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Dear Ms Ross

Objection to Development Application SSD-93020230 at 40–48 Redan Street, Mosman

1 Summary

- 1.1 I refer to State Significant Development Application SSD-93020230, which seeks consent for the “[d]emolition of existing dwellings; [c]onstruction of a 10-storey residential flat building comprising 53 apartments (including 11 in-fill affordable housing apartments), two basement levels with parking for 106 cars, communal open space; and [a]ssociated works including site preparation, excavation, earthworks, landscaping and installation of services” at 40–48 Redan Street, Mosman (**Site**) (**Development Application**).
- 1.2 I reside with my family at 71 Muston Street, which would be directly and seriously negatively affected by the proposal. My family and I have just completed a four year rebuild of our family home at enormous expense and significant personal cost. The design has been carefully curated to ensure our family home sits in the landscape, has minimal impact on our neighbours and compliments nearby and suburban built form. From my home I presently enjoy open outlook, sunlight, privacy and a visual relationship with the harbour landscape, including views towards Sydney Heads over the natural topographical fall and Balmoral Beach. The proposal would cause severe and devastating impacts to those amenities arising directly from an intrusive built form of exceptional height and bulk into a low rise residential setting. This would irreversibly and materially alter both the character of the locality and the amenity of my home and is entirely at odds with good planning principles, the equity of view sharing that has been a bedrock of Sydney’s built environment and is contrary to the tenacity principles and the LGA’s planning instruments.
- 1.3 I object to the proposal. It is a gross overdevelopment of the Site, an unsuitable planning outcome for the location and an abuse of the planning controls that are in place. In particular, it:

- (a) seeks a form of development whose height, bulk and massing are out of scale with the surrounding area;
- (b) improperly relies upon departures from applicable planning controls for which there are no persuasive planning or other grounds;
- (c) would cause severe view loss, overshadowing, overlooking and visual intrusion to my property and to neighbouring homes in Muston Street;
- (d) would intensify traffic, servicing and waste impacts in and around Redan Lane and the surrounding local street network;
- (e) would undermine the established scenic, residential and heritage character of this part of Mosman;
- (f) seeks to override existing heritage protection in the relevant LEP;
- (g) relies upon a selective reinterpretation of the Mosman Scenic Protection Area that has been in place for well over half a century and which the Minister has publicly said will not occur;
- (h) gives rise to a serious threshold question of whether, having regard to the indivisible operation of local heritage protections and the Scenic Protection Area, the proposal is wholly prohibited and therefore not properly assessable as a State Significant Development; and
- (i) offers only a limited and time constrained public benefit by way of affordable housing (relying upon poor doors which are inimical to Australian social and cultural values) when weighed against the magnitude and permanence of the planning harm.

1.4 So far as my own property is concerned, the impacts of the Development Application would be immediate and profound, admitted by the proponent in view loss terms as likely ranging from “severe” to “devastating”.¹ The proposal would substantially overshadow my land, diminish the sunny aspect of my home and private open space, and materially erode my privacy. It would entirely destroy the outlook that presently defines the amenity and character of my home. The asserted benefit of tower separation does not meaningfully answer that impact in my case.

1.5 The construction consequences are also highly material given that a project of this scale would necessarily expose my family and other nearby residents to years of

¹ Urbis, *40-48 Redan Street Mosman: Visual Impact Assessment (VIA)* at p. 43.

noise, vibration, dangerous environmental pollution, dust, heavy vehicle movements and construction disruption in an already constrained locality. Those impacts would also result in significant risk of damage to my property and wellbeing. These adverse impacts will be experienced daily by residents living immediately beside the Site, including my household. The severe burden on me, my family and local residents is patently unreasonable.

1.6 [REDACTED]

1.7 For the reasons set out above and developed further below, I object to the proposal. In my view, it is clear that the Development Application represents an excessive and unsuitable form of development for the Site and its setting. It is not a modest or localised intervention but a substantial intensification of built form, excavation and traffic generation in a sensitive part of Mosman. Its height, bulk, visual presence and basement excavation raise serious questions about site suitability, scenic impact, local character, heritage setting, amenity and the public interest. When assessed under section 4.15 of the *Environmental Planning and Assessment Act 1979* (NSW) (**EPA Act**), those impacts are both cumulative and individually sufficient to warrant refusal.

2 Height, bulk, scale and suitability

2.1 Redan Street and its surrounding streets are characterised by lower scale residential development, landscaped setbacks, and a finer grain streetscape. The proponent's own VIA accepts as much, describing the visual context east of Redan Street as being "predominantly characterised by low density residential development", with pitched roof forms, traditional architectural detailing, treed landscape settings, and generous front and rear setbacks.²

2.2 The proponent further accepts that, notwithstanding some medium density development closer to Military Road and west of Redan Street, "the dominant surrounding typology is low density single and double storey residential dwellings" and that the "majority of surrounding private dwellings are therefore significantly lower than the proposed development".³ Viewed in that context, it is clear that a 10

² VIA at p. 13.

