

ATTENTION: JULIA MOISO

**RE: STATE SIGNIFICANT DEVELOPMENT - SSD 88702457 - MIXED USE
DEVELOPMENT - PPTIES: 1-13, 17-19 MACKENZIE STREET AND 211
BLUES POINT ROAD, LAVENDER BAY**

Dear Julia,

I refer to the abovementioned current State Significant Development Application, SSD – 88702457 (SSD Application).

I was requested by owners/residents forming the community group known as “Residents Opposing Lavender Bay Overdevelopment” (ROLBO) to provide my independent professional opinion in response to the above SSD Application on the combined area of the properties known as 1-13, 17-19 MacKenzie Street and 211 Blues Point Road, Lavender Bay (subject site).

For the reasons referred to in this submission, I strongly consider that the current SSD Application represents an objectionable proposed development which is not worthy of approval.

Prior to providing my points of objection, I wish to briefly advise you of my qualifications and experience. I am a Consultant Planner with 15 years’ experience in 3 Local Government Councils, including 9 years as a Senior Development Control Planner. I hold a Bachelor of Town Planning Degree from the University of NSW and a Bachelor of Laws Degree (Hons) from the University of Technology, including a High Distinction in Environmental Studies.

I previously undertook the role of a Solicitor primarily in the Land and Environment Court (Court), but now only carry out my work as a Consultant Planner.

I have appeared as an Expert Planning Witness for 9 Local Government Councils in the Court, and I have also appeared in numerous Appeals as a Court Appointed Expert.

I was also previously appointed by North Sydney Council (Council) to assess applications within the North Sydney LGA, including Lavender Bay.

I also know the locality well due to the fact that I previously resided in a unit in Kirribilli for a number of years and I have also carried out extensive work in the locality in response to numerous applications.

As you are aware, the document entitled *“Planning Secretary’s Environmental Assessment Requirements”* (SEARs) states that the Environmental Impact Statement (EIS) *“**must** meet the minimum form and content requirements as prescribed by Part 8 of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation) and the State Significant Development Guidelines. The EIS **must** also address the Issues set out below.”* (emphasis added).

I consider that the SSD Application is seriously flawed due to the fact that it does not satisfy a number of the mandatory Issues in the SEARs document.

Furthermore, for the reasons outlined in this submission, I consider that the SSD Application will generate a range of adverse Amenity Impacts on adjoining properties and the Streetscape.

This submission primarily comprises the following sections: -

- **APPLICANT’S FAILURE TO RESPOND TO THE MANDATORY ISSUES UNDER SEARS.**
- **RESPONSES TO EIS.**

- **INCORRECT AND INADEQUATE RESPONSES BY APPLICANT'S CONSULTANTS.**
- **CONCLUSION.**

APPLICANT'S FAILURE TO RESPOND TO THE MANDATORY ISSUES UNDER SEARS.

ISSUE 1. "STATUTORY CONTEXT"

Issue 1 "*Statutory Context*" lists a range of mandatory Issues under SEARs, which must be addressed in the SSD Application, including the EIS.

I consider that the SSD Application, including the EIS, fails to take into account a number of relevant matters including, but not limited to, the following: -

- As you are aware, the Court has established various "*Planning Principles*" for consideration of applications. I particularly note the fact that the SSD Application has failed to properly consider the following Court's Planning Principles, particularly in relation to Issue 6 "*Built Form and Urban Design*", Issue 7 "*Environmental Amenity*" and Issue 8 "*Visual Impact*": -
 - i. Project Venture Developments Pty Ltd v Pittwater Council (Project Venture) relating to "*Surrounding Development*" – "*Compatibility of proposal with surrounding development*".
 - ii. Seaside Property Developments Pty Ltd v Wyong Shire Council (Seaside Property) relating to "*Development at zone interface*".
- I consider that the above Court Planning Principles are particularly important in response to the current SSD Application due to the fact that the subject site contains a Heritage Item. Furthermore, the subject site is within a Heritage Conservation Area (HCA) and adjoins zone boundaries.
- I particularly wish to note that the HCA comprises a number of Heritage Items and Contributory Items, noting that there is also a Heritage Item on the subject site. Thus, the proposed development at the zone interface (Seaside Property) must demonstrate a higher sensitivity and compatibility (Project Venture) given the HCA and the combination of Heritage Items and Contributory Items.
- The fact that the proposed development must demonstrate a higher sensitivity and compatibility given the HCA and adjoining Heritage Items is

emphasised by the following findings in Project Venture by the then Senior Commissioner Roseth, wherein he held as follows: -

- i. At paragraph 30 in Project Venture, Senior Commissioner Roseth stated as follows *“Conservation Areas are usually selected because they exhibit consistency of scale, style or material. In Conservation Areas a high level of similarity between the proposed and existing is expected than elsewhere. The similarity makes the architectural style expressed through roof form, fenestration and materials”*.
 - ii. At paragraph 22 in Project Venture, Senior Commissioner Roseth held that *“It is generally accepted that buildings can exist together in harmony without having the same density, scale or appearance, though as the difference in these attributes increases, harmony is harder to achieve”*.
 - iii. At paragraph 24 in Project Venture, Senior Commissioner Roseth held that *“Where compatibility between a building and its surroundings is desirable, its two major aspects are physical impact and visual impact”*.
 - iv. In Project Venture at paragraph 26, Senior Commissioner held that *“The most important contributor to Urban Character is the relationship of built form to surrounding space, a relationship that is created by building height, setbacks and landscaping. In special areas, such as Conservation Areas, architectural styles and materials are also contributors to urban character”*.
- Further to the above, in Seaside Property, the then Commissioner Bly at paragraph 25 held that *“As a matter of principle, at a zone interface as exists here, any development proposal in one zone needs to recognise and take into account the form of existing development and/or development likely to occur in an additional zone”*.
 - It is inexplicable to me that the Applicant’s Consultants have **not** properly considered both of the above Court’s Planning Principles in Project Venture and Seaside Property. I reiterate that the subject site is within a HCA and adjoins Heritage Items/Contributory Items of a building scale of predominantly 2-4 storeys. By any measure, the proposed 20 storey tower is

totally incompatible with the height, bulk, scale and design of the HCA. Again, the failure of the Applicant's Consultants to consider the above Court's Planning Principles is a significant flaw of the SSD Application.

- For the reasons referred to in this submission and other submissions, I consider a number of the Applicant's documents and reports do not "*provide an accurate summary of the detailed assessment of the impacts of the project*". Of particular concern is the advice of Tom Steal, Traffic Consultant, in his response to the Applicant's Traffic and Parking Report. In his report, Tom Steal has identified numerous inadequacies, inaccuracies and unsupported claims. The local residents also raise numerous concerns.
- I note that there is a concurrent Planning Proposal over the subject. Please refer to my additional comments later in this submission.

ISSUE 2. “ESTIMATED DEVELOPMENT COST AND EMPLOYMENT”

Issue 2 relates to “*Estimated Development Cost and Employment*”.

I defer to relevant experts as to whether Issue 2 has been addressed.

ISSUE 3. “CONTRIBUTIONS AND PUBLIC BENEFIT”

Issue 3 relates to “*Contributions and Public Benefit*”.

I wish to acknowledge that there are proposed public domain works adjoining the existing church which I consider to be positive elements of the SSD Application. Please refer to later comments in this submission.

I also note that I fully support the objectives of increased Housing Stock and the provision of Affordable Housing. I, however, advise that a proposed development must achieve the above objectives but in a form of development which is compatible with the existing and future character and does not generate adverse impacts on adjoining properties nor the public domain.

From a Planning perspective, I consider that the proposed 20 storey tower represents an incompatible and insensitive development based on the Court’s Planning Principles in Project Venture and Seaside Property as well as generating adverse impacts on adjoining properties and the public domain.

Again, the fact that the proposed development adjoins Heritage Items and is within a HCA requires a more sensitive and compatible development.

Accordingly, I consider that the proposed development is not of Public Benefit.

In relation to the issue of Heritage Impact, I am not a Heritage Expert and defer to the advice of Council’s Heritage Officer in relation to the impacts of the proposed 20 storey tower and 7 storey tower.

ISSUE 4. “ENGAGEMENT”

I have been advised by a number of adjoining owners and residents within the immediate locality that the “*Engagement and Consultation Activities*” required to be undertaken by the Applicant under Issue 4 of SEARs have **not** been undertaken in accordance with the “*Undertaking Engagement Guidelines*” for State Significant Projects.

I defer to the advice of local residents within the immediate locality in response to Issue 4.

ISSUE 5. “DESIGN QUALITY”

Issue 5 of SEARs requires the proposed development to demonstrate Design Quality in accordance with the Objectives for Good Design in the document entitled “*Better Placed*”.

I consider that the proposed development is not of “*Good Design*” for the reasons referred to in this submission.

