

# WILLOWTREE PLANNING



27 February 2026

Ref: Objection to SSD:101842729

Department of Planning, Housing and Infrastructure  
Via NSW Planning Portal

**Attention: Department of Planning, Housing and Infrastructure**

**RE: SUBMISSION IN OBJECTION TO SSD-101842729 PROPERTY AT: 2A / 2-6 CONWAY AVENUE & 38-40 CARLISLE STREET, 15-15A FERNLEIGH AVENUE, ROSE BAY ON BEHALF OF: MR PETER MONTGOMERY, OWNER OF FERNLEIGH CASTLE, 5 FERNLEIGH GARDENS, ROSE BAY (HERITAGE ITEM I309)**

Dear Department of Planning, Housing and Infrastructure,

This submission is prepared on behalf of Nufeno Pty Limited (Mr Peter Montgomery since 1982), the owner of Fernleigh Castle, located at 5 Fernleigh Gardens, Rose Bay (Heritage Item I309 under the *Woollahra Local Environmental Plan 2014*) (the Adjoining Property), in objection to SSD:101842729 for the construction of a six-to-eight storey residential flat building comprising 70 apartments at 2A / 2-6 Conway Avenue & 38-40 Carlisle Street, 15-15A Fernleigh Avenue, Rose Bay (the Application).

The enclosed Submission Report identifies deficiencies in the Application with respect to heritage impacts, residential amenity, visual privacy, and cumulative traffic impacts. The submission is supported by heritage advice from NBR Architecture (Sam Polkinghorne, Heritage Consultant) and is informed by submissions from the Rose Bay Residents Group.

It is respectfully submitted that the Application, in its current form, should not be approved. The key grounds of objection are:

- The Application does not adequately assess and mitigate impacts to the heritage significance, curtilage, and setting of Fernleigh Castle - one of the few large, intact Victorian mansions remaining in Sydney, listed on the Register of the National Estate and the Woollahra LEP Heritage Schedule.
- The Application contains incorrect sight line analysis with respect to the principal private open space of Fernleigh Castle, resulting in an inadequate assessment of privacy and overlooking impacts.
- The Application does not adequately address impacts to a heritage-significant Moreton Bay Fig tree located within the curtilage of Fernleigh Castle.
- The Application fails to assess cumulative traffic impacts arising from six concurrent Low- and Mid-Rise Housing developments in the Rose Bay precinct, despite the Application's own acknowledgment of those developments in the Urban Design Report.
- The Application contains non-compliances with applicable planning controls that have not been adequately justified and the setbacks in project, changes in view lines in proposal.

Should you have any questions in relation to the above and/or attached, please do not hesitate to contact the undersigned.

Kind regards

ACN: 146 035 707 ABN: 54 146 035 707  
165 Walker Street  
North Sydney, NSW 2060

enquiries@willowtp.com.au  
willowtreeplanning.com.au  
02 9929 6974



SYDNEY | BRISBANE



Chris Wilson  
Managing Director  
Willowtree Planning Pty Ltd



**PLANNING SUBMISSION REPORT**

**OBJECTION TO SSD-101842729**

**2A / 2-6 CONWAY AVENUE & 38-40 CARLISLE STREET, 15-15A FERNLEIGH AVENUE, ROSE BAY**

**Prepared on behalf of:** Mr Peter Montgomery, Owner of Fernleigh Castle, 5 Fernleigh Gardens, Rose Bay

**Prepared by:** Willowtree Planning (NSW) Pty Ltd Suite 404, Level 4, 165 Walker Street North Sydney NSW 2060 02 9929 6974

**Date:** 25 February 2026

**Reference:** Fernleigh Castle - Conway Avenue SSD Objection



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## 1 EXECUTIVE SUMMARY

This submission is made on behalf of Nufeno Pty Limited (Mr Peter Montgomery), the owner of Fernleigh Castle since 1982 at 5 Fernleigh Gardens, Rose Bay, in objection to the SSD application for a 70-apartment residential flat building at the adjoining site at 2A / 2-6 Conway Avenue & 38-40 Carlisle Street, 15-15A Fernleigh Avenue, Rose Bay.

Fernleigh Castle is one of the most significant heritage items in the Woollahra Local Government Area. It is a rare, intact example of a large Victorian mansion from Sydney's 1890s boom period, constructed of fine dressed Sydney sandstone in a distinctive Norman-style with a square tower, smaller turrets, castellated walls, and elaborate interior ornamentation. The building was designated on the Register of the National Estate on 21 March 1978 (Place ID 2495) and is listed as Heritage Item I309 under the *Woollahra Local Environmental Plan 2014*. The NSW Heritage Database describes it as "one of the very few large Victorian mansions still intact in Sydney" and notes that its structure is "a highly decorated example of the stonemason's craft using pink to brown fine dressed sandstone, still in very good condition."

The heritage significance of Fernleigh Castle extends beyond the building itself to include its curtilage - the surrounding gardens, mature trees, outbuildings, and landscape features that contribute to the understanding and appreciation of the place. This curtilage includes a heritage-significant Moreton Bay Fig tree said to be 150 years old, the pool and pool house, and the visual relationships between the Castle and its surroundings, including the views and vistas that have characterised the property since its construction in 1892.

The Application proposes a development of a scale and intensity that is incompatible with the heritage significance and setting of Fernleigh Castle. The key findings of this submission are as follows.

### 1.1 Heritage Assessment - Methodology and Conclusions

The Application's heritage analysis relies on distance measurements from the proposed building to the Castle building itself (77-96 metres), rather than assessing the impact on the heritage item, including its curtilage and setting. The relevant distances - to the garage (19.66 metres) and the pool house (39.82 metres) - are not used as the basis for the heritage impact assessment. No curtilage assessment has been prepared for Fernleigh Castle. This is a fundamental omission.

The Heritage Impact Assessment (**Appendix L**) concludes that the development has "no impact" on the heritage item and that it "complies with CI 5.10" of the *Woollahra Local Environmental Plan 2014*. This conclusion is reached by:

- Confining the assessment to the Castle building alone, without defining, mapping, or assessing the heritage curtilage.
- Relying, in each impact category under *Guidelines for Preparing Statement of Heritage Impact 2023* - including fabric, setting, views and vistas, and curtilage - on a single, verbatim rationale: that the development is "screened by landscaping to a height of approximately 17 metres"; and
- Providing no differentiated analysis of each impact category, despite the guidelines requiring a separate assessment of each.

This does not constitute a robust or methodologically sound heritage assessment for a development immediately adjoining a heritage item of this significance.

The EIS (**Section 6.11.1**) adopts the Heritage Impact Assessment conclusions without independent analysis, stating that the development "has no impact on the physical fabric" of Fernleigh Castle and is "not visible from the key views." The EIS further states that the development is "screened by landscaping" with "filtered views" that are "negligible." At no point does the EIS acknowledge or assess



the impact of the development on the heritage curtilage, the setting, or the visual relationships of Fernleigh Castle - it simply defers to the Heritage Impact Assessment, which is itself deficient.

The EIS also makes the misleading claim in the Urban Design Report that "the larger setback in the northwest enlarges the curtilage to the heritage item on Fernleigh Avenue." This statement conflates the concepts of setback and curtilage. A setback from a neighbouring development does not "enlarge" the heritage curtilage - the curtilage is a defined area associated with the heritage item itself. This mischaracterisation should not be accepted by the Department of Planning, Housing and Infrastructure (DPHI).

## 1.2 Moreton Bay Fig Tree – Heritage and Environmental Significance

The Application relies on "significant existing trees" as a visual barrier between the proposed development and the heritage item. The very trees relied upon - including a heritage-significant Moreton Bay Fig - are at risk of impact from the proposed development, and the adequacy of a visual barrier that depends on the continued health and survival of individual trees does not constitute a robust heritage response.

The EIS (**Section 6.4.1**) confirms that all 33 trees within the subject site are to be removed - including 12 trees with medium retention value. The arboricultural assessment addresses only the trees within and immediately adjacent to the application site. It does not assess the impact of the proposed development - including excavation for a 2-3 level basement, construction vibration, changes to soil moisture, and alterations to the water table - on the Moreton Bay Fig tree located within the grounds of Fernleigh Castle, beyond the site boundary.

This is a critical gap. The Moreton Bay Fig is simultaneously:

- The centrepiece of the Application's heritage mitigation strategy (as the principal visual screen relied upon in the Heritage Impact Assessment).
- A heritage-significant element of the Fernleigh Castle curtilage in its own right; and
- A tree whose protection zone may extend into the application site, given the extensive root systems characteristic of mature *Ficus macrophylla*.

The proposed building reaches a maximum height of 28.6 metres - substantially exceeding the 17-metre tree screening height relied upon in the heritage assessment. The assessment does not address:

- The heritage impact of the development above the tree line.
- The reduced screening effectiveness during winter months when deciduous species within the screening group may provide diminished coverage; or
- The long-term viability of the tree in the fundamentally altered environmental conditions created by the excavation and construction of a 70-apartment building on the immediately adjoining site.

The SEARs (**SEAR 14**) require an Arboricultural Impact Assessment that addresses "significant impacts to tree-protection zones of retained trees identified as being significant." The failure to assess the impact on the Moreton Bay Fig is a non-compliance with this requirement.

## 1.3 Privacy and Overlooking - Sight Line Analysis

The Application's overlooking and privacy assessment contains incorrect sight lines with respect to the principal private open space of Fernleigh Castle, specifically the pool area. The sight line diagrams do not accurately represent the viewing angles from the proposed building to the pool and its immediate surrounds. This results in an understatement of the actual privacy impact and an overstatement of the effectiveness of the proposed mitigation measures (louvres, planters, and solid balustrades).

The EIS (**Section 6.2.2**) addresses visual privacy in the following terms:



- "Separation distances to the north, south and east well in excess of the ADG".
- "A curtilage of greenery and mature landscape which wraps the perimeter of the building, and acts as a visual and privacy buffer to neighbouring properties"; and
- "Location of privacy louvres and balcony treatment that allow occupants access to distant views whilst minimising overlooking."

This assessment is deficient in the following respects:

- It does not specifically identify or assess the pool area of Fernleigh Castle as the principal private open space most sensitive to overlooking. The pool - where residents undertake private outdoor recreation including swimming - is the area where a reasonable expectation of privacy is highest. The failure to identify it as the primary receptor is a material error.
- It relies on "separation distances" and "mature landscape" without acknowledging the topographic relationship between the sites. The application site sits at approximately 40 metres elevation on a ridgeline; Fernleigh Castle and its grounds are at a lower elevation to the north and north-west. The proposed building at 28.6 metres on the ridgeline will generate downward oblique sight lines into the pool area that the proposed mitigation measures - louvres, planters, and balustrades designed for horizontal or near-horizontal sight lines - are unlikely to address.
- It relies on the same "curtilage of greenery" that forms the basis of the heritage screening argument. As noted in **Section 1.2** above, the long-term viability of this screening is compromised by the development itself. A privacy response that depends on the same vulnerable landscape as the heritage response compounds the risk of both responses failing.

The Development Control Plan (DCP) privacy controls (**Section B3.5.4**) require that new windows in habitable rooms prevent a direct sightline to private open space within 9 metres. The Statutory Compliance Table (**Appendix B**) records compliance by reference to the blank wall of 8 Conway Street to the west - but does not assess the overlooking relationship to the north-west towards Fernleigh Castle's pool area. This is a significant omission.

#### 1.4 Cumulative Traffic Impacts – Non-Compliance with the SEARs

The Urban Design Report identifies six sites in the Rose Bay precinct that are either consolidated, under development, or earmarked for redevelopment under *State Environmental Planning Policy (Housing) 2021* - Low- and Mid-Rise provisions:

1. 23-31 Dover Road, Rose Bay - consolidated
2. 10-12 Ian Street, Rose Bay - consolidated
3. 13-21 Carlisle Street, Rose Bay - consolidated
4. 2-16 Spencer Street, Rose Bay - consolidated
5. 8 Conway Avenue, Rose Bay - recently developed
6. 4 Carlisle Street, Rose Bay - recently developed

The Application acknowledges that "the built form and character will be rapidly transformed." Despite this acknowledgment, the Transport Impact Assessment treats the Application in isolation and does not assess the cumulative traffic generation of these six developments on the local road network - particularly Conway Avenue, Carlisle Street, and Fernleigh Avenue, which are narrow residential streets not designed for the traffic volumes that six concurrent mid-rise developments will generate.

The Transport Impact Assessment (**Appendix O**) contains the following shortfalls:

- It categorises the site as a "high density development with high public transport accessibility" based on the PTAL metric and applies trip rates of only 0.19 and 0.15 vehicle trips per dwelling in the morning and evening peaks respectively - resulting in a claimed net increase of only 7 additional vehicles in the morning peak and 4 in the evening peak.



- It assesses the Application in complete isolation. It does not model the cumulative traffic generation of the six identified LMR developments, each of which will generate similar or greater traffic volumes on the same local road network.
- It does not include any intersection modelling - such as SIDRA analysis - for the key intersections of Conway Avenue / Carlisle Street, or Carlisle Street and Fernleigh Avenue with New South Head Road, which are the critical access points to the arterial network.
- It does not assess cumulative construction traffic impacts arising from six concurrent multi-year construction programs in a compact residential precinct; and
- It concludes that the traffic impacts are acceptable on the basis that the net additional vehicles represent "an additional vehicle approximately every 8 minutes" - a characterisation that is only valid when the Application is assessed in isolation and not as part of the precinct-wide transformation the Application itself acknowledges.

The EIS (**Section 6.5.2**) adopts the Transport Impact Assessment's conclusion without qualification, stating that the traffic generation is "minor with minimal impact on surrounding roads and intersections." This characterisation is misleading. If even the same trip rate methodology is applied across six developments of comparable scale (50-70 apartments each), the cumulative net traffic generation on the local road network will be greater than the figures presented.

