

30 April 2026

To: The NSW Department of Planning, Housing and Infrastructure, and the City of Sydney

Regarding: Formal Objection to SSD-83867719 – 45-53 Macleay Street, Potts Point (The Chimes)

Executive Summary

This submission constitutes a formal objection to the State Significant Development (SSD) application for 45-53 Macleay Street. The proposal represents a **gross overdevelopment** of a sensitive site within the Potts Point Heritage Conservation Area (HCA). The application must be refused on the grounds of **statutory non-compliance**, factual misrepresentation of heritage value, and a failure to provide a public benefit that outweighs the catastrophic net loss of housing diversity. The developer seeks to bypass critical tenant protections while simultaneously "cherry-picking" lucrative height and density bonuses, resulting in a project that lacks both planning and social merit.

Unjustifiable Clause 4.6 Variation (Height)

The proposal seeks a maximum building height of **56.01m (RL 83.6)**, representing a **5.96m (11.9%) exceedance** over the maximum permissible height of 50.05m—a limit that already includes a 30% affordable housing bonus and a 10% design excellence bonus 1.

Under the legal test established in *Initial Action Pty Ltd v Woollahra Municipal Council*, the applicant must demonstrate that compliance is "unreasonable or unnecessary" 2. The developer's justification in **Appendix K** is technically flawed and factually contradictory. While the **Clause 4.6 Variation Request (Prepared by Urbis)** labels the exceedance as being for "essential building elements" and "plant," the detailed sections reveal that the over-height zone specifically contains "**part of the Level 14 sub-penthouse**" and the "**Level 15 penthouse apartment**" 3, 4.

It is legally indefensible to argue that the provision of **luxury habitable penthouse space** constitutes a "sound environmental planning ground" for a significant height breach. The public benefit of affordable housing (relegated to the lower podium) does not necessitate a height variation for a private luxury residence on Level 15 2, 5.

Heritage Error – The Hugo Stossel Legacy

The application is built upon a factual misrepresentation of the site's contribution to the Potts Point HCA. The developer relies on a "detracting item" label to justify total demolition, yet the **Statement of Heritage Impact (Prepared by John Oultram Heritage & Design, Appendix EE)** admits the building is the work of **Hugo Stossel**, an "**architect of note**" and a primary figure in Sydney's post-War Modernist movement 6, 7.

The Heritage Impact Statement attempts to downplay this legacy, describing the 1963 building as a "**modest example**" and an "**undistinguished example of its type**" 6, 7. However, the same document concedes the building is "**relatively intact to its original design**" externally 7, 8. By dismissing a rare, intact example of high-density Stossel Modernism as "detracting," the applicant seeks to bypass the very HCA protections designed to preserve the suburb's diverse architectural layers 9-11.

Statutory Inconsistency (Housing SEPP)

The application exhibits a fatal procedural flaw regarding the **SEPP (Housing) 2021**. The developer has engaged in "legal cherry-picking":

1. **The Bonus:** They utilise **Chapter 2, Part 2** of the SEPP to claim a massive **30% building height and FSR bonus** 12, 13.
2. **The Evasion:** They simultaneously claim in the **Social Impact Assessment (Prepared by Notting Hill Advisory, Appendix HH)** that **Chapter 2, Part 3** (Retention of existing affordable rental housing) "**does not apply to the existing building**" 14.

This is a technical contradiction. The Social Impact Assessment (SIA) admits current tenants pay an average of **\$550 per week** 15. The SIA further notes that the median rent for a studio in the City of Sydney LGA was **\$530 per week** as of June 2025 14. Because these 80 units currently serve "lower to mid-income renters," they meet the functional definition of affordable stock that Part 3 of the SEPP is mandated to protect 16. The applicant cannot legally invoke the SEPP to gain height while ignoring the same SEPP's protections for the low-income renters they are displacing.

Negative Social Impact & Net Loss

The proposal results in a **net loss of 36 dwellings**, demolishing **80 small-format studios** to create only **44 luxury and managed units** 17, 18.

- **Absence of Data:** There is **no evidence** in the SIA that the 80 current tenant households were surveyed regarding their relocation needs or the impact of their displacement 19, 20.
- **Market Impact:** The permanent removal of 80 established rental homes will have a devastating cumulative impact on local housing choice, particularly given that studios are critical to the character of Potts Point 21, 22.
- **Temporary Affordability:** The 23 "affordable" units are only secured for **15 years**, whereas the loss of the 80 existing studios is **permanent** 17, 23.

Conclusion

The application for 45-53 Macleay Street is technically non-compliant and socially regressive. It uses a nominal "affordable housing" component to mask a massive breach of height controls for the sake of luxury penthouse floor space. Furthermore, it misrepresents the architectural significance of a Hugo Stossel building to facilitate its destruction.

We formally request that the NSW Department of Planning and the City of Sydney **refuse the application** in its current form.

I reserve the right to supplement this objection should further technical documentation be released or should the applicant amend the Clause 4.6 Variation Request.

Sincerely,



Alan Nowak
Resident of the Chimes
45-53 Macleay Street, Potts Point NSW 2011

Reference List

Citation, Full Name of Document, Section / Page Number

"12, 24", Appendix B - Statutory Compliance Table.pdf, "Page 3, Section 3.2; Page 19, Section 6.2"

2, Appendix B - Statutory Compliance Table.pdf, "Page 19, Section 6.2"

"6-8, 25", Appendix EE - Statement of Heritage Impact (Prepared by John Oultram Heritage & Design), "Page 6, Authors; Page 14, Section 2.4.2; Page 22, Section 3.0; Page 28, Section 5.1.2"

"17, 26", Appendix EE - Statement of Heritage Impact (Prepared by John Oultram Heritage & Design), "Page 29, Section 5.1.2; Page 31, Section 6.1"

9, Appendix EE - Statement of Heritage Impact (Prepared by John Oultram Heritage & Design), "Page 38, Section 7.6.1.1"

"19, 23, 27", Appendix HH - Social Impact Assessment (Prepared by Notting Hill Advisory Pty Ltd), "Page 2, Author; Page 11, Introduction; Page 18, Consultation"

14-16, Appendix HH - Social Impact Assessment (Prepared by Notting Hill Advisory Pty Ltd), "Page 26, Retention of Housing; Page 29, Site Context"

"18, 20", Appendix HH - Social Impact Assessment (Prepared by Notting Hill Advisory Pty Ltd), "Page 34, SIA Table; Page 56, Livelihoods"

"3, 5, 13", Appendix K - Clause 4.6 Request.pdf (Prepared by Urbis), "Page 9, Proposed Development; Page 11, Section 1"

"1, 4", Appendix K - Clause 4.6 Request.pdf (Prepared by Urbis), "Page 13, Section 6; Page 14, Section 7"

"10, 11", Environmental Impact Statement.pdf, "Page 88, Section 6.10"