

## FORMAL OBJECTION REGARDING STATE SIGNIFICANT DEVELOPMENT (SSD-96272465) – 11-23 RANGERS AVENUE, MOSMAN

---

### EXECUTIVE SUMMARY

This constitutes a formal objection to the proposed Residential Flat Building (RFB) (SSD-96272465) at 11-23 Rangers Avenue, Mosman, on the basis that the proposal fails both the statutory **legal test** and the **planning merit test** of the New South Wales planning framework.

Our review confirms that the project suffers from critical, measurable, and non-mitigable non-compliance points which render the current design unacceptable and potentially unlawful on the following grounds:

1. **Failure of Upfront and Ongoing Community Engagement:** Deliberate failure to adhere to the mandatory requirements for upfront and ongoing engagement as stipulated by the Department of Planning, Housing and Infrastructure's (DPHI) guidelines, thereby compromising the integrity of the Environmental Impact Statement (EIS) prior to public exhibition.
2. **Pedestrian Safety:** Lack of a provision of a safe, legal, and publicly approved pedestrian pathway.
3. **Site Isolation and Unorderly Development of Land:** The narrow, irregular shape of 9/9A, combined with the mandatory visual privacy separation setbacks (ADG 3F) from the newly constructed 11-23 building, would squeeze any potential new structure on 9/9A into an unviable building envelope. Furthermore, The DPHI must also consider the "**orderly and progressive development of land**" (a key public interest test), given the existence of a State-agreed Mosman Masterplan process.
4. **Measurable Amenity Failure:** The proposed design systematically fails to meet the **Apartment Design Guide (ADG)** mandatory minimums, evidenced by the 3.0-metre setback being grossly non-compliant with the required separation distance for habitable interfaces or Deep Soil Zones.
5. **Unacceptable Structural Risk:** The required deep excavation of ~10m on the boundary, is physically unfeasible, occurring within **30 centimetres** of the existing Federation dwelling at 25 Rangers Avenue, immediately activating the onerous protection mandates of **Clause 98E of the EP&A Regulation 2000**. This constraint makes the site unsuitable for the proposed density.

6. **Unlawful Scale and Bulk:** The project's reliance on the State Environmental Planning Policy (Housing) 2021 (Housing SEPP) density bonus is invalid, as the presence and intended alteration of the **Local Heritage Item I438** triggers the policy's explicit exclusion criteria. The resultant height (6–7 storeys) is therefore non-compliant with base Mosman LEP controls.
7. **Affordable Housing:** The rent achievable under the Affordable Housing Scheme is far lower than the Proponent has taken into consideration. Chapter 2, Part 1 of the Housing SEPP: "households that have a gross income ... of the **median household income for Greater Sydney** or the Rest of NSW..... pays no more than **30% of the gross income in rent**". The rent will be significantly below an economic rent.

We formally confirm our intention to retain 25 Rangers Avenue as our long-term residential home, maximizing our legal standing as existing occupants resisting the erosion of established amenity. We require the Department of Planning to seek either **refusal of the application** or a **deferral** to address these fundamental statutory and physical constraints.

## **FULL REPORT/ FORMAL OBJECTION**

### **1. Failure of Upfront and Ongoing Community Engagement:**

On 4<sup>th</sup> December 2025, we wrote to the DPHI ([Information@planning.nsw.gov.au](mailto:Information@planning.nsw.gov.au)), ticket number P-1590564. The letter is detailed below:

- Start of letter -

This letter constitutes a formal objection to the procedural timeline adopted by the proponent (ETERNO) and their consultant (Urbis) for the above-referenced State Significant Development application. The sequence of events demonstrates a deliberate failure to adhere to the mandatory requirements for upfront and ongoing engagement as stipulated by the DPHI's guidelines, thereby compromising the integrity of the EIS prior to public exhibition.

The proponent's actions contravened the spirit of early engagement by denying the adjoining landowner the necessary time to review and respond to critical site design information before the formal lodgement, effectively transforming the consultation into a procedural formality.

#### **a) Chronology of Procedural Contravention**

The record clearly shows that the proponent withheld the single most critical measurement affecting the adjoining property until the last possible moment, preventing meaningful, pre-lodgement design refinement:

Date	Proponent/Adjoining Owner Action	Procedural Consequence
14 October	Adjoining owner (25 Rangers Ave) requests a meeting to discuss prior to finalisation and lodgement.	Request for bona fide early engagement made.
3 November	Rushed meeting held (45 minutes, with only 2 business days' notice). Architect, Proponent and Planner could not advise the western boundary setback. No meeting notes or plans were provided post-meeting.	Opportunity for substantive dialogue was negated by a lack of preparation and data transparency.
21 November	The critical western setback figure (3.0m) is formally advised for the first time via the "Information Pack."	Critical information provided too late. The owner was prevented from assessing the design's key metric until days before lodgement.
24 November	Adjoining owner immediately provides a detailed, technical submission raising measurable non-compliance against the Apartment Design Guide (ADG).	Substantive design issues were formally flagged to the proponent.
27 November	DPHI issues the Notice of Exhibition to commence on 4 December 2025.	Application lodged before the proponent could possibly assess or respond to the material design flaws raised on 24 November.

