

30 March 2026

Lodged on Planning Portal

Minister for Planning and Public Spaces
Department of Planning, Housing and Infrastructure
Locked Bag 5022
Parramatta NSW 2124

Dear Sir

**Objection to SSD-93020230 on behalf of The Owners Corporation for 77 Muston Street
Property: 40-48 Redan Street, Mosman NSW 2088
Our ref: STR099-00001**

Introduction

- 1 We act for the Owners – Strata Plan 10028 (**the Owners**) at 77 Muston Street, Mosman (**Property**), which lies to the west and upslope of 40-48 Redan Street (the **Site**), adjacent to the Site across Redan Lane.
- 2 We refer to development application SSD-93020230 (the **SSDA**), which seeks consent for the demolition of existing structures and construction of a part ten- and part five-storey residential flat building comprising 53 residential dwellings (including 11 affordable dwellings), and two levels of basement car parking. The SSDA relies on the provisions of Chapter 6 (Low and Mid Rise Housing) (**LMRH**) of the *State Environmental Planning Policy (Housing) 2021* (NSW) (**Housing SEPP**) which came into force on 28 February 2025.
- 3 The Owners have asked us to submit their objection to the SSDA, to describe the significant adverse impacts arising from the SSDA upon 77 Muston St.
- 4 In support of this objection, our client has retained these experts to prepare the following reports, which are **appended** hereto:
 - a) Ms Lynne Sheridan, Town Planner, who has addressed the adverse amenity and view loss impacts to and from the Property in her report of 30 March 2026 (**Planning Report**), which is at **Annexure A** hereto; and
 - b) Mr Andrew Philip Mason, registered Surveyor, who has prepared a survey, dated 26 March 2026, showing walking distance between the Site and the nearest mapped Town Centre identified in the Town Centres Map under the Housing SEPP (**Survey**), which is at **Annexure A** hereto.

Location of our Client's Property relative to the Site

- 5 Our client's Property, which is directly adjacent to the Site across Redan Lane, sits within Zone R3 Medium Density Residential under the *Mosman Local Environmental Plan 2012 (MLEP)*.
- 6 The Property is also located directly to the west of the proposed development. It currently has the benefit of expansive views of Middle Harbour and headlands to the east, and enjoys largely uninterrupted solar access throughout the day.
- 7 The Owners submit that the proposed development will have severe adverse amenity impacts, to their views, solar access and privacy.

Application of the LMRH Policy – Distance to Town Centre

- 8 The Owners submit that the Applicant has failed to demonstrate in its documentation in support of the SSDA, that it has the benefit of the development standards applicable to a "low and mid rise housing inner area" under the Housing SEPP.
- 9 Under ss 176 and 177 of the Housing SEPP, different development standards apply in land within a "low and mid rise housing inner area" and land within a "low and mid rise housing outer area", as those terms are defined under s 163 of the Housing SEPP.
- 10 The SSDA proceeds on the assumption that the Site falls within a "low and mid rise housing inner area" pursuant to s 163 of the Housing SEPP, which is land within 400m "walking distance" of land mapped as a "Town Centre" or a train or light rail station listed in Schedule 11 of the Housing SEPP.
- 11 Under Schedule 10 of the Housing SEPP, "walking distance" is defined as follows:

walking distance is defined as '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.'
- 12 The Owners consider that the Applicant has failed to provide a walking route that complies with the definition of "walking distance" pursuant to Schedule 10 of the Housing SEPP.
- 13 At part 2.1.4 of the Applicant's Environmental Impact Statement prepared by Urbis, dated 27 February 2026 (EIS), the Applicant identifies a walking route between the Site and the nearest mapped Town Centre, which is located in Spit Junction. The Applicant claims that the walking distance of that route is 372.5m.

- 14 We note that the source of the diagram at part 2.1.4 of the EIS is identified as “Urbis” and no surveyor is identified as having completed a survey. It is unclear what methodology has been used to measure the distance, and whether a survey has been taken in the field, or if the distance has simply been generated on “desktop”.
- 15 We refer to the definition of walking distance set out above, and to the pedestrian crossing that traverses Almora St, where Almora St meets Military Rd. We note that there is no pedestrian crossing located at the crossing of Almora St at the point identified in the map provided in the Applicant’s EIS, and extract of which is located below at Figure 1.



Figure 1 Applicant’s walking distance map, EIS Part 2.1.4

- 16 The definition of “walking distance” under various environmental planning instruments has been considered in caselaw. The now-repealed State Environmental Planning Policy (Affordable Rental Housing) 2009 (**SEPP ARH**) included the term “walking distance” with an identical definition as the one currently contained in the Housing SEPP. The interpretation of “walking distance” under the SEPP ARH was considered in *Ritchie v Hills Shire Council* [2018] NSWLEC 1376 (**Ritchie**) and *Bennett v Northern Beaches Council* [2022] NSWLEC 1720 (**Bennett**).