I strongly consider that the proposed development exhibits the following elements of Poor Design: -

- For the reasons referred to in this submission, I consider that the proposed 20 storey tower does not properly respond to the immediate context and represents an insensitive and incompatible development based on Project Venture and Seaside Property. I reiterate that I am concerned that the Applicant’s SSD Application has not properly assessed the proposed development against the Court’s Planning Principles in Project Venture nor Seaside Property. Given the fact that both of the Court’s Planning Principles deal with relevant issues of “*compatibility*” and “*development at zone interface*”, the absence of a proper assessment of the SSD Application against the above Court’s Planning Principles is of significant concern.
- In particular, I consider that the proposed development is contrary to “*Better Placed*”, Project Venture and Seaside Property for the following reasons: -
 - i. I consider that the SSD Application will be in conflict with the height, bulk, setbacks, architectural style and materials of the prevailing character of the HCA. I particularly note the following findings of then Senior Commissioner Roseth in Project Venture who held that: -

“For a new development to be visually compatible with its context, it should contain, or at least respond to, the essential elements that make up the character of the surrounding urban environment. In some areas, planning instruments or urban design studies have already described the urban character. In others (the majority of

*cases), the character needs to be defined as part of a proposal's assessment. The most important contributor to urban character is the relationship of built form to surrounding space, a relationship that is created by **building height, setbacks and landscaping**. In special areas, such as conservation areas, **architectural style and materials** are also contributors to character."*

There is, no doubt, that the proposed 20 storey tower is incompatible and insensitive with the surrounding HCA, Heritage Items and Contributory Items based on the Applicant's own Photomontages.

I wish to reiterate that the SSD Application, including the EIS and associated documents, have **not** properly assessed the proposed development against the Court's Planning Principles in Project Venture and Seaside Property.

- ii. The proposed development will have unacceptable impacts on adjoining properties and will **not** result in a "*high level of residential amenity*" as required under Issue 7 of SEARs. Based on my review of the SSD Application, there is **no** claim by the Applicant's Consultants that the adjoining properties, particularly within the HCA, will enjoy a "*high level of environmental amenity*" as required under Issue 7 of SEARs. The fact that the Applicant's Consultants have not claimed that the proposed development will ensure that adjoining properties will enjoy a "*high level of environmental amenity*" is evidence of the fact that the proposed development does not comply with the Issue 7 of SEARs. In other words, the adjoining residential properties will not enjoy a "*high level of environmental amenity*". For the reasons referred to in this submission, I consider that the adjoining residential properties in the HCA, including Heritage Items and Contributory Items, will suffer a **loss** of residential amenity, and will **not** enjoy the "*high level of environmental amenity*" as required under Issue 7 of SEARs.

- iii. The proposed development does not respond to the “*essential elements that make up the character of the surrounding neighbourhood*”. Simply put, introducing a proposed 20 storey development adjoining a HCA characterised by existing 2 - 4 storey buildings is incompatible with the immediate locality.
- iv. The Consultant Planner for the Applicant claims that the proposed 20 storey tower will be part of the prevailing character providing a transition between the North Sydney CBD and Lavender Bay. I strongly disagree for the following reasons: -

- (a) As evidenced by the Land Zoning Map, the properties to the north of the subject site are zoned E2 “*Commercial Centre*”. The subject site and the properties within the HCA are zoned either R2, R3, R4 or SP2. Rather than providing a “*transition*” between the subject site and the adjoining E2 “*Commercial Centre*”, the proposed 20 storey tower block proposes a height, bulk and scale roughly equivalent to the tower blocks that form part of the North Sydney CBD precinct which is to the north of the subject site. This is evidenced by the Applicant’s own photomontages.

- (b) As previously advised, in Seaside Property, then Commissioner Bly at paragraph 25 held that “*As a matter of principle, at a zone interface as exists here, any development proposal in one zone needs to recognise and take into account the form of existing development and/or development likely to occur in an additional zone*”. I consider that the Applicant has completely failed to “*recognise and take into account the form of existing development*” within the HCA and has only considered the existing developments to the north within the E2 “*Commercial Centre*”.

- (c) On this point, the proposed 20 storey tower block is incompatible with the adjoining HCA as the HCA is predominately characterised by 2 - 4 storey developments. The primary context of the proposed development is

characterised by a HCA, Heritage Items and Contributory Items, all of which are generally only 2 to 4 storeys in scale. The proposed 20 storey tower is clearly incompatible with this immediately adjoining context. Rather than the SSD Application demonstrating the high level of environmental amenity required under Issue 7 for these adjoining properties, these adjoining properties will suffer a range of adverse Amenity Impacts contrary to Issue 7. In regard to the adverse Amenity Impacts generated onto adjoining properties, I refer to my comments in response to Issue 7 within this submission.

(d) Further to the above, it cannot be said that the proposed 20 storey tower will be part of the prevailing existing character. Of particular note is the Planning Principle in Project Venture which states that *“Conservation Areas are usually selected because they exhibit consistency of scale, style and material. In Conservation Areas, a higher level of similarity in the proposed and the existing is expected than elsewhere. The similarity may extend to architectural style expressed through roof form, fenestration and materials”*. The immediate locality is within a HCA, and includes numerous Heritage Items and Contributory Items. The proposed 20 storey tower will be incompatible with the bulk, scale and design of the prevailing existing character of the HCA.

- v. Despite the claims in the EIS that the proposed 20 storey tower building provides a *“transition”* between the North Sydney CBD and the adjoining HCA, containing low density residential development, I strongly consider the proposed 20 storey tower will provide a significant *“abrupt”* change in the words of Project Venture. On this point, from my Planning perspective, I do agree that the proposed 7 storey tower represents a transition between the North Sydney CBD and the adjoining HCA. As to whether the proposed 7 storey tower is satisfactory from a Heritage perspective, I defer to the advice of Council’s Heritage Officer.

- vi. Further to the above, based on the definition of a *“transitional building”* as being a building *“between high-density, tall commercial zones and low-density, short residential neighbourhoods”*, it cannot be said that the proposed 20 storey tower is a transitional building.
- Further to the above, I consider the proposed development demonstrates Poor Design due to the numerous breaches of the Apartment Design Guide (ADG) and the significant breach of the Height of Buildings Standard.
 - Thus, for the reasons referred to above, I consider that the proposed 20 storey tower is totally incompatible with the adjoining existing context, contrary to the Court’s Planning Principles in Project Venture and Seaside Properties.
 - For the reasons raised in this submission, I also strongly consider that the proposed development does not demonstrate the *“high level of environmental amenity for any surrounding residential or other sensitive land uses”* as required under Issue 7 of SEARs. Please refer to later comments in this submission. Furthermore, the proposed development is incompatible with the most proximate Residential zones immediately adjoining the subject site.
 - I reiterate my opinion that it cannot be said that the adjoining residential properties and the sensitive uses in the HCA will achieve a *“high level of environmental amenity”* as required under Issue 7. The low to medium density residential developments to the south will suffer adverse Visual Impact and adverse Overshadowing Impact as a result of the proposed 20 storey tower building, in stark contradiction to the mandatory requirements under Issue 7 and other Issues of the SEARs document.

ISSUE 6. “BUILT FORM AND URBAN DESIGN”

Issue 6 of SEARs entitled “*Built Form and Urban Design*” requires the proposed development to “*demonstrate how the proposed built form addresses and responds to the context, site characteristics, streetscape and existing and future character of the locality*”.

I strongly consider that the proposed development does not comply with Issue 6 of SEARs for the following reasons: -

- For the reasons referred throughout this submission, I consider that the proposed multi storey towers do not “*address and respond to the context, site characteristics, streetscape and existing and future character of the locality*”.
- Simply put, the subject site and the immediate locality are within a HCA with numerous Heritage Items and Contributory Items of only 2 – 4 storeys. To introduce a proposed 20 storey tower is incompatible and insensitive noting the Court’s Planning Principles in Project Venture and Seaside Property.
- The incompatibility is a result of the significant breach of the Height of Buildings Standard as proposed under the concurrent Planning Proposal.
- This significant breach of the Height of Buildings Standard is exacerbated by the fact the proposed 20 storey tower building immediately adjoins a HCA and Heritage Items.
- Issue 6 also requires an assessment against the ADG. On the issue of the ADG, I note the Applicant’s “*ADG Compliance Table*” in the Design Report. I particularly note the following breaches: -
 - i. Breach of Objective 3B-2 under “*Orientation*” in that the proposed development does not minimise Overshadowing of neighbouring properties during mid-winter. The excessive height of the proposed development generates the adverse Overshadowing Impact. Rather than a proposed development minimising Overshadowing Impact as required under Objective 3B-2 of the ADG, the proposed development maximises Overshadowing Impact at mid-winter. On this point, I refer to additional comments later in this submission.