³ VIA at p. 13.

storey building that exceeds the permitted legal maximum height, with additional substantial basement excavation and parking is, by any fair measure, an abrupt escalation in height, bulk and intensity. I refer to **Figures 1-2**, below.



Figure 1: Comparative view from south-south-east from corner of Almora & Arbutus Streets⁴



Figure 2: Comparative view from north-north-west along Redan Street⁵

- 2.3 The underlying topography of the area falls steeply east from Military Road towards Balmoral Beach and the harbour waterfront, with Redan Street occupying a mid-slope position along the ridgeline. Below Redan Street, the street pattern becomes irregular and development increasingly low lying. This is not a site whose context is defined by existing tall built form. It is instead a visually and environmentally sensitive transitional location between more urbanised areas closer to Military Road and the lower scale residential slopes descending toward Balmoral. A building of this height and mass in this position does not read as a contextual response but as an obvious and egregious overdevelopment of a constrained site.
- 2.4 The proponent's own material in fact makes a series of concessions which tell strongly against approval. The VIA states that visual effects shown in the photomontages range from low to high, and that a high rating relates to immediate streetscape views including from Redan Street and Redan Lane at the intersection of Almora Street.⁶ It further states that two close immediate streetscape views were

⁴ VIA at p. 21-2.

⁵ VIA at p. 24-5.

⁶ VIA at p.5.

rated medium-high in relation to visual effects on baseline factors.⁷ The proponent's analysis of the images reproduced in Figures 1 and 2, above, confirms that assessment – in each case, the proposal was found likely to create overall medium-high effects on the existing view attributes, with low compatibility with the existing urban and visual context.⁸ That acknowledgement strongly reinforces the conclusion that the proposal sits awkwardly and intrusively within its present surroundings.

2.5 Importantly, the VIA expressly concludes that “significant visual change in terms of height and scale will occur”.⁹ Where the starting point is a street and locality of predominantly low density dwellings, landscaped setbacks and harbour-oriented outlook, the introduction of a building of this magnitude cannot sensibly be dismissed as a routine consequence of infill housing. It is a transformation of the Site and of its immediate setting. The VIA seeks to dilute that conclusion by invoking “desired future character” and asserting that, over time, the proposal's presently isolated visual effects will achieve “high compatibility with the future potential visual context”.¹⁰ That reasoning is speculative and circular. It assumes a more intense future pattern of redevelopment in the locality and then relies upon that assumption to justify the present proposal. That is not a satisfactory answer to a current assessment. Instead, the present application must be assessed by reference to the Site, its actual surroundings, and the real impacts of the built form now proposed. The consent authority should not permit some conjectural future context to be used to neutralise a presently excessive development outcome.

2.6 Further, the proponent asserts that while some neighbours may experience impacts ranging from “severe to devastating”, those impacts are said to arise from “fully complying built form”.¹¹ That submission should not be accepted for two reasons.

(a) *First*, it is not correct as a matter of fact as this is not a wholly compliant proposal. The proponent seeks to rely upon bonus height provisions, yet its own VIA acknowledges that the maximum permissible height for the site is 28.6 metres, that sections of the upper storeys exceed the height plane, and that the highest storey of the western form exceeds the permissible envelope

⁷ VIA at p. 5.

⁸ VIA at pp. 21, 24.

⁹ VIA at pp. 5, 59.

¹⁰ VIA at pp. 5, 59.

¹¹ VIA at pp. 5, 59.

height control.¹² The premise of a “fully complying built form” is therefore false on the proponent’s own case. It is a lie.

- (b) *Second*, and more fundamentally, the logic of the VIA does not follow even on its own hypothesis. The fact that view loss or visual intrusion may arise from a complying or notionally complying envelope does not then mean those consequences are thereby acceptable, still less that they should be disregarded. View loss, visual dominance, bulk, loss of openness and impacts on neighbouring amenity remain relevant matters in the exercise of planning discretion. Compliance may inform that exercise but does not conclude it. That is especially so where the same report accepts that immediate neighbours may suffer impacts ranging from “severe to devastating”, and that the proposal will produce “significant visual change in terms of height and scale”. Those are matters requiring genuine evaluative judgment by the consent authority.

2.7 The critical mistake in the VIA’s reasoning is that it treats compliance as if it were a complete planning answer. Leaving to one side the fact that the proposal is NOT compliant, formal compliance is not an answer in any event. The relevant question for the consent authority is whether a development of this height, bulk and massing is suitable for this site and acceptable in its context having regard to its consequences. On the proponent’s own material, the answer should be no. The acknowledged severity of the impacts on immediate neighbours, combined with the admitted significant visual change and the proposal’s non-compliances, tells strongly against approval rather than in favour of it.