### **b) Contradiction of DPHI Engagement Requirements**

The DPHI's *Undertaking Engagement Guidelines for State Significant Projects* require engagement to be upfront and ongoing for all SSDs . The entire purpose of this early stage is to allow the proponent to refine the design of the project to avoid or minimise impacts and integrate the findings into the EIS before it is lodged.

By disclosing the 3.0m setback on 21 November and then immediately lodging the application, the proponent ensured that the highly material and measurable non-compliance points raised on 24 & 27th November could not be assessed or resolved in the design.

The submitted EIS is thus procedurally deficient because it was lodged without proper consideration of the "real and reasonably perceived impacts" raised by the directly

affected neighbour, which is contrary to the mandatory content requirements for the Submissions Report and the overall objectives of the SSD process. The proponent has made consultation a retrospective hurdle rather than a genuine opportunity for design improvement.

### **c) Request for Regulatory Action and Deferral**

We respectfully request that the Planning Secretary formally notes this procedural failure and its direct contribution to the submission of a potentially flawed EIS.

We formally request that the DPHI intervene and deem the current EIS submission procedurally deficient due to the failure to satisfy the mandatory pre-lodgement engagement requirements.

Given the proponent's clear failure to allow for a substantive response to material design non-compliance (specifically Habitable Setback / deep soil zones / Pedestrian access / site isolation before lodging the EIS, we formally request that the Planning Secretary intervenes immediately. We urge the DPHI to suspend the assessment process or delay the formal exhibition period to allow the proponent adequate time to submit an Amendment Report that addresses the technical deficiencies raised in our letter of 24 and 27th November 2025. Proceeding with the exhibition of a demonstrably non-compliant design, where the proponent has intentionally curtailed the pre-lodgement dialogue, fundamentally breaches the DPHI's commitment to procedural fairness for adjoining landowners.

Failure to address these upfront procedural and substantive design flaws before the assessment concludes undermines the accountability and transparency mandated by the *Environmental Planning and Assessment Act 1979*.

- End of letter -

### **Failure of Upfront and Ongoing Community Engagement (Continued)**

The proponent's consultation process demonstrates a failure to meet the requirements for transparency and good faith mandated by the **DPHI's *Undertaking Engagement Guidelines for State Significant Projects***. This action renders the integrity of the EIS and the subsequent public exhibition process procedurally flawed and potentially invalid.

### **The Procedural Breach and Intentional Misleading of Stakeholders**

The submission of the final architectural plans (dated **5 November 2025**) just two days after our rushed meeting (on **3 November 2025**) clearly shows that the design was completed and formalized while the proponent's team was actively claiming the

drawings were not yet available and all that was displayed on a screen on November 3 was the vague images provided in “Engagement Report” Appendix C – Near Neighbour briefing 3 November 2025.

Chronology of Misrepresentation and Concealment	Procedural Failure
<b>3 November 2025 Meeting:</b> Proponent’s team (architect, planner, Proponent) advised that detailed architectural drawings would not be finalized until the <b>end of the month</b> .	<b>Concealment of Material Information:</b> The design was finalized by the architect on November 5th. This demonstrates the proponent knowingly withheld material information from the adjoining landowner.
<b>3 November 2025 Meeting:</b> We were advised that there were “ <b>no habitable rooms</b> ” on the western boundary of the proposed development adjoining 25 Rangers Avenue.	<b>Deliberate Misstatement of Fact:</b> The final plans confirm that the rooms on every floor facing our boundary are <b>bedrooms</b> , which are, by legal definition, habitable rooms. This misstatement was critical to justifying the non-compliant 3.0m setback as later advised on 21 November 2025.
<b>Lodgement Timeline:</b> The application was lodged almost immediately after the plans were finalized, cutting off any opportunity to formally respond to the disclosed setback figure (3.0m) and the obvious design conflicts.	<b>Circumvention of SSD Guidelines:</b> This action bypasses the core requirement of the SSD process, which is to <b>refine the design</b> and <b>avoid or minimise impacts</b> based on stakeholder engagement <i>prior</i> to lodging the EIS.

This timeline confirms that the consultation was not conducted in good faith, but rather as a perfunctory procedural step designed to meet the minimum threshold for lodgement while actively concealing substantive non-compliance points from the most affected neighbour.

Furthermore, the EIS itself confirms (page 19) that substantive design aspects—including the FSR (1.95:1), height (6, Part 7 storeys), and apartment count (44 units)—have remained virtually unchanged since the **DPHI Scoping Meeting on 9 September 2025**, which suggests that greater material (as would be needed to calculate these figures) was available and could have been available to adjoining landowners:

Aspect of Proposal	Scoping Proposal	Final SSDA Proposal
Number of Storeys	6 Storeys, Part 7	6 Storeys, Part 7
FSR / GFA	1.95:1	1.95:1
Affordable Housing	15%	15%
Number of Apartments	44 apartment units	44 apartment units
Car Parking	91 spaces	91 Spaces + 2 motorbike / 12 bicycle
Canopy Cover	20% site area	22.61%

### a) Legal Ramification: EIS Procedural Deficiency

The DPHI's guidelines require proponents to give "**proper consideration to the issue, considering both real and reasonably perceived impacts**" when responding to community concerns before a final EIS submission. The failure to disclose the final plans and the contradictory nature of the verbal advice means the proponent lodged a deficient EIS.