- 17 In *Bennett*, Commissioner Gray stated in relation to the definition of “walking distance”: “[i]n my view, these words are unambiguous and must be given their ordinary meaning” (at [48]).
- 18 In *Ritchie*, Senior Commissioner Dixon considered that a walking route that required pedestrians to cross a road where there was no pedestrian crossing, or a route which required pedestrians to walk along the hard shoulder of a road with no footpath, did not fall within the definition of “walking distance”.
- 19 The Owners consider that the route chosen by the Applicant in its EIS fails to demonstrate compliance with the definition of “walking distance” because it does not make use of a pedestrian crossing across Almora St, despite there being one directly to the west, where Almora St meets Military Rd.
- 20 Furthermore, the Owners consider that the Applicant has failed to demonstrate that Melaleuca Lane, which does not contain a public footpath, is a safe for pedestrians.
- 21 The Owners consider that since other routes exist nearby which readily provide public footpaths and pedestrian crossings, the route chosen by the Applicant fails to meet the criteria of the definition of “walking distance” which requires the use of public footpaths and pedestrian crossings “as far as reasonably practicable”.
- 22 We refer to the Survey prepared by Mr Andrew Philip Mason at **Annexure B**. Mr Mason has identified 5 Options for walking routes between the Town Centre and the Site.
- 23 For clarity, Mr Mason has not provided an opinion as to whether any of the 5 Options satisfy the definition of “walking distance”, and Mr Mason has made notations on the Survey, wherever a route crosses Almora St without a pedestrian crossing.
- 24 We consider, based on the above reasoning, that Options 1, 4 and 5 of the Survey fail to fall within the definition of “walking distance” as they fail to make use of the abovementioned pedestrian crossing.
- 25 We suggest that either Option 2 or 3 has the potential of falling with the definition of walking distance. Neither of those routes show a distance of under 400m.
- 26 The Owners accordingly consider that the Site is not within a “low and mid rise housing inner area” as no part of the Site falls within 400m “walking distance” of a Town Centre.
- 27 The Owners consider that the walking distance from the Site to the Town Centre is a key jurisdictional requirement of the development standards relied upon by the Applicant.

28 The Owners submit that the Applicant has failed to discharge its onus of demonstrating that the Site benefits from the development standards applicable to a “low and mid rise housing inner area”, and accordingly the SSDA should not be approved.

Planning and amenity impacts

29 The Planning Report prepared by Ms Lynne Sheridan at **Annexure A**, sets out in detail, the catastrophic adverse impacts of the proposed development to our clients’ property.

Views

30 The Owners currently enjoy expansive views to the east over Balmoral, overlooking Middle Harbour, North Head, Middle Head and Grotto Point.

31 The proposal under the SSDA will cause a “near complete loss” of those views. In particular, the Planning Report indicates that the views from the main living areas of the Owners’ property are likely to be lost.

32 The Planning Report sets out in a photomontage, the extent of the view loss caused by the proposal to various properties, including units within 77 Muston St. The photomontage evidences the drastic loss of views caused by the proposal.

33 Our clients submit that the Visual Impact Assessment prepared by Urbis, dated February 2026 (**VIA**), fails to demonstrate the views impacts to the Owners’ property.

34 Despite a series of photomontages being provided at Part 5 of the VIA, none of those images demonstrates to impact to the views of 77 Muston St or the adjoining properties, which are located directly to the west of the proposed development. The VIA also fails to demonstrate the views impacts to other properties located further upslope from the proposed development.

35 The Owners consider that the proposed development fails to uphold view sharing principles as set out in *Tenacity Consulting v Warringah Council* [2004] NSWLEC 140 (at [25]-[29]).

36 The Owners submit that the SSDA should be refused on its merits on that basis.

Overshadowing and solar access

37 The Planning Report also sets out the impacts on solar access to the Owners’ property.

38 Ms Sheridan considers that the SSDA fails to demonstrate the extent of the impacts on 77 Muston St, as there is no analysis in plan view of overshadowing at the winter solstice and equinox.

- 39 In Ms Sheridan's opinion, the overshadowing impact to 77 Muston St at the winter solstice and equinox "will significantly increase between 9am - midday".
- 40 The Owners submit that the proposal represents an unacceptable degree of overshadowing to the Owners' property which has not been adequately considered in the documentation in support of the SSDA.

Overlooking and privacy

- 41 The Owners are concerned that the proposal will result in overlooking and privacy impacts arising from the bulk and scale of the proposed development.
- 42 In Ms Sheridan's opinion, the 10-storey development will "create an 'overbearing' effect, stripping neighbouring residents of their sense of privacy" and impact the visual amenity of the Owners' private open spaces and living areas.
- 43 The Owners submit that the overlooking impacts will severely impact their enjoyment of their property.

Further planning considerations

- 44 The Planning Report sets out further impacts of the proposed development, including:
- a) Inadequate consideration of EPA Regulation and inadequate EIS;
 - b) Bulk and scale;
 - c) Unjustified Clause 4.6 requests;
 - d) Adverse traffic impacts;
 - e) Inadequate waste management;
 - f) Affordable housing; and
 - g) Inconsistency with EPA Act, Mosman Local Environmental Plan 2012 (**MLEP**) zone objectives and MLEP Scenic Protection Lands.
- 45 Those concerns are detailed in the Planning Report, and the Owners submit that the SSDA should be refused on account of those concerns which go directly to both the merits and jurisdictional requirements of the SSDA.

Conclusion

- 46 The Owners submit that the SSDA does not have the benefit of the LMRH provisions as set out in the proposal, as the Site is not within a “low and mid rise housing inner area” under the Housing SEPP. The SSDA should be refused on that basis alone.
- 47 The Owners also submit that the SSDA should be refused on its merits, due to the severe adverse impacts to our clients’ amenity, including severe view loss, overshadowing, overlooking and privacy impacts.
- 48 We thank the Department for its consideration of this submission. Please let us know if we can provide anything further to assist the Department in its assessment.

Yours faithfully

Catherine Morton

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