2.8 The VIA also attempts to minimise the additional height sought on the basis that it blocks “open areas of sky” rather than “unique compositions” or “highly valued views”.¹³ That formulation understates the real planning issue because for immediate neighbours and for the public domain, the problem is not merely the “loss of sky” as an abstract category. It is the introduction of a large, elevated building mass into a mid-slope residential street, with consequential visual dominance, loss of openness, a hardening of the skyline, and a substantial change in the experience of the locality. The assessment cannot properly be reduced to whether a heritage item or iconic landmark is entirely obliterated. Bulk and dominance matter in themselves. They matter particularly in a place such as this.

¹² VIA at pp. 5, 59.

¹³ VIA at p. 5.

- 2.9 The same is true of the asserted “view sharing corridor” created by the 9 metre separation between the two upper forms. The VIA presents that opening as a “more skilful design” intended to reduce view impacts and the perception of height and scale.¹⁴ Even accepting that intention, the relevant question is one of result, not aspiration. In circumstances where the VIA itself identifies potential private domain impacts ranging from severe to devastating for a small number of immediate dwellings, that is not a persuasive basis upon which to conclude that the massing has been appropriately resolved. On the contrary, it demonstrates that the scale and arrangement of the proposal remain fundamentally problematic for those properties most directly affected.
- 2.10 For those reasons, the proposal’s height, bulk and scale are excessive, and the Site is not suitable for a development outcome of this magnitude. The Development Application should be refused on this basis alone.

3 Scenic protection and broader visual setting

- 3.1 This part of Mosman is not merely a collection of isolated suburban streets but directly forms part of the wider harbour landscape. Development in this setting should preserve the visual qualities of the foreshore slopes, including the existing balance between vegetation and built form. In my view, the proposal would replace that balance with a much larger and more dominant built form, visible in a way that is appreciably inconsistent with the scenic values of the area.
- 3.2 Of particular significance is that the Site falls within the Mosman Scenic Protection Area (**SPA**), which the Mosman Council describes as an “integral part” of the Sydney Harbour landscape because of its visibility from surrounding waterways and land areas across the water. I refer to **Figure 3**, below.¹⁵

¹⁴ VIA at p. 5.

¹⁵ VIA at p. 18.



Figure 3 – Mosman Scenic Protection Area with Site overlaid

- 3.3 As the Council rightly notes, the significance of Mosman’s foreshore slopes has been recognised in both State and Council planning since the 1960s.¹⁶ There is no justification for treating the SPA as if its objectives may be relaxed or effectively displaced for the economic convenience of a single development. To do so would erode a carefully developed planning framework directed to visual protection, landscape dominance, and the preservation of Mosman’s foreshore character.
- 3.4 Moreover, the VIA is flawed in its repeated assertion that the “key scenic compositions” of the SPA are said to lie elsewhere (to the east) and therefore do not include the proposed development.¹⁷ That is not a satisfactory planning answer in circumstances where the SPA has already been identified by the planning framework. Its significance is not to be selectively redefined by an interested proponent or consultant according to which views are said to matter most for the purpose of a particular application. The relevant question remains whether this development will minimise visual impact to and from Sydney Harbour and maintain the existing natural landscape and landform within the SPA. The proponent’s attempt to narrow the field of relevant scenic concern to “key” compositions of its own choosing impermissibly sidesteps that inquiry.
- 3.5 Nor is it an answer to say, as the proponent does, that the aims of the LMR policy “prevail” to the extent that DCP scenic protection objectives are said to be “less relevant”.¹⁸ At its highest that observation says no more than that State policy may prevail in the event of direct inconsistency with some local controls. It does not

¹⁶ Mosman Council, *Mosman Scenic Protection Area* < <https://www.yourvoicemosman.com.au/mosman-scenic-protection-area/widgets/307838/faqs>>.

¹⁷ VIA at p. 40

¹⁸ VIA at p. 40.

render scenic protection irrelevant and still less does it displace the obligation to undertake an evaluative assessment of visual impact, character, amenity and public interest. The proper task is to give coherent work to both the State housing policy and the enduring scenic protection framework so far as the law permits. That is achieved not by treating scenic protection as spent but instead by refusing proposals whose scale and visual intrusion exceed what the site and setting can reasonably bear.

- 3.6 In my submission, the correct conclusion is that the proposal would displace the existing balance between vegetation and built form with a much larger and more dominant built form, appreciably inconsistent with the scenic values of the locality. That inconsistency is not cured by saying that some views are “transitory”, that some scenic compositions “remain elsewhere”, or that similar massing may later emerge on other sites. The SPA exists to resist precisely that mode of attrition. The proposal should therefore be regarded as contrary to the scenic protection objectives of the Mosman LEP and to the broader visual setting of the Mosman foreshore slopes.
- 3.7 For those reasons, I submit that the proposal is visually discordant with the broader harbour setting. The impact on the scenic protection values of this part of Mosman is real, and it tells strongly against approval. I note also that the Minister for Planning has made public, written statements that the SPA will be protected. The consent authority should have due regard to that representation.

