available to them.

Hence a clear parallel can be drawn with the well-publicised Mascot Towers (see later) experience where buildings were constructed adjacent to each other by different developers in similar soil conditions to those that exist in Rose Bay and a confidential settlement was only reached because the occupants of the Mascot Tower building were able to mobilise and enlist media support that in turn forced government to facilitate an outcome; albeit a very unsatisfactory one where the lines of responsibility were hidden by legal shenanigans associated with privilege claims with many of the owner occupiers and owner investors of the Mascot Tower building being left massively in debt with all paths to recourse apparently exhausted after the confidential settlement was reached.

Statutory Context (Ref. Section 7.3 of the EIS)

This *Submission* rejects any assertion that this *Project* can be reasonably assessed in “good faith” as complying with all the relevant provisions of the EP&A Act and other applicable legislative and regulatory requirements.

In this regard, a key aspect that must be remembered is the definition of “environment” in the *EP&A Act* as follows:-

“environment” includes all aspects of the **surroundings of humans**, whether affecting any human as **an individual** or in his or her **social groupings**”.

Hence, “environment” includes the existing physical houses and buildings in which individual persons and the communities of Rose Bay (as a whole) reside (including those of relevant *At-Risk Vulnerable People*), as well as those of Double Bay.

This *Submission* asserts that it is vital to ensure that this very important (and easily overlooked) fact is kept to the forefront of considerations when assessing this SSDA.

This assertion is also supported by the Protection of the Environment Administration Act 1991 where the definition of “environment” includes “human-made or modified structures”.

Community Views (Ref. Section 7.4 of the EIS)

The *EIS* states that community and stakeholder engagement (including “*direct engagement and consultation*”) occurred” with:

- Adjoining landowners and occupants; and
- Government, agency and utility stakeholders.

Relevantly, this includes Woollahra Council and its officers and the NSW Government and its agencies, including NSW Planning).

However, such consultation and engagement did not include genuine and serious interaction with the *At-Risk Vulnerable People* and the various individual property owners and residents in or near the Rose Bay Settlement Area (and in the Double Bay Settlement Area) who have already suffered substantial loss and damage from the excavation and groundwater interference facilitated by large residential flat developments that have been undertaken adjacent to, or near their properties; nor has it included genuine and serious interaction with other individual property owners and residents in or near the *Rose Bay Settlement Area* who, had they been made aware of the possible short and long term risks associated with single and aggregated future developments involving deep excavation and the placement of below ground basements that penetrate groundwaters in the *Rose Bay Settlement Area*, might have had plenty to say about the matter.

Simply put, the community engagement with the Rose Bay Community reported in the *EIS* was not significant or effective but was undertaken only with a view to ensuring that the appropriate assessment BOX could be TICKED. This conclusion is also supported by the fact that groundwater does not appear to have been a key discussion point at the reported meeting held with *Woollahra Council* on 18 September 2025 (see page 46 of the *EIS*) but groundwater was amongst the follow up queries from *Woollahra Council* dated 23 September 2025 that the *EIS* records (at pages 47 and 48) as follows:

Council is urging the NSW Government to exclude the Double Bay and Rose Bay (New South Head Road) centres from the Low and Mid-Rise Housing Policy (LMR Policy) due to them being at high risk of hydrogeological hazards. A copy of the letter was sent to the Minister for Planning and Public Spaces on 18 September 2025...

Council is concerned about impacts of excavation, particularly the potential impact on the structural and geological integrity of buildings in the Rose Bay area which may occur due to the groundwater drawdown during excavation. In November 2024, Council adopted DCP Amendment 30, which aimed to address hydrogeological, geotechnical and vibration impacts within Rose Bay.

The DCP Amendment did not have regard to the increased density permitted under the Mid-Rise Housing Reforms as these were not introduced until February 2025.

It is noted that the subject site is partially located within the Rose Bay settlement area as identified in Chapter E2 (Stormwater, Flood and Geotechnical Risk Management) of the Woollahra DCP 2015

Any geotechnical and hydrogeological report should be prepared in accordance with attachment 6 to Council's DA Guide

The application should consider the potential impacts having regard to the above.

Therefore, and despite seemingly best efforts, *Woollahra Council* was pointing out its concerns that the recent amendments made to *Woollahra Council's* DCP, from a practical viewpoint, would be ineffective and would provide no guarantees capable of protecting potentially affected Rose Bay residents at all (especially the *At-Risk Vulnerable People*).

However, as this *Submission* strongly asserts, the preparation of such a "geotechnical and hydrogeological report... in accordance with attachment 6 to Council's DA Guide" (as suggested by *Woollahra Council* above) does NOT automatically make that report an acceptable "*Independent & Just Consultant Report*" (as defined in this *Submission*), but merely acknowledges and promotes the practice of dealing with issues by enabling BOXES to be TICKED.

Furthermore, this *Submission* understands that anecdotal evidence suggests that *Woollahra Council* officers have unofficially acknowledged that that Council's 2024 DCP amendments will NOT be effective to protect Rose Bay's *Fragile Areas* from being badly impacted if deep excavation basements are allowed to proliferate there. In fact, that Council's latest public communications have effectively confirmed this with that unofficial acknowledgement being also reflected amongst *Woollahra Council's* concerns reported in the *EIS* for this *Project*.

Disturbingly, a *Woollahra Council* mayoral minute for tabling at that Council's meeting scheduled for 23 June 2025 contained the following statement:

"Concerningly, the NSW Government has completely disregarded our advice on the complex hydrogeological conditions that exist in Rose Bay and Double Bay. Much of these suburbs sit in a basin, and have a high water table that are prone to destabilising buildings when earthworks and dewatering occur. Reports lodged with development applications to address such concerns only

*take **single sites** into account, and have no regard to the highly damaging impacts of cumulative changes to subterranean water flows”.*

Single site assessments do not effectively deal with these issues but this *Submission* understands (rightly or wrongly) that that is the approach that *NSW Planning* reportedly intends to take. Such an approach is inherently flawed.

Accordingly, and with respect, it is this *Submission’s* firm view that the Urbis Project Team responses to Council’s queries are unhelpful and do not reflect well on how these issues have been addressed in the *EIS*. If correct, *NSW Planning’s* understood approach restricts due inquiry being made on the cumulative impacts of multiple Basement-dependent & Profit-driven Development on groundwater conditions.

The difficult question then needs to be asked as to why the Urbis Project Team (armed with this information) did not fully inform the Rose Bay residents of this high risk hydrogeological hazard and seek their views on the matter; with the clear question that could have been put to them being something along the lines of:

“Now that you are aware of the many property damage and loss incidents that have occurred over the last few years in the Rose Bay and Double Bay areas as a result of construction in and near the hydrogeologically and geotechnically vulnerable Rose Bay Settlement Area and the Double Bay Settlement Area (with detrimentally affected persons having no viable recourse to enable them to recover their losses), are you comfortable with the Project in Dover Road proceeding, especially knowing that there are several other large proposed residential flat developments (with deep excavated basements) in the pipeline (with many more predicted to follow) as a result of the generous concessions to developers now contained in the NSW Government’s 2025 Low and Mid-Rise Housing Reforms and other developer friendly related changes made to other legislation and instruments?”

This *Submission* respectfully asserts that the answer to such an inquiry would NOT support a case for this *DA* to be approved.

Additionally, there is also a need to highlight that, as reported on Page 48 of the *EIS*, in response to *Woollahra Council’s* query, namely,:-

It is noted that the subject site is partially located within the Rose Bay settlement area as identified in Chapter E2 (Stormwater, Flood and Geotechnical Risk Management) of the Woollahra DCP 2015,

the *EIS* response is

Noted. This is addressed in the Integrated Water Management Plan prepared by NDY at Appendix U.

In fact, the PURPOSE of that *Integrated Water Management Plan* prepared by NDY at Appendix U is stated in that Civil Engineering Report as “to provide advice on the

proposed development regarding civil site works, stormwater drainage, wastewater management, proposed floor levels, stormwater quality, and stormwater quantity”.

Despite the *EIS*’s response (quoted above), the *NDY Report* does nothing to seriously address the *Woollahra Council* query (also quoted above) and provides no certainty or level of comfort for potentially affected Rose Bay property owners and residents (especially the *At-Risk Vulnerable People*).

Accordingly, this *Submission* is compelled to assert, having regard to that *EIS* response, that the *consent authority* cannot take seriously this Proponent’s commitment and capability to address the inherent problems associated with the construction of this Project’s *Basement-dependent & Profit-driven Development* in Rose Bay’s *Fragile Area* (including the *Rose Bay Settlement Area*). The importance of this assertion cannot be over-stated as a vital consideration in the *consent authority*’s role in determining this *DA*.

Environment Impacts (Ref. Section 7.5 of the EIS)

This *Submission* emphatically asserts that there has been no proper and credible assessment undertaken of the likely environmental impacts of the Project, especially the “environmental impacts on both the natural and built environments” that might be caused or contributed to in the short and long terms by the Project on the lands comprising the *Fragile Area* as well as the fragile Rose Bay coastline and waters.

Furthermore, the *EIS* has NOT demonstrated how each of the likely impacts (both on a single site basis and cumulatively from the construction of the *Project* building and other like buildings in or near the *Rose Bay Settlement Area*) can be appropriately mitigated with any degree of certainty, especially having regard to such things as

- the inherent complexities of hydrogeological and geotechnical analysis,
- the inherent shortcomings of the technical and professional consultant reports provided, especially the *Client-focussed Consultant Reports*,
- the obvious lack of preparedness for any relevant parties (including government) to take responsibility for losses or damage that might ensue for the innocent *At-Risk Vulnerable People* of Rose Bay, and
- the clear acknowledgement by *Woollahra Council* that the 2024 amendment to its DCP “*did not have regard to the increased density permitted under the Mid-Rise Housing Reforms as these were not introduced until February 2025*” and its communication of its related concerns to the *Developer*’s Project Team.

This *Submission* respectfully, but emphatically, refutes the legitimacy of the statement that “it is considered that the potential risks associated with the surface and groundwater at the site can be adequately managed through the above de-watering strategy” because it does not make it clear that such mitigation will provide certain and safe outcomes for lands and properties in fragile areas beyond the site, especially the *Fragile Area*. Consideration of this *Project* on a single site basis is not only self-serving but borders on heightened indifference, and neither *NSW Planning* nor the *consent authority* ought condone this.