The legal consequence is that the DPHI is empowered to **suspend the assessment process** or **delay the exhibition period**. The Department cannot confidently proceed with assessing a project whose core design—the western setback and resulting amenity protection—was based on the deliberate misrepresentation of the adjoining interface.

## **2. Pedestrian Safety**

This submission raises a fundamental objection to the Application based on the proponent's failure to demonstrate statutory compliance with the "**Accessible Area**" definition in the *State Environmental Planning Policy (Housing) 2021* (Housing SEPP).

The project's density (1.95:1 FSR) and height (part 6, part 7 storeys, 22.75m maximum) are wholly dependent on the In-fill Affordable Housing (IAH) bonus, which is contingent upon the site being located within 800 metres walking distance of the Cremorne Town Centre.

The definition of walking distance in the Housing SEPP is prescriptive:

*"Walking distance means the shortest distance between 2 points measured along a route that may be safely walked by a pedestrian using, as far as reasonably practicable, public footpaths and **pedestrian crossings**."*

The proponent's claims of compliance rely on two distinct walking routes. We contend that neither route meets the statutory requirement of utilizing safe, defined pedestrian infrastructure, thereby invalidating the site's **Accessible Area** status and the entire height/FSR bonus.

### a) **Route 1: Bloxsome Lane**

The proposal relies on Bloxsome Lane to satisfy the development's proximity to a town centre (668m) but fails to demonstrate a safe, legal, or sufficient pedestrian path.

The pedestrian access strategy is fundamentally flawed as it relies on walking on a road (Bloxsome Lane). The lane is not wide enough for both cars and a footpath, creating an unacceptable safety risk that violates mandatory traffic and roads legislation.

- i. **Non-Compliant Footpath:** Bloxsome Lane's publicly held land is currently only wide enough for vehicular access (including garbage trucks, which have to reverse out), lacking a public footpath.

- ii. **Safety and Sufficiency (RMS Guide):** The significant increase in residential density (adding over 100 people) requires compliance with the **RMS/Transport for NSW Guide to Traffic Generating Development**. This Guide mandates the assessment of **sufficiency of footpath widths** and the mitigation of pedestrian safety issues at conflict points.
- iii. Relying on a road, without a footpath, as a high volume of public pedestrian traffic to meet the 800m Low and Mid-Rise Housing Policy walkability requirement is inherently unsafe and insufficient.
- iv. **Public Domain Breach (Roads Act 1993):** Constructing a path intended for high-volume public pedestrian use requires approval under **Section 138 of the Roads Act 1993**. The use of private land for a de facto public street function is an illegal circumvention of standard public domain safety and accessibility standards (AS 1428) and creates an unresolved legal and physical safety issue for residents.

#### **b) Route 2: Rangers Ave**

The proponent's Route 2 (742m) uses Rangers Avenue and crosses Spofforth St to reach the Cremorne Town Centre.

Spofforth St is defined as a **Regional Road** and functions as a primary traffic corridor into the area. It is managed by Council, but performs an intermediate function between State and Local roads. It is a High-Volume traffic corridor requiring formal traffic controls. Crossing this road without a formal pedestrian crossing poses a heightened safety risk.

- i. **Refutation of Safety Claim:** The proponent's claim that the route "may be safely walked" is fundamentally contradicted by the official road hierarchy. Spofforth Street is classified as a **Regional Road**, carrying significantly higher volumes of through-traffic than a local street. The intersection used by the proponent's survey (Spofforth Street/Holt Avenue) is not a quiet suburban crossing, but a major traffic artery requiring legally mandated pedestrian protection.
- ii. **Safety vs. Definition:** The definition of "walking distance" requires the use of "**pedestrian crossings**" where reasonably practicable. A pedestrian crossing is a safety device defined by **white stripes and regulatory signs**. The proponent relies on an unmarked "**pram crossing**" to cross a high-volume Regional Road, forcing the site's future residents, including the elderly, children, and those using prams, to negotiate heavy traffic without the required legal right-of-way or safety infrastructure.
- iii. **Safety Failure:** To cross a road of this volume without a legally protected pedestrian crossing (where vehicles are mandated to yield) means the route cannot be deemed "safely walked by a pedestrian" as required by the policy.

By relying on these deficient crossing points, the proponent has failed to secure a safe and statutory route for pedestrians, thereby invalidating the **Accessible Area** claim, the proven statutory failure of the Accessible Area claim, demonstrate that the EIS is not fit for purpose and should not proceed to assessment.