- ii. Breach of Objective 3D-1 under “*Communal Open Space*”. The proposed development does not comply.
 - iii. Breach of Objective 3D-1 due to the fact that the inadequate Communal Open Space Area does not enjoy the minimum of 50% direct sunlight for a minimum of 2 hours.
 - iv. Breach of Objective 4A-1 under “*Solar and Daylight Access*” requiring 70% of apartments to receive a minimum of 2 hours direct sunlight.
 - v. A further breach of Objective 4A-1 requiring a maximum of 15% of units to receive no direct sunlight.
 - vi. Breach of Objective 4F-1 under “*Common Circulation Spaces*”.
 - vii. Breach of Objective 4L-1 under “*Street Frontage Activity*”.
- Thus, when assessed against the Court’s Planning Principles in Project Venture and Seaside Property, I strongly consider the proposed 20 storey tower is incompatible and insensitive with the immediately adjoining HCA, Heritage Items and Contributory Items for the reasons referred to in this submission.

ISSUE 7. “ENVIRONMENTAL AMENITY”

Issue 7 of SEARs requires the proposed development to demonstrate “**a *high level of environmental amenity for any surrounding residential or other sensitive land uses must be demonstrated***” (emphasis added).

I note that the SSD Application, including the EIS, have not claimed that the adjoining residential developments and sensitive uses will enjoy a “*high level of environmental amenity*”. This is clear evidence of the fact that the proposed development does **not** achieve a “*high level of environmental amenity*” for the adjoining residential uses and sensitive uses as required under Issue 7 of SEARs. Thus, the SSD Application has failed to satisfy the mandatory requirement under Issue 7 of SEARs (and other Issues).

I consider that the required “*high level of environmental amenity*” on surrounding development has **not** been demonstrated for the following reasons: -

- In terms of “***Overshadowing Impact***”, I note that the Applicant has provided a “*Overshadowing Report*” prepared by Windtech. Given the extent of proposed Overshadowing, I note that my Clients engaged John Denton, Shadow Expert, to prepare accurate Shadow Diagrams. In accordance with the Shadow Diagrams prepared by John Denton, I wish to note the following:
 - i. Firstly, I consider that the proposed 7 storey development will not generate unreasonable Overshadowing Impact onto adjoining residential properties.
 - ii. However, it is clearly the case that there will be unreasonable Overshadowing Impact into a number of the adjoining residential terraces to the south fronting Mackenzie Street and Wilona Avenue as a result of the proposed 20 storey tower. This adverse Overshadowing Impact is clearly a result of the significant breach of the Height of Buildings Standard.
 - iii. In terms of Overshadowing Impact, I specifically note the following points:-

- a. I have been advised by a number of owners in the terraces immediately to the south of Mackenzie Street that no Consultant for the Applicant has inspected their terraces to inform the Consultant in the preparation of the Overshadowing Report. I consider that it is an essential role of all Consultants to examine those adjoining properties in detail, particularly in their internal layout, to provide an informed advice as to the degree of Overshadowing Impact and specific uses of the subject rooms.
- b. A number of terraces immediately to the south of Mackenzie Street have their primary kitchens/living rooms on the northern side which face the proposed development. The Overshadowing Impact on these adjoining terraces is very significant.
- c. The Shadow Diagrams produced by the Applicant do **not** show the northern facades of the adjoining terraces in Elevation Form as required under Council's DA Checklist. Thus, there is inadequate assessment of the issue of Overshadowing Impact.
- d. The Overshadowing Report prepared by the Applicant acknowledges that the effected rooms "*do not achieve the 3 hour minimum solar access commonly adopted by NSW Planning Guidelines for non-urban areas*". Thus, it is a clear breach of the relevant Solar Access Controls, particularly in terms of the Solar Access Controls of Council.
- e. In the Overshadowing Report at Section 2.4, the author of the Overshadowing Report states that "*properties that did not achieve the 3 hours of direct solar access under the existing conditions and continue to receive less than 3 hours following the proposed development are **not** considered to have been adversely affected for the purposes of this assessment*" (emphasis added). This methodology is seriously flawed. Relevant Planning Controls, including the DCP of Council, requires a minimum of 3 hours of sunlight at mid-winter and there must be no increased Overshadowing Impact if a property does not already receive 3 hours of sunlight at mid-winter. Thus, it is incorrect for the author

of the Applicant's Overshadowing Report to disregard these properties.

- f. It is also clearly the case that the private open space areas of the Mackenzie Street terraces will also suffer significant Overshadowing Impact generated by the proposed 20 storey tower.

- Thus, in terms of "*Overshadowing*", there is a significant and adverse Overshadowing Impact on the Mackenzie Street terraces, contrary to relevant Planning Controls. It is clearly the case that the adverse Overshadowing Impact is also contrary to Issue 7 of SEARs which requires that adjoining residential properties must achieve a "*high level of environmental amenity*". The proposed development has not achieved this requirement.
- In terms of "**View Loss**" from Public Domain areas, I wish to note the following:
 - i. In the Urban Design Report prepared by the Applicant's Consultant, the author acknowledges that "*Blue Street Plaza and St Peters Park are **important public open spaces** from which views towards Sydney Harbour, the Harbour Bridge and the Sydney CBD skyline can be experienced.*" Thus, consistent with the Court's Planning Principle in *Rose Bay Marina v Woollahra Council* (Rose Bay Marina), the Applicant acknowledges that the views from the Blue Street Plaza and St Peter's Park are important public spaces and must be assessed against the Court's Planning Principle in *Rose Bay Marina*. There has been no assessment carried out by the Applicant's Consultant in terms of a criteria set out in *Rose Bay Marina* judgement. On this point, I note that I was the Expert Planning Witness for Woollahra Council in the *Rose Bay Marina* Appeal in which Woollahra Council was successful in its opposition to the proposed development.
 - ii. In regards to Blue Street Plaza, the Applicant's Visual Impact Assessment (VIA) prepared by Urbis has provided a photomontage of the "*View south from Blue Street Plaza*". The author of the VIA

considers that *“The proposed development does not block views to any ‘icons’ including the Sydney Harbour Bridge”*, from the Blue Street Plaza. Whilst this is true from the selected location, I consider that additional photomontages need to be prepared from the middle and rear of the Blue Street Plaza (to the north of the provided photomontage). Following my own on-site inspection, it appears that views of the Sydney Harbour Bridge may be lost or significantly reduced the further back you stand in Blue Street Plaza. Given the importance of Blue Street Plaza, as acknowledged by the Applicant, it is essential that further photomontages be provided to properly determine the extent of View Loss from the Plaza.

- iii. Further to the above, under Part F Section 2.1 *“Central Business District”* of North Sydney DCP 2025 (DCP), Provision 7 states as follows: -

*“The following views and vistas are to be **preserved** and where possible **enhanced**:*

*(a) From the **Plaza at No.5 Blue Street** and located over North Sydney Rail Station to the Sydney Harbour Bridge”*

- iv. Given that views and vistas from Blue Street Plaza are required to be either *“preserved”* or *“enhanced”* under Council’s DCP, I consider that when one undertakes additional photomontages from within Blue Street Plaza, the View Loss will likely to be found to be unacceptable.
- v. In regard to St Peter’s Park, the Applicant’s VIA has provided a photomontage of *“View south-east from St Peter’s Park”*. The author of the VIA considers that *“The proposed development does not block view to ‘icons’ including the Sydney Harbour Bridge or Sydney Opera House.”* and *“The proposed development does not block views to any scenic or highly valued features or to any heritage items.”*. Again, whilst this is true from the selected location, I consider that additional photomontages need to be prepared from additional locations (to the north) within St Peter’s Park. Given the importance of St Peter’s Park,

as acknowledged by the Applicant, it is essential that further photomontages be provided to properly determine the extent of View Loss from St Peter's Park.

- vi. Further to the above, under Part F Section 9.5 "*Lavender Bay Neighbourhood*" of Council's DCP, Provision 6 states as follows: -

*"The following views and vistas are to be **preserved** and where possible **enhanced**:*

(b) View of Harbour Bridge from St Peter's Park Lookout (79)"

- vii. Given that views and vistas from St Peter's Park Lookout are required to be either "*preserved*" or "*enhanced*" under Council's DCP, I consider that when one undertakes additional photomontages from within St Peter's Park, the View Loss will likely be found to be unacceptable.
- viii. In regard to the identification of both St Peter's Park and Blue Street Plaza as having important View and Vistas in Council's DCP, I wish to again note the Court's Planning Principle in Rose Bay Marina. I again note that I was the Expert Planning Witness for Woollahra Council in its successful opposition to the proposed development at Rose Bay Marina. Senior Commissioner Moore considered that the identification of the importance of a view in a relevant planning regime places greater importance on the public interest when assessing the impact on public domain views. Specifically, Senior Commissioner Moore held as follows held: -

"The final step to be identified is whether or not there is any document that identifies the importance of the view to be assessed.

- This will encompass specific acknowledgment of the importance of a view (for example, by international, national, state or local heritage recognition) or where the relevant planning regime promotes or specifically*

requires the retention or protection of public domain views.”