Suitability of the Site (Ref. Section 7.6 of the EIS)

This Submission refutes the statement that “the site is considered highly suitable for the Project” simply because the reasons advanced are selective and self-serving in the interests of the Project and ignore the many other issues that might be contained in this and other submissions.

Put another way, this Project is neither “proper” development nor “proper” construction as contemplated by the objects of the *EP&A Act*.

As this Submission asserts and demonstrates, the Site is affected by critical constraints and those constraints CANNOT be abated “through skillful design or the implementation of mitigation measures”. The *Client-focussed Consultant Reports* provided with the *EIS* do nothing to demonstrate otherwise. However, they may enable BOXES to be TICKED in the assessment process and this is exactly what this *Submission* condemns.

Public Interest (Ref. Section 7.7 of the EIS)

The *EIS* claims that the *Project* is considered to be in the public interest for various stated reasons, some of which need to be commented on as follows, namely:-

- The Project will deliver 11 affordable housing dwellings for a 15 year period but this does not really address the NSW Government’s objectives as stated. As previously explained the REAL percentage of affordable housing that this Project will provide (namely, 3.75% and not the 15% claimed) exposes a severe imbalance against the generous concessions being “gifted” to the Developer by the NSW Government, not to mention the plight of the potentially adversely affected property owners and residents of Rose Bay in and near the Rose Bay Settlement Area (namely, the At-Risk Vulnerable People);
- A careful consideration of the circumstances under which the Rose Bay (New South Head Road) was identified as a Town Centre (when it clearly did not meet *NSW Planning’s* published criteria for such identification) does not support the *EIS’s* view that this *Development* aligns with “the strategic planning framework” as claimed;
- Even if the recommended mitigation measures are implemented, the *Project* will most certainly cause or contribute to adverse environmental impacts from interference with groundwater and other vulnerable soil conditions especially over the long term when aggregated and concentrated with other similar *Basement-dependent & Profit-driven Developments*.

This *Submission* asserts that this *Project* does NOT represent “a thoughtful and responsible approach to urban development, balancing economic growth, environmental sustainability, and social considerations” (as claimed on page 85 of the *EIS*). It effectively ignores the significant and serious risks that present themselves for the innocent bystander property owners and residents in and near the *Rose Bay Settlement Area* (that is, the *At-Risk Vulnerable People* of Rose Bay).

With respect, this *Submission* asserts that it is patently unacceptable for the EIS to deem the Project “*appropriate for the site*”, based on a wrongly claimed “*comprehensive evaluation*” and an assumption that “*measures taken*” (whose implementation, in reality, cannot be guaranteed nor their effectiveness warranted to third parties, especially, the *At-Risk Vulnerable People*) will “*address potential impacts*”. Additionally, this *EIS* has not properly and diligently “*considered all relevant matters*”.

Whilst the JARGON employed in the *EIS* is enticing and usual for the planning industry to advocate for its client in an *EIS* of this type, the SUBSTANCE of what is being presented to the *consent authority* cannot withstand detailed scrutiny undertaken in “good faith” and outside imperatives and constraints under which *consent authorities* and their support staff (including assessors) and are compelled to operate in the current political climate created and overseen by the NSW Government’s strategy to deal with the housing shortage in NSW.

The balance of this *Submission* will expand on matters that relate both to the *Project* and why its approval is NOT in the public interest.

4. THE ESSENTIAL ISSUE

This *DA* seeks approval for the construction of a large residential flat building of luxury apartments. It extracts for itself the generous planning concessions allowed by the *LMR* announced in February 2025 by the NSW Government with the aim of providing more housing, especially affordable housing, to the people of NSW.

At the heart of, and crucial to, this *Submission* is to highlight the fact that the *LMR* has facilitated a significant alteration to the status quo in the *Fragile Area* of Rose Bay and this has created the serious and obvious CONFLICT that exists between

- The desire of Rose Bay residents and property owners (especially the *At-Risk Vulnerable People*) to prevent the construction of *Basement-dependent & Profit-driven Development* in the *Fragile Area*; and
- The desire of the *Developer* to construct such a large residential flat building with below ground deep basement(s) so as to maximize the financial return that will flow to the *Developer* from the construction of such a *Basement-dependent & Profit-driven Development*.

It is up to the *consent authority* and its advisers to consider in GOOD FAITH both of those desires and, if possible, to fashion a sensible outcome that satisfies the imperative that the innocent *At-Risk Vulnerable People* of Rose Bay NOT be punished and that is truly in the PUBLIC INTEREST; the public interest being of fundamental relevance in determining this *DA*.

This *Submission* asserts that there are compelling reasons that demand that this *DA* cannot be approved unless the below ground basements are entirely eliminated from the *DA Project* (at a minimum).

Those compelling reasons embrace not only legal and ethical issues but also extend to balancing

- the rational concerns of the under-resourced and fragmented weaker members of the community (being the ordinary residents and property owners of the Woollahra LGA, especially Rose Bay's *At-Risk Vulnerable People* and their counterparts in Double Bay; and
- the demands of the overwhelmingly-resourced and mobilized powerful members of the residential developer industry (including the various bodies and persons that represent and advance its interests) supported by the current strongly pressed LMR policies of the NSW Government and by the tacit performance to date of *Woollahra Council* purportedly representing its constituents.

This *Submission* asserts that, in this tussle, it is the Rose Bay Community that is the underdog facing a juggernaut spearheaded by a well-resourced and fully mobilized developer industry that has intertwined itself with government at both the State and local levels; so that it has been able to contribute to and influence the formulation and implementation of housing policy in NSW generally (and especially the application of the *LMR*).

This tussle and existing odds of success can be likened to a David v. Goliath scenario. This *Submission* asserts that only an honest assessment of what truly advances the public interest in these circumstances can balance those odds; and this is supported by relevant legislation and regulations.

Furthermore, and as previously referred to, it is a key assertion of this *Submission* that this DA proposes an alteration to the status quo for the Rose Bay environment (including its residential buildings) and is doing so for the dominant purpose of greatly enhancing the financial return it can extract from the *Project*.

Therefore it follows that, before any consent to this *Project* can even be considered, the public interest demands that the *Proponent* be obliged to positively establish in a certain and unqualified manner that there is absolutely no risk of this *Project* and similar proposals in the short or long term, directly or indirectly causing or contributing to any loss or damage to persons or property in or on land located in or near the *Fragile Area* (especially the *Rose Bay Settlement Area*); in other words, there will be no risk for the *At-Risk Vulnerable People* of Rose Bay.

5. PUBLIC INTEREST: Nature of Public Interest

Various Perspectives of the “public interest”

The public interest test requires balancing factors for and against granting consent to a DA. That balancing must be undertaken in “good faith” and includes a consideration of the various factors/indicators capable of being gleaned from the relevant legal and regulatory structures that are in place.

Additionally, the “public interest” can be viewed from various perspectives and some of these are the following:

Legalistic Perspective: From a strictly legalistic position public interest is used when referring to the balancing of individual rights against collective need and the ‘general welfare’ of the public. This view may be used to improperly justify an array of regulations, government interventions, or legal decisions – some of which serve an assumed majority.

Political Perspective: From a more political perspective, public interest can be seen as variously the will of the majority determined through elections and representative models of governance, but linked to this is a governance perspective, where acting in the public interest implies serving citizens equitably and responsibly, including adhering to standards of accountability and transparency and avoiding conflicts of interest or countenancing corruption.

Ethical Perspective: Public interest may also be framed in ethical terms and, in this light, rests on questions of justice and fairness and with a focus on shared values and collective wellbeing. This perspective is important in ensuring that the interests of ordinary local people and property owners in a community are fully considered and not ignored or treated with indifference by powerful makers and those who are mobilised and well resourced to champion and publicise their own vested financial interests.

Environmental and Sustainability Perspective: The environmental or sustainability perspective is where public interest includes short and long-term considerations that relate to CAUTIOUS environmental protection and preserving natural resources for future generations and this demands that sustainable development balances economic growth with ecological limits, alongside long term intergenerational equity.

This *Submission* respectfully asserts that the reality is that the *LMR*, on which this *DA* is based, has distorted a sensible understanding of what constitutes the public interest and:-

- does NOT balance individual rights against collective need and the ‘general welfare’ of the public and, in reality, is partly the product of an intense lobbying campaign conducted by the developer industry to facilitate financial windfalls for it by dramatically increasing housing development opportunities under the mythical guise of providing affordable housing to struggling families, housing opportunities for essential workers, and undertaking relatively large residential developments portrayed (on an artificial deemed basis) as being of State significance (when, in reality, those developments have no significance for the State at all); with the legislatively value-triggered deeming mechanism simply intended to enable the replacing of a local government consent authority with a State consent authority; and
- is energised by the politically expedient drivers for a government to present itself as one that is doing something about the housing shortage and whose only interest is really to achieve electoral success through higher new housing numbers that will electorally assist it, even if this is achieved by compromising governance precautions and delivering windfalls to a developer industry that

has strategically placed itself to have an impact on government decision-making.

Accordingly, this *Submission* asserts, in relation to this DA, that the public interest is most appropriately and safely considered in the context of both the Ethical and Environmental Perspectives, since these appropriately reflect and are most consistent with relevant public interest factors/indicators that can be discerned from the relevant legal and regulatory structures that are in place.

Relevant Public Interest Factors/Indicators

The relevant “public interest” indicators/factors can be gleaned from the relevant legislative and regulatory framework (extracted in Part B of the *Schedule*).