The shortfall to undertake a cumulative assessment is potentially a non-compliance with the SEARs, which require a Transport Impact Assessment prepared in accordance with the GITA methodology - a methodology that explicitly requires consideration of known and likely future development in the surrounding area.

## 1.5 Statutory Compliance

The scale, height, and intensity of the proposed development - made possible by the application of the *State Environmental Planning Policy (Housing) 2021* height and FSR bonuses - results in outcomes that are inconsistent with the objective of the R3 Medium Density Residential zone "to ensure that development is of a height and scale that achieves the desired future character of the neighbourhood." The development is also inconsistent with the objects of the *Environmental Planning and Assessment Act 1979*, including the object of promoting the conservation of the State's environmental heritage.

The Statutory Compliance Table (**Appendix B**) contains the following deficiencies:

- It records compliance with Clause 5.10 (Heritage Conservation) of the *Woollahra Local Environmental Plan 2014* on the basis that heritage is "addressed in the Heritage Impact Assessment (**Appendix L**)." As set out above, that assessment is deficient - it confines its analysis to the Castle building, does not assess the heritage curtilage, setting, or views, and relies on a single verbatim screening rationale. The claimed compliance with Clause 5.10 is therefore not supported by the evidence base.
- It records the heritage provisions of the Woollahra DCP as not applicable on the basis that DCPs do not apply to SSD. While technically correct, the DCP heritage provisions remain a relevant consideration in the merit assessment - and their dismissal without any substantive analysis undermines the assessment of the development's heritage impacts.
- It records compliance with the DCP privacy controls (**Section B3.5.4**) by reference to the blank wall of 8 Conway Street to the west - without assessing the overlooking relationship to Fernleigh Castle to the north-west.
- It records overshadowing as "non-compliance justified" without demonstrating the impact on the principal private open space of Fernleigh Castle.



## 1.6 The Affordable Housing Bonus – Scale of Departure

The 30% affordable housing bonus - which increases the maximum height from 22.0 metres to 28.6 metres and the FSR from 2.2:1 to 2.86:1 - is a privilege, not an entitlement. The base LEP controls for the site are a height of 10.5 metres and an FSR of 0.75:1. The proposed development therefore represents:

- A building height approximately 2.7 times the base LEP height control; and
- An FSR approximately 3.8 times the base LEP FSR control.

This is a departure from the underlying planning framework - one that demands a correspondingly rigorous assessment of heritage, amenity, and traffic impacts. The EIS does not demonstrate that the full utilisation of the bonus is appropriate on this site given the heritage constraints. A development at the base LMR controls (22.0 metres, FSR 2.2:1), or at a reduced bonus level, may achieve a more appropriate balance between housing delivery and heritage protection.

It is respectfully submitted that the Application should not be approved in its current form.



## 2. INTRODUCTION

### 2.1 Purpose of this Submission

This submission is made during the public exhibition of SSD-101842729 for the proposed development at 2A / 2-6 Conway Avenue & 38-40 Carlisle Street, 15-15A Fernleigh Avenue, Rose Bay. It is made on behalf of Mr Peter Montgomery, the owner of the immediately adjoining property at 5 Fernleigh Gardens, Rose Bay - known as Fernleigh Castle.

The purpose of this submission is to:

- Bring to DPHI's attention the significance of Fernleigh Castle as a heritage item of local and national importance, and the inadequacy of the Application's assessment of heritage impacts.
- Demonstrate that the Application's sight line analysis with respect to the principal private open space of Fernleigh Castle is misleading, resulting in an inadequate assessment of privacy and overlooking impacts.
- Identify the failures of the Application to assess cumulative traffic impacts arising from six concurrent LMR developments in the immediate precinct.
- Identify departures with applicable planning controls and demonstrate that these have not been adequately justified; and
- Demonstrate that the Application, as submitted, is inconsistent with the objects of the *Environmental Planning and Assessment Act 1979*, the strategic planning framework relied upon in the Application, including the Eastern City District Plan, the Woollahra Local Strategic Planning Statement 2020, and the Woollahra Local Housing Strategy 2021 - and the design quality principles of *Better Placed*; and
- Request that the Application be refused, or alternatively, that substantial amendments be required to address the deficiencies identified in this submission prior to any determination.

This submission does not oppose the delivery of housing, including affordable housing, in the Rose Bay precinct. The delivery of housing supply and diversity is a legitimate and important policy objective. What this submission contends is that the delivery of housing on this particular site, at this particular scale, has not been supported by an adequate assessment of the site-specific constraints - and that the deficiencies in the Application's heritage, amenity, and traffic considerations mean that DPHI does not have a sufficient evidence base on which to be satisfied that the development achieves an acceptable planning outcome.

### 2.2 The Secretary's Environmental Assessment Requirements

The Secretary's Environmental Assessment Requirements (**SEARs**) issued for this Application include specific requirements that are directly relevant to the grounds of objection raised in this submission. Key requirements include:

SEAR 7 - Environmental Amenity. The SEARs require the Application to "assess amenity impacts on the surrounding locality, including solar access, visual privacy, view loss and view sharing." The SEARs further require that "a high level of environmental amenity for any surrounding residential or other sensitive land uses must be demonstrated." This submission demonstrates that the Application fails to meet this requirement with respect to Fernleigh Castle. In particular, the EIS (**Section 6.2.2**) does not identify the pool area of Fernleigh Castle as the principal private open space most sensitive to overlooking, does not acknowledge the topographic relationship between the ridgeline site and the lower-lying Castle grounds, and relies on mitigation measures - louvres, planters, and landscape screening - that are directed at horizontal sight lines and do not address the downward oblique views from Levels 4-7 of the proposed building.

SEAR 9 - Transport. The SEARs require a Transport Impact Assessment "in accordance with the processes and methodology recommended in the Guide to Transport Impact Assessment (**GITA**) published by TfNSW." The GITA methodology requires consideration of cumulative impacts from



known developments in the area. The Application fails to undertake this cumulative assessment despite the Application's own acknowledgment of six concurrent LMR developments in the precinct. The Transport Impact Assessment (**Appendix O**) assesses the Application in isolation, arriving at a net increase of only 7 and 4 additional vehicle trips in the morning and evening peaks respectively. It does not include intersection modelling for the key access points to New South Head Road, nor does it assess cumulative construction traffic. The EIS (**Section 6.5.2**) adopts these findings without qualification, characterising the traffic impacts as "minor with minimal impact" - a characterisation that is only valid when the Application is assessed in isolation and not as one of six concurrent mid-rise developments on the same local road network.

SEAR 14 - Trees and Landscaping. The SEARs require an Arboricultural Impact Assessment that "assesses the number, location, condition and significance of trees to be removed and retained" and, where significant trees are impacted, requires "tree root mapping if the proposal involves significant impacts to tree-protection zones of retained trees identified as being significant." The adequacy of the arboricultural assessment with respect to the Moreton Bay Fig must be critically examined. The Arboricultural Impact Assessment (**Appendix J**) addresses only trees within and immediately adjacent to the application site. It does not assess the impact of the proposed 2-3 level basement excavation, construction activity, or changes to drainage on the tree protection zone of the Moreton Bay Fig located within the Fernleigh Castle grounds - the very tree upon which the Application's heritage screening strategy depends.

SEAR 22 - Environmental Heritage. The SEARs require, "where there is potential for direct or indirect impacts on environmental heritage," a Statement of Heritage Impact prepared "in accordance with the relevant guidelines." This submission contends that the Statement of Heritage Impact submitted with the Application is deficient in its assessment of indirect impacts on the heritage significance, curtilage, and setting of Fernleigh Castle. The Heritage Impact Assessment (**Appendix L**) concludes that the development has "no impact" on Fernleigh Castle by confining its analysis to the Castle building (77-96 metres distant) and relying on a single, verbatim rationale - that the development is "screened by landscaping to a height of approximately 17 metres" - for every impact category. It does not prepare a curtilage assessment, does not assess the impact on the heritage setting, and does not address the 11.6-metre differential between the maximum building height (28.6 metres) and the tree screening height (17 metres). This does not constitute a heritage assessment prepared "in accordance with the relevant guidelines" as required by the SEARs.

The EIS is accompanied by a REAP declaration certifying that the EIS addresses the SEARs for the project. The Department is respectfully invited to satisfy itself that the matters identified in this submission have been adequately addressed in that context

### 2.3 The Application's Strategic Framework

The EIS (**Section 7**) claims consistency with the strategic planning framework, including the Greater Sydney Region Plan, the Eastern City District Plan, the Woollahra LSPS, and the Woollahra Local Housing Strategy. A close reading of the strategic documents relied upon by the Application reveals that the Application is inconsistent with key heritage and character objectives within those very documents:

- The *Eastern City District Plan* - Planning Priority E6 - requires "creating and renewing great places and local centres *and respecting the District's heritage*." The Application does not respect the heritage of the District as it relates to Fernleigh Castle. It does not undertake a curtilage assessment, does not assess cumulative heritage impacts from the six identified LMR developments, and relies on a Heritage Impact Assessment that confines its analysis to the Castle building alone.
- The *Woollahra Local Strategic Planning Statement 2020* - Planning Priority 4 - requires "sustaining diverse housing choices in planned locations that enhance our lifestyles and fit in with our local character and scenic landscapes." The proposed development, at 28.6 metres and 2.86:1 FSR on a site immediately adjoining one of Sydney's most significant Victorian



mansions, does not "fit in" with the local character of the Rose Bay precinct in the vicinity of Fernleigh Castle.

- The *Woollahra Local Strategic Planning Statement 2020* - Planning Priority 6 - requires "placemaking that supports and maintains the local character of our neighbourhoods." The transformation of the precinct from fine-grain residential to six concurrent mid-rise apartment developments - assessed in isolation and without a cumulative impact assessment - is not placemaking that "maintains the local character" of the neighbourhood.
- The *Woollahra Local Housing Strategy 2021* - Housing Objective 3 - requires that housing "conserves heritage, maintains local character and achieves design excellence." The Application does not conserve heritage. The Heritage Impact Assessment concludes "no impact" without assessing curtilage, setting, or views. The Application does not maintain local character. It proposes a built form 2.7 times the base LEP height on a site immediately adjoining a heritage item of exceptional significance.

The proposed development cannot claim consistency with a strategic framework and then selectively ignore the heritage and character objectives embedded within that same framework. Housing delivery and heritage conservation are not mutually exclusive - but the reconciliation of these objectives requires a rigorous, site-specific assessment that the Application has not undertaken.

## 2.4 The Objects of the EP&A Act

The Statutory Compliance Table (**Appendix B**) addresses the objects of the *Environmental Planning and Assessment Act 1979* in cursory terms. In particular:

- Object (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 - is addressed solely by reference to the delivery of 70 dwellings. No consideration is given to the conservation of Fernleigh Castle as a heritage resource of the State.
- Object (d) - to promote the delivery and maintenance of affordable housing - is addressed. This submission acknowledges the importance of this object. However, the delivery of affordable housing does not extinguish the other objects of the Act, including objects (a), (f), and (g).
- Object (f) - to promote the sustainable management of built and cultural heritage - is addressed by cross-reference to the Heritage Impact Assessment (**Appendix L**), which this submission demonstrates is deficient.
- Object (g) - to promote good design and amenity of the built environment - is addressed by cross-reference to the Architectural Design Report (**Appendix E**). However, good design and amenity extend beyond the internal amenity of the proposed apartments to include the amenity impacts on surrounding properties - including the privacy, solar access, visual impact, and heritage setting impacts on Fernleigh Castle.

The objects of the Act require a balanced assessment. The Statutory Compliance Table assesses each object in isolation, addressing housing delivery for one and heritage for another, without at any point demonstrating how the Application reconciles the competing demands of housing supply and heritage conservation on this site. This submission contends that the reconciliation has not been achieved and that the Application, at its current scale, prioritises Object (d) at the expense of Objects (a), (f), and (g).

## 2.5 Structure of this Submission

This submission comprises 17 sections, structured as follows:

- **Sections 3-6** describe the Application, the heritage significance of Fernleigh Castle, its curtilage and setting, and the significance of the Moreton Bay Fig tree.
- **Sections 7-8** assess the privacy, overlooking, and amenity impacts of the proposed development on Fernleigh Castle.



- **Sections 9-10** identify non-compliances with the applicable statutory and strategic planning framework.
- **Section 11** addresses cumulative traffic impacts.
- **Section 12** assesses the Application against the objects of the Environmental Planning and Assessment Act 1979.
- **Sections 13-14** address Apartment Design Guide compliance and heritage assessment deficiencies.
- **Sections 15-17** address resident group concerns, risks of approval, and conclusions and recommendations.

The submission is supported by heritage advice from NBRS Architecture (Sam Polkinghorne, Heritage Consultant) and is informed by submissions from the Rose Bay Residents Group.

## 2.6 Woollahra Council's Pre-Lodgement Concerns

The EIS (**Section 5.3, Table 12**) records the matters raised by Woollahra Council at a pre-lodgement meeting on 5 December 2025. Council's concerns are directly relevant to the grounds of objection in this submission and include:

- Council "raised concern 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 groundwater drawdown during excavation." Council specifically stated that "the application should consider the potential impacts of excavation including the accumulative impacts of LMR developments." This concern - that cumulative impacts of LMR developments must be assessed – was raised by the local planning authority itself. The Application has not adequately addressed it.
- Council "raised concern about the extent of car parking proposed" and requested that parking provision be reduced and car share spaces be allocated. The Application provides 130 spaces against a DCP maximum of 135, declining Council's request. This is relevant to the traffic and parking concerns discussed in **Sections 11** and **15**.

The local planning authority has detailed knowledge of the precinct and its constraints, raised cumulative impact concerns at the pre-lodgement stage, and the Application has not adequately responded to those concerns. These are matters the Department should weigh in its assessment.



