

FORMAL OBJECTION

State Significant Development Application SSD-97528708

160 Oxford Street, Paddington

To: NSW Department of Planning, Housing and Infrastructure

Re: SSD-97528708 — Mixed Use Development with Infill Affordable Housing, 160 Oxford Street, Paddington

Applicant: Toohey Miller (TM No. 8 Development Unit Trust)

Contact Planner: Victor Casasanta

Exhibition Period: 3 March 2026 – 16 March 2026

Date: March 2026

1. Introduction

This submission is lodged during the public exhibition period in formal objection to State Significant Development Application SSD-97528708, proposing an 8-storey mixed-use residential flat building comprising 40 apartments (including 10 infill affordable housing units) and ground-floor retail at 160 Oxford Street, Paddington, within the Woollahra Local Government Area and the Paddington Heritage Conservation Area (HCA). The applicant is Toohey Miller (TM No. 8 Development Unit Trust). The application is classified as an Infill Affordable Housing SSD under Section 26A of Schedule 1 of the State Environmental Planning Policy (Planning Systems) 2021 (Planning Systems SEPP), triggered by a capital investment value exceeding \$75 million and the inclusion of at least 15% of gross floor area as affordable housing under the Housing SEPP.

The submitter is a resident of Paddington with a longstanding connection to the precinct, and objects to the development on each of the grounds set out below. The objection is based on a thorough review of the Environmental Impact Statement (EIS) dated 9 February 2026 and all 41 supporting technical documents lodged on the NSW Planning Portal.

The submission seeks, as its primary relief, **refusal of the development application**. Should the consent authority be inclined to approve, the submission requests significant modifications to building height, the affordable housing component, and construction management, as detailed in Section 12 below.

2. Procedural Concerns — Removal of Democratic Safeguards

As a threshold matter, this submission notes a fundamental procedural concern regarding the assessment pathway. Under amendments effective December 2024, the standard triggers for referral to the Independent Planning Commission (IPC) — specifically, 50 or more unique public objections, or a council objection — **do not apply** to infill affordable housing SSDs (Section 26A of Schedule 1, Planning Systems SEPP). The only IPC referral trigger is a reportable political donation by the applicant.

The practical consequences are significant:

- The decision will be made by the Minister for Planning or delegate, without an independent merit hearing.
- There will be no public hearing before the IPC regardless of the volume or quality of objections.
- Development Control Plans (DCPs), including the Woollahra DCP 2015, do not apply to this application (per s.2.10 of the Planning Systems SEPP), removing the local planning framework that would ordinarily constrain building height, setbacks, and design quality.
- The 14-day exhibition period is wholly inadequate for a development of this magnitude: the EIS comprises 41 separate documents totalling hundreds of pages.

This submission does not contend that the pathway is unlawful. It argues that the removal of these safeguards places heightened weight on the Department's own merit assessment. The Department is specifically asked to note DPHI's own Practice Note on infill affordable housing, which states: *"The full extent of the in-fill affordable housing bonuses may not be achieved on all sites, due to site constraints and local impacts. The in-fill affordable housing bonuses should not be treated as an entitlement."* This principle is of central importance to this application.

3. Ground 1: Net Loss of Affordable and Low-Cost Housing

This application, if approved, will reduce the number of affordable dwellings on this site by at least 17. This outcome is antithetical to the stated purpose of the Infill Affordable Housing provisions.

3.1 The Existing Housing Stock

The site currently contains 27 studio apartments in a three-storey residential flat building at 160 Oxford Street (acknowledged in the EIS at Section 2.1 and the Traffic Assessment at Section 2.1). These studios are, by virtue of their size, age and condition, genuinely affordable in the ordinary sense: they are let at market rents accessible to low- and moderate-income earners, key workers, and vulnerable persons who cannot afford equivalent accommodation in Paddington. These tenants are real people with real housing needs who will be displaced by this development.

3.2 The Proposed Replacement

The proposal delivers only **10 affordable housing units** (15% of GFA), managed by EchoRealty NSW & ACT Limited as community housing provider (Document GG — Letter of Support). The remaining **30 apartments will be market-rate build-to-sell dwellings** (confirmed in the Clause 4.6 Variation Request at Section 1.1) priced at levels accessible only to high-income purchasers. The comparison is stark: existing affordable dwellings (de facto): 27; proposed affordable dwellings (formal): 10; **net change: loss of 17 affordable dwellings** on a single site in one of Sydney's most expensive suburbs.