Such indicators/factors, appropriately grouped below for the sake of convenience, are as follows:

A. Protection of the Environment

(See Sections 1.3(e) and 1.4 of the *EP&A Act* and Section 3.1(1) and 6(1)(a) and (b) of the *Protection of the Environment Administration Act 1991*)

To protect

- the environment (as defined in the EP&A Act)

B. The Need to Ensure that Development and Construction of Buildings is Proper

(See Sections 1.3(a) and (h) of *EP & A Act*)

To promote

- the social and economic welfare of the community by **PROPER development**, and
- the **PROPER construction** of buildings including the protection and safety of their occupants

C. Decision-Making

(See Sections 1.3(b) and (j) of *EP&A Act*)

Section 6(1)(a) and (b) and 6.2 of the *Protection of the Environment Administration Act 1991*
Regulation 193 of the *Environmental Planning and Assessment Regulation 2021*)

To facilitate in **DECISION-MAKING** about environmental planning and assessment

- ecologically sustainable development; and
- environmental and social considerations

To effectively integrate in **DECISION-MAKING** processes the principles of ecologically sustainable development, including

- the precautionary principle; and
- inter-generational equity

To provide

- increased opportunity for **community participation** and involvement in **DECISIONS** about environmental matters

D. Desired Development Types

(Regulation 3(a), (b) and (h) and Regulation 142(f) of the *State Environmental Planning Policy (Housing) 2021*)

To enable and encourage the development of

- diverse housing types, including purpose-built **rental housing**;
- housing that will meet the needs of more **vulnerable members** of the community, including very low to moderate income households, (such as housing that will meet the needs of the *At-Risk Vulnerable People* of Rose Bay to avoid adverse impacts to themselves and their property).

To mitigate

- the loss of existing **affordable housing**

To support

- **housing affordability**

E. Housing Development Matters

(Regulation 3(e), Regulation 142(c) and Regulation 162 of the *State Environmental Planning Policy (Housing) 2021*)

To minimize

- adverse environmental impacts of new **housing development** (such as this Project).

To maximize

- the amenity, **safety** and security of the residents of **residential apartment development** and the community (including the maximization of the safety and security of the *At-Risk Vulnerable People* of Rose Bay)

To encourage

- the development of low and mid rise housing in well located areas.

6. PUBLIC INTEREST: Applying Relevant Factors/Indicators

Below is an explanation of the application of relevant public interest factors/indicators to this *Project*.

A. Protection of the Environment

(See Sections 1.3(e) and 1.4 of the *EP&A Act* and Section 3.1(1) and 6(1)(a) and (b) of the *Protection of the Environment Administration Act 1991*)

Given that “environment” (as defined) includes the existing physical houses and buildings in which individual persons and the community of Rose Bay (as a whole) reside, it follows that any project (including the *Project*) that, directly or indirectly, exposes those existing physical houses and buildings to the risk of damage must be rejected (especially where those existing houses and buildings are owned and/or lived in by the *At-Risk Vulnerable People of Rose Bay*).

This *Submission* strongly asserts that there are many such buildings, particularly in or near the *Rose Bay Settlement Area*, that are very likely to suffer damage if the prevailing groundwaters are interfered with by the excavation for, and placement of, below ground basements; and the likelihood of such damage will increase the more such basements are allowed to be constructed.

This position is already supported by the number of incidents that have already been reported in the Rose Bay and Double Bay areas.

Therefore, if this *Project* insists that the excavation for and the placement of basements occur, the *DA* must be rejected.

B. The Need to Ensure that Development and Construction of Buildings is Proper

(See Sections 1.3(a) and (h) of *EP & A Act*)

Is it PROPER for this *Project* and construction be allowed to proceed, given its proximity to the *Rose Bay Settlement Area* and the knowledge that such a development is likely to cause damage to existing structures of the residents and property owners of the Rose Bay community (especially Rose Bay’s *At-Risk Vulnerable People*)?. This *Submission* asserts “No”.

In the “public interest” context, this *Submission* strongly asserts that “proper” can readily be taken to have various meanings such as “suitable”, “appropriate”, “fitting”, “just”, “ethical”, “virtuous”, “principled”, “moral” and the like.

This *Submission* strongly asserts that, taken as a whole and in the context and purposes (objects) of the *EP&A Act*, there is clear support for all of the above textual meanings applied to the word “proper” and that when considering the *Project* in the public interest context, the question needs to be asked: is the *Project* suitable,

appropriate, fitting, just, ethical, virtuous, principled and moral or, in other words, proper?

This *Submission* strongly asserts that the answer is “No” in respect of all of those adjectives.

For the potentially affected residents and property owners of Rose Bay (especially Rose Bay’s *At-Risk Vulnerable People*), the construction of below ground deep basements beneath a residential flat building (like that proposed by this *DA*) in what have generally become known as the *Fragile Area* of Rose Bay (specifically, in or near the *Rose Bay Settlement Area*) exposes those persons to the unacceptable risk of damage being caused to their properties and this risk and their fears are exacerbated by such things as:

- A seeming lack of willingness on the part of anybody (including governments at both state and local level) to accept responsibility for the damage and the costs of undertaking repairs (as was graphically illustrated by the Mascot Towers debacle;
- The seeming reluctance of both state and local governments to provide an INDEMNITY to cover the losses of Rose Bay’s *At-Risk Vulnerable People*, despite such an indemnity being at no cost to government if the perceived risks of the *At-Risk Vulnerable People* is zero (as seemingly claimed by government);
- The NSW Government and *Woollahra Council* choosing to blame each other for the clear problem that has arisen since the announcement of the *LMR* and its application to Rose Bay;
- The fact that there exists no credible hydrogeological study that considers the cumulative effects of the construction of large residential flat buildings with deep underground basements and in a concentrated area in or near the *Fragile Area* (especially the *Rose Bay Settlement Area*);
- The failure and/or unwillingness of *Woollahra Council* to ensure that the *Rose Bay Settlement Area* be included as an exempted vulnerable area in the 2024 Refinement Paper issued by *NSW Planning* and the unwillingness of the *Minister* and *NSW Planning* to revisit that issue, despite compelling evidence that on any rational basis demands that the matter be revisited;
- The trivialising (of attempts by Rose Bay residents to have this critical matter remedied) by the media fuelled by developer industry groups and NSW Government announcements and media releases seemingly calculated to cause distraction, belittle and silence Rose Bay residents who have been wrongly and disparagingly labelled as NIMBYS;
- The misplaced stance taken by the NSW Government that the issues of concern can be overcome by engineering and geotechnical persons when in reality that is not the case; as is evidenced by the fact that relevant technical and consultant reports do not express unqualified conclusions and are almost always filled with disclaimers, based on assumptions and circumscribed by limitations, rendering them virtually useless in the event that responsibility for damage needs to be identified and attributed (see material under heading – **7. PUBLIC INTEREST: Shortcomings of Technical Reports (especially Client-focussed Consultant Reports)**);
- The inability and/or unwillingness of the construction industry generally to adhere to approved development consent conditions and the inability and/or

- unwillingness of Woollahra Council to monitor and enforce compliance with those conditions (as can be readily gleaned from *Woollahra Council* records);
- The heightened activity of developers' agents, after the passing of the *LMR* changes, to "lock" people in to sales of their properties to developers obviously anxious to exploit the financial windfall delivered to them by the *LMR* through the development of prime coastal lands, essentially for the construction of UNNAFFORDABLE LUXURY apartments under the mythical guise of providing affordable housing and housing for essential workers and on the misleading basis that the construction of a large residential flat building is truly SIGNIFICANT to the State of NSW (when it is not); and
 - The fast pace at which the NSW Government is driving housing development approvals in the full knowledge that its planners and assessors do not have the technical competence or resources or time to scrutinise the questionable various hydrogeological and geotechnical reports that are relied upon by developer proponents (see material under heading - **9. PUBLIC INTEREST: Possible Factors Derogating from MERIT and "GOOD FAITH" Assessment**).

This *DA* proposes the construction of such a large residential flat building with below ground deep basement(s) so as to maximize the financial return that will flow to it from such construction. This *DA* proposes the construction of a *Basement-dependent & Profit-driven Development*. This is a development and construction that is NOT PROPER.

If this *DA* is approved, it will wrongly and IMPROPERLY advance the creation of the paradigm that such constructions are suitable and proper for land in or near the *Fragile Area* (including the *Rose Bay Settlement Area*).

Furthermore, and despite the developer industry's postured and altruistic public stances, such an approval will validate further that industry's keen desire to maximize its profits by seizing the opportunity to construct UNAFFORDABLE large luxury apartments on the coastal areas of Rose Bay in the full knowledge that the particular developer will not be held accountable in the event that the feared short term and long term detriments from the construction of *Basement-dependent & Profit-driven Developments* in or near Rose Bay's *Fragile Area* (including the *Rose Bay Settlement Area*), in fact, materialise.

It must be remembered that "*urban development is increasingly aiming to maximize the value of land in the Rose Bay region*" and that "*many developments are considering the construction of basements, underground parking, car stacking and other associated below ground structures*", as stated on page 1 of GHD Ltd's **Rose Bay – Hydrogeological and Geotechnical Impacts** report to Woollahra Council dated 31 July 2024. Significantly, the Report goes on to say (on Page 1) that

"The construction of these underground structures can have implications for the groundwater environment in short and long term, and the magnitude of these implications can be significant when the developments are considered from a cumulative perspective. In terms of the built environment, the depressurisation of compressible sediments can lead to consolidated settlement, and settlement differentials can have significant impacts on existing buildings. Dewatering can also result in other impacts associated with

managing disposal of the seepage, reduced access to groundwater by the environment, and activation of acid generating geological materials.”

It must also be remembered that the developer industry, quite understandably, is known to have amongst its ranks and lobbyists former politicians and advisers to various NSW Premiers and Ministers, former holders of executive roles and senior positions in the NSW public service, and political advisers to government agencies generally.

Therefore, on the one hand we have individuals in the Rose Bay community, under resourced and filled with fear and anxiety about their future as well as seemingly abandoned by their elected representatives, forced to simply accept and make the best of a poor situation (that they did not create) and who are effectively being “punished” by their elected representatives who are seemingly reluctant to listen.

On the other hand we have a strong, mobilized and highly resourced developer industry that has had delivered to it by the *LMR*, and is ready to seize, a potential financial windfall from the *LMR*; with a seeming reluctance or inability of a local council (or its staff) to aggressively put the case for its constituents to the State.

Development consent being granted for this DA will support the strong developer industry and abandon the weak community of Rose Bay. This *Submission* strongly asserts that, in the public interest context, such a decision would NOT be proper on both a legal and ethical basis and, if scrutinised, would hover very closely to the cusp of heightened indifference sufficient to carry with it legal implications.

C. Decision-Making

(See Sections 1.3(b) and (j) of *EP&A Act*

Section 6(1)(a) and (b) and 6.2 of the *Protection of the Environment Administration Act 1991*

Regulation 193 of the *Environmental Planning and Assessment Regulation 2021*)

In the context of the public interest, this *Submission* crucially asserts that the *consent authority* decision sought by this *DA* is inherently about environmental planning and assessment and, accordingly, involves a consideration of

- ecologically sustainable development (especially the precautionary principle and inter-generation equity);
- environmental and social considerations; and
- increased opportunity for community participation and involvement in the decision.