### **3. Site Isolation and Unorderly Development of Land:**

#### **a) 9 and 9A Rangers Ave**

- i. The mass and required setbacks of the 6–7 storey RFB risks sterilising the future development potential of the smaller adjacent allotments at 9a (348sqm) and 9 (509sqm) Rangers Avenue, violating the fundamental principle of orderly land use and equitable development capacity.
- ii. Whilst the combined site at 9-9A Rangers Ave is greater than the minimum lot size required (approx. 858 m<sup>2</sup>), it has **an irregular, non-rectangular shape, which presents a significant planning challenge for apartment design.**
- iii. The narrow, irregular shape of 9/9A, combined with the mandatory **visual privacy separation setbacks** (ADG 3F) from the newly constructed 11-23 building, would squeeze any potential new structure on 9/9A into an unviable building envelope. This envelope would likely be too shallow for high-quality, naturally ventilated apartments (ADG 4D) and leave insufficient space to meet the essential requirements for **Deep Soil Zones (ADG 3E)** and **Communal Open Space (ADG 3D)**.
- iv. The bulk, height, and necessary setbacks required by the 11-23 Rangers Ave RFB will severely constrain the residual development potential of 9a and 9 Rangers Ave, potentially sterilizing those sites. The resulting land-use pattern would be chaotic, inefficient, and inconsistent with the strategic planning objective to facilitate the eventual, orderly consolidation and redevelopment of land in the area. The large-scale RFB constitutes an act of "land sterilisation," contravening a fundamental principle of sustainable urban planning upheld by the Land and Environment Court.

#### **b) 25 Rangers Ave and west onwards**

The determination of the development application (DA) for 11-23 Rangers Ave is **premature** and constitutes **inconsistent planning** under the DPHI's own framework, as it actively undermines the current strategic planning process being undertaken by Mosman Council with the *in-principle agreement* of the NSW Government.

If the Mosman Masterplan ultimately excludes this area, or determines a lower, more contextual scale for the street (e.g., 3-4 storeys), the DPHI will have approved an isolated, uncontextual building that **contravened the DPHI's own objective for consistent and orderly development** by actively setting a disruptive precedent.

The NSW planning system is founded on the principle that development must be **orderly, progressive, and strategically aligned** with long-term land-use policies. An approval for a 6–7 storey structure prior to the Masterplan's completion risks creating a **stand-alone tower**—an isolated, high-density form—that is likely incompatible with the eventual, refined, or reduced LMR built form that the Masterplan may prescribe for the surrounding area (e.g., 9/9A and 25 Rangers Ave).

ADG Design Quality Principle	Relevant Objective/Requirement	Argument Point
1. Context and Neighbourhood Character	<b>Objective 1A:</b> To ensure that development is compatible with the existing and <b>desired future character</b> of the locality.	A single 6–7 storey building is incompatible with the <b>existing</b> low-rise character and <b>prejudices the desired future character</b> being determined by the Masterplan. It creates a <b>visual discontinuity</b> that neither responds to nor enhances the local area.
2. Built Form and Scale	<b>Objective 2A:</b> To ensure that building bulk and scale is <b>compatible with neighbouring development.</b>	If 11-23 is approved at 6–7 storeys and the surrounding sites (9/9A and 25) are either sterilised (as previously argued) or restricted to a lower scale (e.g., 3-4 storeys) by the Masterplan, the building will be perceived as <b>excessive visual bulk</b> and will <b>fail to transition</b> appropriately. This creates an abrupt, unintegrated 'tower' effect, which is contrary to the aim of the ADG to promote harmonious development. Especially given this will be the last tower, the furthest away from Cremorne Town Centre.

The determination of the DA for 11-23 Rangers Ave must be **deferred or refused** on the grounds of **prematurity and design inconsistency**. Given that 25 Rangers Ave, could very realistically be excluded from LMR in Mosman Councils Masterplan. Leaving 25 Rangers Ave a residential dwelling with **habitable rooms** on this boundary. The NSW Planning Department must consider the 'in use' / standalone residential dwelling as the potential **long term use of the land** per the requirements of the under the State Environmental Planning Policy (Housing) 2021 and Apartment Design Guidelines.

**Objective 1A (ADG):** "To ensure that buildings are **compatible with the existing and desired future character of the locality**.

The NSW Planning Department must consider that the "**desired future character**" for 25 Rangers Ave is not a stand-alone residential dwelling, but the maximum built form permitted by the Low and Medium Rise (LMR) provisions, *unless* the emerging Mosman Masterplan strategically amends that direction. Approving 11-23 Rangers Ave now, while disregarding the LMR potential of 25 Rangers Ave, creates an immediate conflict with the intended future character.

An approval now would elevate a single, uncontextual development, effectively bypassing the current strategic planning process and resulting in an isolated built form that:

- i. Creates **site isolation** or a **sterile site**.
- ii. **Undermines the State-supported Mosman Masterplan process**, setting a negative precedent.
- iii. **Violates the ADG objectives** for compatible Built Form and Scale by creating an unintegrated **stand-alone tower** in an area whose capacity for such density is still under strategic review.

The DPPI must also consider the "**orderly and progressive development of land**" (a key public interest test). The existence of a State-agreed Masterplan process (GM/9) suggests that approving 11-23 Rangers Ave now is **premature** and is an **unorderly** development that undermines the potential strategic direction for 25 Rangers Ave or 9 & 9A, which could be locked into a lower-density use.

### **c) Design Quality Principle 6: Amenity**

To provide good solar access and daylight to the development and neighbouring properties.

