

OBJECTION TO STATE SIGNIFICANT DEVELOPMENT APPLICATION
SSD-93020230
RESIDENTIAL FLAT BUILDING WITH IN-FILL AFFORDABLE HOUSING

A. Introduction

1. I object to State Significant Development Application SSD-93020230 for a residential flat building with in-fill affordable housing (**SSDA**) in its current form. In summary, the reasons for objection relate to the following issues:

- (a) the Site is not within a 'low and mid rise housing inner area' for the purpose of *State Environmental Planning Policy (Housing) 2021 (SEPP (Housing))*;
- (b) excessive height and visual impact to the Balmoral Basin;
- (c) excessive height and:
 - (i) Site suitability;
 - (ii) inconsistency with the character of the local area and desired future character of the precinct
- (d) inappropriate excavation of, and impact to the visual character, of Redan Street road reserve – a local heritage item under *Mosman Local Environmental Plan 2012 (Mosman LEP)* and zoned C4 environmental conservation;
- (e) insufficient information:
 - (i) inconsistent and/or unclear representations relating to building height and height exceedances;
 - (ii) apparent absence of owner's consent from Mosman Municipal Council.

B. The proposed development

2. The SSDA is accompanied by a Statement of Environmental Effects, prepared by Urbis, dated 27 February 2026 (**SEE**) which identifies the proposed development as being for:

- Demolition of the existing structures on site, including 5 dwellings and vehicle crossovers.
- Site preparation works, including:
 - *Tree removal.*
 - *Excavation across the site.*
- Construction of a multi-storey residential flat building comprising:
 - *Two levels of basement for 133 car parking spaces, services and storage.*
 - *53 residential dwellings in 2-, 3- and 4-bedroom configurations.*
 - *Communal open space at ground level, level 1 and level 5.*

- ***Part ten, part five storey built form across the site within a podium and two tower forms.***
 - Ancillary vehicular entry and public domain works from Redan Street.
 - Provision of 15% affordable housing to be managed by a community housing provider for a period of 15 years from date of the Occupation Certificate.
 - Extension and augmentation of physical infrastructure and utilities as required.¹ [emphasis added]
3. However, a detailed review of the documents accompanying the SSDA suggest the description is inaccurate. In particular, the proposal does not seek consent for a part 10, part 5 storey building but rather, a 13 storey building comprising 11 storey northern building over 2 levels of basement. The 11th storey comprises a building for plant, including lift overrun with an identified roof level on the architectural drawings at Appendix B of the SEE of **RL 95.350**. This issue is relevant not only to insufficiency of the information but also whether the proposed development has been sufficiently described to the NSW public for the purpose of ensuring there is proper community consultation under the *Environmental Planning and Assessment Act 1979*.

The land to which the development application relates

4. Whilst the SEE identifies the Site as comprising 8 lots, commonly known as 40-48 Redan Street,² that does not identify all of the land to which the development application relates. In particular the proposed development seeks consent to carry out work on land in the ownership of Mosman Council, being part of the Redan Street road reserve, a listed heritage item under cl 5.10 and, Schedule 5, Part 1 of the Mosman LEP. Noting that the consent authority in the case at hand is the Minister for Planning and not the Council, it is unclear whether owner's consent from Council, has been obtained as required pursuant to s 23 of the *Environmental Planning and Assessment Regulation 2021*. That is a jurisdictional prerequisite in the absence of which development consent must be refused.

C. The Site and locality – a description of the area which informs substantive issues raised in this objection

5. It is convenient at the outset to identify material facts which are informative of several issues raised in this objection dealing with excessive height, visual impact, impact to the heritage Redan Street road reserve etc.

¹ SEE, at [1.2] – The Project

² SEE at [2.1]. The identification of only 8 lots in the SEE's legal description of the site appears to be an error as it does not include reference to Lot 1 in DP929591 which is identified as being within the site as identified in Appendix G, Site Survey, and Appendix B, Architectural Drawings, 'Demolition Plan', Sheet 1501, Rev B.