3.3 Duration of the Affordable Housing Obligation

The EchoRealty letter (Document GG) confirms only a **minimum 15-year management period**. The letter is 1.5 pages long and contains no detail on: (a) what happens at the conclusion of the 15-year period; (b) the specific income bands targeted for eligible tenants;

(c) the rental discount methodology; or (d) whether any commitment is made to house current tenants of the 27 studios. The letter simply confirms EchoRealty “would be pleased to manage the affordable housing” and “supports the proposed location.” This is a letter of intent, not an Affordable Housing Management Plan. It is materially deficient.

A 15-year affordability covenant is inadequate for a development seeking **permanent planning entitlements**. The consent authority is being asked to grant permanent additional height and floor space in exchange for a time-limited obligation. After 15 years, all 40 apartments may be sold or rented at full market rates.

3.4 The Social Impact Assessment Is Absent

The EIS at Section 6.8 (page 109) contains a “Social Impact Scoping Study” of approximately two pages. It concludes that *“a separate Social Impact Assessment is not required.”* The scoping study does not mention the 27 existing tenants by name or circumstance. It does not assess tenant displacement. It does not assess the loss of housing diversity in the Paddington precinct. It does not assess the availability of suitable alternative accommodation. The “potential negative social impacts” it identifies relate only to “changes to sense of place”, “pressure on local infrastructure”, and “temporary amenity impacts during construction.” The displacement of 27 households is not identified as a social impact at all. This is a critical omission that should require supplementary analysis under the SIA Guideline for State Significant Projects.

4. Ground 2: Exploitation of the Affordable Housing Bonus Scheme

4.1 The Actual Height Arithmetic

The Clause 4.6 Variation Request (Document X) reveals the full extent of height escalation. The **Woollahra LEP 2014 base height for this R3-zoned site is 10.5 metres** (confirmed in the Scoping Meeting Request at Table, page 5). The Low and Mid Rise Housing SEPP raises this to a non-discretionary development standard of **22 metres**. The 30% infill affordable housing bonus further raises this to **28.6 metres**. The applicant then seeks a Clause 4.6 variation **above even the bonus height**, proposing a maximum building height of **30.6–32.6 metres** — a further 7–14% exceedance above the already-boosted standard (Document X, Table 2).

To state this plainly: the LEP permits 10.5 metres. The proposal is 30.6–32.6 metres. **The building will be approximately three times the base LEP height limit.** This is not a modest uplift enabled by affordable housing policy; it is a wholesale transformation of the planning controls for this site.

4.2 The Bonus Is Not an Entitlement

The DPHI Practice Note is unambiguous: the bonuses “should not be treated as an entitlement.” The site constraints — location within the Paddington HCA, direct proximity to Victoria Barracks (State and Commonwealth Heritage listed), the fine-grain Victorian streetscape, and the low-scale residential fabric of Gipps and Shadforth Streets — are precisely the constraints that warrant a reduction or elimination of the available bonus. The Clause 4.6 Variation Request (Document X) at Section 5.1 does not meaningfully engage with these constraints but instead argues generically that the Housing SEPP “envisages” this density.

4.3 The Bonus Is a Vehicle for Private Profit

The 10 affordable units are the minimum threshold to unlock the bonus for 30 market-rate apartments in a premium Eastern Suburbs location. The EIS at Section 6.9.3 characterises the affordable housing as a “public benefit.” It is not. It is a **net reduction** of 17 affordable dwellings dressed in the language of affordability. The Department should carefully assess whether the net community benefit — accounting for the loss of 17 existing affordable dwellings, the heritage impacts, and the time-limited affordability obligation — justifies permanent additional height and floor space. This submission contends it does not.

5. Ground 3: Heritage Impact — Paddington Heritage Conservation Area

5.1 Deficiencies in the Statement of Heritage Impact

The Statement of Heritage Impact (Document K, prepared by GBA Heritage, December 2025) contains a number of analytical deficiencies that should concern the Department:

(a) The “intrusive items” characterisation. The HIS asserts (Section 2.1.2 and throughout) that all seven buildings proposed for demolition are “intrusive items in the Paddington HCA.” It acknowledges these structures were built after WWII. However, the HIS fails to grapple with the fact that the contribution of the buildings at 142–148 Oxford Street and 160 Oxford Street to the HCA lies not primarily in their individual architectural merit but in their **scale**. They are 2–3 storey structures consistent with the prevailing height of the conservation area. Replacing them with an 8-storey tower of 30.6–32.6 metres will have a far greater adverse impact on the HCA than the existing “intrusive” buildings, which at least respect the established streetscape scale.

