



GFM Investment Group Pty Ltd
As trustee for the GFM BTS Trust Subtrust No.2
255 George Street, Sydney NSW 2000

21 November 2024

John Martinez
Department of Planning, Housing and Infrastructure
Locked Bag 5022,
Parramatta NSW 2124

Dear John,

173-179 Walker Street and 11-17 Hampden Street, North Sydney SSD-67175465 | Public Exhibition Submission | Objection

This letter has been prepared by CASA, the owners of 45 McLaren Street, North Sydney with regards to the proposed residential development at 173-179 Walker Street and 11-17 Hampden Street, North Sydney (**the site**), which is currently on public exhibition until 21 November 2024.

This letter provides a formal objection to the State Significant Development Application (SSDA), referred to as SSD-67175465. We note that the SSDA was previously placed on public exhibition from 5 July 2024 – 1 August 2024 and the current exhibition package forms an amendment to the original submission.

CASA provided an objection on the original as lodged package, citing the main areas of concern as view loss, including the inadequacies in the assessment of the original View Impact Assessment (VIA). This submission should be read in conjunction with the original submission prepared by CASA.

Whilst we appreciate that CBUS and its consultants have undertaken a revised VIA, which now appropriately includes the approved development at 45 McLaren Street and identifies the 30% uplift, the VIA and amended architectural plans still do not address the critical view loss considerations, required under Tenacity.

1. Review of VIA

Ethos Urban have prepared an '*Addendum View and Visual Impact Assessment*' which now appropriately includes drone photography analysis of view impacts from the approved development.

It is noted that views from 45 McLaren Street across the site include highly valued and iconic views to the Sydney Harbour, the Opera House and panoramic views of the harbour "*enabling an appreciate of its peninsula nature*" (Ethos Urban).

The VIA does not provide an overall summary of the visual impact that the proposed development has on 45 McLaren Street, but rather provides an assessment of each individual view.

8 view points were assessed across the building, at varying heights from RL83 to RL109. The value and the impact of the view are summarised as follows:

Value	View	Impact
Moderate - High	Panoramic harbour views	Severe
Moderate - High	Sydney Harbour (land / water interface)	Moderate
Moderate - High	Sydney Harbour (land / water interface)	Severe
High	Sydney Harbour and Opera House	Moderate
Moderate - High	Sydney Harbour (land / water interface)	Severe
High	Sydney Harbour and Opera House	Moderate
High	Sydney Harbour and the peninsula	Moderate - Severe
High	Sydney Harbour and the Sydney Opera House	Moderate

As summarised above, the views across the site from 45 McLaren Street, are of moderate to high views comprising land and water interface, the Sydney Harbour in a panoramic harbour setting and of the Sydney Opera House. The VIA clearly notes that the impact on these views is moderate – severe and therefore an equitable degree of view sharing is critical.

Further to the above, the Section 5.2 of the VIA provides a summary of case law and outlines the applicability of the DCP, tenacity and objectives of the NSLEP development standard as it relates to the height of buildings.

We agree that the intent is not to strictly retain views but rather to ensure that the most appropriate design outcome is explored that “***strikes a balance between facilitating new developments, while preserving accessing to views.***”

This is discussed more fully in item 2 below, which we fundamentally disagree that the proposed envelope best promotes the fair and equitable sharing of views.

The amended architectural plans which have been placed on exhibition have done little to reduce the width of the main tower envelope which has increased by 8m in width and has therefore had a far greater impact on the ability to equitable promote view sharing across the site.

Objection: In order to ‘strike a balance’ between facilitating new developments, while preserving access to views, the width of the tower envelope should be reduced to provide a slender tower form that promotes view sharing across the site.

The VIA confirms that the view impact is moderate – severe with loss of views to highly valued locations, yet the architectural design has done little to mitigate this impact.

2. Alternative Design Outcome Resulting in Greater View Sharing

The NSW Land and Environment Court of NSW View Sharing Planning Principal [*Tenacity Consulting v Warringah Council*] sets out four key steps in assessing the impacts of the view sharing on neighbours.