### 3. THE APPLICATION

#### 3.1 Overview

The Application seeks approval for the construction of a residential flat building at 2A / 2-6 Conway Avenue & 38-40 Carlisle Street, 15-15A Fernleigh Avenue, Rose Bay. The key parameters of the proposal are as follows:

| OVERVIEW                   |  |
|----------------------------|--|
| Parameter                  | Value  |
| Site Area                  | 3,105 m <sup>2</sup>                                     |
| Maximum Building Height    | 28.6 metres (including 30% affordable housing bonus)     |
| Floor Space Ratio          | 2.86:1 (including 30% affordable housing bonus)          |
| Permissible GFA            | 8,880 m <sup>2</sup>                                     |
| Total Residential Units    | 70 apartments  |
| Affordable Housing         | 17 apartments (15% of total GFA – 1,332 m <sup>2</sup> ) |
| Building Configuration     | Three building masses around three central cores         |
| Storeys                    | Six to eight storeys (stepping with terrain)             |
| Dwelling Mix               | 1 bed: 10 (14%) · 2 bed: 26 (37%) · 3-4 bed: 34 (49%)    |
| Car Parking                | 130 spaces across 2-3 basement levels                    |
| Estimated Development Cost | \$86,958,526 (excl. GST)                                 |

The dwelling mix is weighted towards larger apartments, with 3-4-bedroom dwellings comprising almost half (49%) of the total yield. The 17 affordable housing apartments - comprising 7 x one-bedroom and 10 x two-bedroom dwellings - are entirely concentrated in the smaller dwelling sizes. This submission does not take issue with the dwelling mix per se, but notes that the concentration of larger market apartments contributes to the overall bulk and scale of the development that gives rise to the heritage, amenity, and traffic impacts addressed in this submission.

The EIS (**Section 3.2**) records that the proposal involves the demolition of all existing structures on the site, removal of all 33 trees within the site (including 12 trees with medium retention value), and bulk excavation to facilitate a 2-3 storey basement. The scale of site disturbance is relevant to the assessment of impacts on the Moreton Bay Fig tree within the Fernleigh Castle grounds, which is discussed in **Section 6** of this submission.

#### 3.2 Height and FSR Bonus Provisions

The Application relies on the bonus provisions of the *State Environmental Planning Policy (Housing) 2021* to achieve its proposed height and FSR. The base planning controls under the LMR provisions provide for a maximum building height of 22.0 metres and an FSR of 2.2:1. The Application applies the 30% Infill Affordable Housing bonus, which increases the permissible height to 28.6 metres (22.0 x 1.3) and the FSR to 2.86:1 (2.2 x 1.3).

The reliance on the affordable housing bonus to achieve the proposed scale of development is a relevant consideration in the assessment. The bonus is intended to incentivise the delivery of affordable housing. However, the bonus does not relieve the obligation to demonstrate that the development, at the increased scale, achieves acceptable amenity outcomes for the surrounding area and appropriately responds to heritage constraints. The mere availability of a bonus provision does not mean that the full extent of the bonus should be utilised on every site, particularly where site-specific constraints, such as



the proximity to a heritage item of exceptional significance, warrant a more restrained built form response.

To place the scale of the proposal in context, the following table compares the proposed development against the applicable planning controls at each level of the planning framework:

| HEIGHT AND FSR BONUS PROVISIONS  |        |        |                      |
|--|--------|--------|----------------------|
| Control  | Height | FSR    | Permissible GFA      |
| Woollahra LEP 2014 (base)  | 10.5m  | 0.75:1 | 2,329 m <sup>2</sup> |
| State Environmental Planning Policy (Housing) 2021 LMR (inner area)                  | 22.0m  | 2.2:1  | 6,831 m <sup>2</sup> |
| State Environmental Planning Policy (Housing) 2021 LMR + 30% Infill Affordable Bonus | 28.6m  | 2.86:1 | 8,880 m <sup>2</sup> |
| Proposed development   | 28.6m  | 2.86:1 | 8,880 m <sup>2</sup> |

The proposed development maximises the permissible envelope at every level. The building height of 28.6 metres is 2.7 times the base LEP height of 10.5 metres. The FSR of 2.86:1 is 3.8 times the base LEP FSR of 0.75:1. The permissible GFA of 8,880 m<sup>2</sup> is 3.8 times the base LEP permissible GFA of 2,329 m<sup>2</sup>.

*State Environmental Planning Policy (Housing) 2021* bonus provisions are a mechanism to deliver affordable housing outcomes. They are not, however, immune from the ordinary requirements of merit assessment. **Section 20** of *State Environmental Planning Policy (Housing) 2021* provides that consent must not be granted unless the consent authority has considered whether the design of the residential development is compatible with the character of the local area or, for precincts undergoing transition, the desired future character of the precinct. The "desired future character" of the Rose Bay precinct in the vicinity of Fernleigh Castle is necessarily informed by the heritage significance of the Castle and its setting. The Application does not demonstrate that a development at the maximum permissible bonus envelope is compatible with the heritage character of this location.

It is noted that the EIS (**Section 1.5**) identifies among the project objectives: "minimise overshadowing and maximise privacy for surrounding dwellings." As discussed in **Sections 7** and **8** of this submission, the Application does not achieve this stated objective with respect to Fernleigh Castle.

### 3.3 Relationship to Fernleigh Castle

The Application site is located immediately to the south and south-east of Fernleigh Castle. The Urban Design Report identifies the following distances between the proposed development and the features of the Fernleigh Castle property:

| RELATIONSHIP TO FERNLEIGH CASTLE            |                           |
|---|---------------------------|
| Feature                                     | Distance                  |
| Proposed building to Heritage Item (Castle) | 77-96 metres (per survey) |
| Proposed building to Pool House             | 39.82 metres              |
| Proposed building to Garage                 | 19.66 metres              |

While the Application emphasises the distance to the Castle building itself (77-96 metres), this analysis is misleading. Heritage significance is not confined to the building envelope. The curtilage of Fernleigh Castle - including the pool, pool house, garage, gardens, and mature trees - is an integral part of the heritage item and its setting. The relevant assessment is the impact of the proposed development on the heritage item, including its curtilage, not merely the distance to the principal building.



The distance from the proposed development to the garage of Fernleigh Castle is only 19.66 metres. The distance to the pool house is 39.82 metres. These are the elements of the property that are most immediately affected by the proposed development, and these distances - not the 77-96 metres to the Castle building - are the relevant measures of the development's proximity to and impact on the heritage item and its setting.

The following additional features of the spatial relationship between the Application site and Fernleigh Castle are relevant to the assessment:

- The Application site is located on a ridgeline at approximately 40 metres elevation (as acknowledged in the Urban Design Report). Fernleigh Castle and its grounds are at a lower elevation to the north and north-west. This topographic relationship means that the proposed building - at 28.6 metres on the ridgeline - will present a combined visual mass of building height plus elevation differential when viewed from the Castle grounds. The heritage, privacy, and visual impact assessments must account for this topographic relationship, and this submission contends that they do not adequately do so.
- The Fernleigh Avenue street frontage of the Application site directly faces the rear boundary and southern grounds of the Fernleigh Castle property. The building setback to Fernleigh Avenue varies from 4.5 metres on the eastern side to 9.8 metres on the western side (as described in the EIS, **Section 3.4.1**). The increase in setback towards the west is described in the EIS as responding "to the heritage item to the northwest." However, the adequacy of this response must be assessed against the curtilage and setting of the heritage item - not merely the distance to the Castle building - and against the full height of the proposed development, not merely the lower levels.
- The EIS describes the heritage context of the site as follows: "a local heritage building is located to the northwest of the site" which "fronts Fernleigh Avenue at 5 Fernleigh Gardens, Rose Bay, with the site being located to the rear of the property." This description understates the significance of Fernleigh Castle. The heritage item is not merely "a local heritage building." It is listed on the Register of the National Estate (Place ID 2495), is Heritage Item I309 under the *Woollahra Local Environmental Plan 2014* and is described by the NSW Heritage Database as "one of the very few large Victorian mansions still intact in Sydney." The characterisation of the heritage item in the EIS does not reflect the level of significance that should inform the assessment of the proposal's impacts.

### 3.4 The Proposal in the Context of the Rose Bay Precinct

The EIS acknowledges that the site and its surrounds are "undergoing a process of renewal" and that "the built form and character will be rapidly transformed" (Urban Design Report). The EIS identifies six sites in the Rose Bay precinct that are either consolidated, recently developed, or earmarked for redevelopment under the State Environmental Planning Policy (Housing) 2021 LMR provisions:

1. 23-31 Dover Road, Rose Bay - consolidated
2. 10-12 Ian Street, Rose Bay - consolidated
3. 13-21 Carlisle Street, Rose Bay - consolidated
4. 2-16 Spencer Street, Rose Bay - consolidated
5. 8 Conway Avenue, Rose Bay - recently developed
6. 4 Carlisle Street, Rose Bay - recently developed

This acknowledgment is significant for two reasons.

First, it demonstrates that the proposal is not an isolated development but one element of a precinct-wide transformation. The EIS presents this transformation as a positive - evidence of the policy intent of *State Environmental Planning Policy (Housing) 2021*. However, the scale of this transformation is also a material planning consideration. Six concurrent mid-rise developments in a compact residential precinct will cumulatively alter the heritage setting of Fernleigh Castle, the traffic conditions on the local road network, and the amenity of the surrounding neighbourhood in ways that cannot be



assessed by considering the Application in isolation. The Application's failure to assess cumulative impacts - in heritage, traffic, and amenity terms - is a deficiency of the Application that is explored in detail in **Sections 11** and **14** of this submission.

As mentioned above, the acknowledgment that the precinct is "undergoing transition" enlivens the character test in **Section 20** of *State Environmental Planning Policy (Housing) 2021*, which requires the consent authority to consider whether the design of the development is compatible with "the desired future character of the precinct." The desired future character of a precinct undergoing transition is not defined solely by the maximum permissible envelope. It must be informed by the site-specific constraints of the precinct - including, in this case, the presence of one of Sydney's most significant heritage items. A desired future character that includes the conservation of Fernleigh Castle and its setting requires a more nuanced built form response than the maximisation of the bonus envelope on every site.



## 4. FERNLEIGH CASTLE - HERITAGE SIGNIFICANCE

### 4.1 History

Fernleigh Castle was built in 1892 on the site of a sandstone cottage constructed in 1874, incorporating the original walls of that earlier building. The Castle was commissioned during Sydney's 1890s boom period and is constructed of fine dressed Sydney sandstone in a distinctive Norman-style. It features a square tower, smaller towers with their own turrets, castellated walls, and wrought iron balconies. The mansion comprises approximately thirty rooms.

The Castle's interiors are of exceptional quality, featuring elaborate plaster ornamentation to walls, piers, and archways; original cedar joinery; fine craftsmanship in the main staircase; large, tiled fireplaces framed by finely carved mahogany mantels with marble pillar supports; intricate stained-glass windows; and a porcelain bath set in a cedar and marble frame. These interior elements have survived largely intact - a rarity for a building of this age and type in Sydney.

The Heritage Assessment (**Appendix L**) records a detailed history of the Fernleigh Castle estate that underscores the depth of its heritage significance. The estate originally comprised approximately 7 acres extending to New South Head Road, with the Castle approached through "a magnificent drive flanked by beautiful lawns and gardens." The grounds were incrementally reduced through successive subdivisions - notably in 1951, when approximately 6 acres were sold, leaving the Castle on its present curtailed lot. This history of progressive subdivision makes the remaining curtilage - the gardens, mature trees, and spatial setting that survive today - even more significant in heritage terms. Each reduction has increased the heritage value of what remains, because the surviving elements are the last physical evidence of the original estate landscape.

The Heritage Assessment also records that the Cedar Fig (**Heritage Item I310**) was visible in a 1943 aerial photograph at approximately 25% of its current extent, confirming that both the Castle and its associated tree plantings have coexisted for well over a century. The historical interrelationship between the Castle, its grounds, and its mature tree plantings is a defining characteristic of the heritage place - and a characteristic that the Application's assessment does not adequately address.

### 4.2 Heritage Listings

Fernleigh Castle holds the following heritage designations:

- Fernleigh Castle was designated on the Register of the National Estate on 21 March 1978 (**Place ID 2495**). While the Register of the National Estate is no longer a statutory list, listing on the Register is an authoritative recognition of heritage significance at the national level and remains a relevant consideration in planning assessments.
- Fernleigh Castle is listed as Heritage Item I309 under the Heritage Schedule of the *Woollahra Local Environmental Plan 2014*. This listing triggers the heritage provisions of Clause 5.10 of *Woollahra Local Environmental Plan 2014*, which require the consent authority to consider the effect of proposed development on the heritage significance of any heritage item within the vicinity of the development site.

The NSW Heritage Database entry for Fernleigh Castle describes it as follows:

*"One of the very few large Victorian mansions still intact in Sydney. A product of the 1890's boom, the structure is a highly decorated example of the stonemason's craft using pink to brown fine dressed sandstone, still in very good condition. The interiors of the main rooms are very decorative contained elaborate plaster ornamentation to walls, piers and archways. Much original cedar joinery remaining and fine crafts example in the main stair".*



The Heritage Assessment also identifies a second heritage item in the vicinity - the Cedar Fig (I310), a *Ficus superba* located within the broader Fernleigh Castle estate area. This tree is separately listed under the *Woollahra Local Environmental Plan 2014* and has its own inventory sheet, statement of significance, and documented history of heritage management. The existence of two separately listed heritage items associated with the Fernleigh Castle estate - the Castle building (I309) and the Cedar Fig (I310) - reflects the recognised heritage significance of both the built and natural elements of this place. The Heritage Assessment acknowledges both items in its introduction but does not carry the significance of Item I310 through into its impact assessment. The cumulative presence of two heritage items in the immediate vicinity of the Application site elevates the heritage sensitivity of the locality and warrants a commensurately rigorous standard of heritage impact assessment.