When assessing overshadowing impacts on 25 Rangers Ave, the Department **should not** model the shadow impact on the existing single dwelling. Instead, consistent planning requires them to model the shadow impact on a hypothetical compliant RFB (**a building designed to the maximum permissible height and setbacks under LMR**) on the 25 Rangers Ave and separately 9 & 9A Rangers Ave. If the 11-23 development's shadow makes it impossible for the hypothetical RFB on 25 Rangers or 9 & 9A Rangers Ave to meet its own ADG 4A criteria (70% of apartments receiving 2 hours of solar access), then the 11-23 proposal is deemed to sterilise the adjoining site, which is contrary to Objective 6A and the public interest.

#### **4. Failure to Meet ADG Amenity Minimums**

The proposal fails the measurable minimum criteria of the Apartment Design Guide (ADG) concerning setbacks, landscape provision, and visual privacy, thereby resulting in unacceptable amenity loss for both 25 Rangers Avenue and its wider neighbourhood context.

##### **a) Setback and Visual Bulk Failure**

25 Rangers Ave is a Federation House situated 30cm from the Boundary of 23 Rangers Ave. It will be occupied as a residential house for the foreseeable future and should be assessed accordingly.

The proposed stepped setback (3.0m for lower levels, 5.5m for upper levels) fails to meet the minimum standard for a building of 6–7 storeys (5–8 storey ADG category).

- i. **Non-Compliant Setback:** Since the building is 6–7 storeys, the entire façade must be assessed against the 5–8 storey minimum standard. The minimum setback to the boundary is **9.0m for lower levels, 12.0m for upper levels** where the adjoining property contains **habitable rooms**.
- ii. **Habitable Room Conflict:** The Proponent initially claimed no habitable rooms facing the boundary, but their own response indicates a secondary window to a **"bedroom"** (a habitable room) on that elevation. Furthermore, 25 Rangers Avenue has **3 children's Bedrooms, a Kitchen, Dining, and Living Room** adjoining this boundary along with two bathrooms (one with a glass roof), a swimming pool and Primary Private Open Space. Suggesting a minimum of **12.0m for lower levels, 18.0m for upper levels**.
- iii. **Critical Non-Compliance:** The proposed 3.0-metre setback (Levels 1–4) and 5.5 metres for the higher levels is catastrophically short of the mandatory required.
- iv. **Contextual Bulk (ADG 2H):** The ADG requires larger setbacks in suburban contexts, especially when managing a transition between different controls, as is the case here. The 3.0-metre wall creates an overwhelming visual bulk for 25 Rangers and residents on the Holt Conservation Area on Holt Ave, contrary to ADG Objective 2H, which addresses transition, light, air, and outlook.

##### **b) The Definitive Legal Definition of a Habitable Room**

The proponent is likely attempting to argue that because a window in the bedroom is fixed or contains translucent glass, the room is rendered "non-habitable." This interpretation is legally incorrect and is refuted:

The definition of a habitable room in NSW planning and building instruments is determined by the **function of the room**, not the treatment or functionality of its window.

**Habitable room** means a room used for normal domestic activities, other than a bathroom, laundry, toilet, pantry, walk-in wardrobe, corridor, stair, lobby, photographic darkroom, clothes drying room or other space of a specialised nature which is not occupied frequently or for extended periods.

#### **Application to 25 Rangers Avenue:**

1. **Bedroom Status:** Bedrooms are unequivocally used for "**normal domestic activities**" (sleeping, study, storage) and are therefore classified as **Habitable Rooms**.
2. **Window Status is Irrelevant:** The **12.0, then 18.0 -metre minimum setback** for a 6–7 storey building adjoining habitable space (our house) is a mandatory requirement of the Apartment Design Guide (ADG). This ADG control is triggered by the *function* of the room (Habitable), not the *type of glazing* (translucent or fixed).
3. **The Violation:** Since the proponent's plan confirms the rooms are bedrooms (Habitable), the 3.0-metre setback is in critical violation of the **12.0, then 18.0-metre minimum ADG separation distance**.

The proponent's attempt to use privacy screening (translucent glazing) as a means to redefine a habitable room is an unacceptable and unlawful attempt to bypass the fundamental ADG amenity standards designed to protect existing residential premises.

#### **c) Privacy and Cumulative Impact**

- i. **Unacceptable Privacy Intrusion:** The western boundary of 25 Rangers Avenue contains highly sensitive areas, including a primary open space, pool, children's bedrooms, and a **glass-roofed children's bathroom**. The Proponent's reliance on fixed translucent glass for one window and a "non-trafficable" planter on a terrace is wholly inadequate to protect against visual intrusion into such a vulnerable space from the 3.0m and 5.5m setbacks.
- ii. **Impact on Holt Avenue (ADG 2H):** The failure to provide adequate setbacks and bulk control on the western boundary directly impacts the **outlook and privacy** of neighbours on Holt Avenue (Holt Conservation Area), which adjoin Bloxsome Lane, constituting a failure to manage the transition between different development controls (ADG 2H).

#### **d) Deep Soil Zone (DSZ) and Landscape Failure**

The proposal's landscaping mitigation is rendered unreliable by a dimensional failure.

- i. The ADG mandates that deep soil zones for large consolidated sites (over 1500sqm) must have a **minimum dimension of 6.0 metres** to support large trees intended for amenity and visual screening.