Hence, it is vital that this *Submission* and others from the Rose Bay community be integrated into the *consent authority*’s decision, taken seriously, and not be arbitrarily discarded as NIMBYISM or just another “*creative means*” of trying to avoid the application of the *LMR*, as reportedly claimed by the Minister.

Again the detrimental impacts on the “environment” (as defined to include existing houses and apartment buildings) of constructing a *Basement-dependent & Profit-driven Development* in or near the hydrogeologically and geotechnically vulnerable *Rose Bay Settlement Area* must be genuinely and competently considered and, if

there is any doubt at all then the principles of ecologically sustainable development should be applied, especially

- the precautionary principle; and
- the principle of inter-generational equity,

These principles are enshrined in Regulation 193 of the *Environmental Planning and Assessment Regulation 2021* and Section 6 of the *Protection of the Environment Administration Act 1991*.

The precautionary principle states that, if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

In relation to the land in or near the *Rose Bay Settlement Area*, there is real threat of serious or irreversible environment damage and there is a severe lack of “full scientific certainty”. This is not an irrational or fanciful fear. It is a genuinely held fear based on prior occurrences/incidents in Rose Base and Double Bay and sound evidence of poor builder behaviour and expressed concerns in relation to both.

The sad reality is that, to date, that lack of “full scientific certainty” is being used by government (both at a State and local levels) as a reason for postponing measures to prevent environmental degradation, relying on the unsupported theory that appropriate technical designs and engineering practices can be used to prevent environmental degradation and that there is no need to take the obviously available and responsible measure to eliminate that degradation, namely, the immediate prohibition of the construction of large residential flat buildings, that is *Basement-dependent & Profit-driven Developments*, in or near the *Rose Bay Settlement Area*.

The NSW Government has implicitly (at least) asserted that there is no risk because soil, excavation and groundwater issues can be solved by engineers working through the issues and finding a way to overcome those problems. But despite its assertion of an absence of risk, the NSW Government does not seem to have seriously entertained the possibility of providing a so-called “risk free” State underwritten INDEMNITY for Rose Bay’s At-Risk Vulnerable People; meaning that, if there truly is no risk, then the State would be providing the indemnity at no cost to it and a cost would only arise if the NSW Government’s assessment of “no risk” proved to be wrong.

The reality is that, to date, the built environments in or near the *Rose Bay Settlement Area* and neighbouring Double Bay Settlement Area have been degraded and the available technical designs and practices employed have failed to prevent such degradation and, for political reasons or otherwise, governments are reluctant to take the obviously available and responsible step to eliminate that degradation on land in or near the *Rose Bay Settlement Area* and the Double Bay Settlement Area.

KEY POINT: This means that the only protection available to the Rose Bay At-Risk Vulnerable People is to demand that the consent authority strictly apply the precautionary principle clearly enshrined in legislation and to make decisions that prevent serious or irreversible damage occurring to the physical built environment within or near the Fragile Area (including the Rose Bay Settlement Area); hence a

CONDITION OF APPROVAL must be that the *Proponent* obtain an INDEMNITY from the State of NSW in favour of Rose Bay's *At-Risk Vulnerable People* and pay the State of NSW the premium necessary to obtain that indemnity OR, if unable to obtain such an indemnity, that the *Proponent* entirely ELIMINATE the basements from the *Project*.

Although full scientific certainty in relation to hydrogeologically and geotechnically related expressed opinions cannot be achieved, certainty of outcome can be achieved through the absence of *consent authority DA* approvals being given to projects proposing the construction of *Basement-dependent & Profit-driven Development* in or near Rose Bay's *Fragile Area* (including especially the *Rose Bay Settlement Area*). Accordingly, this *DA* in its current form must be rejected

It is this *Submission's* assertion that the *consent authority* is compelled at law and, especially in the context of the public interest, ethically to apply the PRECAUTIONARY PRINCIPLE in how it approaches its consideration of this *DA*; especially recognising that the environmental degradation of great concern to the Rose Bay Community is both serious and, except for repairs being undertaken to individual damaged buildings where resources permit, is IRREVERSIBLE. Furthermore, the *consent authority* must exercise its power in good faith and take full account of the Rose Bay community's limited opportunity for participation in the process in trying to make their rationally based concerns known to government and its decision-makers.

Significantly, and in the context of the public interest, it needs to be highlighted that a search of *Woollahra Council's* public records has revealed the existence of an independent report (commissioned by the Double Bay Residents Association) dated 5 August 2024 from an ACT based Senior Geotechnical Engineer (Mr. Jeremy Murray) of **Fortify Geotech Pty Ltd** who provided a Geotechnical Assessment of the Impacts of Large Scale Volumes of Excavation in relation to the then proposed amendments to the *Woollahra Development Control Plan 2015*. This report was apparently submitted as part of Late Correspondence to *Woollahra Municipal Council's* Environmental Planning Committee's Meeting scheduled for Monday 5 August 2024. This report does NOT appear to have been highlighted by *Woollahra Council* to its local community or to *NSW Planning*.

Significantly, that report does NOT appear to contain any disclaimers, limitations or assumptions and, given that its author appears to be ACT based, it is likely to also be, at least prima facie, independent of the developer industry that operates in the *Woollahra LGA* and not beholden to that industry for future work.

Some extracts from that report are reproduced below, as they are critically relevant to the issues of concern.

"Groundwater is typically present at shallow depth (sometimes only 1m or 2m below the ground surface) in the lower-lying areas of Woollahra LGA."

"The soil conditions are not favourable for supporting structures (existing and future) and typically have low bearing capacities and potential for large settlements."

“Given the high groundwater inflow rates, when dewatering, pump-out rates are also high. This can sometimes exceed the capacity of the stormwater network resulting in local flooding, with subsequent settlement/subsidence of adjacent ground and damage to existing structures, road and sewer network. This is not necessarily due to a single development but from the cumulative impact of multiple developments, which is also made worse by the higher frequency of rainfall and flooding events.”

“The primary suspected cause of the major structural issues at Mascot Towers was due to dewatering activities on the site next door. Although not in the Woollahra LGA, the geotechnical conditions are similar (deep Aeolian sands and shallow groundwater).”

Of critical relevance are the reference to “a cumulative impact of multiple developments” and the recommended mitigation measures advised as conditions on new developments including the following:

“- Not allowing excavations to extend below the groundwater table.”

“- Not allowing dewatering that draws down the groundwater table.”

This Submission strongly asserts that there is only one proper decision for the consent authority to make in respect of this Project, namely, a decision to reject this DA.

KEY POINT: The giving of development consent to a DA involving Basement-dependent & Profit-driven Developments in or in the vicinity of Rose Bay's Fragile Area (including especially the Rose bay Settlement Area, and based on an assessment undertaken on a single-site basis, must on any reasonable view be regarded as being absurd and incapable of justification. This DA in its present form must be REJECTED.

D. Desired Development Types

(Regulation 3(a), (b) and (h) and Regulation 142(f) of the *State Environmental Planning Policy (Housing) 2021*)

It is this *Submission's* assertion that this *Project* does NOT

- enable and encourage the development of diverse housing types (including purpose-built rental housing) or housing that will meet the needs of more vulnerable members of the Woollahra LGA community (including very low to moderate income households);
- mitigate the loss of existing affordable housing; and
- support housing affordability

It is this Submission's strong assertion that approval of this DA would provide support for creating the PARADIGM of enabling and encouraging the capture by the broader developer industry of the desirable coastal areas of Rose Bay for the overwhelmingly dominant purpose of creating UNAFFORDABLE luxury apartments suitable for the relatively wealthy members of the Sydney Eastern Suburbs community who can

afford to pay at the very least \$3M plus for each such apartment and, doing so through indiscriminate *Basement-dependent & Profit-driven Developments* and without any visible regard to the detrimental impacts on the environment or Rose Bay's *At-Risk Vulnerable People*.

Furthermore, and again as previously referred to, this *DA* masks the exact level of affordable housing that is being provided by this *Project* when one applies a typical building lifecycle of 60 years plus (with the level of affordable housing reducing further the longer a typical building lifecycle is assumed; for example, assuming a building lifecycle of 60 years, then a 15 year affordable housing provision of 15% would reduce to 3.75% of the building's lifecycle years, NOT the 15% claimed by the *Proponent*).

KEY POINT: Accordingly, in the context of the public interest, this *Submission* asserts that the reality of the level of affordable housing being provided by this *Project* is MINISCULE and will have a negligible impact on alleviating the so-called housing crisis, even when developments are aggregated as part of a Rose Bay precinct.

E. Housing Development Matters

(Regulation 3(e), Regulation 142(c) and Regulation 162 of the *State Environmental Planning Policy (Housing) 2021*)

It is this *Submission's* assertion that this *Project* does NOT

- minimize adverse environmental impacts of new **housing development**.
- maximize the amenity, **safety** and security of the residents of **residential apartment development** and the community
- encourage the development of low and mid rise housing in well-located areas.

The reasons as for making these assertions are readily apparent from a reading of this *Submission* as a whole.

7. PUBLIC INTEREST: Shortcomings of Technical Reports (especially *Client-focused Consultant Reports*)

This *Submission* strongly asserts that most of the technical reports provided by the *EIS* in support of the *Project* have only been created and written with the intention of serving the interests of the *Proponent* and they fall far short of being *Independent & Just Consultant Reports* (as defined in this *Submission*) that can assist the *consent authority* to properly assess this *DA* in good faith. Accordingly, most of those reports are *Client-focussed Consultant Reports* designed to enable BOXES to be TICKED.

The *EIS* claims that it and the accompanying technical reports provide detailed, environmental, economic, and social assessments that have informed the design of the proposal and ensure its suitability for the site. This is NOT correct.

This *Submission* cautions against unscrutinised reliance upon the provided *Client-focussed Consultant Reports* because they simply fall short in both their communication of technical matters in plain, clear language, and, more importantly, are too quick to infer severely qualified conclusions (if, indeed, any helpful or meaningful conclusions are articulated) that fall far short of what is necessary or appropriate for enabling a legitimate assessment of this DA and, to the extent that a conclusion might be expressed, they do not evidence any due process for such expression; ultimately providing advice that distracts but is suitable to meet rudimentary assessment check lists.