6. The Site is situated at the uppermost ridgeline of the Balmoral Basin. As noted in the SEE:

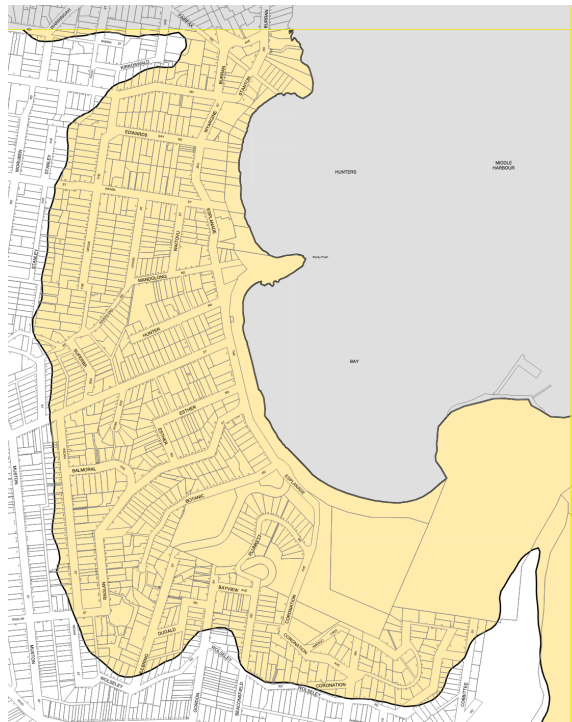
More broadly, Redan Street runs along a contour and is positioned at the rim of the Balmoral basin. This affords the site extensive views out towards Middle Head and North Head. Residential streets step down into the basin, following topography

7. Due to the topography of the Site and its immediately surrounding area to the east, the proposed development has the capacity to impose a more severe visual impact than would a development in a different location. In particular, the location of the proposed development is such that, having regard to its proposed height, will have a significant impact on the visual catchment of the Balmoral basin, and indeed from Middle Harbour waters looking back towards Balmoral.
8. The Balmoral basin includes both Balmoral and Edwards Beach and is a highly frequented recreation area. So too are the waters of Middle Harbour about Balmoral and Edwards Beach, which are used by swimmers, kayakers, and boaters alike. The Balmoral Basin in which this Site sits at its ridgeline is readily perceived from the water and its scenic amenity will be unreasonably impacted by the development in its proposed form.
9. The cultural and scenic significance of the area in which the Site is situated is evident in:
- (a) the identification of part of the Site as it fronts Redan Street as part of a scenic protection area under cl 6.4 of Mosman LEP;
 - (b) the identification of the Redan Street road reserve as a heritage item under cl 5.10 of Mosman LEP;
 - (c) the zoning of the Redan Street road reserve (and land further east of the road reserve) as C4 Environmental Living under Mosman LEP;
 - (d) The longstanding identification]by the National Trust of Australia (NSW)³ of the:
 - (i) Middle Harbour Landscape Conservation Area, listed January 1982;
 - (ii) Mosman Urban Conservation Area – Precinct 9 – Balmoral, listed November 1982;within which the Site falls.
10. A copy of the listing reports for the Middle Harbour Landscape Conservation Area and Mosman Urban Conservation Area is attached to these submissions.

³ The National Trust of Australia (NSW) is a community-based, non-government organisation, committed to promoting and conserving New South Wales' natural, built and cultural heritage.

Scenic protection map

11. An extract of the Scenic Protection Map, sheet SCP_002 as currently in force is set out below. It is readily apparent that the area of scenic protection follows the contours and topographical area of the Balmoral Basin and demonstrates the sensitivity of the visual catchment, particularly directly east towards the water.



Extract, sheet SCP_002
Scenic Protection Map
Mosman LEP

Heritage item – Redan Street road reserve

12. Pursuant to cl 5.10 and Schedule 5, Part 1 of Mosman LEP the Redan Street road reserve along its frontage with the Site (and beyond) is identified as a heritage item.