### 4.3 Significance Assessment

The heritage significance of Fernleigh Castle may be summarised against the standard NSW Heritage Assessment Criteria as follows:

Fernleigh Castle is a product of Sydney's 1890s boom and demonstrates the scale of residential construction undertaken in the eastern suburbs during that period. It has historical associations with the development of Rose Bay as a prestigious residential suburb.

- The Castle was built for Frank Bennett in 1892 and has been associated with prominent Sydney families throughout its history. The Heritage Assessment records associations with Dame Nellie Melba (c.1920), the Watt family (1920-1950), and subsequent institutional uses including a private hotel (1954-66) and the Commercial Banking Company's staff training college (from 1966). These associations across different eras of Sydney's social history contribute to the historical and social significance of the place.
- The Castle is an exceptional example of the stonemason's craft, featuring fine dressed sandstone, elaborate plaster ornamentation, carved mahogany, stained glass, and a distinctive Norman-style architectural expression that is unique in the Sydney context. The NSW Heritage Database specifically notes the quality of its construction and decoration.
- As one of the very few large Victorian mansions remaining intact in Sydney, Fernleigh Castle has social significance as a rare surviving example of a building type that once characterised the eastern suburbs.
- The construction techniques, materials, and decorative finishes of the Castle provide research value regarding late nineteenth-century building practices in Sydney.
- The NSW Heritage Database explicitly identifies the rarity of Fernleigh Castle: it is "one of the very few large Victorian mansions still intact in Sydney." This rarity amplifies the significance of the item and increases the importance of protecting its setting and curtilage from inappropriate development.
- Fernleigh Castle is a representative example of the large Victorian mansion typology from the 1890s boom period, distinguished by its exceptional level of intactness.

The heritage significance of Fernleigh Castle is at the highest level applicable to a locally listed heritage item. Its former listing on the Register of the National Estate confirms that its significance extends beyond the local level. This demands a correspondingly high standard of heritage assessment and impact mitigation from any proposed development in its vicinity.

### 4.4 The Application's Characterisation of the Heritage Item

The EIS (**Section 6.11.1**) describes Fernleigh Castle simply as a heritage item "located 77-96m away" and adopts the Heritage Assessment's conclusion that the proposed development has "no impact on the physical fabric" of the Castle. The EIS does not independently assess the significance of the heritage item or engage with the depth of its heritage values. It does not reference the Register of the National Estate listing, nor does it acknowledge the rarity finding in the NSW Heritage Database.



This characterisation understates the significance of the heritage item at the threshold of the assessment. The consequence is that every downstream analysis in the EIS that depends on the heritage characterisation - including the assessment of visual impact, setting, amenity, and compliance with Clause 5.10 - is built on an incomplete foundation. A heritage item described by the NSW Heritage Database as "one of the very few large Victorian mansions still intact in Sydney" warrants a substantially more rigorous assessment than the Application provides.

The Heritage Assessment accompanying the Application (**Appendix L**) compounds this concern. The Statement of Significance it relies upon - "A large and intact Victorian mansion built as a product of the 1890's boom" - is the abbreviated statutory listing entry. The assessment does not undertake its own significance assessment against the standard NSW Heritage Assessment Criteria. It does not assess significance against criteria of historical, associational, aesthetic, social, research, rarity, or representativeness values. The absence of a criteria-based significance assessment means that the heritage impact analysis that follows has no evidential benchmark against which to measure the nature and degree of impact.

#### **4.5 Planning Merit – The Significance Threshold**

The level of heritage significance of an item in the vicinity of a proposed development is a material consideration in the assessment of planning merit. The NSW Heritage Council's *Guidelines for Assessing Heritage Impact 2023* establish that the standard of heritage response required is proportionate to the significance of the item. Heritage items of higher significance require a higher standard of impact assessment, a greater degree of impact avoidance, and more robust mitigation measures.

Fernleigh Castle, as a heritage item of exceptional local significance with former national-level recognition, sits at the upper end of this significance spectrum. The obligation on the Application is to demonstrate - through a rigorous, criteria-based assessment - that the proposed development will not result in unacceptable impacts on the heritage significance, setting, curtilage, and views of the item. The adequacy of that demonstration is examined in **Sections 5, 6, 8, and 14** of this submission.

This obligation is reinforced by the objects of the *Environmental Planning and Assessment Act 1979*, which include "the sustainable management of built and cultural heritage" (Object (f)) and "the conservation of the cultural heritage of the State" (**Section 1.3**). It is further reinforced by the Woollahra Local Housing Strategy Objective 3 – "Ensure housing conserves heritage, maintains local character" – which is cited in the EIS itself as part of the strategic framework supporting the Application. The Application cannot rely on a strategic framework that includes heritage conservation as an objective while simultaneously providing a heritage assessment that does not meet the standard that objective requires.



## 5. THE HERITAGE CURTILAGE AND SETTING OF FERNLEIGH CASTLE

### 5.1 The Concept of Heritage Curtilage

The NSW Heritage Office publication *Heritage Curtilages* (1996) defines curtilage as "the area of land surrounding an item that is required to retain its heritage significance." The publication identifies several types of curtilages, including lot boundary curtilage, reduced curtilage, expanded curtilage, and composite curtilage. It makes clear that the curtilage of a heritage item is not limited to the footprint of the building itself but extends to the surrounding land and features that contribute to the heritage significance of the place.

The Heritage Council of NSW *Guidelines for Assessing Heritage Impact* further provide that the impact of development on a heritage item is not limited to physical impacts on the item itself but includes impacts on its setting - defined as the area around a heritage item that contributes to its heritage significance. The setting includes visual relationships, spatial relationships, and the character of the surrounding area.

Clause 5.10(1)(b) of the *Woollahra Local Environmental Plan 2014* reinforces this principle at the statutory level, with its objective "to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views." The inclusion of "settings and views" as a defined component of heritage significance means that the curtilage and setting of Fernleigh Castle are not merely desirable considerations - they are mandatory matters for the consent authority under the *Woollahra Local Environmental Plan 2014*.

The *Guidelines for Preparing a Statement of Heritage Impact 2023* reinforce this position. The Guidelines require the SOHI to "describe impacts to the identified curtilage, including on layout, use(s), built and landscape elements such as open space, plantings (trees, shrubs, ground covers)" and to "describe any previous subdivision and consider how it may result in future development or affect the identified curtilage" (**Section 4.1**, "Curtilage"). The HIA makes no reference to the concept of curtilage beyond a single sentence acknowledging that the development sits within the viewshed of the heritage item. It does not identify, define, or map the curtilage of Fernleigh Castle, despite the DPE Guidelines expressly requiring this analysis for works in the vicinity of a heritage item.

### 5.2 The Curtilage of Fernleigh Castle

The curtilage of Fernleigh Castle extends beyond the building envelope to include the full extent of the property at 5 Fernleigh Gardens. The following elements are integral to the curtilage and setting of the heritage item:

The garden setting of Fernleigh Castle is characteristic of the large Victorian mansion typology. The generous grounds surrounding the Castle - including landscaped gardens, lawn areas, and mature plantings - contribute to the understanding and appreciation of the building as a substantial residential estate from the 1890s boom period. The spatial relationship between the building and its grounds is an essential component of the heritage significance of the place.

The mature trees within the grounds of Fernleigh Castle - including, critically, the heritage-significant Moreton Bay Fig - are contributory elements of the heritage curtilage. These trees predate or are contemporary with the Castle itself and contribute to the character and amenity of the heritage place. Their removal or decline would diminish the heritage significance of the curtilage.

The pool and pool house, while later additions to the property, form part of the evolved curtilage and contribute to the ongoing residential use and enjoyment of the heritage place. The pool area is the principal private open space of the property. Impacts on the amenity of this space - particularly visual privacy and overlooking - directly affect the ability of the owners to use and enjoy the heritage property in a manner consistent with its residential function.



The garage and associated outbuildings are located at the southern portion of the property, in closest proximity to the Application site (19.66 metres). These structures form part of the curtilage and contribute to the understanding of the property as a complete residential estate.

The visual relationship between Fernleigh Castle and its surrounding area - including the views from the Castle grounds towards the harbour and the broader Rose Bay landscape - is an element of the heritage setting. Development that intrudes into these visual relationships, or that dominates the visual context of the Castle when viewed from within its grounds, has the potential to diminish the heritage significance of the setting.

The topographic relationship between the Application site and Fernleigh Castle is a further element of the setting that requires assessment. The EIS records site levels varying from RL 47m AHD at the north-western corner to RL 37m AHD at the southern corner - a fall of approximately 10 metres across the site. Fernleigh Castle and its grounds sit at a lower elevation to the north and north-west. The proposed building, at up to 28.6 metres on this elevated site, will present a substantially greater apparent height when experienced from within the Castle grounds than its absolute height alone would suggest. The Heritage Assessment does not address this topographic relationship in its assessment of impacts on setting.

### 5.3 The Inadequacy of the Curtilage Assessment

The Application's heritage analysis treats the heritage item as though its significance is confined to the Castle building itself. The distances cited in the Urban Design Report - 77-96 metres from the proposed development to the heritage item - refer to the distance to the Castle building, not to the boundary of the heritage curtilage.

While the Application emphasises the distance to the Castle building itself (77-96 metres), this analysis is misleading. Heritage significance is not confined to the building envelope. The curtilage of Fernleigh Castle - including the pool, pool house, garage, gardens, and mature trees - is an integral part of the heritage item and its setting. The relevant assessment is the impact of the proposed development on the heritage item, including its curtilage, not merely the distance to the principal building.

The distance from the proposed development to the garage of Fernleigh Castle is only 19.66 metres. The distance to the pool house is 39.82 metres. These are the elements of the property that are most immediately affected by the proposed development, and these distances - not the 77-96 metres to the Castle building - are the relevant measures of the development's proximity to and impact on the heritage item and its setting.

The Heritage Assessment (**Appendix L**) acknowledges in its **Section 5.1** that the site "sits within the viewshed of the heritage item" and that "view lines include trees of significant height to the rear boundary that conceal most of the development." The use of the qualifier "most" is significant - it is an implicit acknowledgment that part of the proposed development will be visible from the heritage curtilage despite the tree screening. The Heritage Assessment does not identify which part of the development will be visible, from which vantage points within the curtilage, or what the heritage impact of that visibility will be. This is a gap in the assessment that the Department should require to be addressed.

The Urban Design Report's claim that "the larger setback in the northwest enlarges the curtilage to the heritage item on Fernleigh Avenue" further demonstrates a misunderstanding of the curtilage concept. A setback from a neighbouring development does not enlarge the curtilage of a heritage item. The curtilage is a defined area associated with the heritage item itself. The Department should not accept this characterisation.



## **6. MORETON BAY FIG TREE – HERITAGE AND ENVIRONMENTAL SIGNIFICANCE**

### **6.1 Significance of the Tree**

The Moreton Bay Fig tree located within the grounds of Fernleigh Castle is a significant landscape element that contributes to the heritage curtilage and setting of the heritage item. Moreton Bay Figs (*Ficus macrophylla*) are iconic elements of Sydney's heritage landscape. They are large, long-lived trees that can achieve canopy spreads of 30 metres or more and are among the most visually prominent and culturally significant tree species in the Sydney region.

The tree at Fernleigh Castle is mature and of substantial size. Its location within the grounds of a heritage-listed Victorian mansion amplifies its heritage significance - the combination of the historic building and the mature fig tree is characteristic of the large estate gardens of the eastern suburbs.

### **6.2 The Reliance on the Tree as a Visual Buffer**

The Urban Design Report identifies "significant existing trees" located between the proposed development and Fernleigh Castle and states that "these trees and the topology of the site create a visual barrier between Fernleigh Castle and the Proposal." The Application relies on this claimed visual barrier as a key element of its heritage response.

This reliance is fundamentally flawed for the following reasons:

- The construction of a 70-apartment, six-to-eight storey building within proximity to the tree's root system creates a risk of damage to the tree through excavation, changes to soil moisture and drainage patterns, vibration from construction activity, and changes to the microclimate (including altered wind and light conditions). If the tree is damaged or declines because of the development, the visual buffer upon which the Application relies will be lost - and with it, a key element of the Application's heritage response.
- While Moreton Bay Figs are generally evergreen, their canopy density varies seasonally and with age. A heritage response that depends on the density of a tree canopy at any given time is not a robust or reliable heritage response.
- The proposed development treats the tree as a convenient visual barrier. But the tree is not merely a screen - it is a heritage-significant element. The Application's analysis should not treat the tree instrumentally (as a screen for the development) but should instead assess the impact of the development on the tree and its contribution to the heritage curtilage.
- The SEARs require an Arboricultural Impact Assessment where significant trees are affected. The assessment must address the tree protection zone (TPZ) of the Moreton Bay Fig, the impact of any excavation, construction activity, or changes to drainage within the TPZ, and the long-term viability of the tree in the changed environmental conditions created by the development. If the arboricultural assessment does not adequately address these matters, the heritage response built upon the tree's visual screening role collapses.
- The proposed building reaches 28.6 metres in height. The Heritage Assessment states the tree screening extends to "approximately 17 metres." This leaves an 11.6-metre differential - the upper four levels of the proposed building - that will be visible above the tree canopy from the Fernleigh Castle grounds regardless of the tree's health or canopy density. The Heritage Assessment does not address this differential or assess the heritage impact of the building mass that will be visible above the tree line.

### **6.3 Tree Protection Zone Considerations**

Moreton Bay Fig trees are renowned for their extensive and aggressive root systems. The structural root zone (SRZ) and tree protection zone (TPZ) of a mature Moreton Bay Fig can extend well beyond the



canopy drip line. Australian Standard AS 4970-2009 *Protection of Trees on Development Sites* provides the methodology for calculating TPZs, based on trunk diameter at breast height (DBH).

For a mature Moreton Bay Fig with a significant trunk diameter, the TPZ radius can extend 15 metres or more from the trunk. The proximity of the proposed development - with its associated excavation for basement car parking, service trenching, and changes to the water table - to the TPZ of the Moreton Bay Fig is a matter that requires detailed assessment and, likely, design modification to ensure the tree's protection.