- ix. Thus, given the importance of the Public Domain views identified under Council’s DCP from both St Peter’s Park and Blue Street Plaza, the likely adverse View Loss is unacceptable.
- In terms of View Loss from my Clients’ properties, I do not anticipate my Clients’ properties to the south will suffer any adverse View Loss. I, however, defer to your assessment in regard to potential View Loss from other residential properties within the locality. I assume that you will personally inspect those adjoining residential properties which may suffer adverse View Loss.
 - In terms of “**Visual Impact**”, I wish to note that the VIA has **not** included an analysis of the Visual Impact from nearby residential properties, particularly in response to the Visual Impact generated by the proposed 20 storey tower. The VIA has only included an analysis from existing public domain. The fact that the Applicant’s VIA has **not** assessed the Visual Impact generated on adjoining residential properties is a further significant flaw. On this point, I defer to my comments in response to Issue 8 of SEARs.
 - In terms of “**Acoustic Impact**”, I refer to my later comments in response to Issue 10 entitled “*Noise and Vibration*”. For the reasons raised in response to Issue 10, the SSD Application has **not** provided sufficient information to properly address the issue of Acoustic Impact. Accordingly, the SSD Application has not demonstrated that the proposed development will achieve “*a high level of Environmental Amenity*” in terms of Acoustic Impact (and other impacts).
 - In terms of “**Structural Stability**”, I note that the adjoining Heritage Items and Contributory Items were built many years ago with foundations/footings clearly not built to current standards. The proposed extensive excavation works clearly pose a risk to the above adjoining buildings. No assessment has been undertaken in the Applicant’s EIS and supporting documents to address the issue of the Structural Stability of the adjoining buildings.

- In terms of “**Transport**”, relating to Traffic, Parking and Access, I note the significant concerns raised by Tom Steal, Traffic Consultant. I further note Traffic, Parking and Access concerns raised by local residents in their submissions. Please refer to later comments in this submission.
- The EIS claims that the proposed development will “*minimise potential residential amenity impacts*”. I strongly disagree. The proposed 20 storey tower will likely generate a range of adverse Amenity Impacts referred to in this submission, and other submissions. To claim that the proposed development “*minimises impacts for the neighbouring sites*” is simply wrong. Furthermore, not only will adjoining properties suffer significant Amenity Impacts, but such significant Amenity Impacts are also clearly contrary to Issue 7 of SEARs which requires the Applicant to demonstrate a “*high level of environmental amenity*” on adjoining residential properties and sensitive uses. The adverse Amenity Impacts also breach a number of additional Issues under SEARs, which are referred to in this submission.
- For the above-mentioned reasons, the proposed development does not achieve a “*high level of environmental amenity*” for adjoining residential properties and sensitive land uses as required under Issue 7 entitled “*Environmental Amenity*” of SEARs.
- In fact, rather than demonstrating the “*high level of environmental amenity*” required under Issue 7 of SEARs, I consider that the proposed development demonstrates adverse Amenity Impacts on the adjoining residential properties and sensitive uses, contrary to the mandatory Issue 7.

ISSUE 8. “VISUAL IMPACT”

Issue 8 entitled “*Visual Impact*” requires a “*visual analysis of the development from key viewpoints, including photomontages or perspective showing the proposed and likely future development*”.

I reiterate the following strong objections in response to the proposed development in terms of Visual Impact: -

- As previously advised, the VIA has **not** provided a VIA from within adjoining residential properties. Simply put, there is **no** assessment of the Visual Impact of the proposed development when viewed from adjoining residential properties.
- Whilst the Applicant’s VIA has considered impacts from locations within the public domain, there is no assessment of the Visual Impact from the private domain in adjoining residential properties to the south of the proposed 20 storey tower block. The Visual Impact of the proposed 20 storey tower is exacerbated for the following reasons: -
 - i. The proposed maximum height significantly breaches the Height of Buildings Standard.
 - ii. The residents of the adjoining residential properties to the south will “*look up at*” the proposed 20 storey tower because their properties are downslope of the proposed 20 storey tower building. This will further exacerbate the adverse Visual Impact.
- Issue 7 of SEARs requires that the proposed development must demonstrate a high level of environmental amenity in surrounding residential properties and sensitive land uses. How can one make an assessment on the issue of Visual Impact if no assessment has been made from within the adjoining residential properties? In light of the fact that the VIA does **not** provide a VIA from within the adjoining residential properties, Issue 7 of SEARs has clearly **not** been satisfied.
- I should add that I have made my own assessment and I consider that the Visual Impact of the proposed 20 storey tower when viewed from within the adjoining HCA represents a severe Visual Impact.

- The fact that the subject site is within a HCA (including numerous Heritage Items and Contributory Items) heightens the need for a sensitive and compatible proposed development. In the words of the Court's Planning Principle in Project Venture, "*Conservation Areas are usually selected because they exhibit consistency of scale, style or material*". Accordingly, in Conservation Areas, a higher level of similarity between the proposed and the existing is expected. Project Venture further states similarity may extend to contextual style expressed through roof form, fenestration and materials. I consider that it cannot be argued that the proposed 20 storey tower is compatible with the adjoining 2 - 4 storey developments in the immediate locality, based on the Court's Planning Principle in Project Venture.
- In terms of likely future character, the immediately adjoining HCA, including numerous Heritage Items and Contributory Items, will not likely be redeveloped for similar multi storey towers due to the heritage restrictions on any redevelopment. Thus, the proposed 20 storey tower will be incompatible with any likely future development in the immediately adjoining HCA.
- Again, the proposed 20 storey tower may well be compatible with the North Sydney Commercial zone to the north which contains numerous multi storey towers. But I stress that the subject site immediately adjoins Residential zones/SP2 zones (not Commercial zones) containing a HCA with numerous Heritage Items and Contributory Items generally of 2-4 storeys in height.
- Thus, in terms of Issue 8 entitled "*Visual Impact*", Issue 5 entitled "*Design Quality*" and also Issue 6 entitled "*Built Form and Urban Design*", I consider that the proposed 20 storey tower is unacceptable due to its incompatibility and insensitivity with the existing Heritage character and likely future Heritage character.

ISSUE 9. “TRANSPORT”

Issue 9 entitled “*Transport*” requires the provision of a “*Transport Impact Assessment*” in accordance with the processes and methodology recommended in the Guide to Transport Impact Assessment published by TfNSW.

As part of the SSD Application, there is a “*Transport Impact Assessment*” prepared by Traffix.

Given the fact that I am not a Traffic Consultant, I defer to the advice of Tom Steal of McLaren Traffic Engineering, who was appointed to address the issues of Traffic, Transport and Parking. Tom Steal is an eminent Traffic Expert.

I wish to make the following comments: -

Section 9.1 Advice of Tom Steal, Traffic Consultant

Tom Steal raises a number of significant concerns including, but not limited to, the following: -

“The key parking issues are as follows:

- *The dates and time periods of the parking surveys were found to misalign with the existing peak parking periods caused by the on-site place of worship and nearby school.*
- *The parking survey results demonstrate that the surrounding on-street parking network is operating at capacity during peak demand periods, despite incorrect conclusions made within the TTIA.*
- *The assessment of the proposal does not give adequate regard to the existing and future parking demands of the Church or the impacts associated with the significant increase in Church GFA coupled with a significant reduction in car parking for church patrons.*

The key traffic issues are as follows:

- It cannot be established whether the traffic surveys conducted within the TTIA were conducted during representative peak periods or under typical traffic conditions, nor can the reported traffic volumes cannot be independently verified without the presence of raw data.*
- The increase of Church GFA is expected to generate additional vehicular traffic, despite invalid conclusions made within the TTIA.*
- The TTIA does not assess the impact of the proposal on the existing school pick-up and drop-off operations of Montessori Primary School that occur on Miller Street.*
- The TTIA does not provide any details of the calibration and validation of the SIDRA traffic modelling undertaken, reducing confidence in the reported operational performance of the surrounding intersections.*
- A key intersection was not assessed within the TTIA which is critical in accommodating the traffic generated by the proposed development and as such should be assessed to determine the traffic impact on the surrounding road network.*
- Traffic modelling has not been completed to assess the operational performance of the surrounding road network under future conditions, therefore it is not possible to verify the assertion that the surrounding road network possesses sufficient spare capacity to accommodate the additional vehicle movements generated by the proposal.*
- The TTIA considers the traffic impacts of the proposed development in isolation and does not assess cumulative impacts arising from the surrounding SSD proposals, failing to meet the NSW Cumulative Impact Assessment Guidelines requirements.*

The key access issues are as follows:

- The western driveway located on Mackenzie Street is located adjacent to a horizontal curve in the road, which has the potential to restrict available sight distance between exiting vehicles and approaching traffic. A detailed sight line assessment is therefore required to demonstrate a safe and compliant outcome.*