4 Heritage, streetscape and neighbourhood character

- 4.1 There is a real question about whether the cumulative and indivisible operation of the heritage protections and the SPA controls render the proposed development wholly prohibited. The proposal is not put forward as a collection of severable components that can be treated in isolation but instead as a single integrated development. In these circumstances the matter is not simply one of a partly prohibited SSD capable of ordinary merits assessment. Instead, the Department should not view the proposal as being properly before it for determination as an ordinary SSD.
- 4.2 Even if the Department takes a narrower view, the proposal must still be assessed not only by reference to the Site itself but also to the heritage setting and established character of the locality into which it would be inserted. The proponent accepts that while the site is not a heritage item and is not located within a heritage conservation area, it is in the immediate vicinity of several listed items including the Redan Street Divided Road (LEP I440), the pair of semi-detached houses at 36 and 38 Redan

Street (LEP I262), and the house at 29 Redan Street (LEP I261).¹⁹ It also accepts that the site presently sits within a residential area characterised by standalone houses of low to medium density, with a vegetated retaining wall to Redan Street, stepped topography and views towards Balmoral Beach.²⁰ The Site therefore sits amongst older residential buildings, fine-grain development, landscaped setbacks and a coherent rhythm of lower scale built form.

- 4.3 The significance of that context is reinforced by the existing heritage descriptions collected in the HIS itself. The Redan Street Divided Road is described as “integral” to Mosman’s visual character and sense of place.²¹ The pair at 36 and 38 Redan Street is identified as a “rare and elegant” Federation Arts and Crafts composition whose setting high above the street and front yard emphasises its visual prominence.²² The house at 29 Redan Street is identified as a “good intact example of a large Federation style residence” whose prominent corner site, garden setting and fence contribute to its significance.²³ Those statements demonstrate that the heritage significance of these items extends to prominence, setting, streetscape relationship, garden presentation and the wider visual composition in which those buildings are experienced.
- 4.4 The LMR is not available in relation to heritage items which are exempt from the LMR and remain protected by force of the LEP and heritage laws. By seeking to destroy parts of the Redan Street Divided Road, the proponent is effectively seeking consent to illegally override heritage status. It is a galling, offensive and breathtakingly brazen request akin to a bank robber asking for permission to rob the bank. No rational or reasonable decision maker could agree to the suggestion.
- 4.5 Against that background it is clear that the proposal would not represent a neutral insertion but would, as the VIA itself accepts, introduce a significant visual change in terms of height and scale into a locality whose dominant surrounding typology remains low density single and double storey dwellings.²⁴ It is clear that a building of this size does not merely occupy its own lot. In my view, it would entirely reorder the perceived hierarchy of the street and risk overwhelming those nearby heritage items

¹⁹ Urbis, *40-48 Redan Street Mosman: Heritage Impact Statement (HIS)* at p. 10.

²⁰ HIS at p. 12.

²¹ HIS at p. 52.

²² HIS at p. 53

²³ HIS at p. 53.

²⁴ VIA at pp. 5, 59.

whose significance is necessarily bound up with their scale, prominence and relationship to the public domain.

- 4.6 The proponent also fails to address the negative impact the development will have on the curtilage from the harbour, the suburbs to the east of the harbour and from the precinct around Balmoral Beach. These are world class amenities, preserved over decades for the benefit of all Sydneysiders, Australians and international visitors. Moreover, the intergenerational impact has not been considered. Once these iconic heritage and scenic protection zones have been negatively impacted by this development, there is no redemption possible, no turning back of the clock. The impact will be profound and permanent.
- 4.7 The proponent seeks to answer that concern in two principal ways.
- (a) *First*, it says that the proposed scale is “consistent with current State planning objectives” and responds to “requirements” for high-density residential living opportunities within 800 metres of designated town centres.²⁵
 - (b) *Second*, it says that the built form volume is “balanced by its architectural design”, that the proposal adopts a “cohesive architectural approach”, and that nearby heritage items will retain their prominence and streetscape presence.²⁶
- 4.8 Neither proposition is persuasive. State planning policy may permit or facilitate greater density in certain locations. But that is not the same thing as *requiring* a development of this scale on this site, or concluding that heritage and character impacts must therefore yield. The evaluative planning question remains whether this particular built form is acceptable in this particular setting. A policy of permission is not a mandate for overdevelopment. And of course, the proponent simply fails to deal with the illegal impact on the LEP heritage protected road, Redan Street.
- 4.9 Nor does the proponent’s architectural language answer the substance of the objection. To say that bulk is reduced by articulation, setbacks, modelling, balconies and material variation does not alter the fact that the proposal remains a vast multi-storey apartment form introduced into a streetscape still defined (including by the proponent’s own account) by low to medium density houses stepping down the slope

²⁵ HIS at pp. 7, 80.