13. The item is described in Schedule 5, Part 1 as follows:

Suburb	Item	Address	Property description	Significance	Item No
.....					
Mosman	Divided road	Redan Street	Redan Street road reserve (between Almora Street and Raglan Street)	Local	I440

14. The section of Redan Street, between Almora Street and Raglan Street to which the heritage listing refers, can be seen in the image from Google Maps below:



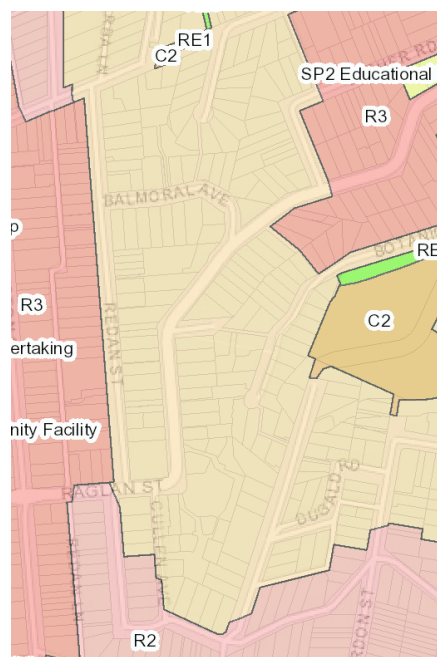
Zoning

15. The SEE describes zoning in the locality at [2.1], including as follows:

*'East of Redan Street, land is zoned C4 (Environmental Living), reflective of the proximity to the bay.'*⁴

16. Whilst the statement is strictly correct, it implies that Redan Street itself has a different zoning – which is not the case.

17. The entirety of the Redan Street road reserve is zoned C4 Environmental Living, and not R3 Medium Density Residential as is the Site (as described by the Applicant). This difference in zoning can be seen in an extract of the Digital EPI zoning map as currently in force under Mosman LEP 2012, below:



⁴ SEE at [2.1]

D. The site has not been demonstrated to be within a 'low and mid rise housing inner area'

18. The proposed development is predicated upon the Site being within a low and mid rise housing inner area for the purpose of Chapter 6 *Low and mid rise housing* of SEPP (Housing). Whilst the SEE does not explicitly address s 163 of SEPP (Housing), it does in broad terms suggest that the Site is within 372.5m walking distance of land identified as a 'Town Centre' on the Town Centres Map.⁵

19. For the purpose of s 163, walking distance means:

walking distance means the shortest distance between 2 points measured along a route that may be safely walked by a pedestrian **using, as far as reasonably practicable, public footpaths and pedestrian crossings.**⁶

20. The Applicant has not demonstrated that the Site is within 400m walking distance of land identified as a 'Town Centre' (Spit Junction town centre) for three reasons.⁷

21. First, nominated walking route requires a path of travel along two laneways with no footpath (Melaleuca Lane and Redan Lane respectively) and otherwise fails to use a route with pedestrian crossings, such as that which is readily available along Military Road at its intersection with Almora Street (as can be seen on SEE Figure 14). Presumably that is because if it did so the Site would be outside of the requisite 400m.

22. The absence of an appropriate footpath along that part of Melaleuca Lane nominated as the relevant route can be seen in photos 1 -5 below. Similarly, the absence of an appropriate footpath along the relevant portion of Redan Lane can be seen in photos 8-12 below.

23. In *Ritchie v The Hills Shire Council* [2018] NSWLEC 1376, Senior Commissioner Dixon considered the meaning of walking distance under *State Environmental Planning Policy (Affordable Rental Housing) 2009* and held that a path of travel along roads which did not include a footpath did not constitute a route that could be safely walked by a pedestrian. So too in this case.