The key design issues are as follows:

- *The concept design is not fit for purpose for access by an SRV and it is likely that on-street parking will be relied upon for deliveries or servicing activities which will be detrimental to traffic and parking conditions on the surrounding roads.*
- *A minimum length of 30m (5 cars) is required to be provided between the vehicular control point and the property boundary in order to allow a free influx of traffic which will not adversely affect traffic or pedestrian flows in the frontage road.*

The key construction issues are as follows:

- *In the absence of adequate on-site worker parking, construction staff are likely to utilise on-street parking within the surrounding residential streets, particularly Mackenzie Street, thereby increasing parking demand. This has not been addressed in the TCTMP.*
- *The impacts of the proposed work zone on Mackenzie Street will have adverse impacts on the parking environment of the area which have not been assessed in the TCTMP.*
- *The truck movement hours have not been addressed in the TCTMP, particularly regarding restrictions to truck movements during school peak pick-up and drop-off times.*

The key other transport related issues are as follows:

- *No assessment has been undertaken of footpath infrastructure, pedestrian crossing facilities, pedestrian safety or potential conflict points between vehicles and pedestrians.*
- *The TTIA does not provide any analysis of existing passenger loads on nearby bus routes, train services or metro services, nor does it assess the extent to which additional patronage generated by the proposal may impact public transport operations.”*

Based on the above advice of Tom Steal, the Applicant's Traffic and Parking Report contains numerous inaccuracies, deficiencies and unsupported statements.

Furthermore, Tom Steal has highlighted unresolved significant concerns in terms of Traffic and Parking in the Applicant's Traffic and Parking Report.

Section 9.2 Concerns of Owners and Residents

I note the comments of numerous local residents in the locality to the effect that the immediate Lavender Bay locality is characterised by a range of adverse constraints including, but not limited to, a high demand for street parking, narrow streets and conflict between vehicles and pedestrians.

I consider that the evidence of local residents should be given significant weight in terms of the assessment on Traffic and Parking issues, particularly in light of the judgement of the Court of the then Senior Commissioner Moore (subsequently Judge Moore) in *"Presbyterian Church (NSW) Property Trust v Woollahra Municipal Council [2014] NSWLEC 1218"* (Scots College Appeal). Senior Commissioner Moore refused the above proposed development, primarily on the comments and observations of local residents attesting to the problems and circumstances evident in the immediate locality. Of particular note is the finding of then Senior Commissioner Moore at paragraph 20 who was *"fortified"* in his view to rely upon lay witnesses in accordance with the following previous finding of his Honour, Justice Craig in *"H and J Standen Pty Ltd v Minister for Planning and Infrastructure [2014] NSWLEC 113"* at paragraph 84 in which Justice Criag held as follows: -

"The practice of this Court in hearing evidence of lay witnesses on site is a practice that has been followed in the determination of almost all merit Appeals for many years. Although those giving evidence on site are not sworn, the evidence has always been treated as if given in Court and in attending witnesses are usually so advised".

Clearly, the then Senior Commissioner Moore in the Scots College Appeal gave significant weight to the evidence of local residents in dismissing the proposed development.

Of particular note is the fact that the Applicant's *"Traffic and Parking Assessment Report"* does not reveal any significant concerns in the Lavender Bay Locality relating to the existing Traffic and Parking circumstances in the immediate locality, despite the significant concerns expressed by Tom Steal and local residents.

I wish to particularly note the following concerns raised by local residents in regard to Traffic and Transport matters: -

- *"no assessment of the impact of the development and increased pedestrian movements on the existing pedestrian and cycle connection through St Peter's Park;*
- *no assessment of the convergence of pedestrian, cyclist and vehicle movements at the proposed western driveway near the Mackenzie Street/Miller Street intersection;*
- *no assessment of whether existing public transport infrastructure has sufficient capacity to accommodate the additional demand generated by this development together with cumulative approved and proposed development relying on the same Metro, rail and bus services;*
- *no assessment of the impacts on different road-user groups, including cyclists using the St Peter's Park/Mackenzie Street connection to the Middlemiss Street cycle route and school children accessing the primary school on Miller Street during morning and afternoon peak periods;*
- *no assessment of current traffic conditions at key local intersections taking into account road-network changes associated with the Warringah Freeway works;*
- *no adequate assessment of the parking impacts arising from the proposed expansion of church and parish activities while simultaneously substantially reducing the parking available to those uses. If the 12 spaces identified in Table 26 are correct, this represents a reduction of approximately 78% from the previous 54 spaces;*
- *insufficient assessment of waste-vehicle egress near the Mackenzie Street/Miller Street intersection and its interaction with on-street parking, with the submitted swept-path analysis not providing sufficient detail to establish safe operation;*

- *no assessment of sight distances at the proposed driveways; and*
- *no assessment of sight lines and pedestrian safety associated with vehicle access across the proposed public forecourt, including the interaction between vehicles using the forecourt and pedestrians using the through-site link.”*

I consider it is incumbent on the decision maker to give significant consideration of the concerns expressed by Tom Steal and local residents relating to Traffic and Parking circumstances in the immediate locality, consistent with the approach adopted by then Senior Commissioner Moore in the Scots College Appeal.

Section 9.3 Lack of Cumulative Impact Assessment (CIA)

I note the document entitled “*Cumulative Impact Assessment Guidelines for State Significant Projects*” dated March 2026 issued by the Department of Planning Housing and Infrastructure of the State Government. This document stresses the need for a “*Cumulative Impact Assessment*” to be undertaken and advises as follows: -

“Cumulative impacts are a result of the incremental, sustained and combined affects of human action and natural variations over time and can be both positive and negative. They can be caused by the compounding affects of a single project or multiple projects in an area, and by the accumulation of affects from past, current and future activities as they arise”.

The above CIA document by the State Government further advises as follows: -

“Project-Level CIA (Cumulative Impact Assessment)” builds on the findings of the EIA to consider impacts from the proposed project in combination with other future projects that are anticipated or reasonably foreseeable. The CIA is therefore the assessment of the environmental, social, economic and other impact which result from a project when added to other past, present and recently foreseeable future projects”.

Furthermore, the above CIA document states that *“the issue-specific CIA approach involves considering the impacts of the project together with the impacts of other relevant future projects on specific issues within an identified area... This approach seeks to extend the standard assessment of the impacts of a given project (see the first 2 approaches explained above) beyond the existing baseline condition of each relevant matter. It incorporates the additional impacts that may occur over time as a result of changes to existing projects”*.

Based on my review of the Applicant’s *“Transport Impact Assessment”*, there has been **no** CIA undertaken which has consider not only the current proposed development, but also likely future developments in the immediate locality which are of multi storey nature.

I consider that the current SSD Application is flawed as it merely attempts to assess the Traffic, Parking and Access Impacts of the proposed development without given due consideration to such impacts generated by similar proposed projects in the immediate locality in the future.

Overall, I respond as follows in terms of the failure to comply with Issue 9 of SEARs entitled *“Transport”*:

- I consider it is incumbent on the decision maker to give significant consideration to the concerns expressed by local residents relating to Traffic and Parking circumstances in the immediate locality, consistent with the approach adopted by then Senior Commissioner Moore in the Scot’s College Appeal.
- Based on submissions lodged by adjoining residents and owners, there has been a failure in the Applicant’s Transport Impact Assessment to identify the concerns raised by local residents and Tom Steal.
- The Transport Impact Assessment has not undertaken a CIA of the Traffic and Parking Impacts of likely foreshadowed proposed developments of similar scale in the immediate locality.

- Tom Steal, Traffic Consultant, considers that the Applicant's Traffic and Parking Report is inadequate and inaccurate in many of its claims and he raises a number of significant concerns.

ISSUE 10. “NOISE AND VIBRATION”

Issue 10 “*Noise and Vibration*” requires the Applicant to “*provide a noise and vibration impact assessment*”

The Applicant’s Acoustic Consultant has prepared a “*Noise and Vibration Impact Assessment*” dated 9 July 2026.

I advise that I am not an Acoustic Consultant and therefore cannot provide a professional opinion on the “*key findings*”.

In terms of Noise Impact from proposed “*mechanical plant and equipment*” and the proposed “*loading dock*”, I raise the following lack of consideration in the following areas: -

- At page 29 of the Applicant’s report, it is advised that “*mitigation measures for the mechanical plant should be considered during the design development stage to ensure compliance with the outline criteria at the nearest sensitive receiver catchments*”.
- Furthermore, the Applicant’s Acoustic Report states that “*it should be noted that the noise reduction requirements likely be refined and reduced once a mechanical plant and equipment selections and designs have been progressed further during the detailed design of the proposed development*”.
- I disagree with the above methodology. I consider that to defer the issue of Acoustic Impact for a later time at the design stage is deferring an essential matter for later consideration. It is vital that Acoustic Impact onto adjoining residential properties is properly considered now as part of the DA process. To do otherwise is to defer an essential matter which is a Legal flaw.
- There has also been no proper assessment of the Acoustic Impact generated by the proposed elevated swimming pools and entertainment areas.