The EIS (**Section 6.4.1**) confirms that all 33 trees within the Application site are proposed to be removed, and the Arboricultural Impact Assessment (**Appendix J**) assesses only the trees within and immediately adjacent to the site. It does not assess the impact of the proposed development on the Moreton Bay Fig within the Fernleigh Castle curtilage across the boundary. This creates a circular dependency in the Application's heritage response:

- The Heritage Assessment relies on tree screening - including the Moreton Bay Fig - to conclude there is no heritage impact.
- The Arboricultural Impact Assessment does not assess whether the development will damage the very tree the Heritage Assessment relies upon; and
- The removal of all 33 on-site trees will itself alter the microclimate and growing conditions for the Moreton Bay Fig, through changes to wind exposure, reflected heat from new hard surfaces, and altered drainage patterns.

This represents a gap in the evidentiary basis of the Application that is relevant to SEAR 14 (Trees and Landscaping) and SEAR 22 (Environmental Heritage). It is respectfully requested that the Department require the arboricultural assessment to be supplemented to address both the direct impacts of construction and the indirect impacts of the changed site conditions on the long-term viability of the Moreton Bay Fig.

## 7. PRIVACY AND OVERLOOKING - SIGHT LINE ANALYSIS

### 7.1 Overview

The SEARs require the Application to assess "visual privacy" impacts on surrounding properties and to demonstrate "a high level of environmental amenity for any surrounding residential or other sensitive land uses." The Apartment Design Guide (ADG) Section 3F establishes the benchmarks for visual privacy, including minimum separation distances and design measures to prevent overlooking.

The Application includes an overlooking assessment and sight line analysis. The Application claims that privacy concerns from the north and west corners of the proposed development have been addressed through increased building setbacks to Fernleigh Avenue, increased setbacks to upper levels, solid balustrades at lower levels, and planters incorporated along upper-level balconies to reduce sightlines and minimise overlooking potential.

### 7.2 The Sight Lines are Incorrect

The sight line analysis submitted with the Application does not accurately represent the viewing angles from the proposed building to the principal private open space of Fernleigh Castle - specifically, the pool area.

The Application's sight line diagrams indicate viewing angles from the proposed building towards the pool house and garage of Fernleigh Castle. However, the pool itself - which is the most sensitive element of the principal private open space - does not appear to have been correctly identified and assessed in the sight line analysis.

The pool area is the space where the residents of Fernleigh Castle undertake private outdoor recreation. It is the area most sensitive to overlooking, as it is used for swimming and associated activities where a reasonable expectation of privacy exists. The failure to correctly identify the pool as the primary point of assessment in the sight line analysis represents a material error in the Application.

The EIS (**Section 6.2.2**) justifies the privacy response by reference to separation distances and a "curtilage of greenery" between the proposed building and neighbouring properties. This justification suffers from the same deficiency as the heritage response discussed in **Section 6** - it relies on landscape screening as a privacy measure without assessing whether that screening will be maintained over the life of the development, and without addressing the 11.6-metre building height above the tree line where no screening exists.

### 7.3 Topographic Considerations

The Urban Design Report acknowledges that the Site is located at approximately 40 metres elevation, on top of a ridgeline, with the natural topography falling to the east, west, and south. Fernleigh Castle and its grounds are located to the north and north-west of the Application site, at a lower elevation.

This topographic relationship is critical to the privacy assessment. The proposed development, at up to 28.6 metres in height on an elevated ridgeline site, will overlook the lower-lying grounds of Fernleigh Castle. The elevation differential means that the actual overlooking impact is greater than would be the case on flat terrain. Sight lines from the upper levels of the proposed building will look downward into the pool area and gardens of Fernleigh Castle at an oblique angle that the proposed mitigation measures - louvres, planters, and balustrades - are unlikely to fully address.

The EIS records site levels of RL 47 mAHD at the north-western corner. With a building height of 28.6 metres from this point, the upper levels of the proposed building will be at approximately RL 75 mAHD - well above the pool area of Fernleigh Castle, which sits at a lower ground level to the north. The sight line analysis should demonstrate the actual viewing angles from each level of the proposed building to the pool area, accounting for this elevation differential. It does not do so.



## 7.4 Inadequacy of Proposed Mitigation Measures

The Application proposes the following measures to mitigate overlooking:

- Privacy louvres and planters integrated into window design.
- Windows with louvres and planters.
- Deep planters that set the occupant back from the edge.

These measures are directed at horizontal or near-horizontal sight lines. They do not adequately address the downward oblique sight lines that arise from the combination of the proposed building height (28.6 metres) and the topographic fall from the site to the Fernleigh Castle grounds. An occupant standing at the edge of a balcony or near a window at Levels 4 through 7 of the proposed building will have a clear downward view over the louvres and planters into the pool area and gardens below.

Louvres and planters are not permanent fixtures in the same way that solid walls or opaque screens are. Planters require ongoing maintenance and can be removed or reconfigured by future occupants. Louvres can be adjusted. Reliance on these measures as the primary means of protecting the privacy of one of Sydney's most significant heritage properties is inadequate.

The Statutory Compliance Table (**Appendix B**) addresses DCP privacy provisions only in relation to the blank western wall at 8 Conway Street. It does not address the privacy relationship with Fernleigh Castle to the north-west. This omission means the Application has not demonstrated compliance with the DCP privacy provisions as they relate to the most sensitive neighbouring receptor.

## 7.5 The ADG Privacy Requirements

The ADG requires minimum separation distances based on building height:

- **Up to 4 storeys:** 12 metres between habitable rooms/balconies; 9 metres habitable to non-habitable.
- **5-8 storeys:** 18 metres between habitable rooms/balconies; 12 metres habitable to non-habitable.

These separation distances are measured between the proposed building and the neighbouring building. However, the ADG also establishes the principle that privacy is to be assessed with reference to the principal private open space of neighbouring properties - not merely to the building-to-building separation. The pool area of Fernleigh Castle, as the principal private open space, is the relevant receptor for the privacy assessment. The distance from the proposed building to the pool area - combined with the topographic fall and the height of the proposed building - results in a level of overlooking that is not adequately addressed by the proposed mitigation measures.

In summary, the privacy assessment in the Application contains three compounding deficiencies:

- The sight line analysis does not correctly identify the pool area as the primary receptor.
- The topographic relationship between the elevated site and the lower-lying Castle grounds is not reflected in the sight line diagrams; and
- The proposed mitigation measures (louvres, planters, balustrades) do not address the downward oblique viewing angles that result from the combination of building height and topographic fall.

It is respectfully requested that the sight line analysis be revised to accurately identify the pool area as the primary receptor, account for the topographic differential between the Application site and the Fernleigh Castle grounds and demonstrate the viewing angles from each level of the proposed building. This is consistent with the recommendation in **Section 17.2** of this submission.



## **8. AMENITY IMPACTS - SOLAR ACCESS, VIEWS, AND VISUAL IMPACT**

### **8.1 Solar Access**

The SEARs require a solar access analysis of the overshadowing impacts of the development on surrounding properties during winter solstice at hourly intervals between 9am and 3pm. The shadow diagrams must be assessed to determine whether the proposed development results in unreasonable overshadowing of the habitable rooms and principal private open space of Fernleigh Castle.

Given the location of the Application site to the south and south-east of Fernleigh Castle, and the proposed building height of up to 28.6 metres, there is potential for the development to cast shadows over the Fernleigh Castle grounds during the morning period (when the sun is in the east and shadows fall to the west and north-west). The extent of this overshadowing must be carefully assessed against the ADG benchmark of a minimum of 2 hours of direct sunlight to living rooms and private open spaces between 9am and 3pm at mid-winter.

Any reduction in solar access to the grounds, pool area, or habitable rooms of Fernleigh Castle because of the proposed development would represent an unacceptable amenity impact on a heritage property of great significance.

The EIS (**Section 6.2.1**) states that "overshadowing impacts to surrounding dwellings have been minimised to the extent possible within the built form controls which apply to the site." This framing is significant - it implicitly acknowledges that overshadowing impacts exist but characterises them as an unavoidable consequence of the permissible envelope. The question for the Department is whether the impacts on Fernleigh Castle have been adequately assessed and whether they are acceptable, not merely whether they are "minimised" within the maximum permissible envelope. As discussed in **Section 9.2.2**, the full utilisation of the bonus envelope is not an automatic entitlement where site-specific constraints exist.

### **8.2 Visual Impact**

The construction of a six-to-eight storey building at up to 28.6 metres in height on a ridgeline site immediately to the south and south-east of Fernleigh Castle will fundamentally alter the visual context of the heritage item. The Castle was built in 1892 in a landscape characterised by low-density residential development. Its visual prominence - the Norman-style tower rising above the surrounding gardens and streetscape - is an integral part of its heritage character.

The proposed development will introduce a building mass of substantially greater height and bulk than any existing development in the immediate vicinity of Fernleigh Castle. When viewed from within the Castle grounds, the proposed building will dominate the southern skyline, diminishing the visual prominence and landmark quality of the Castle tower.

The Urban Design Report states that "the larger setback in the northwest enlarges the curtilage to the heritage item on Fernleigh Avenue." This statement conflates the concepts of setback and curtilage. The heritage curtilage of Fernleigh Castle is a defined area associated with the heritage item itself. A setback from a neighbouring development does not "enlarge" the curtilage - it merely provides a greater physical distance between the development and the curtilage boundary. The characterisation of its setback as an enlargement of the curtilage is inaccurate and should be considered by the Department.

The Visual Impact Assessment (VIA) accompanying the Application assessed 18 viewpoints from the public domain. The EIS reports that the VIA found "severe" view impacts from streets directly surrounding the site but characterised these views as having only "minor to moderate value." The VIA also concluded that the development "is obscured from the viewpoint from Fernleigh Gardens at the frontage of the local heritage residence 'Fernleigh Castle'." This conclusion addresses only the public domain view from Fernleigh Gardens - the Castle's front entrance. It does not assess views from within



the Castle grounds, including from the rear garden, pool area, and southern curtilage - which are the area's most directly affected by the proposed development. An assessment of visual impact on a heritage item that considers only the public domain frontage view, and not the private domain views from within the heritage curtilage, is incomplete.

The DPE (2023) Guidelines (**Section 4.1**, "Setting, views and vistas") require the SOHI to "describe any impacts on significant views and vistas, including views to, from and within the heritage item" and to "include photographs or photomontages that indicate the potential visual impacts." The applicant's HIA does not include any photomontages showing the proposed development as viewed from within the Fernleigh Castle grounds. This is a significant omission given the DPE Guidelines' express requirement. A photomontage from the Castle's rear garden, pool area, or eastern elevation would demonstrate the extent to which the upper storeys of the 28.6-metre building - which exceed the 17-metre tree screening by over 11 metres - will be visible above the tree canopy. The absence of this visual evidence means the Department does not have the information required by the DPE Guidelines to make an informed assessment of the visual impact on the heritage item.

### 8.3 View Loss

The residents of Fernleigh Castle currently enjoy views to the south and south-east from the Castle and its grounds. The proposed development will obstruct or significantly diminish these views. While view sharing principles under the planning framework recognise that views cannot be permanently preserved in all cases, the assessment of view loss must consider the heritage significance of the viewing location.

Views from a heritage item of exceptional significance - particularly views that have been enjoyed since the building's construction in 1892 - warrant a higher degree of protection than views from a non-heritage property. The loss of views from Fernleigh Castle is not merely an amenity issue for the current owner but a diminution of the heritage setting and the appreciation of the heritage place.

The VIA's conclusion that view impacts are "acceptable when assessed against the permissible building envelope proposed for the site" adopts a benchmark of the maximum permissible envelope rather than assessing the actual impact on the heritage setting. Compliance with a building envelope does not, of itself, establish that the amenity and heritage impacts of a development are acceptable. The assessment of view loss from a heritage item requires a qualitative assessment of what is lost and its contribution to the heritage significance of the place - not merely a comparison with the permissible envelope.

### 8.4 Views from the Water - Backdrop to Fernleigh Castle

Fernleigh Castle occupies an elevated ridgeline position that affords it a commanding visual presence from Sydney Harbour and Rose Bay itself, with its distinctive Norman-style tower rising above its garden setting as a landmark visible from the water. The Application's Visual Impact Assessment assessed 18 viewpoints exclusively from street level and does not assess the impact of the proposed development on this water-facing aspect. The proposed development, at 28.6 metres immediately behind and beside the Castle on the same ridgeline, will introduce a dominant building mass into the backdrop of the Castle when viewed from the harbour and Rose Bay foreshore, diminishing the landmark quality and visual dominance that have characterised the heritage item in the Rose Bay landscape since 1892. Photomontages from water-based and foreshore vantage points would demonstrate this impact and are expressly required by the DPE (2023) Guidelines; their absence is a further material omission from the Application's heritage and visual impact assessment.

### 8.5 Geotechnical Impacts

A preliminary geotechnical assessment has been prepared by Fortify Geotech (Ref: JM/C17267\_Rev1, February 2026) on behalf of neighbouring residents, examining the potential off-site impacts of the proposed three-level, ~11m-deep basement excavation.



The report identifies significant concerns arising from the site's subsurface conditions - Holocene-age coastal and estuarine deposits overlying weathered Hawkesbury Sandstone - and the shallow groundwater table encountered at approximately 7m depth (~RL39). The assessment finds that construction dewatering would need to lower the groundwater table by up to 5m on site, and estimates that this drawdown would extend between 15m and 45m beyond the site boundaries, potentially impacting between 20 and 25 neighbouring properties - far exceeding the 0.3m drawdown limit recommended by GHD in its report commissioned by Woollahra Municipal Council (Report 12588469) and now incorporated into the Woollahra DCP 2015 via Amendments 18 and 30.