(b) The view hierarchy framework. The HIS adopts Dr Richard Lamb’s five-level “heritage view hierarchy” (Section 4.1.2) and classifies all views involving the proposed development as “Level 5” — the lowest significance category, described as views where “simply being able to see a heritage item... does not make the view a heritage view.” This framework, while academically defensible in some contexts, is used here to systematically **minimise the assessed impact of every viewpoint**. The HIS concludes that impacts on the Paddington HCA are “Moderate” for “views to” and “Minor” for setting — all below the “material threshold.” This methodology allows a 32-metre building to be inserted into a Victorian conservation area with a finding of “acceptable impact.” The Department should treat this assessment with considerable scepticism.

(c) The Victoria Barracks assessment. The HIS acknowledges (Section 4.3.2) that the heritage assessment of Victoria Barracks identifies “views to the Paddington township” as having heritage significance. It then concludes the impact is “acceptable” partly because “Block F of the University of NSW Art & Design School... is already visible from within the Barracks.” This is a “two wrongs make a right” argument: the existence of one intrusive element in a heritage setting does not justify adding another. The HIS also relies heavily on mature Oxford Street trees to “obscure views of the lower 5 stories” (Section 5.2). Tree canopies are seasonal and not permanent — and the upper 3 storeys (the bonus storeys) will be clearly visible above the tree line in perpetuity.

(d) Cumulative impact assessment. The HIS addresses cumulative impact (Section 4.3.12) in a single paragraph that simply restates its conclusion that the buildings are

“intrusive” and the replacement is “high-quality.” It does not address the cumulative impact of this development as a precedent for similar bonus developments on other similarly-zoned sites throughout the Paddington HCA. This is the most significant omission in the HIS.

(e) The conclusion. The HIS concludes (Section 5.3) that “The Department of Planning, Housing and Infrastructure should have no hesitation, from a heritage perspective, in approving the application.” This is an advocacy statement, not an objective heritage assessment. A HIS that finds no material impact from inserting a 32-metre building into one of Australia’s most significant Victorian conservation areas should be subject to independent peer review.

5.2 Heritage NSW Consultation

This submission requests confirmation that Heritage NSW and the Commonwealth Department of Climate Change, Energy, the Environment and Water (DCCEEW) have been formally consulted. The EPBC Self-Assessment (Document II) concludes the proposal is “not a Controlled Action” under the EPBC Act. This is a self-assessment by the applicant’s own heritage consultant. Given the proximity to three Commonwealth Heritage listed items within Victoria Barracks, an independent assessment of Commonwealth heritage impacts should be required.

6. Ground 4: Built Form — Height, Scale, Bulk, and Amenity

6.1 Overshadowing

The shadow diagrams should be examined to determine the hours of overshadowing imposed on the heritage cottages on Gipps Street and Shadforth Street at the winter solstice (21 June). The ADG requires at least 2 hours of direct solar access to principal living areas of adjoining dwellings between 9am and 3pm. The HIS itself acknowledges (Section 4.3.12) that “the proposal will overshadow part of the Barracks in the mornings of the winter months” and will “overshadow the rear parts of Buildings 95 and 96 for a few hours.” The impact on the residential properties to the north — which are far closer than Victoria Barracks — warrants careful scrutiny.

6.2 Transition in Scale

The application proposes an 8-storey building (30.6–32.6m) adjacent to single and two-storey heritage cottages (approximately 6–9 metres). The Clause 4.6 Variation Request (Document X, Figure 10) shows building separation distances that purport to comply with the ADG, but the ADG’s separation standards were designed for tower-to-tower relationships in urban renewal areas, not for a tower abutting a Victorian heritage cottage. No amount of setback or articulation can adequately mitigate the impact of a 32-metre building on a 6-metre cottage.

6.3 Wind Impacts — Material Deficiency

No wind impact assessment has been provided. A comprehensive search of the 41 documents on the Planning Portal reveals no pedestrian wind assessment, wind comfort study, or wind environment report. For a building of 30.6–32.6 metres in a low-rise heritage environment on a major arterial road, a pedestrian wind assessment is a standard requirement. The SEARs Compliance Table (Document A) addresses “wind effects” at item

6 by reference to the EIS, but the EIS's only reference to wind is a single passing mention (Section 6.1) that the building is designed to avoid “overshadowing, wind effects or view loss impacts” — an assertion without any supporting analysis. This is a material deficiency that should prevent the application from proceeding to determination without supplementary information.

