



APPLICATION NUMBER - SSD-67175465

Site 173-179 Walker Street and 11-17 Hampden Street, North Sydney
Objector Dixon ANDREWS
Date 30/7/2024

DETAILS OF OBJECTOR

My wife and I own and reside in unit 1103 229 Miller St, North Sydney.

The amenity of our home will be significantly impacted by the proposed development.

Our apartment is located on the southeast corner of 229 Miller St.

The views from our apartment are classified by the applicant as being severely impacted.

OVERVIEW OF OBJECTIONS

The site is not capable of supporting level of density proposed. The proposal is inherently inappropriate for the site's specific constraints, particularly in relation to traffic.

The proposed development has very significant impacts on both public and private amenity and is therefore in direct conflict with a range of aims, objectives and controls contained in the NSLEP including the primary aims of the LEP.

The proposed development has very significant impacts on both public and private views and is not compliant with the NSLEP in this regard.

The proposal assumes an automatic right to the building heights detailed in the NSLEP. This assumption is invalid. Clause 4.3 and 19.C of the NSLEP set maximum heights that should not be exceeded but they do not infer an automatic right to build to these levels. The appropriate building height can only be established by reference to the objective of Claus 4.3(1). The proposed development height does not comply with these objectives.

Contrary to the assertions of the applicant, the proposal has significant non-compliance with the NSLEP.

The proposal ignores good planning principles on so many levels that it cannot be justified.

The proposal has such significant adverse environmental impacts that approval cannot be justified.

To approve this application would be to impose in perpetuity a poor planning outcome on this part of North Sydney.

In its strategic planning documents the North Sydney Council has already identified that there are more appropriate and reasonable ways to meet the local housing needs.

PUBLIC INTEREST

The proposal is at every level fundamentally not in the public interest.

Provision of housing can be validly classified as being in the public interest but this definition of “public interest” is not a valid argument to justify all developments in all locations. Broad aspirational statements such as this re the provision of housing are a starting point only for the definition of public interest.

When assessing a development proposal the definition of what is in the public interest is inherently site specific.

The proposal for this particular site has significant, cumulative adverse impacts for a very large number of people and the impacts are not limited to affecting just local residents. Decisions in the LEC have repeatedly defined such a large and diverse group of people as “the public”.

As such, the impacts on this group must be considered in assessing what is “in the public interest”.

CAPACITY OF SITE TO SUPPORT DEVELOPMENT

An in-depth assessment of the capacity of the site to support development and what level of adverse impacts should be considered to be acceptable in terms of the public interest will clearly demonstrate that the site is simply not suited for the density proposed.

This was recognised by the planning control that imposed a 12 m height restriction in the NSLEP prior to the amendment the NSLEP under PP-2020-141.

PLANNING PROPOSAL PP-2020-141 - Dated July 2021

The approval of planning proposal PP-2020-141 was based on fatally flawed reports in relation (but not limited) to:

- Loss of amenity generally (the Architectural Design Report can only be described as creative literature not a design report).
- Site specific height, bulk and scale
- Height, bulk and scale in the broader context of the NS CBD (The Skyline Study effectively contradicted itself).
- Traffic impacts (the traffic study failed on multiple levels).
- View loss (the Visual Impact Analysis completely failed to adequately qualify the view loss and visual impact).

The approval of PP -2020-141 has resulted in planning controls for the site that infer a building that far exceeds the capacity of this particular site to support.

The approval of PP-2020-141 was a fundamentally poor planning outcome given that it was based on reports and submissions that were at best creative fiction and in some respects blatantly false and misleading. As a result the height and bulk controls that have been approved do not adequately address the specific issues of the site.

The assessment of the current proposal provides an opportunity to address and to not perpetuate the mistakes made by the approval of PP-2020-141

In this case it would be poor and culpable planning to assess the proposal primarily of compliance with numeric controls.

ENTITLEMENT TO NUMERIC CONTROLS

The case *Furlong v Northern Beaches Council* [2022] NSWLEC 1208 before Walsh C deals with views from simple alterations to a dwelling. However the principles can be reasonably apply on a broader scale.

Walsh found that compliance with planning controls does not overcome or negate the impact of the aims, objectives and other controls contained in the LEP.