KEY POINT: This *Submission* is compelled to highlight the fact that, being *Client-focussed Consultant Reports*, several of the provided technical documents contain DISCLAIMERS, are based on ASSUMPTIONS and are circumscribed by LIMITATIONS, rendered VAGUE and inconclusive by the use of AMBIGUOUS language that mandate that those technical reports be regarded with scepticism and canNOT be relied upon to provide any degree of confidence and certainty.

Effectively they are UNHELPFUL in addressing the issues raised by this *Submission* and they cannot be seriously be relied upon to justify a conclusion that this DA ought be approved, with or without conditions that, in any event, would be almost impossible to formulate and articulate, let alone being able to ensure that they would be fully complied with.

Particular attention is drawn to the hydrogeologically and geotechnically related Reports and Plan listed below:

- **Appendix S – Geotechnical Investigation Report** by IGS Dewatering Management Plan from **Morrow Geotechnics** Pty Ltd dated 17 September (See particularly the UNCERTAINTIES contained in **Section 6 (STATEMENT OF LIMITATIONS)** and the “**IMPORTANT**” **INFORMATION**” document attached to it
- **Appendix Z – Site Hydrogeology Report** from **Morrow Geotechnics** Pty Ltd dated 24 October 2025 (See particularly the UNCERTAINTIES contained in **Section 4 (STATEMENT OF LIMITATIONS)** and the “**IMPORTANT**” **INFORMATION**” document attached to it
- **Appendix N – Dewatering Management Plan** from **Morrow Geotechnics** Pty Ltd dated 24 October 2025 (See particularly the UNCERTAINTIES contained in **Section 9 (STATEMENT OF LIMITATIONS)** and the “**IMPORTANT**” **INFORMATION**” document attached to it

This *Submission* asserts that the full meaning of what each of the above documents is actually saying must be clearly identified and, once identified, be considered in “good faith” in the context of the wording of each Statement of Limitations, “important information” document, and Disclaimer variously referenced in each of them.

Then, if it is truly possible to do so, a DETAILED SUMMARY of what each such *Client-focussed Consultant Reports* actually COMMITS to must then be provided in the

assessment report of this DA produced for the *consent authority* to consider in making its decision.

It is critical that each of the above documents be carefully read and considered by those advising the *consent authority*. As repeatedly emphasized, this *Submission* asserts that those documents achieve little more than enable a BOX TICKING exercise to be completed. They provide no substantial input for injecting any confidence that the construction of this *Project's* building in or near Rose Bay's *Fragile Area* can be conducted with safety and without risk to Rose Bay's *At-Risk Vulnerable People* and their environment (as defined in the *EP&A Act* and the *Protection of the Environment Administration Act 1991*); rendering the compelling and inescapable conclusion that the proposed *Project* is a *Basement-dependent & Profit-driven Development* (as its definition in this *Submission* correctly describes) that is "UNACCEPTABLE IN SUBSTANCE" and, accordingly, must be rejected.

Additionally, this *Submission* asserts that the following design, plan, assessment and statement respectively are inaccurate and incomplete and offer very little in support of this DA.

- **Appendix Q – Ecologically Sustainable Design (ESD) Report** by IGS Dewatering Management Plan from **Morrow Geotechnics** Pty Ltd dated 24 October 2025 (See particularly the UNCERTAINTIES contained in **Section 8 (Conclusion)** and **Section 9 (Disclaimer)**).
- **Appendix G – Acid Sulfate Soil Management Plan** from EI Australia dated 12 September 2025 (See particularly the UNCERTAINTIES contained in Section 3.4 (Likelihood of ASS Occurrence), Section 4.6 (Risk Management), Section 4.7 (Contingency Measures), **Section 6 (Statement of Limitations)**)
- **Appendix W – SSD Noise & Vibration Impact Assessment** prepared by Pulse White Noise Acoustics Pty Ltd
- **Appendix AA – Social Impact Statement** prepared for Fortis by Urbis Ltd dated 2 October 2025 (See particularly the UNCERTAINTIES contained in **Section 10 (Disclaimer)**).

Technical Resources Consulted in the Preparation of this Submission

This *Submission* acknowledges that the hydrogeological and geotechnical intricacies that must be considered in order to properly consider in "good faith" the merits of a *Basement-dependent & Profit-driven Development* for Rose Bay's *Fragile Area* are very complex, varied and devoid of simplistic resolutions.

It is trite that ground conditions can vary even over short distances and, in practice, geotech advice given in reports is based on the assumption that the test results are representative of overall ground conditions, noting that actual conditions in other parts of a test site might differ from those found.

The available relevant technical literature on the subject does not provide any scientific certainty that will ensure that (a) degradation of the environment (as defined

in the *EP&A Act* and the *Protection of the Environment Administration Act 1993*) will not occur; and (b) the threats of short term and long term serious irreversible environmental damage will not materialise, if the *Basement-dependent & Profit-driven Development* proposed by this *DA* is allowed to occur in the *Fragile Area* of Rose Bay.

Accordingly, and for the sake of transparency, this *Submission* reveals that in its preparation at least the following technical documents were viewed:-

- **Geotechnical Assessment of Impacts of Large Volumes of Excavation (re. Proposed Amendment to Woollahra Development Control Plan 2015) Report** by Fortify Geotech's Senior Geotechnical Engineer (Mr. Jeremy Murray) dated 5 August 2024 (being part of Late Correspondence to Woollahra Council's Environmental Planning Committee Meeting for 5 August 2024)
- **Chapter E2 Stormwater, Flood and Geotechnical Risk Management** in Woollahra Development Control Plan 2015 last amended on 2 December 2024
- **Rose Bay - Hydrogeological Geotechnical and Technical Impacts Report** by GHD Ltd and dated 31 July 2024
- **Double Bay - Hydrogeological Geotechnical Impacts Groundwater and Geotechnical Assessment Report** by GHD Ltd and dated June 2020
- **Rose Bay Centre Urban Design Study** (as exhibited 1999) by Woollahra Municipal Council
- **Planning for coastal hazards** NSW Government Planning Circular PS 21-009 issued 2 December 2021
- **NSW Aquifer Interference Policy: NSW Government policy for the licensing and assessment of aquifer interference activities** first published September 2012 Publication number:11445
- **Groundwater Management Handbook: A Guide for Local Government** dated September 2006 and prepared by Sydney Coastal Council Group (in consultation with the SCCG Groundwater Working Group)
- **DPE (2022) Guidelines for Groundwater Documentation for SSD/SSI Projects. Technical guideline** and dated January 2022 prepared for NSW Planning (**SSD Guidelines**)

Accordingly, the preparation of this *Submission* was undertaken and the *Submission* is provided on a best efforts basis, recognizing the significance and seriousness of this *DA* and with a concern that the interests of ordinary people are being unfairly threatened and not being visibly considered or addressed by government.

8. PUBLIC INTEREST: Failure to Apply a CAUTIOUS APPROACH to Development on the Rose Bay Coastland

This *Submission* asserts that the *LMR* has unwittingly cast aside any concerns relating to the coastal environment and has subordinated those concerns to the driving of a shift from protecting the environment and the NSW coastline to driving housing development that unduly favours the development industry. The approval of

this DA will provide support for this in a manner that is clearly contrary to the public interest.

Additionally, and relevant to this DA, is the need highlight that the framers of the LMR did not ensure that steps were taken to have each relevant fragile or vulnerable part (or pocket) of the coastal suburb of Rose Bay identified as a “*coastal vulnerability area*” within the meaning of the *Resilience and Hazards SEPP*, thereby readily enabling exemption of those parts from the LMR. At the very least, those vulnerable parts (or pockets) would be covered by Rose Bay’s *Fragile Area* as defined in this *Submission*.

Exemption from the LMR is available under section 164(1)(b) of the Housing SEPP for “land identified as a **coastal vulnerability area** ... within the meaning of the *State Environmental Planning Policy (Resilience and Hazards) 2021*, Chapter 2.”

It should also be noted that identification as a “*coastal vulnerability area*” does not mean that there is anything inherently wrong with the land in question where the intensity of such land use is kept relatively normal and reasonable. What it means is that such land, because of its proximity to the NSW coastline, should have the benefit of certain principle-based management objectives that (as a whole) recognise the local and regional scale effects of coastal processes and the inherent ambulatory nature of the shoreline.

Hence, this *Submission* asserts and draws attention to the fact that the LMR falls short in ensuring adherence to the requirements of section 2.12 of the *Resilience and Hazards SEPP*, that prohibits the granting of development consent “*unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on the land or other land.*”

This *Submission* asserts that, in considering this DA, the *consent authority* now has the ability and power to implement the spirit and intent of section 2.12 of the *Resilience and Hazards SEPP* by rejecting this DA in its current form.

This *Submission* emphasises is that, whilst the *Resilience and Hazards SEPP* stresses the need for exceptional care to be taken in relation to the management of the coastal zone (particularly in relation to the granting of development consents), the framework of the LMR runs counter to this in favour of unrestrained development. This indicates a heightened indifference that the *consent authority* for this DA should try to remedy by exercising its discretion in favour of responsible governance and sensible decision-making by rejecting this DA in its current form.

Accordingly, the LMR has fallen short of fully applying a CAUTIOUS approach to development in the NSW “*coastal zone*” and this has been relevantly compounded by the fact that a “*coastal vulnerability area*” has NOT been mapped for Rose Bay, when it clearly should have been; especially given the various hydrogeological and geotechnical studies undertaken and the full awareness that exists of the fragility of the land in some parts of Rose Bay and Double Bay, at least.

As of February 2024, only one “*coastal vulnerability area*” has been both certified and mapped as contemplated by the then *Coastal Management State Environmental*

Planning Policy 2018 (which now forms Chapter 2 of *Resilience and Hazards SEPP*), namely, that of part of the Coffs Harbour Coastal Zone.

Therefore, although the relevant development controls (applying specifically to development on land within a “*coastal vulnerability area*”) are contained in section 2.9 of the *Resilience and Hazards SEPP*, those controls are NOT YET ACTIVE for other LGAs (including Woollahra Council LGA, and hence Rose Bay). This represents a major problem, especially for Rose Bay’s *At-Risk Vulnerable People*.