Fortify Geotech notes that the proponent has not provided any groundwater monitoring data, numerical dewatering modelling, or a Dewatering Management Plan as required by DPIE's Minimum Requirements for Building Site Groundwater Investigations and Reporting 2022 - a deficiency acknowledged even by the Application's own geotechnical consultant, EI Australia.

The proposed excavation volume of approximately 15,000m<sup>3</sup> also vastly exceeds the Council's recommended limit of 1,000m<sup>3</sup> per 1,000m<sup>2</sup> of site area. Fortify Geotech concludes that the development, in its current form, does not appear able to comply with the 0.3m groundwater drawdown threshold, and that there are limited practical mitigation measures available given the physical constraints of the site. The Application should not be approved until compliant groundwater investigations, numerical modelling, and a detailed Dewatering Management Plan have been provided and independently reviewed.



## **9. STATUTORY PLANNING FRAMEWORK – NON-COMPLIANCE ASSESSMENT**

### **9.1 Woollahra Local Environmental Plan 2014**

#### **9.1.1 Heritage Provisions – Clause 5.10**

Clause 5.10 of the *Woollahra Local Environmental Plan 2014* establishes the heritage conservation provisions for the LGA. The objectives of Clause 5.10 include:

- (a) *to conserve the environmental heritage of Woollahra,*
- (b) *(b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,*
- (c) *(c) to conserve archaeological sites,*
- (d) *(d) to conserve Aboriginal objects and Aboriginal places of heritage significance.*

The reference to "settings and views" in objective (b) is directly relevant to this submission. The *Woollahra Local Environmental Plan 2014* explicitly recognises that the heritage significance of a heritage item includes its setting and views - not merely the building fabric. The proposed development impacts the setting and views of Heritage Item I309 (Fernleigh Castle) and is therefore subject to assessment under Clause 5.10.

Clause 5.10(4) provides that the consent authority must, before granting consent to development in the vicinity of a heritage item, consider the effect of the proposed development on the heritage significance of the item. Clause 5.10(5) requires the consent authority to consider a heritage assessment, including the views of the Heritage Council of NSW (where required).

The Statement of Heritage Impact, as discussed in **Section 14** of this submission, does not adequately assess the indirect impacts of the proposed development on the setting and views of Fernleigh Castle. This represents a shortfall to comply with the requirements of Clause 5.10.

The Statutory Compliance Table (**Appendix B**) marks the Application as compliant with Clause 5.10 by cross-referencing the Heritage Assessment at **Appendix L**. However, as demonstrated in **Sections 5, 6, and 14** of this submission, the Heritage Assessment contains significant methodological deficiencies - including the absence of a curtilage assessment, the use of a single repeated rationale ("screened by landscaping to a height of approximately 17 metres") across all impact categories, and the failure to assess the 11.6-metre building height above the tree screening. A claim of compliance with Clause 5.10 that rests on a deficient Heritage Assessment cannot be sustained.

#### **9.1.2 Zoning Objectives – R3 Medium Density Residential**

The site is zoned R3 Medium Density Residential under the *Woollahra Local Environmental Plan 2014*. The objectives of the R3 zone include:

*To ensure that development is of a height and scale that achieves the desired future character of the neighbourhood.*

A further objective of the R3 zone is:

*To ensure development conserves and enhances tree canopy cover.*

The removal of all 33 trees within the Application site is inconsistent with this objective. While the Application proposes replacement planting that would increase canopy cover from 12% to 34% over time, this outcome is contingent on the successful establishment and maturation of new plantings - a

process that will take decades. In the interim, the development will result in a substantial net loss of existing canopy, contrary to the zone objective.

The proposed development, at 28.6 metres and 2.86:1 FSR, represents a scale of development that is achieved only through the application of *State Environmental Planning Policy (Housing) 2021* bonus provisions. The base LEP controls for the site do not contemplate development of this height and intensity. While *State Environmental Planning Policy (Housing) 2021* overrides the LEP height and FSR controls, the objectives of the underlying zone remain a relevant consideration in the assessment of the development's compatibility with its context.

The "desired future character of the neighbourhood" in the vicinity of Fernleigh Castle is informed by the heritage significance of the Castle and its setting. A development of 28.6 metres and 70 apartments on a site immediately adjoining one of the few large intact Victorian mansions in Sydney does not achieve the desired future character of this neighbourhood.

## **9.2 State Environmental Planning Policy (Housing) 2021**

### **9.2.1 The State Environmental Planning Policy (Housing) 2021 and Heritage**

*State Environmental Planning Policy (Housing) 2021* LMR provisions establish height and FSR controls for qualifying sites. However, the *State Environmental Planning Policy (Housing) 2021* does not extinguish the heritage provisions of the LEP. Clause 5.10 of the *Woollahra Local Environmental Plan 2014* continues to apply to development in the vicinity of heritage items, regardless of the pathway under which the development is assessed.

Furthermore, *State Environmental Planning Policy (Housing) 2021* itself recognises that development must be compatible with its context. The design quality principles set out in *State Environmental Planning Policy (Housing) 2021* and the ADG require development to respond to its site context, including heritage items in the vicinity.

Section 20 of the *State Environmental Planning Policy (Housing) 2021* establishes a "character test" requiring that development be compatible with the character of the local area. The Statutory Compliance Table acknowledges this provision but does not demonstrate how the maximum bonus envelope - delivering a building 2.7 times the base LEP height and 3.8 times the base LEP FSR - is compatible with the character of a precinct containing a heritage item of this significance. Compliance with a numerical standard does not, of itself, satisfy a character test. The character test requires a qualitative assessment of the relationship between the proposed built form and its context, which is absent from the Application.

### **9.2.2 The Affordable Housing Bonus - A Privilege, Not an Entitlement**

The 30% height and FSR bonus available under the Infill Affordable Housing provisions of *State Environmental Planning Policy (Housing) 2021* is a mechanism to incentivise the delivery of affordable housing. It is not an automatic entitlement to develop to the maximum permissible envelope on every site regardless of constraints.

The bonus provisions must be read in the context of the broader planning framework, including heritage provisions, amenity requirements, and the objects of the *EP&A Act*. Where site-specific constraints - such as the proximity to a heritage item of exceptional significance - mean that the full utilisation of the bonus would result in unacceptable impacts, the appropriate response is to reduce the scale of the development, not to accept the impacts as a necessary consequence of the bonus.

The Application does not demonstrate that the full utilisation of the 30% bonus is appropriate on this site given the heritage constraints. A development at the base LMR controls (22.0 metres, FSR 2.2:1) or at a reduced bonus level may achieve a more appropriate balance between housing delivery and heritage protection.



The following table illustrates the layering of controls and the scale of departure from the base LEP standards:

| <b>WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 2014 DEVELOPMENT STANDARDS</b> |                 |   |                          |                 |
|--|-----------------|---|--------------------------|-----------------|
| <b>Control</b>   | <b>Base LEP</b> | <b>LMR (State Environmental Planning Policy (Housing) 2021)</b> | <b>LMR + Bonus (30%)</b> | <b>Proposed</b> |
| Height   | 10.5m           | 22.0m   | 28.6m                    | 28.6m           |
| FSR  | 0.75:1          | 2.2:1   | 2.86:1                   | 2.86:1          |
| Permissible GFA  | ~2,329 sqm      | 6,831 sqm   | 8,880 sqm                | 8,880 sqm       |

The proposed development represents a height 2.7 times the base LEP control and an FSR 3.8 times the base LEP control. *State Environmental Planning Policy (Housing) 2021* authorises this scale of development on qualifying sites, the scale of departure from the base controls underscores the importance of a rigorous assessment of site-specific constraints - particularly heritage - in determining whether the full bonus envelope is appropriate on this site.

### 9.3 Woollahra Development Control Plan 2015

The Woollahra DCP 2015 includes provisions relating to heritage, setbacks, privacy, overshadowing, and built form that are relevant to the assessment. While the DCP is subordinate to the LEP and the State Environmental Planning Policy (Housing) 2021, it provides guidance on the expectations for development in the LGA and is a relevant consideration in the assessment of the Application's merit.

The DCP provisions relating to heritage conservation areas and heritage items in the vicinity of development require an assessment of the impact of the development on the heritage significance, setting, and curtilage of the item. The Application's failure to undertake a curtilage assessment, as discussed in **Section 5** of this submission, is inconsistent with the DCP provisions.

The Statutory Compliance Table (**Appendix B**) dismisses the DCP heritage provisions as "NA" on the basis that DCPs do not apply to SSD under Section 2.10 of the *Planning Systems SEPP*. While this is technically correct, the Statutory Compliance Table itself acknowledges elsewhere that the DCP has been "considered" notwithstanding its non-application. The selective treatment - considering the DCP where it supports the Application and dismissing it where it does not - is inconsistent. If the DCP is to be considered at all, its heritage provisions should be given the same weight as its other provisions. The DCP heritage provisions, if properly considered, require a curtilage assessment and an assessment of impacts on setting and views - neither of which the Application provides.



## 10. STRATEGIC PLANNING CONTEXT

### 10.1 The Government's Housing Policy – A Balanced Approach

The NSW Government's housing policy, as expressed through the *State Environmental Planning Policy (Housing) 2021* LMR provisions, seeks to increase the supply of well-located housing, particularly in areas near centres, public transport, and services. This submission does not object to the principle of increased housing supply in Rose Bay. The Rose Bay precinct is an appropriate location for medium-density development.

However, the Government's housing policy does not contemplate the delivery of housing at the expense of heritage conservation. The objects of the *Environmental Planning and Assessment Act 1979*, discussed in **Section 12**, include both "the promotion and co-ordination of the orderly and economic use and development of land" and "the conservation of the cultural heritage of the State." These objects are to be balanced - not prioritised one over the other.

The Government has consistently stated that its housing reforms are intended to deliver "well-located" and "well-designed" housing. The Premier and the Minister for Planning have emphasised the importance of design quality and contextual responsiveness in new development. A development that fails to adequately respond to the heritage context of Fernleigh Castle is not "well-designed" within the meaning of the Government's policy.

### 10.2 The Rose Bay Place Plan 2023-2028

The Application relies on the *Rose Bay Place Plan 2023-2028* as strategic support for the proposed development. The Place Plan identifies population decline, rapid ageing, and shrinking household sizes as key demographic challenges and prioritises walkability, active transport, and improved pedestrian connections.

However, the Place Plan also prioritises the conservation of heritage and the maintenance of the character of the Rose Bay area. The Plan's vision for an "intimate, connected and thriving place" does not contemplate the wholesale transformation of the area's built form through developments of 28.6 metres and 70 apartments on sites immediately adjoining heritage items of exceptional significance.

### 10.3 The Application's Own Strategic Framework

The EIS (**Section 7** and **Table 5**) claims consistency with a series of strategic documents. Several of these documents contain heritage and character objectives that the Application has not demonstrated it satisfies. The following are drawn directly from the EIS's own strategic framework table:

Eastern City District Plan - Planning Priority E6. The EIS claims consistency with Priority E6: "Creating and renewing great places and local centres and respecting the District's heritage." The Application has not demonstrated how the proposed development "respects the District's heritage" in circumstances where the Heritage Assessment contains the methodological deficiencies identified in **Sections 5, 6, and 14** of this submission.

The EIS claims consistency with Priority 4: "Sustaining diverse housing choices in planned locations that enhance our lifestyles and fit in with our local character and scenic landscapes." The requirement to "fit in with our local character" is a qualitative test. The Application does not demonstrate how a development of 28.6 metres and 2.86:1 FSR on a site immediately adjoining Fernleigh Castle "fits in with" the local character of this location.

The EIS claims consistency with Priority 6: "Placemaking supports and maintains the local character of our neighbourhoods and villages whilst creating great places for people." The local character of the neighbourhood in the immediate vicinity of Fernleigh Castle is defined, in part, by the heritage item



and its setting. The Application's failure to adequately assess the heritage impacts undermines the claim of consistency with this priority.

The EIS claims consistency with Housing Objective 3: "Ensure housing conserves heritage, maintains local character and achieves design excellence." This is the most directly relevant strategic objective. The Local Housing Strategy also identifies that housing growth must "conserve heritage" and "sensitively respond to local character" - these are listed as requirements, not aspirational goals. For the reasons set out in Section 14 of this submission, the Heritage Impact Assessment accompanying the Application does not adequately demonstrate that heritage is conserved in the manner required by Objective 3. A claim of strategic consistency cannot be sustained where the underlying heritage assessment does not address the requirements of the DPE (2023) Guidelines

#### **10.4 Better Placed - Design Quality**

The SEARs require the Application to demonstrate "good design in accordance with the seven objectives for good design in Better Placed." The Better Placed objectives include:

**Objective 1 - Better fit.** Development should "respond and contribute to its context." The proposed development, at 28.6 metres immediately adjoining Fernleigh Castle, does not respond to the heritage context of the site.

**Objective 4 - Better for community.** Development should "respond to its community's needs, present and future." The Rose Bay community's heritage assets - of which Fernleigh Castle is among the most significant - are a community need that the development fails to adequately respond to.

**Objective 7 - Better look and feel.** Development should be "aesthetically responsive to its setting." The proposed development's scale and mass, when viewed from the Fernleigh Castle grounds and from Fernleigh Avenue, is not aesthetically responsive to the heritage setting.



## 11. CUMULATIVE TRAFFIC IMPACTS – PRECINCT-WIDE ASSESSMENT

### 11.1 The Problem

The Urban Design Report identifies six sites in the Rose Bay precinct that are either consolidated, recently developed, or earmarked for redevelopment under the *State Environmental Planning Policy (Housing) 2021* LMR provisions:

1. 23-31 Dover Road, Rose Bay - consolidated
2. 10-12 Ian Street, Rose Bay - consolidated
3. 13-21 Carlisle Street, Rose Bay - consolidated
4. 2-16 Spencer Street, Rose Bay - consolidated
5. 8 Conway Avenue, Rose Bay - recently developed
6. 4 Carlisle Street, Rose Bay - recently developed

The Application acknowledges that "as a consequence of this pattern of redevelopment, the built form and character will be rapidly transformed." Yet the Transport Impact Assessment submitted with the Application does not assess the cumulative traffic generation of these six developments - it assesses the Application in isolation.