“The proposal’s reasonableness and design alternatives

56. *An applicant is entitled to try to optimise its ambitions, in the matter before me here it is concerned with bringing about amenable alterations and additions to a residence. This litigation is particularly concerned with securing amenable views from a master bedroom. In this case there is more than compliance with numerical standards relating to boundary setbacks, and the like. **However, compliance with other controls does not, of itself, overcome policy settings aimed at reasonable view sharing, in this case, in accordance with the objectives and requirements of cl D7 of WDCP. It makes sense to me to then that questions be asked of the reasonableness of the proposal which would bring about the severe view loss to 51A Wheeler Parade, including whether there might be design alternatives regarding the proposal.**”*

Based on Walsh, compliance with numeric controls is not enough. The proposal must be assessed against the aims and objectives of the NSLEP and NSDCP in terms of the actual adverse environmental impacts arising from this level of density on this site.

AMENITY

The issue of amenity is central to all levels of the applicable North Sydney planning controls.

There is universal consensus among the local community and the Council that the proposal will result in a significant loss of amenity for the local community and the public at large resulting from:

- The impact of the bulk and scale of the proposal in relation to the context of the site
- The impact of the bulk and scale of the proposal for pedestrians using Walker St,
- The substantial impacts on traffic congestion and safety particularly in relation to The Walker St and Berry St intersection,
- The excessive, cumulative impact on views from adjoining buildings

The application should be refused on the basis of loss of amenity alone.

The principal objectives of the LEP include a requirement that existing residential amenity be protected.

The LEP states that the particular aims of the plan include the following:

- (a) to promote development that is appropriate to its context and enhances the **amenity** of the North Sydney community,
- (b) (ii) to maintain a diversity of activities while protecting residential accommodation and local **amenity**,
- (c) (i) to ensure that new development does not adversely affect residential **amenity**

This proposal fails miserably against these primary Objectives in the LEP.

The site is located in the Zone R4 High Density Residential.

The objectives of this zone also require the protection of existing residential amenity

The Objectives of this zone include

- To encourage the development of sites for high density housing if such development does not compromise the **amenity** of the surrounding area.
- To ensure that a reasonably high level of residential **amenity** is achieved and maintained.

Again the proposal fails miserably against the stated objectives for the R4 zone.

The proposal also does not meet the primary objectives of the DCP. Under the DCP new development is required to not have adverse impacts on existing residential amenity

Objective O1. To ensure that residential development reinforces the aims and targets of Council's *Residential Development Strategy*;

One of the main principles of the Residential Development Strategy is to "Minimise the impact of new development on local character, **amenity**, environment and heritage."

Objective O5. To ensure that residential development "does not have adverse impacts on residential **amenity** or environmental quality"

The proposal fails miserably against the intent and objectives of the DCP.

PARKING

The proposal aims to provide a total of 294 on-site parking bays.

This figure does not include the overflow of other cars seeking to park in adjacent street which will impact on access to street parking for existing residents.

The report also does not appear to factor in the loss of street parking adjacent to the site.

The true impact on parking from the development will therefore be much larger.

TRAFFIC

There are currently approx 44 dwellings on the site as follows.

Address	No of dwellings	Car parks
17 Hampton	1	0
15 Hampton	1	2
11 Hampton	18	5
173 Walker	6	0
175 Walker	6	0

177 Walker	6	0
179 Walker	6	0
Total	44	7

It simply doesn't compute that 7 carparking spaces will generate 29 vehicle trips/hour in the AM peak.

It also doesn't compute that the addition of 294 on-site car parking spaces will only generate an additional 17 vehicle trips/hour in the AM peak.

The survey data provided in the traffic report is irrelevant.

Since the previous DA was submitted there have been a number of proposal approved for the immediate area including:

- A new school at 41 McLaren St which will have significant local traffic impacts.
- A high-rise apartment building with an additional 80 parking spaces.

In addition, the Aura building in McLaren St (containing 415 apartment) is nearing completion. It will shortly add significant additional traffic movements to an already over-taxed system.

The traffic generated by the 415 apartments in Auroa is not addressed in the traffic report.

None of this traffic from these approved/nearly completed development is captured by the surveys.

The system is already overloaded at peak periods with traffic regularly backing up Walker Street past McLaren St. Unfortunately, this congestion does not simply disappear as the result of theoretical calculations in a report that infers that it doesn't exist.