Because the “*coastal vulnerability area*” relevant development controls have not been activated for the relevant areas of the Woollahra LGA (as they should have been), the provided exemption from the application of the LMR (by section 164(1)(b) of the *Housing SEPP* for “*land identified as a coastal vulnerability area*” within the meaning of what has become Chapter 2 of the *Resilience and Hazards SEPP*) does NOT apply to Rose Bay’s *Fragile Area* when it SHOULD HAVE so applied.

KEY POINT: This clear oversight was compounded by the fact that the failure to ACTIVATE was the result of an ongoing tussle between local councils and the State as to who should do the work associated with the required certification and mapping to achieve the activation. What clearly was intended (and contemplated) to happen by the then *Coastal Management State Environmental Planning Policy 2018* (which now forms Chapter 2 of *Resilience and Hazards SEPP*) did NOT happen and this was overlooked by the drafters of section 164(1)(b) of the *Housing SEPP*.

The public interest demands that this major oversight be corrected before it is too late to do so. This *Submission* asserts that the oversight can still be partly corrected (in respect of this *DA*) through the *consent authority’s* careful consideration of the oversight and matters relating thereto; thereby providing clarity to both the developer industry and Rose Bay’s *At-Risk Vulnerable People* who do not deserve to be “punished” by this.

For the sake of completeness, section 2.9 of the *Resilience and Hazards SEPP* is extracted below:-

Development consent must not be granted to development on land that is within the area identified as “coastal vulnerability area” on the Coastal Vulnerability Area Map unless the consent authority is satisfied that :

- (a) if the proposed development comprises the erection of a building or works--the building or works are engineered to withstand current and projected coastal hazards for the design life of the building or works, and*
- (b) the proposed development--*
 - (i) is not likely to alter coastal processes to the detriment of the natural environment or other land, and*
 - (ii) is not likely to reduce the public amenity, access to and use of any beach, foreshore, rock platform or headland adjacent to the proposed development, and*
 - (iii) incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and*

(c) measures are in place to ensure that there are appropriate responses to, and management of, anticipated coastal processes and current and future coastal hazards.

It is most important to note that the matters listed in section 2.9 are specifically aimed at strengthening the level of ASSESSMENT of proposed development on land categorised as part of the “coastal vulnerability area”,

- in keeping with the levels of risk in developing that land, and
- to significantly reduce UNCERTAINTY about current and FUTURE coastal risks on that land; and

Therefore, there exists a real gap or oversight in relation to the framing of the *LMR* and its implementation. Allowing that gap to remain is NOT consistent with applying a CAUTIOUS approach to coastal related matters; nor is it consistent with the public interest

Whilst the *Resilience and Hazards SEPP* stresses to need for exceptional care to be taken in relation to the management of the coastal zone (particularly in relation to the granting of development consents), the framework of the *LMR* runs counter to this in favour of unrestrained development. This indicates a heightened indifference that the *consent authority* for this *DA* should try to moderate by exercising its discretion in favour of responsible governance and sensible decision-making and, accordingly, by REJECTING this *DA* in its current form.

9. PUBLIC INTEREST: Possible Factors Derogating from MERIT and “GOOD FAITH” Assessment

On a precautionary basis, albeit reluctantly, this *Submission* is compelled to make the following observations that suggest, rightly or wrongly, that not only does there appear to have been a “Ring of Steel” constructed that surrounds and segregates the *LMR* decision makers from the general public (whose concerns need to be properly and genuinely considered), but also that the “politically” difficult bureaucratic climate that may or may not exist can derogate from this *DA* being considered in “good faith”, impartially and only on its merits. If that were to be the case, this *Submission* asserts that that bureaucratic climate would be contrary to the public interest and needs to be considered by the *consent authority* as part of its considerations when determining this *DA*.

This *Submission*’s need to draw attention to the possibility of the limited ability for *NSW Planning*’s assessment officers to consider this *DA* in good faith and on its merits is triggered by the UNVERIFIED reported anecdotal evidence that suggests that any representation(s) made to the *Minister* and *NSW Planning*, irrespective of their validity and merits, automatically will fall on deaf ears for reasons including the following: -

- *NSW Planning* has been “politically” instructed (directly or subtly) to press for more housing and that nothing should stand in the way of this happening; resulting in senior bureaucrats being unable or unwilling to consider and/or

investigate representations that they perceive derogate from that direction, irrespective of their validity or merit;

- Representations made to *NSW Planning* are not considered on their merits and responded to but are instead arbitrarily dismissed with reasons that do not address the issues raised but instead avoid those issues which are then buried within a series of carefully crafted motherhood statements clearly calculated to create the illusion that the merits and issues underpinning the representations have been sincerely and carefully considered when, in fact, the reality is that they have not;
- Many high profile developers, planners and politicians (including those within the NSW Government) have “whispered” that the NSW Government has embarked on a “frenzied” course of action where it just wants housing approvals to be given immediately and without delay and it will not allow itself to be distracted from this in any way; and it is especially not prepared to listen to anything that deviates from it achieving its goals irrespective of any physical havoc or ruin that this might cause to some areas;
- Many are reportedly suggesting that the *LMR* guidelines have not been carefully or correctly thought out and anybody wishing to question their application is battling a government that is not prepared to listen or even slow down for a moment; because it has now become driven by “pride and ego” that blocks a preparedness to consider that some vulnerable areas may not be able to physically accommodate what a developer driven industry, anxious to reap the financial benefits now made readily available to it through the construction of UNAFFORDABLE luxury apartments in coastal areas under the *LMR*, seeks to extract for itself; and that that industry has influenced and intertwined itself with the NSW Government and its bureaucrats (including at local government level) in this regard; and
- That the NSW Government and its bureaucrats have adopted an awkward strategy of simply dismissing concerns expressed about soil, excavation and groundwater issues, with such dismissal being based on an unrealistic and simplistic solution that engineers and other technical experts will work through and find a way to overcome those problems, so people should stop complaining or raising concerns.

Despite the fact that the above anecdotal evidence points have NOT been verified, this *Submission* respectfully suggests that their arbitrary dismissal by a *consent authority* would be unfair and contrary to the public interest, especially when they are examined in the context of

- the reported view of a Housing Delivery Authority Panel Member that the HDA Panel’s role is to assess applications “*quickly*” which, if true, also suggests that determinations will also be assessed “*quickly*” and without due and competent consideration being given to them; relevantly being the complex hydrogeological and geotechnical ground conditions that prevail in the *Fragile Areas* of Rose Bay that cannot readily accommodate the construction of multi-storey residential flat buildings with deeply excavated basements.

- some quotes that have been attributed to the *Minister* in the **Australian Financial Review** of 20 August 2025, the quotes being: -

“I have confidence that if sites have constraints, professionals such as engineers and designers whose job it is to make sure developments are structurally sound – will get it right [because] they have been doing so for years”.

“But seriously, this sounds like NIMBY-ism by another name from a council whose population has been falling over the last 30 years, while most other council areas have grown exponentially.”

“I am growing tired of this approach to housing where some people think that the best thing they can do is look for new and creative ways to say no to housing, instead of embracing new and creative ways for their suburb to help tackle our housing challenge.”

- the apparent reluctance of *NSW Planning* to provide meaningful responses to the concerns and suggestions raised with it and the *Minister* by written communications to them by *Woollahra Council*;
- the unconvincing reasons put forward to justify the identification and listing of Rose Bay (New South Head Road) as an *LMR* Town Centre when the criteria published by *NSW Planning* for such identification and listing were clearly not satisfied.

In addition to wanting to ensure transparency by reluctantly making these observations, this *Submission* cannot ignore the possibility of the existence of a “Ring of Steel” that segregates the *LMR* facilitators and decision makers from ordinary people (whose concerns need to be properly and genuinely considered), and the possibility that a “politically” challenging bureaucratic climate can also derogate from this *DA* being considered in “good faith”, impartially and only on its merits.

10. PUBLIC INTEREST: Further Reasons for REFUSING Consent

Despite some repetition, this *Submission* provides and emphasises further reasons why the public interest demands the refusal of this *DA* on the basis that it seeks to install a *Basement-dependent & Profit-driven Development* in or near Rose Bay’s *Fragile Area* (especially the *Rose Bay Settlement Area*). These are set out below.

Below ground level basements undermine Fragile Areas

The construction and placement of *Basement-dependent & Profit-driven Developments* with deep below ground basements in precarious soil conditions will penetrate the groundwater table with no certainty of outcome as to the direct, indirect and cumulative effects that might result for uninvolved *At-Risk Vulnerable People* when such basement construction is continuously allowed and repeated in the neighbourhood.

Duty of care in relation to support for land

The *EIS* provides no explanation as to how the *Proponent* and the relevant developer that facilitated its creation will ensure that the duty of care in relation to support for land imposed by Section 177 of the *Conveyancing Act, 1919* will not be breached by the placement of a *Basement-dependent & Profit-driven Development* that has the potential to adversely impact on land in Rose Bay's *Fragile Area* and reduce the available support for that *Fragile Area's* land to the detriment of the *At-Risk Vulnerable People of Rose Bay*.

Relevantly, section 177 imposes a duty of care on any person not to do anything on land (meaning the *Project's* site), which supports other land (meaning land in Rose Bay's *Fragile Area* outside the *Project's* site), which may cause damage by removing the support provided. In this regard it is important to note that, for the purposes of section 177, the 'supporting land' includes not only the natural surface of the land (the *Project's* site) but also the subsoil of the *Project's* site and any water beneath the *Project's* site.

Therefore, to the extent that the removal or interference with groundwater in the *Project's* site detrimentally interferes with the support available to other land in Rose Bay's *Fragile Area*, this *Submission* asserts that any such interference, no matter how small, would place the *Proponent* and the relevant developer that facilitated its creation in breach of the section 177 duty of care. It would not matter if the interference is direct or indirect or if it is singular or cumulative, noting that a removal of support also means a reduction of such support.

Masking the reality of the miniscule level of affordable housing

As previously alluded to, *Basement-dependent & Profit-driven Developments* under *LMR* mask the exact level of affordable housing that is provided when one applies a typical building lifecycle of 60 years plus (with the level of affordable housing reducing further the longer a typical building lifecycle is assumed).

Flawed presumption that government decisions are in the public interest

Basement-dependent & Profit-driven Developments under *LMR* support and legitimise the flawed presumption that government decisions are always made in furtherance of the public interest rather than vested interests that pose under the guise of the public interest.