- ii. The proposed 3.0-metre setback imposes a physical limitation that restricts the DSZ width to 3.0 metres. This is **half** the mandatory ADG minimum dimension. Given a federation house will remain next door.
- iii. This measurable failure compromises the long-term viability of the proposed screening of childrens bathrooms etc, failing the ADG objective (2F) to "support mature vegetation consolidated across sites"

The bulk and density of the proposal, particularly if the LMRHP bonuses are utilized, are inconsistent with the scale and context of the surrounding low-density area (particularly Holt Ave). Planning guidance confirms that buildings on infill sites, especially where shallow or transitioning to lower density uses, may need to be "more slender" than buildings in open settings to protect the amenity of neighbouring uses.

The proposal fails to satisfy the objectives of the ADG and Mosman LEP regarding residential amenity, privacy, and visual bulk, and does not meet the minimum numerical standards.

- i. **Visual Bulk and Inadequate Setbacks:** The minimal 3.0-metre western setback is functionally inadequate for a multi-storey structure transitioning into a low-density zone. This results in excessive visual bulk and intrusion onto 25 Rangers Ave, contrary to planning principles requiring more "slender" buildings on constrained infill sites.
- ii. **Critical Privacy Breach:** The proposed mitigations are insufficient to protect the highly sensitive, glass-roofed children's bathroom at 25 Rangers Ave. The proximity of the upper levels (5.5m setback) still constitutes an unacceptable and severe breach of privacy.
- iii. **Deep Soil and Landscape Failure:** The lack of specific Deep Soil Zone calculations suggests likely non-compliance. Furthermore, the reliance on immature canopy trees for screening provides inadequate amenity protection in the short to medium term, failing to mitigate immediate visual intrusion from the 3m setback.
- iv. **Failure to Document and Contradiction of DSZ:** The EIS contains critical, measurable deficiencies in the Landscape Plan and the related DSZ provisions along the western boundary (adjoining 25 Rangers Avenue). These deficiencies expose the failure of the proponent's entire privacy mitigation strategy.

The EIS is procedurally opaque and technically contradictory regarding the deep soil provision along the western boundary:

- a. **Missing Documentation:** The EIS repeatedly refers stakeholders to the "Landscape Architect's Plans" for specific design details. The absence of clear, legible plans detailing the boundary treatment forces the adjoining

landowner to speculate on the final design, which is unacceptable for an SSD application.

- b. **Contradiction: Paving vs. Deep Soil:** The alleged area for the DSZ is the 3.0-metre setback strip along the **eastern and western boundary**. However, drawing evidence reveals **paving immediately adjacent to BOTH boundaries** where habitable rooms both in existing residences and the development, are located.
- c. The presence of paving in this strip demonstrates that the area is **not Deep Soil** but rather hardscape. This is a direct, measurable contravention of the Deep Soil Zone objectives and the proponent's promise to plant mature trees for visual screening along this critical interface.
- d. **Failure to Meet ADG Minimum Dimension:** The ADG mandates that for amalgamated sites of this size (over 1,500m<sup>2</sup>), deep soil zones must have a **minimum functional dimension of 6.0 metres** to sustain large canopy trees. The proposed 3.0-metre setback is already **half** this mandatory width. Given 25 Rangers and 9 and 9A may remain standalone residential dwellings. By paving any portion of this 3.0-metre strip, the proponent confirms a zero-compliance result, making the planting of large, promised screening trees ecologically impossible and the privacy mitigation unviable.

**e) Failure to Document the Boundary Fence and Structures**

The design fails to provide adequate and specific detail regarding the proposed boundary fence, which constitutes a material change to the adjoining property's amenity and outlook:

- i. **Undocumented Visual Impact:** The inclusion of an undimensioned >2m high fence extending to the south boundary of 25 Rangers Avenue is a major element of bulk and visual impact. This substantial structure must be fully detailed with precise measurements, materials, and elevations to allow for an informed assessment by the adjoining owner.
- ii. **Visual Amenity and Outlook:** The lack of clarity regarding this 2-metre structure means the full extent of visual intrusion and loss of outlook cannot be determined. Any structure of this height along the boundary directly and adversely impacts the amenity of our property, particularly concerning the children's bedrooms and primary open space.

**5. Site Unsuitability and Structural Risk**

The site is physically constrained to a degree that makes the proposed scale, particularly the necessary deep excavation, an unacceptable and high-risk planning outcome for the adjoining property.

The proximity of excavation to the existing dwelling at 25 Rangers Avenue generates a non-mitigable structural risk that renders the site unsuitable for this high-density development.