Access to the slip road access to the site is not permitted from the north. As a result all cars entering the slip road need to approach from the south. There is significant potential for adverse interactions between:

- cars backed up across Berry St while cars are trying to enter the slip road and
- traffic using Berry St to access the freeway and the new cross Sydney tunnel.

There is already significant congestion at this intersection from traffic moving in the northerly direction particularly during the PM peak.

The site has significant issues with traffic that cannot be overcome or "designed out". The traffic is certain to become much worse shortly even without any further development on 173 Walker St.

The divided road / slip road configuration of the street adjacent to the site is not adequate to cater for the level of traffic that the development will generate.

The traffic issues clearly demonstrate that the site does not have the capacity to support the proposed development.

VISUAL IMPACT & VIEWS (+ Height of Buildings)

The Visual Impact report states that “it is not possible to succinctly categorise the value of views”. The report relies on “a number of general observations may be made to assist in assessment purposes”.

A development should not be approved based on a report that does not adequately assess and categorises the view loss resulting from the development.

The report states that “Overall, it is reasonable to state that a large number of apartments in this area have high value views”. Given that the report also states that a large number of these views are to be affected, basing the assessment on “general observations” is not an adequate basis for approval.

As detailed below a number of these “general observation” are invalid and misleading.

The assessment of view impact is based primarily on photographs taken from balconies. Tenacity makes it very clear that the assessment should “consider from what part of the property the views are obtained”. **This vital second step detailed in Tenacity has not occurred.**

In the majority of cases the views are available from the living areas.

This failure to assess the view loss from the living areas invalidates any conclusions or statements purporting to be based on the Tenacity ruling i.e. the entirety of the section of the report dealing with view loss.

The Visual Impact report seeks to justify the view loss by citing compliance with numeric controls contained in the NSLEP.

As noted above in *Furlong v Northern Beaches Council* [2022] NSWLEC 1208 Walsh found that “compliance with other controls does not, of itself, overcome policy settings aimed at reasonable view sharing”.

The report states “The **NSDCP 2013 seeks to preserve and where possible enhance views** of Kirribilli and the Harbour from Walker Street ... Glimpses, rather than views, of Kirribilli and the harbour from Walker Street are only obtained from the south-west corner of the Walker Street and McLaren Street intersection. **The proposal will obstruct much of this glimpse.**”

The author of the report confirms that the extend of these public views is currently limited. It is a consistent principle in the LEC that where desirable public views are limited the need to retain those views become much more important and should be given greater importance in assessment of the impacts.

The report continues as follows. “While preferable to obtain a greater amount of this glimpse, it is not considered that it is a key characteristic of this part of the existing Walker Street streetscape.” This statement is not consistent with the findings in *Rose Bay Marina Pty Limited v Woollahra Municipal Council and anor* [2013] NSWLEC 1046 by Moore SC & Adam AC

On page 35 the report refers to the character statement for the area - Part C 'Character Statements', Section 2 'North Sydney Planning Area', Sub-section 2.4 'Hampden Neighbourhood'. The report states as follows:

Under 'Views', this sub-section has the following provision:

- P4 The following views and vistas are to be preserved and where possible enhanced:
 - (a) Maintain views of Kirribilli and the Harbour from Walker Street
 - (b) Strong vista along Walker Street to southern part of CBD.

The report proceeds to subsequently ignore these provisions in the DCP without providing any justification for the proposal non-compliance with them.

The report continues as follows: “The WIA also shows that the proposal will integrate well with this townscape. In particular, when seen from public parkland to the east, the proposal will be seen in the context of the North Sydney CBD to the left (south) and buildings appearing of comparable scale and height in the form of Aura and comparable height in the form of the Ridgemont Apartments to the right (north).”

This statement ignores the concept embedded in the NSLEP that the height of buildings should transition downwards from the centre of the CBD and from the ridgeline along Miller St.

The statement also ignores that fact that the location, site topography and context of the Aura building is very different to that of the site for the proposal. The sites are simply not directly comparable. As a result any attempt at comparison between these two sites to attempt to justify the appropriate density of development for 173 Walker is invalid.

The 3D image of the proposed development clearly demonstrates that the proposed development does not comply with the concept of transitioning. It is will be seen as being separate/detached from the taller buildings located closer to the centre of the CBD. It will be as being much taller than the buildings in its immediate vicinity and will visually dominate the surrounding buildings.

Personally I think this image is a strong argument against the applicant’s case.