7. Ground 5: Traffic, Transport, and Construction Impact

7.1 Methodological Error in the Traffic Generation Assessment

The Traffic and Parking Assessment Report (Document R, prepared by Varga Traffic Planning, December 2025) contains a **significant methodological error** that understates the net traffic impact of the development.

At Section 3.7 (page 18), the report calculates the existing site's traffic generation using TfNSW's “**Low Density Residential Dwellings**” rate of 0.68 trips/dwelling (AM peak) for the 27 existing studio apartments. However, 27 studio apartments in a three-storey residential flat building are not “low density residential dwellings” — they are, by the TfNSW Guide's own definition, high density residential (being “a building containing more than 20 dwellings, 3 or more storeys”). The correct rate is **0.19 trips/dwelling** (the “High Density Residential Flat Dwellings” rate used for the proposed development itself).

The effect of this error is to **inflate the existing baseline traffic generation by approximately 80%**, making the net increase appear negligible:

- **As reported:** Existing RFB traffic = 4.6 vph AM (using 27×0.17 — the implied rate). Net increase claimed: 1.6 vph AM.
- **Corrected:** Existing RFB traffic = 5.1 vph AM (using 27×0.19 high-density rate). But the houses (2 dwellings at $0.68 = 1.4$) and terraces (4 at $0.68 = 2.7$) should also be recalculated if they are being compared on a like-for-like basis. The net increase, properly calculated, is materially higher than the 1.6 vph claimed.

More fundamentally, the traffic report's conclusion that the development will generate a “statistically insignificant” net increase of 1.6 vph ignores **the absolute traffic generation of 83 car parking spaces** on a 4-level underground car park with a single entry/exit point on Shadforth Street. The report assesses only 10 vehicle trips per hour — yet provides 83 car spaces. The disconnect between the number of spaces provided and the traffic generated should be explained.

7.2 Oxford Street Capacity

The SIDRA analysis (Section 3.8) models only the Shadforth Street intersections and finds Level of Service “A” in all scenarios. It does **not model the Oxford Street corridor** itself, which carries 1,480–1,670 vehicles per hour in peak periods (Section 3.3). The traffic from 83 car spaces entering and exiting via Shadforth Street will ultimately feed onto Oxford Street. The omission of the Oxford Street/Shadforth Street junction's interaction with the broader Oxford Street corridor under cumulative development scenarios is a gap in the assessment.

7.3 Construction Traffic

Four levels of basement excavation in Hawkesbury Sandstone will require sustained heavy vehicle movements for spoil removal over a construction period estimated at 3+ years. The Preliminary Construction Management Plan (Document S) should be reviewed for adequacy, including daily truck movements, haul routes, and management of Oxford Street access during excavation.

8. Ground 6: Geotechnical and Excavation Risks

The Geotechnical Report (Document V) and Site Hydrogeology Report (Document JJ) must be assessed against the specific risks of deep excavation adjacent to heritage buildings on unreinforced sandstone masonry — including the cottages on Gipps and Shadforth Streets and the sandstone structures of Victoria Barracks. Risks include vibration damage from piling and excavation, ground settlement, and groundwater drawdown. Pre-construction dilapidation surveys of all properties within 50 metres of the excavation boundary should be mandatory, with developer liability confirmed for any damage caused.

9. Ground 7: Environmental and Amenity Impacts

9.1 Tree Protection

The HIS relies substantially on the Oxford Street trees to “obscure views of the lower 5 stories” of the proposed building (Section 5.2). This reliance creates a contradiction: the Arboricultural Impact Assessment (Document N) should be examined to confirm that Tree Protection Zones for these trees are compatible with 4 levels of underground excavation extending to the Oxford Street kerb line. If the trees that are relied upon for heritage screening are damaged by the excavation that enables the building, the heritage impact assessment is fundamentally undermined.

9.2 Noise and Vibration

The Noise and Vibration Impact Assessment (Document Y) should be reviewed for both construction and operational impacts, including plant noise from rooftop HVAC, lift machinery, and car park ventilation on a building of this scale.

10. Ground 8: Precedent — Implications for Heritage Conservation Areas

This application is one of the first infill affordable housing SSDs proposed within a Heritage Conservation Area in New South Wales. The Clause 4.6 Variation Request (Document X) itself acknowledges at Section 5.1 (Figure 19) that other sites in Paddington are subject to “locality restraints” that restrict LMR redevelopment — but this argument works against the applicant: if this site is approved as a precedent, those constraints will be tested next.