In terms of “*Vibration*”, I raise significant concerns relating to the fact that the proposed development involves very extensive Basement Excavation which has the potential of generating an adverse impact on the foundations and footings on

the immediately adjoining Church and surrounding Heritage Items/Contributory Items. I particularly note the following: -

- I note that the proposed volume of excavation is very expansive and extensive to accommodate the multi-level basement carpark.
- Despite the above circumstances, there is no proper assessment of the foundations/footings under the Heritage Item and Contributory Items to address potential Vibration Impact. Simply put, the Applicant is seeking to defer this essential matter for later consideration. I consider that such an approach is a legally flawed approach. The Applicant should have undertaken a detailed examination of the foundations/footings of the adjoining Heritage Item and Contributory Items and made a proper and informed assessment of the potential Vibration Impact on these important and sensitive structures.
- Thus, I consider that the issue of “*Vibration*”, as with the issue of “*Noise*”, under Issue 10 of SEARs have not been resolved.
- The unresolved issues of Noise and Vibration Impacts are additional adverse Amenity Impacts which are likely to generate adverse Amenity Impacts on the adjoining dwellings and sensitive uses contrary to Issue 7 under SEARs which requires the proposed development to demonstrate a “*high level of environmental amenity for adjoining properties and sensitive uses*”.
- Rather than demonstrating a high level of environmental amenity for these adjoining properties, it is clearly the case that these adjoining residential properties and sensitive uses will suffer a range of adverse Amenity Impacts contrary to Issue 7 under SEARs.

ISSUE 11. “WATER MANAGEMENT”

Issue 11 relates to “*Water Management*”.

I defer to relevant experts as to whether Issue 11 has been addressed.

ISSUE 12. “GROUND AND GROUND WATER CONDITIONS”

Issue 12 relates to “*Ground and Ground Water Conditions*”, particularly Ground Water Impact Assessment.

I defer to relevant experts as to whether Issue 12 has been addressed.

ISSUE 13. “CONTAMINATION AND REMEDIATION”

Issue 13 relates to “*Contamination and Remediation*”.

I defer to relevant experts as to whether Issue 13 has been addressed.

ISSUE 14. “TREES AND LANDSCAPING”

Issue 14 relates to “*Trees and Landscaping*” which requires a Landscape Plan and Arboricultural Impact Assessment as part of the SSD Application.

The Applicant has provided Landscape Plans and an Arboricultural Impact Assessment.

As to the adequacy of the proposed landscaping and the appropriateness of the tree species, I leave this matter in the hands of appropriate experts for their consideration.

As previously advised, the proposed development does incorporate positive Public Domain works, with proposed landscaping.

ISSUE 15. “ECOLOGICALLY SUSTAINABLE DEVELOPMENT (ESD)”

Issue 15 relates to “*Ecologically Sustainable Development*”.

I defer to relevant experts as to whether Issue 15 has been addressed.

ISSUE 16. “BIODIVERSITY”

Issue 16 relates to “*Biodiversity*”.

I defer to relevant experts as to whether Issue 16 has been addressed.

ISSUE 17. “WASTE MANAGEMENT”

Issue 17 relates to “*Waste Management*”.

I defer to relevant experts as to whether Issue 17 has been addressed.

ISSUE 18. “SOCIAL IMPACT”

Issue 18 relates to “*Social Impact*”.

There is, no doubt, that the provision of additional Housing Stock and Affordable Housing represent a positive “*Social Impact*”, but any proposed development must be of a compatible and sensitive design with the adjoining context and must not generate unreasonable adverse Amenity Impacts on adjoining properties. The proposed development must also be compatible and sensitive to the adjoining Heritage Items, Contributory Items and HCA.

I consider that the current proposed 20 storey tower is both incompatible with the existing and likely future character based on Project Venture and Seaside Property and also generates adverse Amenity Impacts. I also consider that the proposed 20 storey tower is also incompatible and insensitive to the adjoining Heritage Items and HCA.

ISSUE 19. “FLOOD RISK”

Issue 19 relates to “*Flood Risk*”.

I defer to relevant experts as to whether Issue 19 has been addressed.

ISSUE 20. “BUSH FIRE RISK”

Issue 20 relates to “*Bush Fire Risk*”.

I defer to relevant experts as to whether Issue 20 has been addressed.

ISSUE 21. “ABORIGINAL CULTURAL HERITAGE”

Issue 21 relates to “*Aboriginal Cultural Heritage*”.

I defer to relevant experts as to whether Issue 21 has been addressed.

ISSUE 22. “ENVIRONMENTAL HERITAGE”

Issue 22 relates to “*Environmental Heritage*” which states that where there is potential for direct or indirect impacts on Environmental Heritage, a Heritage Impact Statement (HIS) and Historical Archaeological Assessment (HAA) are required.

The Applicant has provided a HIS and HAA.

I am not a Heritage Expert and do not propose to provide my comments as to the contents of the above HIS and HAA. I defer to the advice of Council’s Heritage Officer. I, however, reiterate my previous comments in relation to the issues of “*Built Form and Urban Design*” (Issue 6) and “*Visual Impact*” (Issue 8).

The fact that the subject site contains a Heritage Item and adjoins a number of Heritage Items/Contributory Items and is within a HCA is a matter to be considered in deciding whether the proposed development is “*compatible*” and “*sensitive*” with the adjoining Heritage context.

For the reasons referred to in this submission, I strongly consider that the bulk, scale and design of the proposed 20 storey tower is totally dissimilar and incompatible to the prevailing 2 - 4 storey residential dwellings in the HCA and is therefore incompatible with the current adjoining context.

In terms of likely future character, I again note that the adjoining HCA, including numerous Heritage Items and Contributory Items, will not likely be subject to redevelopment to the scale of the proposed multi storey towers due to Heritage constraints.

Thus, the proposed development will be incompatible and insensitive not only with the existing character but also the likely future character.

ISSUE 23. "PUBLIC SPACE"

The proposed development provides public space by way of proposed public areas, which are of public benefit.

ISSUE 24. “HAZARDS AND RISKS”

Issue 24 relates to “*Hazards and Risks*”.

I defer to relevant experts as to whether Issue 21 has been addressed.

RESPONSES TO EIS

I note the Applicant's EIS which accompanies the SSD Application.

I wish to provide my following responses to the following points contained in the EIS.

I should note that a number of the following responses have already been made in previous sections of this submission.

I wish to make the following responses: -

- I note that the SSD Application is accompanied by a concurrent Planning Proposal for the proposed development.
- In the section entitled "*Project Description*" on page 7, the SSD Application involves a range of works, particularly to St Francis Xavier Catholic Church, to facilitate its continued use. I note that the subject site is within a Heritage Conservation Area and the St Francis Xavier Church is a Heritage Item. I defer to appropriate experts in Heritage in assessing the impacts of the proposed development on both the above Heritage Item and the Heritage Conservation Area generally.
- In the 4th bullet point on page 8, the EIS also notes that the concurrent rezoning includes "*amend the Heritage map to reflect the extent of the HCA on the site and the Heritage curtilage of the existing Heritage Item*". Again, I defer to the advice of relevant Heritage Officer of Council.
- In the section entitled "*Project Justification*" on page 9, the EIS concludes that "*holistically, the proposal will provide a net positive outcome for the Site, the surrounding area and Sydney more broadly.*" Whilst there are some positive benefits, I consider that the proposed 20 storey tower is objectionable for reasons outlined in this submission.
- Section 1.5.2 entitled "*Engagement with Adjoining Landowners*" discusses the various "*engagements*" with various bodies and the community. As to the community, a number of my Clients, being residents in the locality, consider that there has been inadequate Engagement. I defer to their comments in their submissions.

- At Section 2.5 entitled “*Surrounding Development*,” the EIS correctly states as follows: -

“The surrounding development illustrates the Site’s existing transitional interface between the high-density built form of the North Sydney CBD and the lower scale residential character of the Lavender Bay.” I agree with this comment. I also agree with the objective stated in the EIS that the proposed development should reflect the transition between the high-density built form of the CBD and the low scale of the residential character of Lavender Bay. Clearly, the proposed 20 storey tower cannot be considered a transitory development between the CBD and Lavender Bay.