- a) **Extreme Geotechnical Constraint:** The Federation house at 25 Rangers Avenue is located approximately 30cm from the shared boundary.
- b) **Statutory Risk (Clause 98E):** The deep excavation required for an RFB basement, occurring within 30cm of the foundation of an older structure, triggers Clause 98E of the *Environmental Planning and Assessment Regulation 2000*. This clause requires development consent for excavation below the footings of an adjoining structure to protect and support the building. Excavation work near adjacent buildings requires formal compliance with SafeWork NSW Code of Practice and specific consent conditions under Clause 98E of the EP&A Regulation 2000. We require:
  - i. A Structural Engineer's Assessment of 25 Rangers Avenue's footings and stability before consent is granted.
  - ii. A detailed Pre-Construction Notification outlining the excavation methodology, shoring design, and monitoring systems at least seven days prior to commencement.
  - iii. An insurance bond to the replacement value of our dwelling should structural damage occur.
- c) **Liability and Feasibility:** The extreme proximity (25 Rangers Ave is 30cm from the boundary and the 10m underground carpark is on the boundary) mandates highly technical, costly, and complex shoring and underpinning solutions. This high level of structural risk, and the Proponent's subsequent liability for damage to 25 Rangers Ave, renders the proposed deep excavation technically unfeasible and inappropriate for the site. The Proponent has set up a Special Purpose Vehicle (SPV) with no assets other than the said development. We would require an insurance bond to the replacement value of our dwelling should structural damage occur.

## **6. Statutory Policy Exclusion (Unlawful Height Bonus Claim)**

The entire scale and bulk of the proposal depend on the Floor Space Ratio (FSR) and height bonuses afforded by the State Environmental Planning Policy (Housing) 2021 (Housing SEPP) for the inclusion of affordable housing. The development appears to be statutorily ineligible for this bonus, rendering the proposed height (6–7 storeys) and density non-compliant with the base controls of the Mosman Local Environmental Plan (LEP) 2012.

The Low and Mid-Rise Housing Policy (LMRHP) exclusion criteria prevent the application of the density bonus on this site.

- a) Heritage Item Exclusion: The LMRHP policy is explicitly excluded from applying to land that "comprises or contains a heritage item listed in a Local Environmental Plan". The 'Divided Road' on Rangers Avenue (Item #I438) is confirmed as a Local Heritage Item listed in the Mosman LEP 2012 and is registered on the State Heritage Register. It adjoins the site and will be used, altered and excavated to create vehicle crossovers, driveways, pedestrian access, rubbish storage and a concierge area.
- b) Item I438 triggers the LMRHP exclusion, the proposed height and FSR bonuses are invalid. This constitutes an automatic, quantifiable ground for refusal.

It should be noted that the excavation of the Heritage Item is grossly underplayed when mapping it on plans and the true extent can be seen in Annexure 1, where greater than 75% of the southern boundary appears to be altered.

Furthermore, the development site is situated adjacent to the Holt Estate Heritage Conservation Area (HCA).

We stress that while the bonus facilitates increased density, it does not exempt the resultant bulk and scale from complying with the fundamental amenity standards of the ADG. The current technical failings regarding the Deep Soil Zone and Building Separation along with the Heritage components, suggest the project's increased density compromises established amenity thresholds that the ADG is designed to protect.

## **7. Affordable Housing**

Affordable housing is defined as housing for very low income households, low income households or moderate income households, being such households as are prescribed by the regulations or as are provided for in an environmental planning instrument.

**Chapter 2, Part 1 of the Housing SEPP** describes very low income households, low income households or moderate income households as:

- a) households that have a gross income within the following ranges of percentages of the **median household income for Greater Sydney** or the Rest of NSW:
  - i. very low income household—less than 50%,
  - ii. low income household—50–less than 80%,
  - iii. moderate income household—80–120%, and
- b) pays no more than **30% of the gross income in rent**.

2021 Census data confirm the median weekly household income for Greater Sydney as \$2,077.

<https://www.abs.gov.au/census/find-census-data/quickstats/2021/1GSYD>

This equates to \$623.10 in weekly rental as the maximum the Proponent is allowed to charge for rent for the next 15 years for apartments in Mosman. In addition to this, the proponent will have to engage a housing provider which will further reduce the proponent's net income per week per apartment. To be clear, this is significantly below market or economic rents for a new apartment in Mosman. The proponent and affordable housing provider must adhere to these numbers.

**The DPHI should ascertain how the proponent, with limited means in a standalone SPV, is going to fund this loss-making exercise over a 15 year period.**

## **CONCLUSION AND DEMAND FOR REFUSAL OR DEFERRAL**

The collective and cumulative impact of the documented failures establishes that the EIS is procedurally deficient, factually contradictory, and fundamentally non-compliant with mandatory planning and safety legislation. The integrity of this application is critically undermined by the proponent's conscious decision to avoid, conceal, and misrepresent material facts.

### **A. Procedural Misconduct and Failure of Good Faith Engagement**

The assessment process has highlighted a **deliberate procedural breach** of the mandatory requirement for **upfront and ongoing engagement** as stipulated by the DPHI's guidelines.

1. **Intentional Concealment:** The proponent's team knowingly advised on **3 November 2025** that final plans were not yet available, when the submitted architectural plans were finalized and dated **5 November 2025**. This action deliberately precluded the adjoining landowner from conducting meaningful, pre-lodgement technical review, thereby denying procedural fairness.
2. **Deliberate Misrepresentation:** The proponent misstated the room classification during the meeting, advising there were **"no habitable rooms"** on the western boundary, despite the final plans confirming the rooms are **bedrooms** (Habitable Rooms). This misrepresentation served to justify the non-compliant 3.0-metre setback, proving the consultation was a procedural box-ticking exercise, not an input into design refinement.