The North Sydney Local Housing Strategy was prepared in 2019, prior to the approval of PP-2020-141.

Statements in the report pertaining to the North Sydney Local Housing Strategy are at best misleading.

The report states that *“It is clear that the overall strategic planning intent for the area immediately north of the North Sydney CBD is for considerable redevelopment. For the area surrounding McLaren, Miller and Walker Streets, the desired form of this redevelopment is for residential uses, with taller buildings on significant sites such as the site”*.

This statement is not consistent with or validated by the actual report.

The North Sydney Local Housing Strategy document actually states that the projected housing required can be provided under the existing zones and planning controls in place in 2019. As a result the changes to the planning controls implemented for this site under PP -202-141 were not considered necessary by the Council in order to achieve the desired outcomes.

The statement *“the desired form of this redevelopment is for residential uses, with taller buildings on significant sites such as the site”* is false.

APPROACH 1 – CAPACITY WITHIN CURRENT LAND USE PLANNING CONTROLS

The NSLHS identifies the potential for an additional 6,952 dwellings within current residential zones and planning controls in the North Sydney LGA.

The statement on page 34 of the report that “the site's maximum permitted height is controlled by two clauses in the North Sydney LEP 2013” is false in that it references only the numeric control contained in these clauses.

The maximum permitted height of the building is determined **both** by the numeric controls and the objectives of Clause 4.3 of the NSLEP. Clause 4.3 states the objectives as follows:

Height of buildings

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

- (a) *to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,*
- (b) *to promote the retention and, if appropriate, sharing of existing views,*
- (c) *to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development,*
- (d) *to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,*
- (e) *to ensure compatibility between development, particularly at zone boundaries,*
- (f) *to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area,*
- (g) *to maintain a built form of mainly 1 or 2 storeys in Zone R2 Low Density Residential, Zone R3 Medium Density Residential and Zone C4 Environmental Living.*

(2) *The height of a building on any land is not to exceed the maximum height shown for the land on the [Height of Buildings Map](#).*

A number of these objectives are critical in determining the “permissible building height”.

(1)(b) *to promote the retention and, if appropriate, sharing of existing views.*

The wording here is important in how Tenacity applies. The clause stipulates “retention of view. “Sharing of views” is secondary to retention and should only be applied where “appropriate”. Given the excessive and cumulative view loss that would result from the proposal, it is difficult to see how view sharing, not retention is appropriate under this clause.

(1)(c) *to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings*

The shear scale of the proposal will have privacy impacts - from medium to significant - for residents in a number of adjoining buildings.

(1)(f) *to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area,*

The proposed development would have by far the dominant visual impact on this section of Walker St. It would dominate the local character of the area in an adverse way.

(2) *The height of a building on any land is not to exceed the maximum height shown for the land on the [Height of Buildings Map](#).*

The critical words here are “not to exceed”. The clause does not infer an automatic right to build to the height shown on the Height of Buildings Map. The height stated on the map is a starting point only. The actual permissible height has to be established by reference to the objective detailed in Clause 1.

Clause 6.19C Development at Hampden and Walker Streets, North Sydney of the NSLEP states:

(2) Despite clause 4.3, development consent may be granted to development involving the erection of a building on the subject land with a height not greater than RL 148 metres, if the consent authority is satisfied that— ...