- At page 14, there are comments in relation “*Aboriginal Cultural Heritage*” and “*European Heritage*”. Again, I defer to the advice of Council’s Heritage Officer.
- Section 2.10 entitled “*Transport and Access*”, I defer to the advice of Tom Steal, Traffic Consultant, who has provided a detailed analysis of the Traffic, Parking and Access features of the proposed development. It can be fairly said that Tom Steal raises significant concerns against the proposed development. Local residents also raise Significant concerns
- Section 3.0 entitled “*Strategic Context*” clearly foreshadows additional Housing Stock, including Affordable Housing. I should stress that I fully support additional Housing Stock and Affordable Housing, but the proposed development must be in a compatible and sensitive form of appropriate height, bulk and scale, particularly given the Heritage features of the subject site and immediate locality. Furthermore, I reiterate the need to ensure that the proposed development is a satisfactory transition between the North Sydney CBD and Lavender Bay, which is one of the objectives stated in the EIS. I strongly consider that this objective is **not** achieved by the proposed 20-storey tower.
- Section 3.2.6 entitled “*Better Place*,” the EIS claims that “*the mass is in response to the scale and significance of Heritage listed church, skill building and surrounding Conservation Area.*” This claim is clearly wrong in relation to the proposed 20-storey tower. It cannot be said that the proposed

20-storeys tower responds to the massing, scale and significance of the Heritage listed Church, School Buildings, and surrounding Heritage Conservation Area. As to whether the proposed 7-storey building is compatible with the Church building, I defer to Council's Heritage Officer.

- Section 3.6 entitled "*Consistency with SEARs Request and Project Justification.*" For the reasons referred to in this submission, I am of the strong professional opinion that the proposed development does not comply with a number of issues, particularly in terms of Issue 7, which requires the Applicant to demonstrate a "*high level of environmental amenity*" for adjoining residences and sensitive uses. Contrary to this claim, the adjoining residents and sensitive uses will suffer adverse Amenity Impacts. Furthermore, there will be adverse impacts on adjoining public locations, contrary to the Court's Planning Principle in Rose Bay Marina. I also consider that the proposed development does not comply with other Issues under SEARs.
- Figure 11 on page 30 clearly demonstrates the fact that, contrary to the claim in the EIS, the proposed massing does not respond to the adjoining Heritage Item and the HCA. The proposed 20-storey tower is clearly incompatible and in conflict with the building envelope of the Heritage Items, Contributory Items and HCA.
- Figure 12 shows the relationship between the proposed 7-storey tower and the Church building. As to the impact of the 7-storey building on the church building, I defer to Council's Heritage Officer. One can unequivocally say that the proposed 20-storey tower is totally incompatible with the Church building, whilst the significantly reduced 7-storey tower behind the Church building is obviously of a more conservative in height and I defer to Council's Heritage Officer.
- Section 4.8 entitled "*Landscaping and Open Space*" on page 35 provides various comments relating to the proposed "*church square*", "*through site link*", "*parish garden*" and "*interface with the train corridor*". I consider that these works are a Public Benefit. Whilst again reiterating my very strong objections to the proposed 20-storey tower building.

- Page 38 shows the interface between the proposed 7-storey tower and the Church building. Again, I defer to Council's Heritage Officer as to whether this relationship is appropriate from a Heritage perspective.
- Section 4.16 entitled "*Construction and Staging*" proposes the 20-storey tower block under Stage 1 with the positive public open space areas under Stage 2. I strongly consider that the proposed 20-storey tower under Stage 1 should not be approved. I, however, consider that the positive public works, including refurbishment of the Church building, should not be deferred to an uncertain time in the future. At the very least, the Stage 2 positive works should be completed prior to occupying the remaining development on the subject site to ensure that the positive public works are not left in abeyance to an uncertain time in the future. An appropriate Condition of Consent should be imposed so as to ensure that the positive public works should not be deferred to an uncertain time in the future. I again stress my strong objection to the proposed 20 storey tower.
- Section 5.0 entitled "*Concurrent Rezoning*" discusses the Concurrent Rezoning. I raise 2 issues of concern: -
 - The Concurrent Rezoning seeks to increase the maximum Height of Buildings to a maximum RL 120 (being approximately 73.5m). This equates with 20-storeys. Again, I strongly object to the proposed 20-storey tower.
 - The Concurrent Rezoning also seeks to "*amend the Heritage map to reflect the extent of the Heritage Conservation Area on the Site and the Heritage curtilage of the existing Heritage Items.*" Again, I defer to the advice of Council's Heritage Officer.
- In the middle of page 51, the EIS claims that there are "*no unacceptable impacts will result in the achievement of the intended outcomes*". I again raise significant concerns relating to the proposed 20-storey tower. As to the proposed 7-storey tower behind the existing Church building, I defer to the advice of Council's Heritage Officer.
- Page 53 of the EIS relating to the Height Buildings Map clearly shows that the proposed 120m height of the proposed 20-storey tower does **not**

represent a transition between the North Sydney CBD (to the north) and the 8.5m height of buildings in the low density residential to the south. By any measure, the proposed 20-storey tower, rather than being a “*transition*” building as claimed in the EIS, is a very “*abrupt*” change in height contrary to the Court’s Planning Principle in Project Venture. Please refer to additional comments in this submission.

- Section 7.2 entitled “*Community Engagement*” on page 59 discusses the issue of Community Engagement. Again, I defer to the advice of local residents who raise concerns about the “*inadequate engagement*.”
- In the last bullet point on page 62, the proposed 7-storey tower, being a “*co-living building*”, is more discreetly sited behind the Church buildings. On this point, I defer to the advice of Council’s Heritage Officer, but it cannot be said that the proposed 20-storey tower building is discreetly sited beside the Church buildings. The proposed 20-storey tower building is an intrusive and incompatible building.
- In the second last paragraph on page 64, the EIS states that the subject site “*occupies a unique position at the interface between the low to medium scale residential development of Lavender Bay and the Harbour foreshore beyond and the high-density commercial core of the North Sydney CBD*”. This objective is correct, in that any proposed development should represent a “*transitory*” building between the CBD and the low-density development in Lavender Bay. It cannot be said that the proposed 20-storey tower is a transitory building, rather it is a very abrupt and obtrusive building, when assessed against Project Venture.
- Figure 11 on page 30 again shows the total incompatibility of the proposed 20-storey tower with the adjoining Church buildings.
- Figure 30 on page 69 demonstrates the incompatibility of the proposed 20-storey tower relative to the Church buildings and the low-density residential scale.
- The proposed 20-storey tower is, in fact, of a height, bulk and scale that are not transitional in scale between the CBD and Lavender Bay.

- In the 3rd paragraph on page 70, the EIS states that the 20-storey tower *“provides a transition to the scale of the surrounding Heritage Item”*. I strongly disagree.
- Figure 33 shows the incompatible relationship between the proposed 20-storey tower and the Church building.
- Section 8.3.1 entitled *“Solar and Daylight Access”* commencing at page 79 discusses the issue of Solar Access. Based on my analysis of the Shadow Diagrams, the low- density residential properties on the adjoining residential streets will suffer severe additional Overshadowing Impact. Please refer to additional comments within this submission.
- Section 8.5 entitled *“Visual and View Impact”* provides an assessment of both views from key public viewpoints and views from the proposed development. For the reasons referred to later in this submission, I consider that the public views from St Peter’s Park is most likely unreasonable based on the Court’s Planning Principle in Rose Bay Marina, subject to further assessment. I also raise a concern as to whether there is an adverse View Loss from parts of *“Blue Street Plaza.”*, again subject to further assessment. Please refer to additional comments within this submission. I note that St Peter’s Park and Blue Street Plaza are 2 public domain locations identified by the Applicant in the EIS as important elements to be considered under the Court’s Planning Principle in Rose Bay Marina.
- At Section 8.5.2 entitled *“Private Views”* at page 93, I note that there is no unreasonable Loss of Views from my Clients’ properties further to the south in Lavender Bay. My concerns in relation to the residents in Lavender Bay relate to adverse Visual Impact and also adverse Overshadowing Impact generated by the proposed 20-storey tower building. I assume that you will undertake an inspection of the residential properties to determine whether there are other residential properties which will suffer from adverse View Loss. Again, I reiterate Issue 7 of SEARs which requires the Applicant to demonstrate *“a high level of environmental amenity”*. Rather than demonstrating a high level of residential amenity, I consider that the proposed development will generate a range of adverse amenity impacts.

- Section 8.6 entitled “*Traffic and Parking*” discusses various issues relating to Traffic, Parking and Access. As to these issues, I defer to the advice of Tom Steal, Traffic Consultant, who raises concerns, as do local residents.
- Section 8.7 entitled “*Aboriginal Cultural Heritage*” up to Section 8.23 entitled “*Contributions and Public Benefit*” relate to mandatory issues required to be satisfied under SEARs.
- Section 9.0 entitled “*Project Justification*” makes various claims about the grounds of justification of the proposed development. Simply put, my primary concern relates to the proposed 20-storey tower which I consider is totally incompatible and insensitive with the adjoining Heritage precinct and the low-density residential zoning in Lavender Bay. Furthermore, the claim in the EIS that the proposed development represents a “*transition*” between the North Sydney CBD and the low-density residential environment in Lavender Bay is simply wrong. Far from being a transitional development, the proposed 20-storey tower is a severe and abrupt change (in the words of Project Venture). Furthermore, the proposed 20-storey tower generates a range of adverse Amenity Impacts on the adjoining residential environment and sensitive land uses which are totally contrary to the mandatory requirement under Issue 7 requiring the Applicant to demonstrate that adjoining residential properties and sensitive land uses will enjoy a “*high level of environmental amenity*”.
- As to the merits of the proposed 7-storey tower relative to the adjoining Heritage Item and Church buildings, I defer to the advice of Council’s Heritage Officer.
- Section 10.0 entitled “*Conclusion*” makes a number of claims in support of the proposed development. I again reiterate that my primary concern is that of the proposed 20-storey tower for the reasons referred to in this submission.

