

11 December 2024

Manwella Hawell
Senior Planning Officer
Department of Planning, Housing and Infrastructure
12 Darcy Street
Parramatta NSW 2150

Dear Manwella,

Submission to SSD-61000021 at 146 Arthur Street, North Sydney

Stockland Corporation Limited (**Stockland**) submits this response to the State Significant Development Application (**SSDA**) for build-to-rent housing that is currently on Public Exhibition at 146 Arthur Street, North Sydney (SSD-61000021). Whilst Stockland supports the transformation of North Sydney with new commercial and residential developments to create a vibrant place, we object to this proposal and urge the Department of Planning, Housing and Infrastructure (**DPHI**) not to support the scheme in its current form. Our objections, as outlined throughout this letter, relate to the following matters:

- **Stockland's interest at 110 Walker Street, North Sydney (Affinity Place).**

Stockland's Development Application (DA/19/2021) for a 51-storey commercial office tower was approved by the Sydney North Planning Panel (**SNPP**) on 3 June 2022 at 110 Walker Street, North Sydney. Stockland is currently in the process of securing tenants for this development, which is known as Affinity Place. As it may be appreciated by the consenting authority, DPHI and by North Sydney Council, the office market conditions are currently extremely challenging. Therefore the proposed development at 146 Arthur Street which will impact views and tenant amenity (ventilation, daylight and solar access) through non-compliant height and setbacks (as outlined in this submission) will further challenge office leasing for the Affinity Place development.

- **Insufficient environmental planning grounds for the bulk and height of development.**

The Environmental Impact Statement (**EIS**) and Clause 4.6 Variation Request have failed to establish compelling environmental planning grounds for the proposed scale of development, including in relation to:

- View loss.
- The suboptimal urban design outcome that would result from the proposed massing strategy.
- The lack of any meaningful public benefit associated with the proposed height variation.
- Inappropriate use of statutory planning terms, in particular 'Design Excellence', to support the proposed height variation.
- The relative scale of development in the local area.

- **Urban design deficiencies that will undermine the desired future character of North Sydney.**

The proposed design scheme for 146 Arthur Street disregards the local strategic planning framework, including the *North Sydney CBD Public Domain Strategy (PDS)*. The scheme fails to prioritise urban design initiatives that are being progressed by Council, including the envisaged pedestrian-friendly laneway along Little Walker Street.

Stockland appreciate the opportunity to make this submission to SSD-61000021. We trust that DPHI and the Applicant will give appropriate consideration to the grounds for our objection.

1. Background

1.1. Affinity Place

The Sydney North Planning Panel approved DA/19/21 on 3 June 2022. The following development (Affinity Place) is approved under this Development Consent:

- A total of 68,276m² of GFA for commercial office and retail uses.
- Use of lower ground, ground floor, podium and rooftop retail tenancies to support office workers and site visitors.
- Seven (7) storey basement accessed from Little Spring Street, consisting of:
 - 163 vehicular car parking spaces for commercial office and retail use (including 4 accessible spaces).
 - 506 bicycle parking spaces (including 58 visitor spaces of which 38 are provided in Basement Level 1 and 20 are provided in the public domain along Walker Street).
 - End of trip facilities.
 - Loading zones and building services.

The approved design will be constructed to a height of 53 storeys (RL 270.3), including the height of rooftop plant.