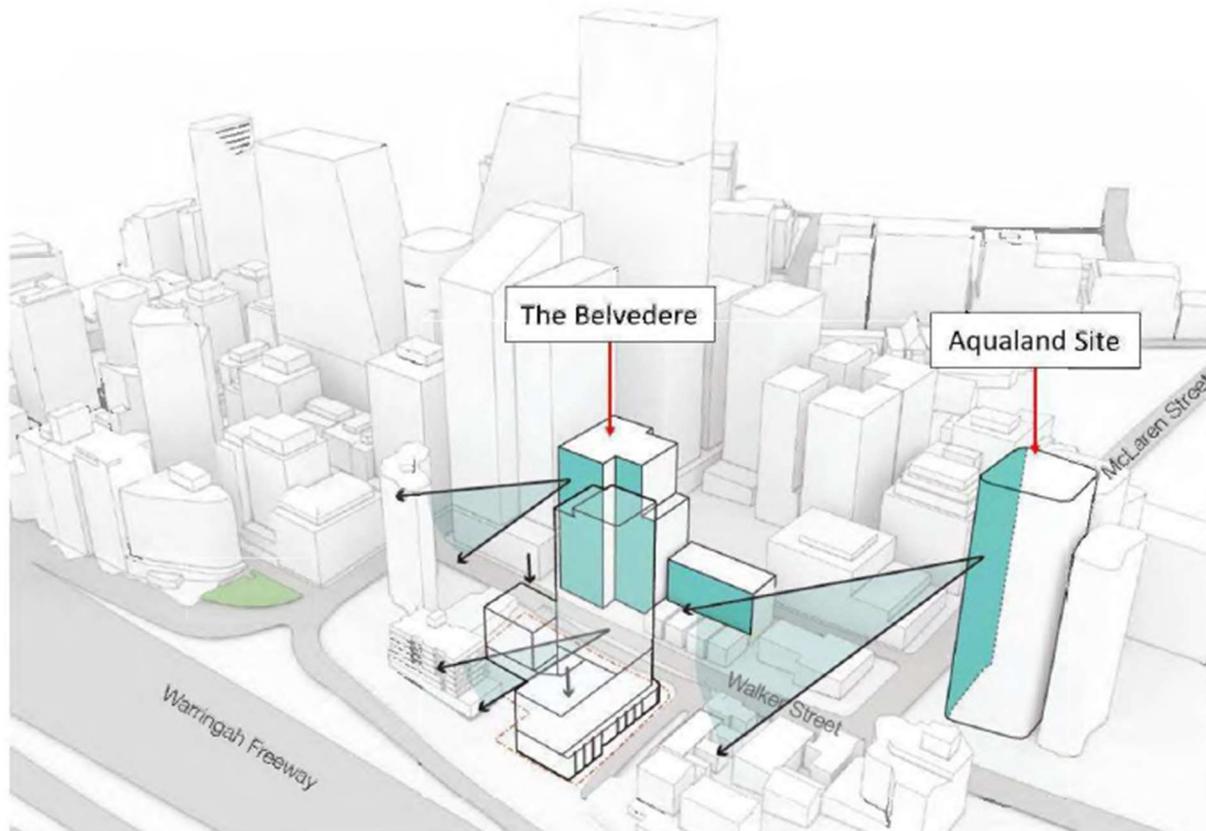
Again, the critical words are “a height not greater than RL 148”. Again, this clause does not infer an automatic right to build to the height of RL 148. The clause only specifies that a building can be no higher than this level. Again it is a starting point only. The actual permissible height under clause 6.19C still has to be established by reference to the objective detailed in Clause 4.3(1).

The diagram shown on Page 38 of the report is from the a DPE report that copied the diagram from the visual impact statement from the applicant’s submission for PP-2020-141.

The diagram completely ignores the impact of the proposal on all the buildings along Miller St and the affected building in McLaren St other than on section of the Aurora building. This is a

clear demonstration of the flawed nature of the reports used to justify the approval of PP-2020-141

I am surprised that this diagram has been included in the current report given the inadequacy of the diagram itself and the inherent inadequacies in the conclusions based on it.



Any conclusions drawn from this diagram are invalid.

Clause 6.3.2 of the report purports to be interpreting Tenacity in relation of the development.

Tenacity deals with view sharing because the relevant LEP dictated “view sharing”. An underlying principle in Tenacity is that the assessment of view impacts must be made in relation of the provisions of the relevant LEP.

The assumption in the report that view sharing automatically applies in this case is incorrect.

As noted above, the NSLEP stipulates the promotion of the **retention** of views.

On pages 54 to 56 of the report an assessment of view loss from various apartments is detailed. Of those listed, the report states that a clear majority of the apartments have either:

- Moderate view loss or
- Severe view loss.