24. Second, that the route is not one that may be safely walked is further demonstrated when regard is had to the fact that the point of commencement/termination of the route is in a service laneway at the rear of retail shops that have their frontages to Military Road. There is no retail entrance at the point that the Applicant nominates for

⁵ SEE, Figure 14 *Walking route to the Spit Junction centre*, electronic p. 28; see also electronic p. 31 at [2.4]; electronic p. 58, electronic p. 88; Appendix C – Statutory Compliance Table; note that SEPP (Housing) s 163 is not addressed

⁶ SEPP (Housing) Dictionary

⁷ SEPP (Housing) – s 163 and Town Centres Map

calculation in Melaleuca Lane. The service nature of this laneway and absence of any pedestrian entrance to retail can be seen in photos 5-7 below.



Photo 1

Photo taken 29 March 2026 at the intersection of Melaleuca Lane and Ritchie Lane, looking east towards Muston Street



Photo 2

Photo taken 29 March 2026 at the intersection of Melaleuca Lane and Ritchie Lane, looking east towards Muston Street



Photo 3

Photo taken 29 March 2026 at the intersection of Melaleuca Lane and Muston Street looking in an approximately westerly direction, directly towards Melaleuca Lane



Photo 4

Photo taken 29 March 2026 at the intersection of Melaleuca Lane and Muston Street (street sign visible at right of image), looking in an approximately westerly direction



Photo 5

Photograph taken 29 March 2026 of Melaleuca Lane looking in an approximately westerly direction towards the site identified as a town centre. The building shown in the centre of the photograph is the rear of the Country Road retail shop with frontage along Military Road.



Photo 6

Photograph taken 29 March 2026 along that part of Melaleuca Lane in an approximately north-south orientation, looking north. This photo shows the predominant service nature of the lane.



Photo 7

Photograph taken 29 March 2026 along that part of Melaleuca Lane in an approximately north-south orientation, looking south towards Ritchie Lane. This photo shows the predominant service nature of the lane



Photo 8

Photograph taken 29 March 2026 at the corner of Arbutus and Almora Street, looking in a southerly direction towards Redan Lane



Photo 9

Photograph taken 29 March 2026 at the corner of Redan Lane and Almora Street, looking south along Redan Lane. There are no footpaths along this part of Redan Lane to the Site.



Photo 10

Photograph taken 29 March 2026 standing on Redan Lane, looking in an approximately southerly direction along Redan Lane



Photo 11

Photograph taken 29 March 2026 standing on Redan Lane, looking in an approximately southerly direction along Redan Lane. The rear of 48 Redan Street is after the 25km speedhump signpost.



Photo 12

Photograph taken 29 March 2026 standing on Redan Lane, looking in an approximately south-easterly direction towards the rear of 48 Redan Street.

25. Third, and independent of the above grounds, there is significant concern with how the Applicant has calculated 372.5m distance from town centre. Having regard to the absence of any clear statement in the SEE, the limited comment on p. 27 and Figure 14, it appears that a simple desktop measurement has been undertaken. That is entirely insufficient, particularly where there is less than 30m to the 400m limitation, and also that the nominated path of travel contains several stairs along Almora Street. A statement prepared by a surveyor as to measurement of this path of travel should be provided.⁸

26. Having failed to demonstrate that the Site is within 400m walking distance of land identified as a town centre, the Site is not in a low and mid rise housing inner area and the Applicant cannot take the benefit of s 175 which enables a building height of 22m.

E. Excessive height and visual impact

27. In respect of the topic of excessive height and visual impact, the following sub-issues are raised:

- (a) height which exceeds the maximum permissible height and for which there is no reasonable justification;
- (b) material inconsistencies in representations as to height levels;
- (c) visual impact of the proposed development as observed within the area of the Balmoral Basin;

⁸ In the context of a Class 1 merit appeal in the Land and Environment Court, Beasley J held that to measure the “shortest distance” that “may be safely walked by a pedestrian” requires evidence of an expert kind: *Annandale Street Developments Pty Ltd v Woollahra Municipal Council* [2026] NSWLEC 5 at [32]-[34]

(d) undesirable precedent.

Height exceedance

28. The SSDA exceeds the development standards in s 175 constraining a height of up to 22m to 6 storeys or fewer and also the height and GFA uplift provisions in Chapter 2 of SEPP (Housing).