Trivialising of the public interest by decision makers

A consent authority, when considering *Basement-dependent & Profit-driven Developments* under *LMR*, must not agree that the public interest has been served by a simple statement contained in any recommendation report to the effect of: "*It is considered that this development will advance the public interest*". A consent authority doing so would trivialise the "public interest" and such an approach would certainly not be in the public interest.

False presumption that Land and Environment Court ignores the public interest

Anecdotal reports suggest that *Basement-dependent & Profit-driven Developments* under *LMR* are often based on the wrong assumption that the NSW Land and Environment Court will support a statement that “*it is considered that the public interest requirement is satisfied by this proposal*”. If these reports are correct, this is wrong and an insult to the integrity of the Court and its officers. The public interest being served must never be taken as a given in considering development applications, including this *DA*.

Flawed Implementation of housing strategy

Although well-meaning, the application of the *LMR* supports a housing strategy that promotes and facilitates the indiscriminate, disorderly and awkward implementation of housing through a hastily formulated and applied planning system and regulation seemingly driven by developer industry vested interests and political expediency. If true, this can never be considered to be in the public interest, despite how well-intentioned it might be. Local community perspectives cannot be ignored in favour of vested interests and it can never be assumed that local government will always transparently share with a state government the rational and genuinely held perspectives of their affected local constituents.

Use of illusion

The public interest cannot condone or support the implementation of a housing strategy that is based on, supports, employs and legitimises the use of illusion to strategically convince the public to believe that the prime driver for *Basement-dependent & Profit-driven Developments* under *LMR* is to satisfy the need for affordable housing for struggling families and essential workers in the Woollahra LGA; and that a *Basement-dependent & Profit-driven Development* under *LMR* is a development that is truly significant to the State of NSW rather than just a legislatively created fiction of convenience.

Shortcomings of SEARS re. Cumulative Impacts

NSW Planning has reportedly asserted that:-

- The industry specific SEARS for SSD housing proposals require applications to undertake flooding, groundwater impact and geotechnical assessments where relevant Groundwater impact assessments (“GIA”) must be undertaken in accordance with government guidelines published on the Planning Departments website (that, after downloading, was a very complex 237 page document entitled *DPE (2022) Guidelines for Groundwater Documentation for SSD/SSI Projects. Technical guideline* and dated January 2022 (**NSW Planning’s SSD Guidelines**); and
- An environmental impact statement (EIS) submitted with an SSD application must also consider NSW Planning’s SSD Guidelines which require applications to consider the Cumulative Impact Assessment Guidelines for State Significant Projects. This guideline requires assessment of both the project’s direct impacts and its combined effects with other or future projects.

This *Submission* strongly disputes the statement that NSW Planning's SSD Guidelines "*requires assessment of both the project's direct impacts and its combined effects with other or future projects*". It disputes this statement on the basis that the **NSW Planning's SSD Guidelines**:

- Do NOT address the CUMULATIVE impacts of the construction/excavation and placement of multiple tanked basements and/or car parks up to two storeys (potentially more) below ground level on and in the low lying flat areas of Rose Bay and Double Bay that are known to be complex in their hydrogeology (that is, acid sulfate soils, land with shallow groundwater levels and flows, and land on a high risk flood plain); and
- Do nothing to slow down the momentum that is rapidly gathering pace for development in those areas in a highly concentrated strip that is known for its vulnerability; and
- As drafted, did not have within their contemplation the particular circumstances that have been raised for a built-up urban residential area but are more concerned with Groundwater issues relating to petroleum projects, open cut mining, quarries, tunnels, coal mines, underground mining in hard rock, and land development (for projects such as buildings, waste management sites, and water treatment facilities).

This *Submission's* assertion that **NSW Planning's SSD Guidelines** were NOT framed for projects in built-up urban residential areas is also supported by

- The material contained in **section B.4.2.3 Cumulative effects of NSW Planning's SSD Guidelines** including the words "*This will include presenting the predicted groundwater elevation (or depth to water table) at an identified receptor during and post project development. There are areas in NSW where existing groundwater development (for example, irrigation areas, quarries, mines) in the project area may already be affecting groundwater quantity, quality and/or surface water-groundwater interaction.*"

and

- the reasons given in *NSW Aquifer Interference Policy Fact Sheet 1* where the following statements appear:-

Groundwater is an important resource for many towns, industries and irrigators who rely on groundwater extraction to support their activities. Also, many landholders rely on groundwater for domestic and stock use. Groundwater is also important for the environment, as it supports some ecosystems and provides baseflow to rivers.

Over-extraction or contamination of groundwater can have serious, long-term and sometimes permanent impacts on the groundwater system. This may ultimately reduce the volume and quality of water available for the users and ecosystems that depend on this groundwater.

Additionally, the Guideline checklist contained in Appendix E of **NSW Planning's SSD Guidelines** do not contain any questions that suggest that those SSD Guidelines were intended to include within their framework an assessment of the

cumulative effects of multiple large residential flat buildings with multiple tanked basements in or near a *Fragile Area* like the *Rose Bay Settlement Area*.

Technical consultants easily compromised

Proponents of *Basement-dependent & Profit-driven Developments* under LMR usually place technical consultants in the invidious position of being pressed by their clients to provide technical advice that serves the needs of their clients who, if dissatisfied by the technical advice given to them, will just shop around until they find a technical expert who will provide the required advice

Public servants deprived of “good faith” protection from personal liability

The NSW Government’s firm desire to attack the housing crisis places lower level public sector advisers in a precarious position where they are reluctant to express honest opinions because to do so might risk creating displeasure from their superiors, making it difficult for those persons to perform their duties in “good faith”; rendering the result that those lower level public servants are exposed to the risk of losing their available statutory protections from personal liability where “good” faith is a key factor.

Competence, Ability, Impartiality and Personal Liability of Consent Authorities

This *Submission* is aware that It has been reported that *NSW Planning* has suggested that the *consent authority* responsible for evaluating local development applications against planning controls are also well placed to make sure a *Basement-dependent & Profit-driven Developments* under LMR is carried out safely. This suggested ability of a *consent authority* to competently make sure a *Basement-dependent & Profit-driven Developments* under LMR is carried out safely must be questioned in the current political environment that seems to be relentlessly pressing for housing development at all costs and the continuous pressure being applied, and allowed to be applied in an unchecked manner, by the developer industry at all levels of government.

Hydrogeological and geotechnical issues related to groundwater are inherently complex and uncertain and, therefore, it is trite that they must be examined and assessed with extreme caution and not treated in a cavalier manner.

This *Submission* asserts that, in the current political climate, no *consent authority* (at State and local government level) is able to carry out and discharge its role in an absolutely impartial manner that is devoid of political ramifications and vested interests based on reportedly well-forged relationships. This assertion is NOT intended to suggest anything sinister on the part of anybody in, or in relation to, the Minister, NSW Planning and/or Woollahra Council (and their respective officers) and/or the developer industry generally.

However, governance and due diligence dictate that vigilance and scrutiny must always be continuously exercised with a view to ensuring integrity is applied and maintained at all times so as to be best placed to successfully refute any suggestions of a lack of “GOOD FAITH”, and so that the available protections for individual

persons against personal liability are not lost (see Section 2.28 of the *EP&A Act* and Section 731 of the *Local Government Act, 1919*).

Finally, and following the September 2025 introduction of the *Planning System Reform Bill*, it was pointed out by the NSW Environmental Defenders Office that the Independent Commission Against Corruption (ICAC) has noted repeatedly that there is significant risk of corruption in the NSW planning system and that robust accountability, transparency and oversight is necessary to mitigate that risk. This *Submission* carefully notes, but makes no comment on, that view and also the high value of increases in development yield available in coastal areas such as Rose Bay and Double Bay seemingly and subtly underpinned and supported by the created myth of the provision of affordable housing for struggling families and essential workers.

For the sake of transparency, this submission reveals that in its preparation at least the following legally related documents were viewed:-

- **Misfeasance in Public Office: A Tort in Tension** by Ellen Rock. Lecturer, University of Technology, Sydney, Melbourne University Law Review Volume 37 (2019)
- **Misfeasance in Public Office** from Legal briefing No. 115 Australian Government Solicitor (2020)
- **Revival of the common law offence of misconduct in public office** by David Lusty (2014) 38 Crim LJ 337
- **Judicial review of illegality and irrationality of administrative decisions in Australia** (1996) by The Honourable Justice Brian J Preston, Chief Judge, Land and Environment Court of New South Wales
- **Misfeasance in Public Office: A Very Peculiar Tort** by Professor Mark Aronson Melbourne University Law Review Volume 35 (2011)
- **Liability of Public Officers** by Alan Robertson SC, Member of the NSW Bar AIAL Forum No. 34
- **Personal Senior Public Sector Liability**, a paper delivered by Mark Robinson at a BLEC Seminar “Government Liability” in Canberra, 1 November 1996
- **Coerced, Compromised or Groomed – How People Get Drawn into Corrupt Conduct** from ICAC (June 2025)
- **Corruption risks in NSW development approval processes** from ICAC (September 2007)

The Mascot Towers Debacle

The Mascot Towers debacle again clearly demonstrates that the public interest alone demands that this *DA* be rejected. Except perhaps for those already in a large strata type building complex (if any such complexes exist in Rose Bay), if they suffer damage, Rose Bay’s *At-Risk Vulnerable People* are in a more precarious position than the residents and property owners of Mascot Towers were, simply because each of them would be alone in trying to establish responsibility and seek recourse and would not have collective power.

The Mascot Tower debacle is demonstrative of the fact that many years later it is still very difficult to compile a cohesive narrative of what actually occurred and who should have taken take responsibility for the pain, anguish and financial loss that was inflicted on the innocent purchasers of dwellings within that building complex.

Clear parallels exist between the Mascot Towers debacle and what Rose Bay's *At-Risk Vulnerable People* face if *Basement-dependent & Profit-driven Developments* are allowed to proliferate in Rose Bay's *Fragile Areas*. Yet there is a fundamental difference.

That fundamental difference is that potentially detrimentally affected Rose Bay *At-Risk Vulnerable People*, unlike those in Mascot Towers, will not have the same collective clout and muscle to engage media support and compel the government to support their plight and to help navigate an acceptable outcome for them. Yet despite the advantages that such collective clout provided, including the raising of finances, even the Mascot Towers property owner occupiers and owner investors failed to achieve a satisfactory outcome. .