²⁶ HIS at pp. 8, 80.

into a scenic protection zone. The difficulty is not one of façade treatment but one of mass, dominance and incompatibility of scale.

- 4.10 The point is particularly acute in relation to 36 and 38 Redan Street and 29 Redan Street. The proponent says that the three-storey podium and progressive setbacks provide a visually complementary scale and a considered transition to the heritage item at 36–38 Redan Street, and that 29 Redan Street will remain prominent because of the carriageway, the divided road and the proposed front setbacks.²⁷ That analysis is too narrow in circumstances where it is now well accepted that heritage prominence is not preserved merely because a building remains visible, nor because some setback survives at ground level. What is relevant is the altered visual relationship between the heritage items and their surroundings. A heritage item may remain physically legible yet still be diminished by an adjacent form that alters the established scale hierarchy, compresses its setting, and changes the character of the street of which it forms part. That is my present concern. It is not just that the proposal would simply sit beside these items, but that it would dominate the background and reframe the streetscape around itself.
- 4.11 The same is true of the Redan Street Divided Road and the retaining wall character identified by the proponent. The proponent's position is that only a minor intervention is proposed, in an area of lower integrity, and that the majority of the sandstone wall will remain legible.²⁸ But the heritage issue is not confined to whether some sandstone fabric is left in place. The divided road is significant because of the combined effect of topography, embankment, retaining wall, elevated pedestrian path, vegetation and lower-scale built form stepping with the landform. As with the individual properties discussed above, a large apartment building inserted behind that setting risks altering the way the divided road is experienced, even if parts of the wall are technically retained. Again, the issue is one of setting and character, not just survival of fragments.
- 4.12 In those circumstances, I do not accept the proponent's conclusion that the proposal would have an "acceptable" heritage impact merely because the subject dwellings themselves are not listed, nearby items remain visible, and the proposal employs setbacks and façade articulation. The surrounding area is presently characterised by low to medium density residential development and heritage items whose significance is bound up with their setting, prominence and streetscape contribution.

²⁷ HIS at pp. 72, 74, 78.

²⁸ HIS at pp. 70, 72-8.

4.13 A development of the scale contemplated by the Development Application risks overwhelming that setting and altering the character not merely of the Site, but of the street as a whole. It follows that the proposal tells against approval on heritage, streetscape and neighbourhood character grounds.

5 Views and visual impact

5.1 The proposal would materially and adversely alter the existing outlook from my property at 71 Muston Street in a manner which is devastating. At present, the property enjoys north-easterly scenic compositions from its main living areas and upper level living areas, including views towards Dobroyd Head and Middle Head, together with south-easterly district views from the main outdoor pool area. These facts are observed in the proponent's own material.²⁹

5.2 Those views are part of the present amenity of the property and form part of the way the dwelling has been deliberately designed, occupied and enjoyed. The proposal would introduce a much larger vertical built form directly into that outlook with the resulting effect being a substantial and deleterious change to the character, openness and amenity of the view. I refer to **Figure 4**, below.



Figure 4: Level of exposure to potential view impacts³⁰

5.3 Importantly, and as accepted by the proponent, 69 and 71 Muston Street are likely to be exposed to significant view loss, likely ranging from “severe” to “devastating” in *Tenacity* terms.³¹ It is difficult to reconcile an acknowledged impact of that magnitude

²⁹ VIA at p. 52.

³⁰ VIA at p. 44.

³¹ Referring to *Tenacity Consulting v Warringah Council* (2004) 134 LGERA 23 (**Tenacity**).

with the suggestion that the proposal is “acceptable” on visual impact grounds. The position is made more concerning by the methodology adopted by the VIA, which is expressly stated as having been prepared “without the benefit of view inspections at neighbouring dwellings”.³² In the absence of this critical material, the proponent’s assessment of private domain view impacts is necessarily incomplete. That is a distinctly fragile foundation for such a reassuring conclusion.

5.4 Nor do I accept the VIA’s attempt to minimise the impact by asserting that the additional upper level mass blocks only “open areas of sky” rather than “unique compositions” or “highly valued views”.³³ That formulation is untenable in relation to my property at 71 Muston Street where the real planning effect is the obstruction of valued water and headland outlook, the hardening of what is presently an open visual field, and the insertion of a dominant building mass into the middle of a settled scenic composition. The same may be said of the asserted mitigation said to arise from the redistribution of mass and the 9 metre separation between the two upper forms. Even accepting that this was the design intention, the relevant question is one of result.