1.2. Approved Height Variations

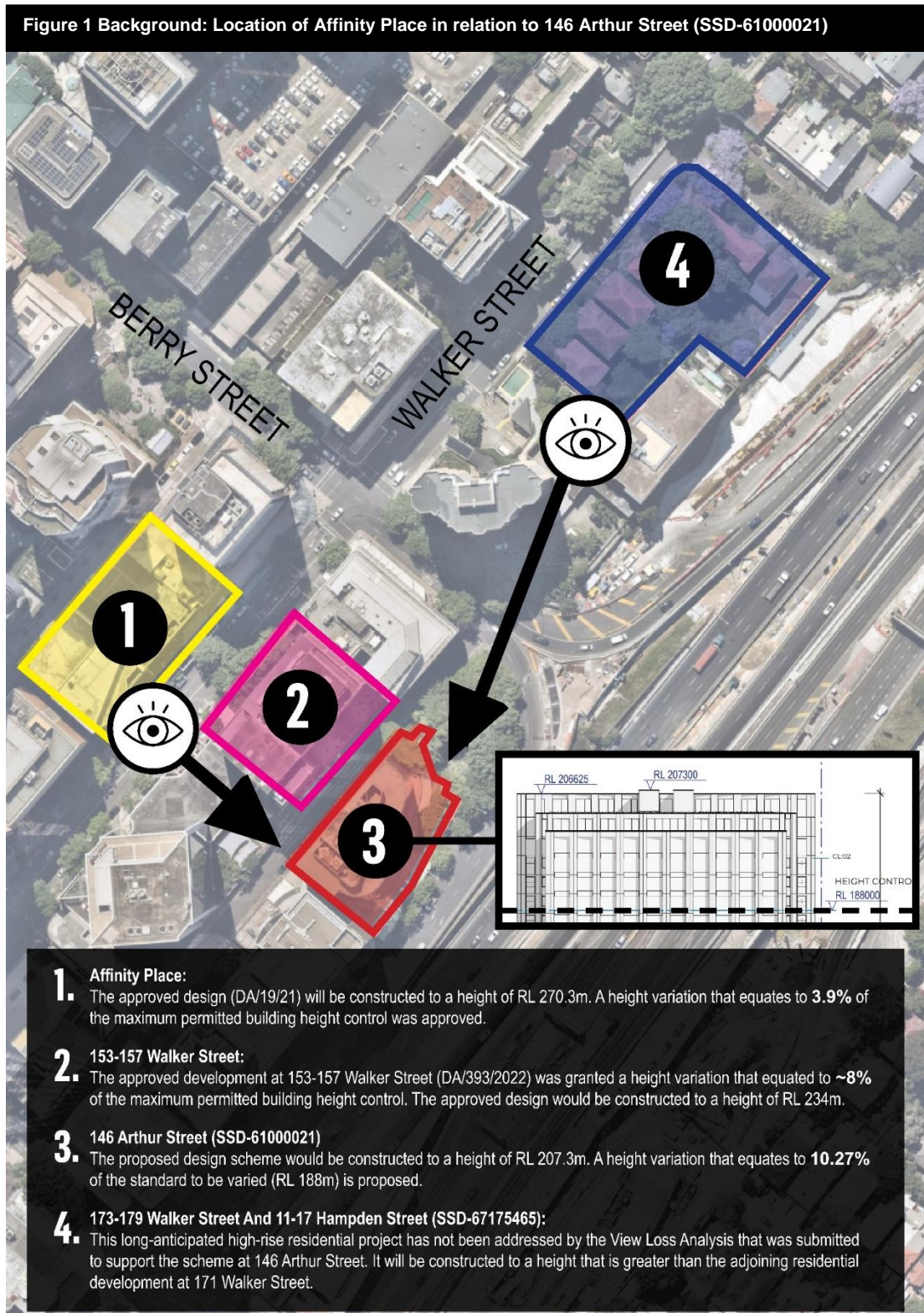
The proposed height variation for the scheme at 146 Arthur Street (10.27% of the permitted building height) is greater than the approved height variation for Affinity Place (3.9%). We note Council's Supplementary Assessment Report for D/19/21 (Affinity Place), dated 18 May 2022, classified the height variation for Affinity Place as 'minor'.

The approved design for Affinity Place will not deliver any habitable floorspace above the maximum permitted building height. The roof form, which is consistent with the definition for Architectural Roof Feature under Clause 5.6 of the NSLEP 2013, has been designed to provide amenity (outlook and daylight) to a rooftop garden that will be accessible to the public.

The substantial nature of the proposed height variation at 146 Arthur Street is discordant with the extent of approved height variations for high-rise development in the local area. In addition to Affinity Place (3.9%), the approved development at 153-157 Walker Street (DA/393/2022) was granted a height variation that equated to ~8% of the maximum permitted building height control (refer to Error! Reference source not found. overleaf).