### 11.2 The Requirement for Cumulative Assessment

The SEARs require a Transport Impact Assessment prepared "in accordance with the processes and methodology recommended in the Guide to Transport Impact Assessment (GITA) published by TfNSW." The GITA methodology requires the assessment of traffic impacts to consider known and likely future development in the surrounding area. The six sites identified by the Application are known developments - the Application has identified them in its own submission documents.

The SEARs require a Transport Impact Assessment prepared "in accordance with the processes and methodology recommended in the Guide to Transport Impact Assessment (GITA) published by TfNSW." The GITA methodology requires the assessment of traffic impacts to consider known and likely future development in the surrounding area. The Application's own Urban Design Report identifies six sites in the Rose Bay precinct that are either consolidated, recently developed, or earmarked for redevelopment under the Housing SEPP Low- and Mid-Rise provisions. These are known developments identified in the Application's own submission documents.

The Transport Impact Assessment (**Appendix O, Section 8.3**) adopts trip rates of 0.19 and 0.15 vehicle trips per dwelling in the morning and evening peaks respectively, based on a "high public transport accessibility" categorisation under the PTAL metric. This yields a net increase of +7 vehicles in the AM peak and +4 in the PM peak, and the assessment concludes that this "will not have any adverse impacts on the surrounding road network." However, this conclusion is reached by assessing the Application in isolation. If the same trip generation methodology were applied across even four of the six identified developments - each delivering in the order of 50 to 70 apartments - the cumulative peak hour traffic generation on the local road network would be materially higher. The Transport Impact Assessment does not undertake this cumulative calculation, despite the Application's own acknowledgment that "the built form and character will be rapidly transformed."

It is respectfully submitted that the Transport Impact Assessment should be supplemented to include a cumulative traffic assessment accounting for the traffic generation of the identified LMR developments in the Rose Bay precinct, in accordance with the GITA methodology required by the SEARs.

### 11.3 The Local Road Network

Conway Avenue, Carlisle Street, and Fernleigh Avenue are narrow residential streets. Conway Avenue is described in the Urban Design Report as "a long block broken only by one-way lanes that connect to



the adjacent street to the south of the site." These streets were designed and constructed to serve a fine-grain residential neighbourhood of detached and semi-detached houses - not six concurrent mid-rise apartment developments, each generating traffic from 50-70+ apartments.

The cumulative traffic generation from these six developments - including resident vehicle movements, delivery and servicing vehicles, ride-share and taxi movements, visitor parking, and construction traffic during the multi-year construction period - will place significant pressure on the local road network. The intersections of Conway Avenue, Carlisle Street, and Fernleigh Avenue with New South Head Road are critical pinch points that must be assessed under cumulative conditions.

The Transport Impact Assessment does not include any intersection modelling (such as SIDRA analysis) for the key intersections providing access to and from New South Head Road. In circumstances where six developments are transforming the precinct, an intersection capacity assessment under cumulative conditions is a standard requirement of the GITA methodology. Its absence is a further deficiency in the assessment.

#### **11.4 Construction Traffic**

The construction period for six concurrent mid-rise developments in a compact residential precinct will generate significant construction traffic, including heavy vehicle movements, concrete trucks, crane operations, and worker parking. The preliminary Construction Traffic Management Plan (CTMP) should address the cumulative construction traffic from all six sites, not merely the Application site.

#### **11.5 Pedestrian Safety**

The *Rose Bay Place Plan 2023-2028* identifies walkability and pedestrian safety as priorities for the precinct. Conway Avenue is a cul-de-sac with no separated pedestrian facilities. The cumulative increase in vehicle movements - particularly heavy construction vehicles during multi-year construction programs across six sites - raises pedestrian safety concerns that the Transport Impact Assessment does not address. This is relevant to the Place Plan's objectives and to the GITA methodology, which requires consideration of pedestrian and cyclist impacts.



## **12. OBJECTS OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979**

### **12.1 Relevant Objects**

**Section 1.3** of the *Environmental Planning and Assessment Act 1979* sets out the objects of the Act. The following objects are directly relevant to this submission:

- (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.*

The proper management and conservation of the State's heritage resources - including Fernleigh Castle - is an object of the Act. The Application does not adequately promote the conservation of this heritage resource.

- (b) *To facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment.*

Ecologically sustainable development requires the integration of heritage conservation with development objectives. The Application prioritises housing delivery without adequately integrating heritage conservation.

- (c) *To promote the orderly and economic use and development of land.*

The orderly development of land requires that development respond to site-specific constraints, including heritage constraints. The Application does not demonstrate an orderly response to the heritage constraint presented by Fernleigh Castle.

- (e) *To protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats.*

The Moreton Bay Fig tree contributes to urban biodiversity and habitat. Its protection is consistent with this object.

- (f) *To promote the sustainable management of built and cultural heritage, including Aboriginal cultural heritage.*

Object (f) of the *EP&A Act* requires the promotion of the "sustainable management of built and cultural heritage." Sustainable heritage management requires that development in the vicinity of heritage items be assessed in a manner that ensures the long-term conservation of heritage significance - not merely the absence of direct physical impact on building fabric. The DPE (2023) Guidelines reinforce this principle: they define "Setting" as "the area around an item, which may include the visual catchment" (Definitions, page 21) and require the SOHI to assess impacts on setting, views, curtilage, and the ability to appreciate the significance of the place. The applicant's approach - which equates "no physical contact with the heritage item" with "no heritage impact" - is inconsistent with the concept of sustainable heritage management as contemplated by both the Act and the DPE Guidelines.

This object explicitly identifies the sustainable management of built and cultural heritage as an object of the *EP&A Act*. The Application's heritage assessment and its potential impacts on the setting of Fernleigh Castle are inconsistent with this object.

The Statutory Compliance Table (**Appendix B**) addresses the objects of *The Act* individually but does not reconcile them. Object (d) - "the delivery and maintenance of affordable rental housing" - is relied



upon to support the Application. Object (f) - heritage conservation - is addressed by cross-referencing the Heritage Assessment. The objects of *The Act* require a balanced assessment. The Application treats them in isolation, relying on Object (d) to justify the proposal while providing an inadequate response to Object (f). The Department's assessment should consider whether the objects have been addressed in an integrated manner, as required by Object (b).



## **13. APARTMENT DESIGN GUIDE COMPLIANCE - NEIGHBOURING AMENITY**

### **13.1 Visual Privacy – ADG Section 3F**

As discussed in **Section 7**, the Application's sight line analysis does not correctly identify the principal private open space of Fernleigh Castle (the pool area) as the primary receptor for the privacy assessment. The ADG requires design solutions that "provide adequate privacy for residents of existing and new buildings." The proposed mitigation measures - louvres, planters, and solid balustrades – are not adequate to prevent overlooking from the upper levels of the proposed building into the pool area of Fernleigh Castle, particularly given the topographic fall from the site to the Castle grounds.

The ADG design guidance for visual privacy states that "direct overlooking of main living areas and private open spaces should be minimised through building layout and design." The proposed building layout places habitable rooms and balconies at Levels 4-7 on the north-western elevation - the elevation directly facing the Fernleigh Castle curtilage. The layout does not minimise direct overlooking; the proposed mitigation measures are applied after the layout has been fixed, rather than the layout itself being designed to avoid the overlooking in the first instance.

### **13.2 Building Separation – ADG Section 3F**

The ADG building separation requirements are:

- Up to 4 storeys: 12 metres habitable to habitable; 9 metres habitable to non-habitable.
- 5-8 storeys: 18 metres habitable to habitable; 12 metres habitable to non-habitable.

While the Application claims that "all proposed setbacks are in excess of the minimum ADG recommended building separations to both current and future neighbouring buildings," this claim must be verified with reference to the actual distance from habitable rooms and balconies at Levels 4-7 of the proposed building to the Fernleigh Castle property boundary - and, critically, to the principal private open space within the Fernleigh Castle property.

The ADG building separation requirements are minimum standards. In the context of a development adjoining a heritage item of exceptional significance, a higher standard of separation and privacy protection is warranted.

### **13.3 Solar Access – ADG Section 4A**

The ADG requires that development should not unreasonably reduce the solar access of neighbouring properties. As discussed in **Section 8.1**, the proposed building height of 28.6 metres on a ridgeline site to the south and south-east of Fernleigh Castle creates potential for overshadowing of the Castle grounds. The Department should require detailed shadow analysis demonstrating that the Castle grounds - including the pool area - retain adequate solar access under the proposed development.

### **13.4 Cross Ventilation of Affordable Dwellings**

The EIS discloses that the affordable housing dwellings achieve a cross-ventilation rate of only 57%, which is below the ADG requirement of 60% (EIS, Section 5.3, Woollahra Council consultation response table). This non-compliance is relevant to the assessment of merit, particularly given that the 30% height and FSR bonus under the Infill Affordable Housing provisions is justified on the basis that the development delivers high-quality affordable housing. Where the affordable dwellings themselves do not meet ADG amenity benchmarks, the justification for the bonus is weakened.



## 14. HERITAGE ASSESSMENT DEFICIENCIES

### 14.1 Overview

The Application's heritage assessment - as presented in the Urban Design Report and the Statement of Heritage Impact - contains the following deficiencies:

### 14.2 No Curtilage Assessment

The Application does not include a curtilage assessment for Fernleigh Castle. The heritage curtilage - including the gardens, mature trees, pool, pool house, garage, and visual relationships - has not been defined, mapped, or assessed. This is a fundamental omission for a development immediately adjoining a heritage item of this significance.

### 14.3 Distance Measurements to the Wrong Feature

The Application's distance measurements (77-96 metres to the heritage item) refer to the Castle building. The relevant distances for assessing the development's impact on the heritage curtilage are to the nearest elements of the curtilage - the garage (19.66 metres) and the pool house (39.82 metres). The Application emphasis on the 77-96 metre distance understates the proximity of the development to the heritage item and its curtilage.

### 14.4 Reliance on Trees as Heritage Mitigation

As discussed in **Section 6**, the Application relies on existing trees - including the Moreton Bay Fig - as a visual buffer between the development and the heritage item. This reliance is not a robust heritage response. Trees are living organisms subject to decline, disease, storm damage, and the impacts of adjacent construction. A heritage response that collapses if a tree is damaged is not an adequate response.

The DPE (2023) Guidelines include a specific section on "Tree removal or replacement" (Table 2) which requires the SOHI to consider whether a tree "contribute(s) to the heritage significance of the heritage item" and whether "the methodology for tree removal [will] impact on the significance of the heritage item." By analogy, where the applicant relies on trees as the primary heritage mitigation measure, the DPE Guidelines require an assessment of the risk that those trees may be damaged or lost because of the proposed development. The HIA does not undertake this assessment. It treats the Moreton Bay Fig and other screening trees as permanent fixtures, without acknowledging that the proposed development - including excavation for a two-to-three storey basement, service trenching, and changes to the water table - may itself threaten the viability of the trees upon which the heritage response depends. There is no enforceable mechanism in the planning framework to compel the retention, maintenance, or replacement of these trees in perpetuity, and a heritage response that depends entirely on the continued existence of living organisms on third-party land does not constitute a robust mitigation measure within the meaning of the DPE Guidelines.

### 14.5 DPE (2023) Guideline Requirements for Works Adjacent to a Heritage Item

The HIA (**Appendix L**) references the DPE (2023) Guidelines for Preparing a Statement of Heritage Impact in its bibliography. However, the HIA does not comply with the structure, content requirements, or assessment prompts set out in those Guidelines. The deficiencies are as follows.

The DPE Guidelines (Table 2, "Works adjacent to a heritage item or within the heritage conservation area") require the SOHI to address three specific questions for works in the vicinity of a heritage item: (i) will the proposed works affect the heritage significance of the adjacent heritage item or the heritage conservation area; (ii) will the proposed works affect views to, and from, the heritage item, and if yes, how will the impact be mitigated; and (iii) will the proposed works impact on the integrity or the streetscape of the heritage conservation area. These questions are specifically identified as



relevant to the "Setting, views and vistas" and "Interpretation" subheadings of the heritage impact assessment (**Section 4.1** of the SOHI template). The HIA does not address these questions in any meaningful way. Its response to each is the repeated assertion that the development "is screened by landscaping to a height of approximately 17 metres."

The DPE Guidelines (**Section 4.1**, "Setting, views and vistas") require the SOHI to "describe any impacts to the heritage item's setting including landscape, land use(s) and character" and to "describe any impacts on significant views and vistas, including views to, from and within the heritage item." The Guidelines further require that "photographs or photomontages that indicate the potential visual impacts" be included. The applicant's HIA does not describe the existing setting of Fernleigh Castle. It does not describe the character of the surrounding area. It does not assess the impact of a 28.6-metre building on the heritage item's setting, including its visual prominence and landmark quality. It does not include photomontages showing the proposed development as viewed from within the Fernleigh Castle grounds. The assessment is limited to the observation that the Castle "faces west-north-west and looks away from the subject site" - an observation that addresses only the front elevation and disregards the impact on the rear curtilage, gardens, pool area, and the experience of the heritage item from within its own grounds.

The DPE Guidelines (**Section 4.1**, "Curtilage") require the SOHI to "describe impacts to the identified curtilage, including on layout, use(s), built and landscape elements such as open space, plantings." The HIA does not identify or describe the curtilage of Fernleigh Castle. It states only that "the site is not a heritage item, but the new development sits within the viewshed of the heritage item in the vicinity." This is a concession that a visual relationship exists, but the HIA does not then assess the impact of the development on the curtilage. As noted in **Section 5** of this submission, the curtilage of Fernleigh Castle - including its gardens, pool, pool house, garage, and mature trees - has not been defined, mapped, or assessed.