5.5 In my submission, the *Tenacity* principles point firmly against approval. The views affected are obtained from parts of the dwelling of the highest sensitivity, namely the principal living areas and principal outdoor recreation areas. I refer to **Figure 5**, below.



³² VIA at pp. 5, 43.

³³ VIA at p. 5.

Figure 5: Views from 71 Muston Street, Mosman.

5.6 The extent of impact, including on the proponent's own assessment, may be severe to devastating. While the VIA seeks to treat that outcome as acceptable by reference to asserted compliance, desired future character and the strategic objectives of the Housing SEPP, those matters do not conclude the inquiry. The remaining question is whether the resulting view loss to 71 Muston Street is reasonable in the circumstances of this case. In light of the scale of the loss, the importance of the affected outlook, and the proposal's conceded non-compliance in height, it should not be regarded as a reasonable sharing of views. I refer to **Figure 6**, below, which reveals the true extent of the likely view loss from my property.



Figure 6: Visualised view loss from 71 Muston Street, Mosman.

5.7 Importantly, it is not correct for the proponent to say that all view loss generated by the proposal is somehow “anticipated” by the strategic objectives of the Housing

SEPP.³⁴ The SEPP's objects include increasing housing supply and choice, but they also reinforce the importance of housing being designed to reflect and enhance its locality. The SEPP does not enact a rule that substantial private view loss must simply be accepted whenever additional housing is proposed near a centre. The evaluative task under section 4.15 of the EPA Act remains. A proposal may be encouraged in principle and yet still be unacceptable in its actual form and consequences.

5.8 The proponent's further suggestion that more residents in new developments will enjoy scenic views "previously held by a few" is also no answer at all.³⁵ There are two points here.

(a) *First*, the proponent's reference to scenic views being enjoyed by more "residents" is imprecise and conceals the true position as the only additional "residents" who would obtain that benefit are the future occupants of the very building now proposed. That is not a redistribution of amenity across the community at large but the simple creation of private amenity within the proponent's own development by removing or diminishing the existing amending of neighbouring properties. The proposal would transfer scenic advantage from existing homes to the new private apartments the proponent seeks to construct.

(b) *Second*, planning law does not proceed on the footing that a serious and unreasonable imposition upon an immediately affected neighbour becomes acceptable merely because it creates an outlook for future occupants of the new building. View sharing is concerned with reasonable design responses and equitable minimisation of impact. It is not a warrant for the compulsory redistribution of private amenity.

5.9 For those reasons, the proposal would cause unacceptable view loss and visual intrusion to 71 Muston Street. The impact is not minor, not incidental, and not adequately mitigated by the present design. That conclusion weighs strongly against approval.

6 Deep excavation, sandstone, basement construction and groundwater risk

6.1 A further and substantial concern is the scale of excavation required for the proposed basement structure. The material exhibited indicates deep excavation into sandstone

³⁴ VIA at pp. 5, 40, 59.

³⁵ VIA at pp. 5, 59.

and very substantial basement works. That has implications not only for the Site itself, but for adjoining land, retaining conditions, structural stability, groundwater behaviour, drainage and construction impacts more broadly. These matters go directly to the suitability of the Site for a development of this scale and to the adequacy of the assessment undertaken.

- 6.2 The physical characteristics of this part of Mosman heighten those concerns. This is a steeply sloping locality with constrained access, existing retaining structures and sensitive interfaces between adjoining residential properties. In that setting, excavation into Hawkesbury Sandstone of the magnitude proposed carries a real potential for vibration, noise, dust, heavy vehicle movement, soil and rock haulage, and adverse effects on neighbouring land and improvements. Even if those risks may ultimately be partly managed to some extent by conditions, the starting point remains that the proposal demands an unusually intensive intervention into the landform in order to accommodate a very large basement outcome. That is itself a relevant indicator of overdevelopment.
- 6.3 The question is therefore not merely whether excavation can technically be undertaken. It is whether a site requiring such extensive intervention into sandstone and below-ground form is suitable for a development of this intensity in such close proximity to established residential development. In my submission, the extent of excavation and basement construction reinforces the broader conclusion that the proposal asks too much of a constrained and sensitive site.
- 6.4 Time has not permitted me to obtain geotechnical and engineering reports. I reserve my rights as against the developer and the consent authority in relation to property damage arising as a consequence of any approval being granted which fails to reasonably consider this issue.

7 Traffic, access and pedestrian safety

- 7.1 The proposal would materially intensify vehicle activity in a location that is already constrained. A development with 106 car spaces would necessarily generate a substantially greater volume of vehicle movement, service activity and construction traffic. In my view, the local street and lane network is ill-suited to that level of intensification, particularly having regard to the existing gradients, narrow carriageways, sight-line issues, on-street parking, pedestrian movement and school or beach-related traffic in the area.