We appreciate that the numerical extent of any height variation, when considered in isolation, does not determine whether it should be supported. In this regard, the numerical extent of the proposed height

variation for the scheme at 146 Arthur Street is only noted as a precursory consideration in relation to the merit-based objections that are raised in **Section 2.1**.



Source: Nearmap (adapted by Stockland)

2. Insufficient Environmental Planning Grounds

Based on the description that has been provided on behalf of the Applicant in the Environmental Impact Statement, we understand that the following works are proposed:

- Demolition of the existing commercial office building at 146 Arthur Street.
- Preparatory works, including ground excavations.
- Construction of a 46-storey residential tower, which is proposed to accommodate 390 build-to-rent apartments and retail floorspace at ground level.
- Three basement car parking levels.
- Landscaping, including works within Doris Fitton Park.
- Tree removal.
- Civil works.

With particular regard to the scale and height of the proposed development, there are insufficient environmental planning grounds for the scheme to be supported in its current form. We have formed this view based on the matters that are outlined in **Section 2.1** and **Section 2.2**.

2.1. Proposed Height Variation

There are insufficient grounds for the proposed height variation, including in relation to the following matters:

- View loss.
- Arguments within the Clause 4.6 Variation Request that, in our view, are not relevant to the insufficient environmental planning grounds for the proposed height variation.
- Massing deficiencies.
- Streetscape amenity and public domain initiatives that are being progressed under the local strategic planning framework.
- The public interest.

These matters are considered in further detail from **Section 2.1.1** to **Section 2.1.5** of this submission.

2.1.1. View Loss

The proposed height variation for 146 Arthur Street (10.23% of the permitted building height) will result in substantial view loss that is not reasonable to anticipate under Clause 4.3 of the NSLEP 2013. 146 Arthur Street is located at the edge of the CBD, which is bound by the Warringah Freeway. Due to the location of 146 Arthur Street and the substantial height variation, the extent of view loss imposed on surrounding development, including the approved commercial tower at 153-157 Walker Street and Affinity Place, will not be acceptable.

The proposed scheme for 146 Arthur Street will reduce high-amenity harbour and district views that are characteristically unique to North Sydney. Affinity Place is a flagship commercial development in the contemporary (present-day) context of the North Sydney CBD. The scheme at 146 Arthur Street has not

considered the implications of view loss on the potential attraction of high-profile commercial office tenants that are essential to the intended function of the CBD. Without a view impact assessment for this development, the consent authority cannot understand or make a full assessment of the true impacts the development will have and whether or not the non-compliance with the height and ADG building separation controls are acceptable.

While it is acknowledged that residential view loss is inherently more sensitive, a nuanced, merit-based approach that considers the intended function of the North Sydney CBD, which is well-established throughout the local planning framework, is warranted. The Area Character Statement in the North Sydney DCP outlines that new development should provide physical breaks between tall commercial towers to afford occupants of commercial buildings reasonable levels of amenity in terms of 'ventilation, daylight access, solar access and views'. It follows that where a residential building is proposed, these breaks should increase so as to provide sufficient separation between the residential and non-residential uses on adjoining sites so as to provide a reasonable level of privacy.

The proposed extent of view loss is considered to be unacceptable in the context of the view loss principles set out in *Tenacity Consulting v Warringah Council*, given a substantial amount of this view loss would be attributed to building mass that is located above the maximum permitted building height. When considering the reasonableness of a proposal that causes a view impact, the principle sets out that 'where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable'. Noting that the proposal does not comply with the maximum height control, provides a reduced side setback control and does not provide any public benefit relative to these proposed variations we submit that the view impacts are unreasonable and the applicant should be requested to amend the proposal such that it complies with the relevant building envelope controls.

2.1.2. Design Excellence

The Clause 4.6 Variation Request has stated that the proposed height variation contributes towards the achievement of Design Excellence, stating:

The proposed variation to the height of building control contributes to the achievement of the building's design excellence and further accentuates its verticality and architectural elegance.