INCORRECT AND INADEQUATE RESPONSES BY APPLICANT'S CONSULTANTS

The representatives of ROLBO have prepared a document listing the incorrect and inadequate responses by Applicant's Consultants.

I have reviewed the above document and consider that many of the points raised by ROLBO are well founded. I have raised many similar points in this submission.

I particularly note the following points raised by ROLBO, without seeking to diminish the remaining points: -

- *"The proposed 20-storey tower is directly opposite predominantly low-rise terrace housing on Mackenzie Street and does not step down in scale towards those properties."*
- *"The solar-access and overshadowing assessment records a number of terraces on the northern side of Wilona Avenue as receiving no existing solar access. Evidence from affected properties indicates that these properties do receive winter-solstice solar access to private open space and living areas. Existing solar panels have also been omitted from the assessment."*
- *"Approximately 75 existing lower-cost and retirement rooms are proposed to be demolished".*
- *"The proposed development will result in rents above those currently paid for some of the existing lower-cost accommodation on the site."*
- *"The North Sydney DCP also adopts stepping down of building height as a built-form principle within the Lavender Bay Planning Area, with greater heights towards the ridge transitioning to lower heights towards the bay. The report does not explain how the proposed 20-storey tower achieves the "transition" in scale that it relies upon in describing the site."*
- *"The EIS describes the proposal as "framing" iconic views towards the harbour as though this represents a positive contribution to local character. In practice, existing broader view corridors are substantially narrowed by*

the proposed built form and become confined between and around the new buildings.”

- *“Outdoor communal facilities including a swimming pool, spa and entertainment area at the top of the podium raise significant privacy and amenity concerns for nearby residents. Based on the architectural diagrams, the pool is located at approximately RL60.1, while Wilona Avenue is at approximately RL45. Mackenzie Street also slopes downward from west to east along the proposed tower location, from approximately RL48.6 to RL45.4, and the Wilona Avenue homes follow this downward slope.”*
- *“The site is located at the interface with Lavender Bay, a fine-grain, low-rise and heritage-sensitive residential area.”*
- *“The claimed “carefully managed transition” is also difficult to reconcile with a proposal rising to approximately RL120 beside much lower-scale residential development around RL56.”*
- *“However, the communal areas face an established residential area, including dwellings with bedrooms and private open spaces directly opposite. Reliance on signage requesting residents not to shout is not, by itself, an adequate acoustic mitigation measure. The EIS should demonstrate through appropriate acoustic treatment and design that noise from the pool, spa and communal entertainment areas will not unreasonably affect neighbouring residential amenity.”*
- *“The locations and specifications of mechanical plant and equipment have not yet been finalised.”*
- *“Significant additional housing could be delivered within existing controls or with a much more modest uplift. Further, the claimed affordable housing benefit is secured for only 15 years, while the height and planning changes are permanent.”*
- *“A transition should step down in scale; this proposal does not. The tower rises to RL120 at the southern edge of the CBD and immediately opposite much lower residential development. The current controls of 8.5m and 12m recognise that change in context. The proposal effectively extends CBD-scale development south rather than providing a meaningful transition into Lavender Bay.”*

- *“The EIS itself says the proposal complies with the NSLEP “other than where amendment is sought as part of the PP.” Those amendments are fundamental: rezoning the whole site to R4, increasing the maximum height from 8.5/12 m to RL120 and permitting additional retail uses. Being declared SSD or satisfying procedural requirements does not establish that those very substantial departures from existing planning controls have planning merit.”*
- *“The terrace houses along Wilona Avenue are contributory items within the Heritage Conservation Area”*
- *“The Blue Street Plaza viewpoint is also narrowly framed”*
- *“Views from St Peter’s Park are similarly narrowed, with substantial new built form introduced into the foreground.”*
- *“The assessment also excludes further reductions in solar access where a property is already assessed as receiving less than three hours of solar access, meaning additional loss caused by the proposal is not identified as an adverse impact for the purposes of the report.”*
- *“As a result, a property can experience an additional reduction in solar access as a direct consequence of the proposal without that reduction being identified as an adverse impact for the purposes of this assessment. In addition, the existing-condition assumptions for a number of properties appear to be incorrect; examples are identified below.”*
- *“The report explicitly assesses public view-place sensitivity as “medium-high”, reflecting the site’s harbourside prominence, high public visibility and proximity to heritage items, and assesses the Physical Absorption Capacity as “low” at close viewing distances because of the surrounding low- to mid-rise and heritage character of Lavender Bay. These findings establish that the immediate receiving environment is sensitive to substantial change and has limited capacity to absorb new built form.”*
- *“This description does not relate to the subject site and appears to have been copied from an entirely different project. References to rural land, grassed paddocks, quarry operations, brick production, sediment basins, dams, unsealed vehicle tracks and an absence of built form are wholly*

inconsistent with the existing urban and heritage context of the Lavender Bay site.”

- *“The photomontage is also based on a narrowly selected directional view and does not demonstrate the effect of the development across the broader range of views available from Blue Street Plaza.”*
- *“The viewing period is classified as “medium”; however, Blue Street Plaza is a destination and gathering space where people sit and remain for extended periods, including during lunch periods. Views from this location are therefore experienced for sustained periods rather than merely in passing, supporting a higher viewing-period sensitivity.”*
- *“These weighting factors materially influence the final assessment. Applying a high Physical Absorption Capacity and medium viewing period has the effect of reducing the assessed visual impact, despite the close proximity, substantial scale and permanent change to the view created by the proposal. The resulting classification of the visual effect as “low” is therefore not adequately supported.”*
- *“The viewing period is also classified as “medium”; however, St Peter’s Park is a destination and gathering space where people sit and remain for extended periods. It is also a significant viewing location during events such as New Year’s Eve. Views from this location are therefore experienced for sustained periods rather than merely in passing, supporting a higher viewing-period sensitivity.”*
- *“These classifications materially influence the assessment of visual impact. A higher sensitivity attributed to the actual use of St Peter’s Park, together with proper recognition of the limited capacity of this close-range view to absorb the proposed built form, would result in a materially different assessment of the visual effect.”*
- In terms of Traffic, Parking and Access, ROBLO also refers to the significant concerns raised by Tom Steal, Traffic Consultant and local residents.

CONCLUSION

I fully support additional Housing Stock and I also fully support Affordable Housing but consider that the current proposed 20 storey tower is most objectionable particularly due to the fact that it significantly breaches the Height of Buildings Standard and generates a range of adverse Amenity Impacts.

Contrary to the claims in the EIS that the proposed 20 storey tower represents a transitional building between the North Sydney CBD and the low density residential developments to the south, I am strongly of the opinion that the proposed 20 storey tower building is a severe and “*abrupt*” building. (adopting the expression in Project Venture)

I note that the subject site contains a Heritage Item and is within a HCA. Furthermore, the subject site adjoins a number of Heritage Items/Contributory Items.

As a result, the proposed development must be compatible and sensitive to the adjoining Heritage Items, Contributory Items and HCA.

For the reasons referred to in this submission, I consider that the proposed development is both insensitive and incompatible with the adjoining Heritage Items, Contributory Items and HCA when assessed against the Court’s Planning Principles in Project Venture and Seaside Property.

I also consider that the incompatible and insensitive nature of the proposed development is in conflict with a number of the mandatory SEARs’ requirements including, but not limited to, the following: -

- **Issue 1. “Statutory Context”**
- **Issue 5. “Design Quality”**
- **Issue 6. “Built form and Urban Design”**
- **Issue 7. “Environmental Amenity”**
- **Issue 8. “Visual Impact”**

In terms of Traffic, Parking and Access, I note the significant concerns raised by Tom Steal, Traffic Consultant, and local residents under Issue 9.

In terms of Noise and Vibration under Issue 10, I consider that these are Issues which are unresolved due to inadequate assessment.

Thus, in its current form, I strongly consider that the SSD Application is not worthy of approval

I earnestly request that the SSD Application not be approved.

Yours faithfully,

A handwritten signature in dark ink, reading "Tony Moody". The signature is written in a cursive style with a horizontal line underneath the name.

Date: 23 September 2026

TONY MOODY

BTP (UNSW), LL.B (UTS) (Hons.), MPIA

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