## **B. Statutory Ineligibility, Unlawful Scale, and Orderly Development Failure**

The entire scale and bulk of this project is based on an unlawful claim to the **In-fill IAH** bonus, which is contrary to the principle of orderly and progressive development of land:

1. **Accessible Area Claim Failure (Pedestrian Safety):** The proponent's reliance on two routes to meet the 800-metre threshold is fatally flawed:
  - **Rangers Ave Crossing:** Rangers Road is defined as a "Regional Road" The intersection used by the proponent's survey (Spofforth Street/Holt Avenue) is not a quiet suburban crossing, but a major traffic artery requiring legally mandated pedestrian protection. The reliance on an unmarked "**pram ramp**" at Spofforth Street, rather than a statutory "**pedestrian crossing**", contravenes the prescriptive "**safely walked**" requirement of the Housing SEPP, creating unacceptable pedestrian safety risks and invalidating Route 2.
  - **Bloxsome Lane Route:** The proposal relies on Bloxsome Lane, which lacks a public footpath and requires a path to be built over **privately held land** for public access, which is an unapproved, unsafe, and illegal circumvention of **Roads Act 1993, Section 138** requirements.
2. **Unorderly Development and Site Isolation:** The approval of this 6–7 storey structure is premature and violates the public interest test of **orderly and progressive development of land**.
  - **Sterilization:** The bulk, height, and resulting ADG setback minimums from the 11-23 Rangers Ave building risk sterilizing the **future development potential** of the adjacent, smaller allotments at **9 and 9A Rangers Avenue**, potentially squeezing them into unviable envelopes and creating an inefficient pattern of land use.
  - **Masterplan Conflict:** The determination of this application is inconsistent with the strategic planning process being undertaken by Mosman Council (the Mosman Masterplan), as it risks establishing a disruptive, isolated, and uncontextual "**stand-alone tower**" that is incompatible with the eventual, planned scale for the surrounding area.

## **C. Measurable and Non-Mitigable Amenity and Structural Failure**

The western boundary design fails to meet mandatory, non-discretionary amenity and safety standards:

1. **DSZ Failure:** The proponent's design is measurably non-compliant with the **ADG's 6.0-metre mandatory minimum dimension** for the DSZ. The proposed

3.0-metre setback is physically insufficient and is contradicted by drawing evidence showing **hardstand paving** (not soil) adjacent to the boundary, rendering the visual screening mitigation unviable.

2. **Habitable Room Setback Failure:** The proposed **3.0-metre setback** is grossly non-compliant with the **minimum separation** required by the ADG for a mid-rise (6–7 storey) structure adjoining our existing home, which contains multiple **habitable rooms** (bedrooms, living, kitchen) along the boundary.
3. **Unacceptable Structural Risk:** The deep excavation required for the basement, occurring within **30 centimetres** of the existing 1900s Federation dwelling at 25 Rangers Avenue, immediately activates the onerous protection mandates of the **EP&A Regulation Clause 28 (formerly 98E)**. The EIS is technically inadequate as it fails to provide the required certified engineering design explicitly mitigating this high-risk structural liability.

### **Demand for Action**

Given the gravity of the statutory non-compliance, the quantifiable amenity failures, and the unacceptable structural risk, we formally demand that the Department of Planning, Housing and Infrastructure take one of the following actions:

1. **Refuse the Application:** Based on the conclusive legal ineligibility for the Housing SEPP bonus and the failure to mitigate the measurable ADG amenity, structural, and pedestrian safety impacts.
2. **Deferral/Suspend Assessment:** Should the Department not refuse consent outright, we demand the immediate **suspension of the assessment and exhibition period** until the Mosman Masterplan is completed to ensure the development of the land is **orderly and progressive**.

To proceed with the assessment of this demonstrably non-compliant EIS is contrary to the public interest, undermines the principle of orderly development, and breaches the Department's commitment to procedural fairness for adjoining landowners.

**Annexure 1:**



**Details:**

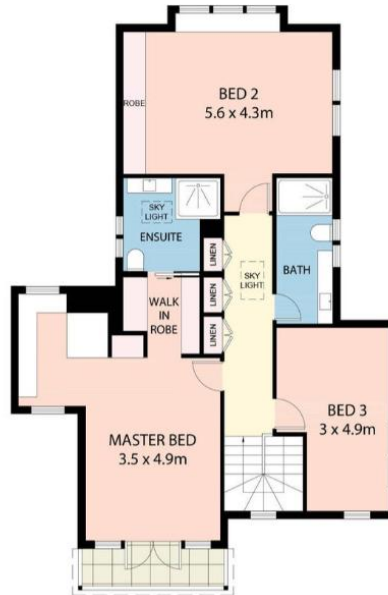
High wall on western Boundary not properly documented anywhere

Severe modification of Heritage Item #I438 as part of this application.

**Annexure 2: (Floor plan of 25 Rangers Ave)**



**ENTRY LEVEL**



**UPPER LEVEL**



**SITE PLAN**

**Annexure 3:**



Details: Children's bathroom at 25 Rangers Ave, including a shower, bath and toilet with a glass roof