Ultimately many of the owner occupiers and owner investors of the Mascot Tower building were left massively in debt with all paths to recourse apparently exhausted after the confidential settlement was reached.

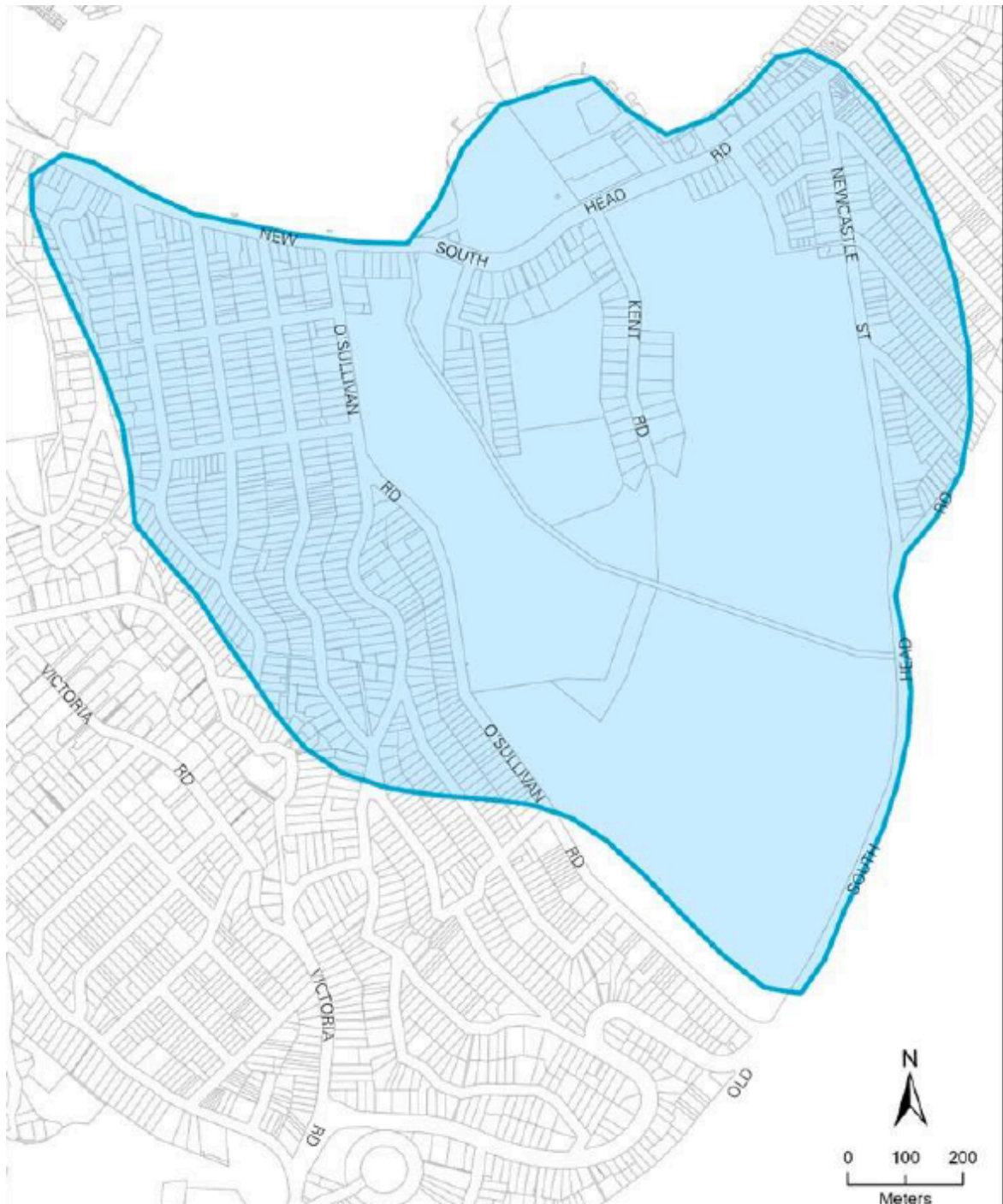
Although the exact cause apparently remains a mystery, strong cause contenders for the damage that occurred are that the construction activity from the adjacent site affected the surrounding water table (thereby causing the building to experience differential settlement) and the inadequately designed structure neglected to consider the full extent of the site context and geological conditions.

But because of the out of court settlement and the suppression of documentation on the grounds of public interest privilege the whole truth might never be known.

SCHEDULE

PART A: Rose Bay Settlement Area

Figure 2 on E2 page 25 of Chapter E2 Stormwater, Flood and Geotechnical Risk Management



PART B: Relevant Legislative and Regulatory Framework

Set out below are “PUBLIC INTEREST” INDICATORS/ FACTORS extracted from the relevant Legislative and Regulatory framework.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

Section 1.3 Objects of Act

The objects of this Act are as follows--

- (a) to promote the social and economic welfare of the community and a better **environment** by the **proper** management, **development** and conservation of the State's natural and other resources,
- (b) to facilitate **ecologically sustainable development**, economic, **environmental and social considerations** in **decision-making** about environmental planning and assessment,
- (c) to promote the orderly and economic use and development of land,
- (d) to promote the delivery and maintenance of **affordable housing**,
- (e) to protect the **environment** including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,
- (f) ...,
- (g) ...
- (h) to promote the **proper construction** and maintenance of buildings, including the **protection of the health and safety of their occupants**,
- (i) to promote the **sharing of the responsibility for environmental planning** and assessment between the different levels of government in the State,
- (j) to provide increased **opportunity for community participation** in environmental planning and assessment.

Section 1.4 Definitions

(1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires--

"ecologically sustainable development" has the same meaning it has in section 6(2) of the *Protection of the Environment Administration Act 1991* .

"environment" includes **all aspects of the surroundings of humans**, whether affecting any human as an individual or in his or her social groupings.

PROTECTION OF THE ENVIRONMENT ADMINISTRATION ACT 1991

Section 3.1 Definitions

(1) In this Act--

"environment" means components of the earth, including--

- (a) land, air and water, and
- (b) ..., and
- (c) any organic or inorganic matter and any living organism, and

(d) human-made or modified structures and areas,
and includes interacting natural ecosystems that include components referred to in paragraphs (a)-(c).

"environment protection" includes anything which furthers the objectives of the Authority as set out in section 6.

Section 6 Objectives of the Authority

(1) The objectives of the Authority are--

(a) to protect, restore and enhance the quality of the **environment** in New South Wales, having regard to the need to maintain **ecologically sustainable development**, and

(b) to reduce the risks to human health and prevent the degradation of the environment by means such as the following--

- promoting pollution prevention,
- adopting the principle of reducing to harmless levels the discharge into the air, water or land of substances likely to cause harm to the environment
- ...,
- ...,
- ...,
- ...,
- ...,
- ...,
- promoting **community involvement** in decisions about environmental matters,
- ...,
-

(2) For the purposes of subsection (1) (a), **ecologically sustainable development** requires the effective **integration** of **social, economic and environmental considerations in decision-making processes**. Ecologically sustainable development can be achieved through the implementation of the following principles and programs--

(a) the **precautionary principle**--namely, that if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

In the application of the precautionary principle, public and private decisions should be guided by--

- (i) careful evaluation to avoid, wherever practicable, serious or irreversible damage to the environment, and
- (ii) an assessment of the risk-weighted consequences of various options,

(b) **inter-generational equity**--namely, that the present generation should ensure that the health, diversity and productivity of the environment are maintained or enhanced for the benefit of future generations,

(c) **conservation** of biological diversity and ecological integrity--namely, that conservation of biological diversity and ecological integrity should be a fundamental consideration,

(d) ...

ENVIRONMENTAL PLANNING AND ASSESSMENT REGULATION 2021

Regulation 82 In-fill affordable housing

(1)

(2)

(3)

(4) In this section--

"affordable housing component" has the same meaning as in *State Environmental Planning Policy (Housing) 2021* , section 21.

"relevant period" means a period of 15 years commencing on the day on which an occupation certificate is issued for all parts of the building or buildings to which the development consent relates.

Regulation 193 Principles of Ecologically Sustainable Development

(1) The principles of **ecologically sustainable development** are the following--

(a) the **precautionary principle**,

(b) **inter-generational equity**,

(c) **conservation** of biological diversity and ecological integrity,

(d)

(2) The precautionary principle is that if there are threats of serious or **irreversible environmental damage**, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

(3) In applying the **precautionary principle**, **public and private decisions** should be guided by--

(a) **careful evaluation** to avoid, wherever practicable, serious or irreversible damage to the environment, and

(b) an assessment of the risk-weighted consequences of various options.

(4) The principle of **inter-generational equity** is that the present generation should ensure the health, diversity and productivity of the environment are maintained or enhanced for the benefit of future generations.

(5) The principle of the conservation of biological diversity and ecological integrity is that the conservation of biological diversity and ecological integrity should be a fundamental consideration.

(6) ...

STATE ENVIRONMENTAL PLANNING POLICY (HOUSING) 2021

Regulation 3. Principles of Policy

The principles of this Policy are as follows--

- (a) enabling the development of diverse housing types, including **purpose-built rental housing**,
- (b) encouraging the development of housing that will meet the needs of more **vulnerable members of the community**, including very low to moderate income households, seniors and people with a disability,
- (c) ensuring new housing development provides residents with a reasonable level of amenity,
- (d) ...
- (e) minimising adverse climate and **environmental impacts** of new housing development,
- (f) ...,
- (g) ...,
- (h) mitigating the **loss of existing affordable rental housing**.

Regulation 142. Aims of Chapter (Chapter 4 Design of Residential Apartment Development)

(1) The aim of this chapter is to improve the design of residential apartment development in New South Wales for the following purposes--

- (a) ...,
- (b) ...,
- (c) to maximise the **amenity, safety and security of the residents** of residential apartment development and **the community**,
- (d),
- (e) ...,
- (f) to support housing affordability,
- (g) ...,
- (h)

(2)

Regulation 162. Aims of Chapter (Chapter 6 Low and Mid Rise Housing)

The aim of this chapter is to encourage the development of low and mid rise housing in areas that are well located with regard to goods, services and public transport.