- 7.2 That concern is not limited to the finished development because the construction phase for a project of this size would itself place very substantial pressure on the surrounding streets. Heavy vehicle movements, deliveries, waste removal, traffic control measures and temporary obstruction of already constrained access routes would be likely to affect residents for a prolonged period. In a locality characterised by narrow residential streets and regular pedestrian use, those impacts raise real questions of safety and residential amenity.
- 7.3 Nor should the traffic issue be viewed in isolation from the scale of the proposal more generally. The volume of parking and access demand is itself a reflection of the overall size and intensity of the development. In those circumstances, the traffic and pedestrian safety impacts are not secondary consequences but are part of the broader planning picture demonstrating that the proposal is an excessive response to the capacity of the Site and its surrounding street network.
- 7.4 A further and important point now arises from the pedestrian route analysis undertaken by registered land surveyor Mr Robert Friend, dated 29 March 2026 (**Walking Distance Report**).³⁶ The Walking Distance Report surveyed the very route relied upon by the proponent,³⁷ and found that the route from the north-east boundary corner of 48 Redan Street to the relevant edge of the Mosman Town Centre measured 402 metres, not 400 metres or less. The two alternative routes measured 423 metres and 472 metres respectively. On the face of that evidence there is at least a serious question whether the proposal satisfies the 400 metre walking distance requirement said to underpin reliance on the LMR pathway.
- 7.5 The Walking Distance Report also identified two practical obstacles along the nominated route.
- (a) *First*, at the Almora Street crossing, a tree in the nature strip blocks direct access to the footpath, with the result that his 402 metre measurement was taken in a direct line through the tree, whereas a person actually walking the route would need to move around it.³⁸
 - (b) *Second*, the concrete footpath ends at the end of Muston Street and the route becomes a walk along the asphalt roadway of Melaleuca Lane. The report notes that the northern side of that lane is occupied by multiple parked cars

³⁶ Robert Friend Surveys, *Identification Survey Report: Pedestrian Route Analysis – 48 Redan Street, Mosman to Mosman ‘Town Centre’* (29 March 2026) (**Walking Distance Report**).

³⁷ JMT Consulting, *40 – 48 Redan Street, Mosman Transport Impact Assessment* (27 February 2026) (**TIA**).

³⁸ Walking Distance Report at p. 1.

and is not available to pedestrians, such that a pedestrian would in practice need to cross to the southern side, again potentially adding further distance. Those matters are illustrated in the photographs and sketch plan accompanying the report.³⁹

- 7.6 In those circumstances, the consent authority should not proceed on the assumption that the proposal plainly satisfied the relevant pedestrian walking criterion, still less that it does so by reference to a continuous and unobstructed pedestrian route. At a minimum, the Walking Distance Report demonstrates that the matter is contestable and requires careful and independent verification. If the nominated route is in truth longer than 400 metres, or if it depends upon a path that is not practically available to pedestrians in the manner assumed by the proponent, then the planning premise on which reliance is placed materially weakens.

8 Landscaping, canopy and the balance between vegetation and built form

- 8.1 One of the defining qualities of this part of Mosman is that vegetation continues to play a dominant visual role. The established character of the slope is consequently shaped not only by built form but also by garden setting, tree canopy, landscaped setbacks and the visual relief afforded by planting between buildings. My concern is that the proposal would shift that balance too far toward built form.
- 8.2 In this locality, landscaping is not merely decorative but is part of the visual structure of the streetscape and of the foreshore slope more generally. The existing balance between vegetation and built form assists in preserving openness, softening development, and maintaining the scenic qualities for which Mosman is rightly valued. A development of this scale, with its extensive basement footprint and dominant built mass, risks diminishing that vegetated character and replacing it with a harder and more urban outcome than the Site and locality can comfortably absorb.
- 8.3 In my submission, the issue is therefore not confined to whether some planting can be reintroduced around the edges of the development. The more fundamental question is whether the proposal preserves the present dominance of landscape over built form, or instead reverses it. The proposal cannot and does not satisfy the requirements for deep soil and broader FSR landscaping requirements pursuant to the LMR (assuming that is an available pathway for this development). Those reasons further weigh against approval.

³⁹ Walking Distances Report at pp. 2, 4-5.