Clause 6.19B of the NSLEP 2013 provides a framework of matters that need to be considered by consent authorities in determining whether a scheme exhibits Design Excellence. This clause does not apply to 146 Arthur Street, which is not on the Design Excellence Map. The design scheme that is currently on Public Exhibition was not subject to any competitive design process, which could have been undertaken at the Applicant's discretion, similar to other development in the local area such as the approved commercial tower at 107 Mount Street (DA/58/2022) and 110 Walker Street ((DA/19/2021).

The Industry Specific SEARs that were issued request the Applicant to "*Demonstrate how the development will achieve design excellence in accordance with any **applicable** EPI provisions*". There is no requirement for the scheme to achieve Design Excellence, and this is reflected in the EIS where this matter has not been mentioned once. Notwithstanding, this statutory planning term is introduced as a justifying point in the Clause 4.6 Variation Request with minimal elaboration.

The 'verticality' of the tower form is achieved through its slender profile, cantilevered roof, and vertical façade design elements that accentuate the narrow presentation of the proposal. In any case, a high-rise development outcome is already anticipated under the standard to be varied, and a height-compliant design outcome would still be capable of incorporating these features.

The Clause 4.6 Variation Request has attempted to justify the proposed variation with reference to a design rationale that has no association with the insufficient environmental planning grounds for the height exceedance.

2.1.3. Public Benefit

The delivery of a public benefit offering (a public roof garden) was approved above the maximum permitted building height for Affinity Place. The proposed height variation for 146 Arthur Street has no unique public benefit offering.

Simply claiming that the proposed height variation has a (in this case, limited) association with the delivery of additional housing stock would be an insufficient justification, given premium (larger) apartment typologies have been proposed on upper levels. This would indicate that the housing stock that is proposed above the maximum permitted building height will make a less than proportionate contribution towards dwelling yield and housing diversity.

Further to the above, and as outlined at **Section 2.6.1** of this submission, the Clause 4.6 Variation Request that was submitted to support the proposed height variation has referred to the bonus provisions that apply to Infill Affordable Housing under the *State Environmental Planning Policy (Housing) 2021*. These provisions are unequivocally inapplicable to this project. Consequently, any reference to these provisions in relation to the proposed height variation is both inappropriate and misleading.

2.1.4. Communal Open Space

The Clause 4.6 Variation Request leans heavily on what has been framed by the Applicant as a generous provision rate for communal open space. The provision of communal open space has been utilised by the Applicant in an attempt to justify the extent of the proposed height variation *and* a deficit in private open space under the *New South Wales Apartment Design Guide (ADG)*.

This form of 'double dipping' is not consistent with the level of design and environmental planning integrity that is commanded in relation to State Significant Development. It is clear that the need for the bulk and height of the scheme to be reduced is a terminal matter that should be addressed by appropriate massing reductions.

2.1.5. Massing Deficiencies

As outlined at **Section 2.2.1**, the proposed tower is inadequately defined as a component that is separate from the podium form. This is largely due to the inadequate above-podium setback distance that has been adopted (3m) along the Little Walker Street frontage. This insufficient built form setback will further emphasise the excessive scale of development, including in relation to the height of the proposed tower form which has not been addressed at street level.

In response to a strategic review of planning controls in the North Sydney Centre and the *North Sydney Capacity and Land Use Strategy*, Council prepared a Planning Proposal (PP/7/19) that, amongst other amendments, increased building heights in parts of the Centre, whilst managing impacts on solar access to surrounding residential development and on RE1 Zoned land and Special Areas within the CBD.

PP/7/19 was gazetted on 26 October 2018. The scheme at 146 Arthur Street is proposing to vary the applicable height control, which, subject to PP/7/9, has already been reviewed extensively. Although a number of height variations have been approved in North Sydney since the gazettal of PP/7/19, the insufficient environmental planning grounds for the proposed height variation are further highlighted in the Applicant's disregard for this carefully considered amendment to the NSLEP 2013.