Non-compliance with s 175 SEPP (Housing)

29. SEPP (Housing) s 175 provides as follows:

(1) This section applies to land in a low and mid rise housing inner area in Zone R3 Medium Density Residential or R4 High Density Residential.

*(2) Development consent must not be granted for development for the purposes of residential flat buildings with a building height of up to 22m **unless the consent authority is satisfied the building will have 6 storeys or fewer.***

(3) Development consent must not be granted for development for the purposes of a building containing shop top housing with a building height of up to 24m unless the consent authority is satisfied the building will have 6 storeys or fewer.

(4) In this section, a storey does not include a basement within the meaning of the standard instrument.

30. For the purpose of s 175(4), basement means:

***basement** means the space of a building where the floor level of that space is predominantly below ground level (existing) and where the floor level of the storey immediately above is less than 1 metre above ground level (existing).⁹*

[emphasis added]

31. Having regard to the limited cross-section drawings provided, it is apparent that the Site has a cross fall which affects the interrelationship between the proposed ground floor and that immediately above which is relevant in the determination of whether a storey constitutes a basement for the purpose of s 174(4).

32. The ground floor on drawing Sheet 4001, 'Section 2 EW Centre', Rev B shows that the majority of that level does not fall within the meaning of a basement and is therefore not excluded from the 6 storey calculation for the purpose of s 175. That is because the floor level of proposed Level 1 at RL 61.850 is greater than 1m above ground level existing. As identified by the orange NGL line on the drawing.

33. Even if the ground floor level across the entirety of the Site constituted a basement for the purpose of s 175(4) the development is excessive in its proposed apartment yield and fails to comply with the limitation on 6 storeys. That is because (excluding the

⁹ SEPP (Housing), s 4(2)

ground floor) the proposal accommodates over 6 storeys within the 22m height limitation.

34. The provision as to the number of stories applies regardless of whether an additional height and GFA uplift might be sought under the infill provisions. Both s 175 and the provisions of infill affordable housing are capable of operating harmoniously. The Applicant's position to the effect that s 175 does not apply because it seeks an additional uplift is unfounded.¹⁰ The Applicant is seeking an intensification of development by reason of greater yield than would otherwise be permissible if it complied with the controls. This is unsatisfactory and will serve as an undesirable precedent for other developments in an area undergoing change because of SEPP (Housing).
35. As can be seen from drawing Sheet 3001, '*Elevation East – Redan Street*', Revision B, part of level 7 is provided for within the identified LMR height plane of 22m. That exceedance relates to the majority of the development (only a small portion of the development near the southern boundary is compliant).
36. In Appendix K, *Visual Impact Assessment*, Figure 11 provides one perspective of the proposed development with height blanket superimposed. This singular oblique drawing is insufficient to properly assess the totality of the actual height exceedances proposed having regard to the nominated relative levels identified on the architectural drawings. That this singular image does not provide a fair representation of height exceedance is apparent when compared to apparent differences in the representation of the 'exceeds LMR permissible envelope including bonus provision' in Viewpoint 03 photomontage – proposed view.
37. Nevertheless, based on Figure 11 it is apparent that the development exceeds the maximum permissible height (taken advantage of the affordable housing uplift provisions) by in excess of a storey.

Visual impact of height exceedance

38. The visual impact assessment demonstrates that the proposed development will have an overbearing effect when viewed from the public domain at vantage points on the footpath adjacent to Balmoral Beach.¹¹ That overbearing effect is exacerbated by the proposed height exceedances to that permitted under SEPP (Housing) Chapter 2 Affordable Housing. The Balmoral Basin, including Balmoral and Edwards Beach and

¹⁰ SEE at electronic p. 47

¹¹ SEE, Appendix K, *Visual Impact Assessment*, Figure 23: Viewpoint 03 photomontage – proposed view, p. 28; Figure 27: Viewpoint 04 photomontage – proposed view, p. 31

Middle Harbour is an important community facility providing public recreation; its scenic amenity should be protected.