These four key steps are identified as:

1. Assess the views to be affected.
2. Consider from what part of the property the views are obtained.
3. Assess the extent of impact.
4. **Assess the reasonableness of the proposal that is causing the impact.**

In relation to step 4, the Planning Principal states:

*“29 ... With a complying proposal, the question **should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours.** If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.”*

In reviewing the submitted VIA, there appears to be little to no analysis on whether a skilful design could provide the applicant with the same development potential and reduce the expected severe loss of views for neighbouring properties. A key requirement of the Planning Principle is to promote fair and equitable view sharing and alternative compliant envelopes are to be considered as part of this analysis.

The site at 173-179 Walker Street was the subject of a Planning Proposal and LEP amendment. On review of the Departments assessment of that Planning Proposal, 73% of the objections related to view loss (DPHI Response to Submissions Report). In response to this, the building envelope was refined, and the tower form was located in the northern corner.

For the purpose of view loss and view sharing, it is considered that the concept scheme that underpinned the Planning Proposal demonstrates an ‘acceptable level of view sharing.’ Any future development on the site should look to reduce that impact, rather than exacerbate it.

When drawing comparisons between the two schemes, it appears that the tower envelope that formed part of the Planning Proposal had a width of 30m (from north to south), comparative to the proposed tower width of approximately 38m. The enlarged tower floor plate directly correlates with the loss of views and does not uphold the same level of equitable view sharing that has been accepted on the site.

Further, whilst a Planning Proposal has occurred, it does not give consent to the concept envelope as that is merely one way in which a development outcome could occur within the proposed planning controls. The merits and impacts are required to be assessed in detail at the detailed development application stage and further design refinement is required to appropriately address those impacts.

In this case, the application has not demonstrated whether an alternative design (such as the inverted tower or a skinner tower) could achieve the same outcome yet promote a greater degree of view sharing. The VIA simply states that it complies with the LEP height controls. Irrespective of whether it complies with the height control, the building envelope within the height must demonstrate that it has made all reasonable efforts to mitigate and reduce external impacts.

It is clear that the tower has been enlarged and angled to maximise private views from within the development site, rather than promote an equitable degree of view sharing from neighbouring properties.

We again reiterate our previous position, that an alternative envelope achieves the same development outcome yet evokes a greater degree of view sharing.

This is evident when comparing with the former DA for the site (**DA197/2022**), that tower form provided a significantly greater degree of view sharing for those western and northern western properties and in particular, our development site.

This was achieved by creating a slender base and inverted tower form. It promoted equitable view sharing and demonstrated a reasonable outcome for the site.

When comparing the former building envelope with the current proposed envelope, it is evident that the view impacts are far more severe, whilst demonstrating, in line with the above Panning Principal that a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours.

The proposed development has substantially greater bulk at the base and this is projected through the entire tower. Contrary to compliance with the ADG in regard to building separation, and the relevant site-specific DCP controls which were purposefully established to create view sharing opportunities through the site, the proposed development has reduced the building separation to 10.95m. The reduction in the building separation, coupled with the greater bulk in the tower form, is responsible for a greater degree of view loss.

An excerpt of the two buildings forms is provided in Figure 1 below, in which the proposed building form, is much bulkier in scale and will result in greater view loss, than what an alternative complying development would.

Figure 1 Comparison of Building Envelopes



Picture 1 Previous DA Design

Source: *fjcstudio*



Picture 2 Current SSDA Design

Source: *Rothelowman*

The proposed development outcome has disregarded the notion of view sharing and failed to explore opportunities that would create equitable opportunities. In this particular instance, a more skilful design

would provide the applicant with the same development potential whilst reducing the impact on the views of neighbouring properties.

Objection: In accordance with the NSW Land and Environment Court view sharing Planning Principles, the VIA should demonstrate that an alternative complying development can be achieved, which would result in improved view sharing for surrounding sites. An assessment of the current design against the previous design should be undertaken to clearly identify the degree of additional view loss generated by the proposed development.

Conclusion

Thank you for the consideration of this submission on SSD-67175465 at 173-179 Walker Street and 11-17 Hampden Street.

As noted above, we strongly recommend that design amendments are made to the current main tower to provide a balance between facilitating an appropriate development outcome on the site whilst promoting equitable view sharing across the site. An alternative design outcome with either a slender tower form or inverted tower are options that need to be explored. The site is of a sufficient size where a more skilful design could be explored that would enable a greater degree of view sharing.

Should you have any questions or comments regarding this letter, please do not hesitate to contact the undersigned.

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CASA

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