The DPE Guidelines (**Section 4.1**, "Cumulative impacts") require the SOHI to "assess the cumulative impact of the proposed works, considering previous approvals and future applications" and to "indicate whether the proposed works as part of this application are one part of a broader scope of works." The HIA states that "the proposed works represent the full scope of works and cumulative impact on the heritage item." This statement does not address the cumulative heritage impact of the six concurrent Low- and Mid-Rise Housing developments identified in the applicant's own Urban Design Report on the heritage setting of Fernleigh Castle. The DPE Guidelines contemplate precisely this kind of cumulative assessment.

The DPE Guidelines (page 6, "Contents of a statement of heritage impact") require that, "in the case of non-listed items within heritage conservation areas or works in the vicinity of heritage items," the SOHI must include "an assessment of how the proposed works contribute to or detract from the significance of the heritage items." The HIA does not include this assessment. It does not address whether a 28.6-metre, six-to-eight storey residential flat building contributes to or detracts from the significance of Fernleigh Castle.

The DPE Guidelines (Table 2, "Alterations and additions") include questions that are analogous to the assessment required for new development in the vicinity: "Are the proposed alterations/additions sympathetic to the heritage item? In what way (e.g. form, proportion, scale, design, materials)?" While this section is directed at works to a heritage item, the underlying principle - that new work must be assessed for its compatibility with the heritage item in terms of form, proportion, scale, design, and materials - applies equally to new development in the vicinity of a heritage item. The HIA does not assess the compatibility of the proposed development with Fernleigh Castle in any of these respects.

#### **14.6 No Assessment of Cumulative Heritage Impact**

The Application identifies six concurrent LMR developments in the Rose Bay precinct. The cumulative impact of these six developments on the heritage character of the Rose Bay area - and specifically on the setting of Fernleigh Castle - has not been assessed. The transformation of the precinct from fine-



grain residential to mid-rise apartment blocks will fundamentally alter the heritage context in which Fernleigh Castle has existed since 1892.

#### **14.7 Repetitive Methodology**

The HIA uses the phrase "screened by landscaping to a height of approximately 17 metres" as the justification across every impact category in the DPE (2023) Guidelines assessment - fabric, setting, views, vistas, landscape, and curtilage. This verbatim repetition across all categories does not constitute a differentiated assessment. Each category of heritage impact requires an independent analysis tailored to the specific nature of that impact. The use of a single repeated phrase suggests a formulaic approach that has not engaged with the heritage values of Fernleigh Castle or the specific characteristics of the proposed development.

#### **14.8 Recommendation**

For the reasons set out above, it is respectfully submitted that the Heritage Impact Assessment accompanying the Application does not provide the Department with a sufficient evidence base to assess the impact of the proposed development on Fernleigh Castle under Clause 5.10 of the *Woollahra LEP 2014*. The assessment does not follow the DPE (2023) Guideline template structure, does not address the specific prompts for works in the vicinity of a heritage item, and does not include a curtilage assessment, photomontages from within the heritage item's grounds, or a cumulative heritage impact analysis.

It is respectfully requested that the Heritage Impact Assessment be supplemented to address these matters, or alternatively, that the matter be referred to the Heritage Council of NSW for advice. The heritage assessment prepared by NBRS Architecture on behalf of Mr Montgomery provides an additional analysis of the heritage impacts and is submitted for the Department's consideration in its assessment of the Application.



## 15. RESIDENT GROUP CONCERNS

### 15.1 Overview

This submission is informed by the concerns of residents in the Rose Bay precinct. The Transport Impact Assessment (**Appendix O**) itself acknowledges that "the community also raised concerns regarding traffic congestion in the surrounding local streets" during consultation undertaken by the applicant. The concerns summarised below reflect issues raised by residents in the immediate vicinity of the Application site and are consistent with the grounds of objection set out in this submission.

### 15.2 Cumulative Impact on Local Character

Residents of the Rose Bay precinct are experiencing the cumulative impact of multiple concurrent LMR developments on the character and amenity of their neighbourhood. The Urban Design Report acknowledges that "the built form and character will be rapidly transformed." Residents are concerned that this transformation is occurring on a site-by-site basis without any holistic assessment of its cumulative effect on the precinct. The character of the neighbourhood - including the heritage setting of Fernleigh Castle - is being incrementally eroded by developments that are each assessed in isolation and each found to have individually "acceptable" impacts, while the cumulative outcome is a precinct that bears no resemblance to the "intimate, connected and thriving place" described in the *Rose Bay Place Plan 2023-2028*.

This concern is directly relevant to the assessment of planning merit. The Woollahra LSPS Planning Priority 6 requires that "placemaking supports and maintains the local character of our neighbourhoods." A planning system that assesses each development in isolation cannot fulfil this priority when six developments are transforming the same precinct simultaneously.

### 15.3 Traffic, Parking, and Road Safety

Residents have raised concerns about the capacity of the local road network - particularly Conway Avenue, Carlisle Street, and Fernleigh Avenue - to accommodate the traffic generated by six concurrent mid-rise developments. These concerns include:

- Increased traffic volumes on narrow residential streets that lack traffic calming infrastructure, separated footpaths, and adequate sight lines at key intersections.
- On-street parking displacement as the residential population of the precinct increases by several hundred persons, noting that the Application provides 130 car spaces against a DCP maximum of 135, meaning demand during peak periods may exceed on-site supply.
- Heavy vehicle movements during multi-year construction programs across multiple sites, with associated noise, vibration, dust, and road damage; and
- Pedestrian safety for the precinct's ageing population and families with young children, in circumstances where the Rose Bay Place Plan identifies "rapid ageing" as a key demographic trend and prioritises walkability.

As discussed in **Section 11**, the Transport Impact Assessment does not assess cumulative traffic impacts and does not include intersection modelling for the key access points to New South Head Road. These omissions mean the concerns raised by residents cannot be assessed on their merits because the evidentiary base does not exist.

### 15.4 Construction Amenity

The construction of a 70-apartment, six-to-eight storey building with two to three levels of basement excavation will generate significant construction impacts over a multi-year period. Residents are concerned about:



- Noise and vibration from excavation and piling activities, particularly given the proximity of the site to existing dwellings on Conway Avenue, Carlisle Street, and Fernleigh Avenue;
- The potential for construction vibration to affect the structural integrity of Fernleigh Castle, a sandstone building of exceptional heritage significance constructed in 1892; and
- The cumulative construction impact if multiple LMR sites in the precinct are under construction simultaneously, resulting in years of concurrent disruption to the residential amenity of the neighbourhood.

The Acoustic Report concludes that construction noise may exceed the EPA's Noise Affected Criteria but would not exceed the "highly affected noise criteria." This assessment addresses the Application in isolation. It does not assess the cumulative noise environment if two or more of the six identified LMR sites are under construction at the same time.

### **15.5 Heritage and Community Identity**

Fernleigh Castle is not merely a heritage listing on a statutory register - it is a landmark that contributes to the identity of the Rose Bay community. Residents are concerned that the proposed development will diminish the visual prominence and setting of the Castle, altering the character of the area in a manner that is irreversible. The Castle has been a feature of the Rose Bay landscape since 1892 and its relationship with its surroundings - including the mature tree canopy, the garden setting, and the spatial qualities of the streetscape - is part of the community's experience of the place.

These concerns are relevant to the public interest test under Section 4.15(1)(e) of the *EP&A Act*. The Department should have regard to submissions from the Rose Bay community in its assessment of whether the Application, in its current form, is in the public interest - having regard to the cumulative impacts of precinct-wide transformation on heritage, amenity, traffic, and local character.



## **16. RISKS OF APPROVAL**

### **16.1 Precedent**

The determination of the Application has implications for the treatment of heritage items in the assessment of LMR and SSD developments. If a development of 28.6 metres and 70 apartments is approved immediately adjoining one of the few large intact Victorian mansions in Sydney - without a heritage assessment that addresses the requirements of the DPE (2023) Guidelines, without accurate sight line analysis, and without a cumulative impact assessment - it may be difficult to require a higher standard of heritage assessment for developments adjoining heritage items of lesser significance.

This consideration extends beyond the Woollahra LGA. The State Environmental Planning Policy (Housing) 2021 LMR provisions apply across Greater Sydney. The way the Department assesses the heritage relationship in this Application will inform how heritage items in the vicinity of LMR sites are assessed more broadly. The significance of Fernleigh Castle makes this Application an important opportunity to demonstrate that the Government's housing reform agenda and heritage conservation can be effectively integrated

### **16.2 Irreversible Heritage Impact**

Heritage impacts are, by their nature, irreversible. Once the setting of Fernleigh Castle is diminished by the construction of a six-to-eight storey building immediately to its south and south-east, that setting cannot be restored. The loss of visual relationships, the intrusion of a dominant building mass into the heritage context, and the diminution of the amenity of the Castle grounds are permanent consequences.

### **16.3 Erosion of the Heritage Framework**

The Woollahra LGA contains a significant concentration of heritage items. The integrity of the heritage framework depends on the consistent and rigorous application of heritage assessment requirements to all developments in the vicinity of heritage items. If the heritage provisions are not applied rigorously to a development adjoining Fernleigh Castle - an item of exceptional significance - there is little basis for applying them rigorously to developments adjoining heritage items of lesser significance.

### **16.4 Community Confidence**

The Rose Bay community has raised concerns about the pace and scale of LMR development in the precinct. Approval of the Application without addressing the deficiencies identified in this submission would further erode community confidence in the planning system's ability to balance housing delivery with heritage conservation and amenity protection.



## 17. **CONCLUSION AND RECOMMENDATIONS**

### 17.1 **Conclusion**

This submission has identified significant deficiencies in the Application for a 70-apartment residential flat building at 2A / 2-6 Conway Avenue & 38-40 Carlisle Street, 15-15A Fernleigh Avenue, Rose Bay. The deficiencies relate to:

- The inadequacy of the heritage assessment, including the absence of a curtilage assessment, the reliance on distance measurements to the Castle building rather than its curtilage, the use of a single repeated rationale across all heritage impact categories, and the reliance on existing trees as a heritage mitigation measure.
- The incorrect sight line analysis with respect to the principal private open space of Fernleigh Castle, resulting in an understatement of privacy and overlooking impacts.
- The failure to assess cumulative traffic impacts from six concurrent LMR developments in the Rose Bay precinct, despite the Application's own acknowledgment of these developments and the absence of intersection modelling for key access points to New South Head Road.
- The potential impacts on the heritage-significant Moreton Bay Fig tree within the curtilage of Fernleigh Castle and the circular dependency between the Heritage Assessment's reliance on tree screening and the Arboricultural Impact Assessment's failure to assess the tree relied upon; and
- Non-compliances with the heritage provisions of the *Woollahra LEP 2014*, the objects of the *EP&A Act*, the SEARs requirements, and the design quality principles of Better Placed.

The Application's strategic framework - including the Woollahra Local Housing Strategy Objective 3 ("Ensure housing conserves heritage, maintains local character and achieves design excellence") and the Eastern City District Plan Priority E6 ("respecting the District's heritage") - contains heritage conservation objectives that the Application has not demonstrated it satisfies.

### 17.2 **Recommendations**

It is respectfully recommended that:

- The Application be refused in its current form, or alternatively, that the applicant be required to substantially amend the Application to address the deficiencies identified in this submission prior to any determination.
- The Heritage Impact Assessment accompanying the Application be supplemented to include a curtilage assessment, an assessment of impacts on the setting and views of Fernleigh Castle (Heritage Item I309), and compliance with the DPE (2023) Guidelines for Preparing a Statement of Heritage Impact, or alternatively, that the matter be referred to the Heritage Council of NSW for advice
- The sight line analysis be revised to accurately represent the viewing angles from all levels of the proposed building to the principal private open space of Fernleigh Castle, including the pool area, with the analysis accounting for the topographic differential between the Application site and the Castle grounds.
- The Transport Impact Assessment be revised to include a cumulative traffic assessment accounting for the traffic generation of all six identified LMR developments in the Rose Bay precinct, including SIDRA intersection modelling for the key intersections with New South Head Road, in accordance with the GITA methodology required by the SEARs.
- The Arboricultural Impact Assessment be supplemented to address the impact of the proposed development - including excavation, construction activity, and changes to drainage - on the tree protection zone and long-term viability of the Moreton Bay Fig tree within the Fernleigh Castle curtilage
- The Application be required to demonstrate that the full utilisation of the 30% affordable housing height and FSR bonus is appropriate on this site, given the heritage constraints, and



- to consider a reduced scale of development that achieves a more appropriate balance between housing delivery and heritage protection; and
- Mr Montgomery be afforded the opportunity to present the heritage advice prepared by NBR Architecture and to meet with the Department's assessment team to discuss the matters raised in this submission.

This submission does not oppose the principle of increased housing supply in Rose Bay, nor does it seek to prevent the delivery of affordable housing. It contends that the Application, as submitted, does not satisfy the evidentiary requirements of the SEARs, does not adequately address the heritage provisions of the *Woollahra LEP* or the objects of the *EP&A Act*, and does not demonstrate that the full utilisation of the 30% affordable housing bonus is appropriate on a site immediately adjoining a heritage item of exceptional significance.

The deficiencies identified in this submission are capable of being addressed through a revised Application that achieves a more appropriate balance between housing delivery and heritage conservation. A development of fewer storeys, reduced bulk, or modified building envelope on this site could deliver housing - including affordable housing - while providing an adequate heritage response, appropriate privacy outcomes, and a cumulative traffic assessment that satisfies the GITA methodology. The question is not whether housing should be delivered in Rose Bay, but whether this proposal, at this scale, on this site, has been adequately assessed.

We would welcome engagement with the Department at its convenience.

Yours faithfully,



Chris Wilson Managing Director Willowtree Planning Pty Ltd

On behalf of Mr Peter Montgomery Fernleigh Castle, 5 Fernleigh Gardens, Rose Bay NSW 2029  
(Heritage Item I309 - *Woollahra LEP 2014*)