39. In respect of non-compliance with s 175 there is no good justification. It is entirely unrelated to the provision of affordable housing and demonstrates that the Applicant is seeking to maximise yield contrary to the development standard and in a manner which ultimately results in unreasonable visual impact than a compliant development which adhered to a storey limitation.
40. A development that exceeds not only the 6 storey limitations under Chapter 6 but also the maximum permissible under the affordable housing provisions in Chapter 2 is inappropriate and should be rejected having regard to all of the reasons given above including paragraphs [5]-[17].

Material inconsistencies in height

41. Significant concern is expressed in regards to the proposed height, and material inconsistencies in representations as to height levels and design.
42. Appendix F to the SEE '*Clause 4.6 variation request – Building Height*', identifies that the proposed development has a maximum building height control of 28.6m.¹² In that regard it is noted that height of the purpose of SEPP (Housing) is calculated as follows:

building height (or height of building) means—

(a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or

(b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,

including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.¹³

[emphasis added]

43. A statement of proposed variation in that height control is addressed in table 3 of Appendix F.¹⁴ Whilst that statement identifies top of lift overrun, reference does not appear to be made to the roof for the level 10 plant identified on the architectural drawings as RL 95.350.
44. Of significant concern is that the *Clause 4.6 variation request – Building Height* suggests that level 10 will be substantially trafficable and intended as communal open space. The report states:

¹² p. 9

¹³ SEPP (Housing), s 4(2); Standard Instrument, Dictionary

¹⁴ p. 10

The other area of non-compliance relates to lift overrun, which will provide access to the communal rooftop and ensure adequate open space is available for all residents, including affordable housing tenants.¹⁵

45. The above statement can only refer to level 10. The architectural drawings provide no suggestion that level 10 is to be communal and there is no ability to assess the impacts of such a proposal. It should be utterly rejected.
46. The Applicant's argument that in order to accommodate a heritage building to the south of the Site it is reasonable to exceed height limits to the north is entirely insufficient. That is particularly so having regard to the visual impacts this height exceedance in the north will have on the Balmoral Basin and Middle Harbour.

F. Scenic conservation and inappropriate excavation of and visual impact to heritage item

47. Clause 6.4 of Mosman LEP provides as follows.

6.4 Scenic protection

(1) The objectives of this clause are as follows—

- (a) to recognise and protect the natural and visual environment of Mosman and Sydney Harbour,*
- (b) to reinforce the dominance of landscape over built form,*
- (c) to ensure development on land to which this clause applies is located and designed to minimise its visual impact on those environments.*

(2) This clause applies to land identified as "Scenic Protection Area" on the [Scenic Protection Map](#).

*(3) **Development consent must not be granted** to any development on land to which this clause applies **unless the consent authority is satisfied** that—*

- (a) measures will be taken, including in relation to the location and design of the proposed development, to minimise the visual impact of the development to and from Sydney Harbour, and*
- (b) the development will maintain **the existing natural landscape and landform**.*

48. The proposed development will not maintain the existing natural landscape and landform. In particular the proposal involves the permanent destruction of part of Council land, being the Redan Street road reserve heritage item, by way of excavation into the exposed natural rockface in order to accommodate a private road to service the Site. That change will be perceptible to all, including not only residents but visitors to the area who travel along Military Road, Almora Street, Redan Street, Balmoral Avenue and then Raglan Street to Balmoral Beach.

¹⁵ p. 11

49. The Land and Environment Court has rejected a development application on the basis of unacceptable impacts to of the Holt Avenue Divided road heritage item under Mosman LEP and the Minister should adopt a similar position in this case and reject the SSDA.¹⁶

G. Conclusion

50. For all of the reasons give above, the SSDA in its current form should be refused.

29 March 2026

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Encl.

1. National Trust of Australia (NSW), Listing Report: Middle Harbour Landscape Conservation Area;
2. National Trust of Australia (NSW), Listing Report: Mosman Urban Conservation Area

¹⁶ *Rose Saltman and Michael Wiles v Mosman Council* [2016] NSWLEC 1632 per O'Neill C at [31]-[32]