The Paddington HCA contains numerous sites along Oxford Street zoned R3 Medium Density Residential with comparable height and FSR controls. Each is potentially eligible for the same infill affordable housing bonus. If approved at 8 storeys (30.6–32.6m), there is no principled basis for refusing comparable applications elsewhere. The cumulative effect would irreversibly destroy the heritage character that justifies the conservation area’s listing.

11. Ground 9: Inadequacy of the EIS and Supporting Documentation

This submission identifies the following specific gaps and inadequacies:

- **Wind impact assessment:** Absent from the documentation. Material deficiency.
- **Social Impact Assessment:** Not prepared. A 2-page scoping study that fails to identify tenant displacement as a social impact does not satisfy the SIA Guideline.
- **Affordable Housing Management Plan:** Not provided. A 1.5-page letter of intent from EchoRealty is not an AHMP. It contains no detail on income targeting, rental methodology, tenant protections, or post-15-year arrangements.
- **Cumulative heritage impact:** Not assessed beyond a single paragraph in the HIS.
- **Traffic generation methodology:** Incorrect baseline rate applied to existing 27-studio RFB, understating net traffic impact.
- **Heritage NSW and DCCEEW consultation:** Confirmation of formal referral to Heritage NSW and the Commonwealth heritage authority is sought.
- **EPBC Act assessment:** Self-assessment by the applicant's own heritage consultant concluding "not a Controlled Action" should be independently verified given proximity to three Commonwealth Heritage listed items.

12. Ground 10: Public Interest

Section 4.15(1)(e) of the EP&A Act requires consideration of the public interest. This submission contends the public interest weighs strongly against approval:

- A net reduction of 17 affordable dwellings in one of Sydney's most expensive suburbs, defeating the purpose of the enabling policy.
- Significant, likely irreversible harm to the Paddington Heritage Conservation Area.
- A precedent that opens heritage conservation areas across Sydney to high-rise development.
- An affordable housing component that is the bare minimum to trigger the bonus, is time-limited to 15 years, and is supported by a letter of intent rather than a management plan.
- A building that exceeds even the bonus height by a further 7–14%, seeking permanent planning entitlements in exchange for temporary and minimal public benefit.
- A 14-day exhibition period for hundreds of pages of documentation, with the IPC referral mechanism removed for this SSD category.

13. Relief Sought

13.1 Primary Relief: Refusal

This submission requests that the consent authority **refuse development consent** for SSD-97528708, having regard to: the net loss of affordable housing contrary to the intent of the provisions; the incompatibility of the height and bulk with the Paddington HCA; the material deficiencies in the EIS (absent wind assessment, absent SIA, absent AHMP); the significant

precedent implications; and the absence of a net public interest benefit proportionate to the permanent entitlements sought.

13.2 Alternative Relief: Conditions of Consent

In the alternative, this submission requests that consent not be granted without:

- **Height reduction** to a maximum of 4–5 storeys (within the base LEP + LMR envelope), consistent with the heritage character and the Practice Note.
- **Increased affordable housing** to at least 30% of total dwellings with a covenant of not less than 30 years.
- **Binding tenant relocation plan** demonstrating all 27 current tenants will be offered comparable accommodation at equivalent or lower rent within 2km.
- **Heritage NSW endorsement** — formal written endorsement of the HIS before consent.
- **Wind assessment** — a peer-reviewed pedestrian wind assessment required before consent.
- **Full Social Impact Assessment** under current DPHI guidelines, addressing tenant displacement.
- **Comprehensive Construction Traffic Management Plan** as a condition precedent to earthworks.
- **Dilapidation surveys** of all properties within 50 metres, with confirmed developer liability.
- **Independent heritage peer review** of the Statement of Heritage Impact.

14. Conclusion

This application presents as an affordable housing initiative. In substance, it is a proposal to demolish 27 genuinely affordable dwellings, displace their tenants, and replace them with a luxury apartment tower in a heritage conservation area — with a minimum of 10 below-market apartments for 15 years as the price of the bonus that makes the tower possible.

The base LEP height for this site is 10.5 metres. The proposal is 30.6–32.6 metres — more than triple. The Heritage Impact Statement concludes the Department should have “no hesitation” in approving a 32-metre building in one of Australia’s most significant Victorian conservation areas. No wind assessment has been provided. No Social Impact Assessment has been prepared. The Affordable Housing Management Plan is a 1.5-page letter of intent.

The consent authority is respectfully requested to refuse this application, or to impose such conditions as would render it genuinely compatible with the heritage character of the precinct and the affordable housing purposes of the enabling legislation.

This submission is lodged in accordance with the requirements of the NSW Planning Portal during the exhibition period ending 16 March 2026.