9 Affordable housing pathway, public benefit and inclusive design

- 9.1 I do not oppose affordable housing as a matter of principle. The question, however, is whether in this case the affordable housing component is being used to justify a much larger market apartment outcome than would otherwise be acceptable on the Site. That is a legitimate planning question, and it bears directly upon the public interest. The mere presence of an affordable housing component does not answer the separate question of whether the Site is suitable for a development of this scale, bulk and intensity, or whether the resulting planning impacts are proportionate to the public benefit said to be obtained.
- 9.2 It should be remembered that the affordable housing obligation is not permanent. Nor is the social return commensurate with the magnitude of the departures sought and the impacts identified elsewhere in this submission. What is proposed is a very large and visually dominant residential flat building, with substantial excavation, basement intensity, traffic generation, visual intrusion and amenity consequences, justified in part by a form of affordable housing whose legal and practical duration is limited. In those circumstances, the consent authority must ask whether the claimed public benefit is in truth being used to unlock a scale of development that would otherwise be unacceptable.
- 9.3 A related concern arises from the design treatment of the affordable housing component itself. On the material exhibited, the affordable housing is accessed separately from the laneway rather than through the principal building entry, and a material proportion of that component comprises very small units. Whether or not one adopts the language of “poor doors”, the arrangement raises a legitimate question as to whether the proposal genuinely advances inclusive housing outcomes, or instead treats the affordable housing component as a planning device by which a substantially larger market development may be secured. That is relevant to the weight to be given to the asserted public benefit.
- 9.4 The public interest under s 4.15(1)(e) of the EPA Act requires consideration of the cumulative and longer-term consequences of development, including the integrity and coherence of the planning framework itself. When those matters are weighed, it is clear that the limited public benefit associated with this proposal does not justify the scale of the impacts identified in this submission. That conclusion is reinforced by the proponent’s reliance on a purported “desired future height” or “desired future character” for the locality, discussed elsewhere in this submission. It should also be recalled that the affordable housing uplift is not conferred as of right. It remains

subject to merits assessment, and any exercise of discretion must still be undertaken by reference to the applicable planning controls and the minimum acceptable standards they embody.

- 9.5 It is worth restating that the Housing SEPP does not itself establish a “desired” future height for this Site that displaces applicable local planning controls or site-specific standards. Nor does it convert a broad policy encouragement of additional housing into a site-specific mandate for a building of this form. The relevant question remains whether this particular proposal is justified on its merits, in its actual context, and in a manner consistent with the orderly and coherent development of land. It is not enough for a proponent to point to some asserted future vision and then treat existing controls as merely provisional obstacles.
- 9.6 The same point arises in relation to the proponent’s clause 4.6 request to vary the maximum building height and number of storeys development standards. The proponent bears the onus of demonstrating that compliance with those standards is unreasonable or unnecessary in the circumstances and that the grant of consent notwithstanding non-compliance would be consistent with the objectives of the standard, the zone and the public interest. That onus has not been discharged.
- 9.7 Rather than demonstrating why compliance with the development standards is unreasonable or unnecessary, the proponent’s reasoning proceeds in the opposite direction. It assumes the primacy of the proposed development outcome and then treats the development standards as obstacles to be displaced in order to achieve it. That is not the reasoning process contemplated by clause 4.6. Development standards are not optional benchmarks to be set aside whenever they constrain yield or design ambition. They are deliberate expressions of planning policy and may be departed from only where the statutory exception is properly made out.
- 9.8 Nor does the clause 4.6 material demonstrate that strict compliance would hinder the broader policy objectives of the planning framework. To the contrary, the planning harms identified elsewhere in this submission show why those standards continue to serve an important purpose for the Site. Clause 4.6 does not permit a consent authority to rank planning controls by perceived importance and dispense with compliance merely because another instrument encourages development in general terms. A broad State-level policy in favour of housing supply cannot be used to hollow out local development standards on a site-by-site basis, particularly where those standards remain directed to legitimate matters of height, bulk, amenity and contextual fit. To approve the present variation on that footing would undermine the

consistency and predictability of the planning system and diminish confidence in the operation of adopted controls.

- 9.9 In a high-value suburb such as Mosman where topography, outlook and upper-level amenity attract substantial premiums, the density bonus mechanism is apt to confer a disproportionate private benefit on the proponent relative to the temporary public benefit obtained. That asymmetry is itself a relevant public-interest consideration.
- 9.10 In that respect, the present case is not merely about the appearance of one building but concerns the integrity of the planning framework over time. Approval of the Development Application on the footing that it is merely “consistent” with some asserted future intent would risk normalising incremental exceedances, eroding the operation of established controls, and encouraging similar departures elsewhere in the locality. The public interest is not served by treating carefully calibrated controls as expendable whenever a proponent can reinterpret and invoke a broad housing objective and a modest affordable housing component.
- 9.11 For those reasons, the affordable housing pathway, the clause 4.6 request, the design treatment of the affordable housing component, and the wider consequences for planning coherence all point in the same direction. The limited and time-constrained public benefit said to arise from the proposal does not justify its scale, its non-compliances, or its impacts. The proposal is contrary to the public interest and should be refused.

10 Conclusion

- 10.1 For the reasons set out above, I respectfully submit that SSD-93020230 should be refused. Properly assessed under s 4.15 of the EPA Act, the independent and cumulative impacts of the proposal are unacceptable, and several of those impacts would independently justify refusal. It is my firm belief that the proposal represents an excessive and unsuitable incursion into a sensitive Mosman site.

Annexure A

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]