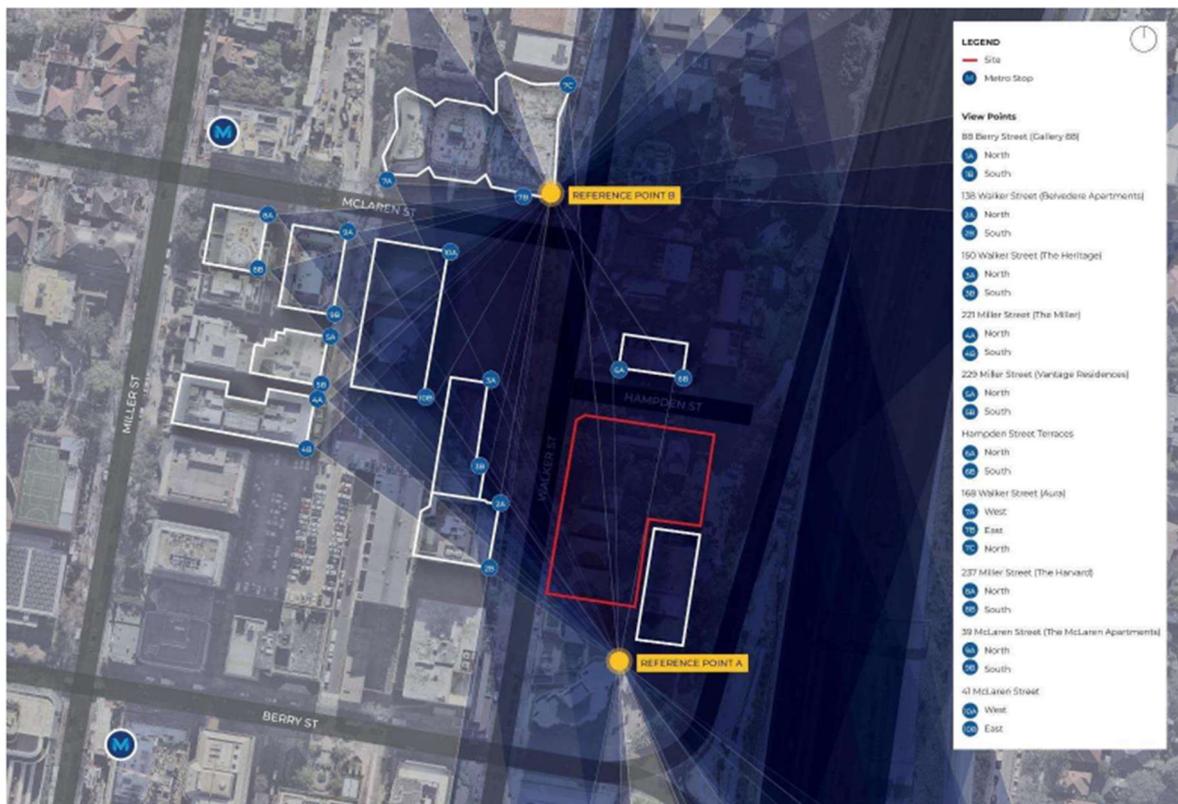
In all but a few of the cases the view assessment has been made from a balcony not from within the apartment. This deliberately misrepresents the actual view loss for the residents of the apartments.

This approach is invalid under Tenacity. The impact on views has to be assessed from the whole of the property not from a location on the site that best suits the applicant.

The View Lines Map below is based on the locations of the photographs detailed in the report. As noted above these are predominantly taken from balconies and not from within the living areas of the apartments. As noted in Tenacity the location where views are obtained from must be established and view from living areas are to be considered to have a high level of significance.

The view lines shown in the diagram do not represent the view line from where the views are obtained from as required under the principles outlined in Tenacity and as a consequence the View Lines Map is invalid and any conclusions derived from it are also invalid.

The view lines attributed to the southeast corner of 229 Miller St (the location of our apartment) are fundamentally flawed. A simple site inspection will irrefutably verify this statement.



The report persistently seeks to justify the proposal on ground similar to the following:

This is particularly the case for the proposal which is located in a precinct identified in council planning documents as being suitable for growth and change within a broader, dense CBD adjacent.

These statements are misleading and invalid because none of the planning documents envisaged the level of density currently being proposed for this site. The documents which do not support the proposed density include the following:

- North Sydney CBD Public Domain Strategy
- North Sydney Local Housing Strategy 2019
- North Sydney Local Strategic Planning Statement
- NSC Civic Precinct Study Nov 2020

Summary re view loss

While the report acknowledges that the level of view loss will be significant and extensive the report downplays the actual level of view loss by deliberately selecting locations on balconies that downplay the extent of view loss.

In many, many cases the view loss will have a significant adverse impact on the amenity currently enjoyed by local residents in their homes.

The assessment of view loss has not been carried out in accordance with the principle established by Tenacity.

The extent of view loss is extensive and affects a very large number of residents to the extent that the cumulative impacts of view loss qualify as significant loss of public amenity.

Dixon Andrews