The proposed height of the design scheme for 146 Arthur Street is inconsistent with the established North Sydney skyline. The proposal fails to address the essential urban design principle of tapering building heights as they approach the Warringah Freeway (the eastern boundary of the CBD). The proposed height does not adhere to this fundamental massing principle, noting:

- Adequate setbacks are essential to ensure a smooth transition between podium and tower forms, promoting a harmonious relationship with surrounding buildings. The current design's insufficient setbacks create a bulky and overbearing appearance, disrupting the skyline's balance and cohesion.
- The additional height proposed further aggravates these matters with an exaggerated vertical presence. Rather than enhancing the North Sydney skyline, the proposal detracts from its visual harmony, appearing out of scale and inconsistent with the area's established urban character.
- Successful development must balance height with appropriate proportions, setbacks, and tower separation to create visual rhythm and ensure new projects integrate seamlessly into the broader urban context, contributing positively to the skyline.

2.1.6. Affordable Housing

The Clause 4.6 Variation Request that was submitted to support the proposed height variation includes the following statement:

If the subject development sought to include an affordable housing component under Part 2, Division 1 of the State Environmental Planning Policy (Housing) 2021, pursuant to Clause 18(2), the proposal could attain a permissible additional height bonus of 30%. This equates to an additional 56.4metres. By comparison, the proposed development seeks an 19.3-metre encroachment beyond the maximum height standard, which is below the permissible bonus control.

While we acknowledge that this statement is correct, it relates to a matter that is not an environmental planning consideration in the case of SSD-61000021. The bonus provisions for infill affordable housing under the *State Environmental Planning Policy (Housing) 2021 (Housing SEPP)* do not apply to this project and should not be raised in relation to the proposed height variation. These provisions are unequivocally inapplicable to this project. Consequently, any reference to these provisions in relation to the proposed height variation is both inappropriate and misleading.

Notwithstanding the above, we note (in passing) the following design requirement under Clause 20 of the Housing SEPP, which applies to development that is subject to Division 1 in Part 2 of Chapter 2:

Development consent must not be granted to development under this division unless the consent authority has considered whether the design of the residential development is compatible with —

- the desirable elements of the character of the local area, or*
- for precincts undergoing transition—the desired future character of the precinct.*

As noted in **Section 2.2.3**, and for the reasons that are detailed throughout this submission, the proposed development is not consistent with the desired future character of the local area. The Housing SEPP provisions must also be taken into consideration with all other planning controls applicable to the site which continue to prevail as well, including controls relating to view impact.

We refer to the recommended massing reductions that are listed in **Section 3**.

2.2. Setbacks and interface Treatments

2.2.1. Proposed Above-Podium Setback from Little Walker Street

Section 2.10 of the *State Environmental Planning Policy (Systems) 2021 (Systems SEPP)* stipulates that Development Control Plans (**DCPs**) do not apply to State Significant Development. Nonetheless, it is occasionally appropriate to consider DCP provisions on merit-based grounds.

The EIS emphasises the proposed design's alignment with the 'commercial appearance' of surrounding development in the North Sydney CBD. While this contextual consideration is acknowledged, the EIS's pronounced emphasis on this point, when advantageous to the Applicant, starkly contrasts with the scheme's disregard for the intended provision of a 4m above-podium setback from Little Walker Street.

The commercial character of the North Sydney CBD has been leveraged in relation to a residential proposal for the purposes of supporting a substantial height variation (refer to **Section 1.2**). The Clause 4.6 Variation Request enumerates a number of high-profile commercial projects and asserts that the proposed development is consistent with the desired future character of the locality. However, the design scheme fails to comply with Control P20 in Section 2.3.1 of the NSDCP 2013, which reinforces a general local design preference for above-podium setbacks that are aligned with Figure C-2.3, including a 4m above-podium setback along Little Walker Street.

Appendix 3 (Statutory Compliance Assessment) of the submission provides a cursory justification for a 3m above-podium setback from Little Walker Street in lieu of the preferred 4m, citing site constraints that would (purportedly) compromise the structural integrity of the building and internal amenities. This reasoning does not consider the context-based arguments that were employed by the Clause 4.6 Variation Request in relation to the prevailing scale of development in the local area, which is generally expected to satisfy the setback provisions of the NSDCP 2013. Sufficient merit-based grounds for the proposed tower setback from Little Walker Street have not been demonstrated.

Further reference should be made to **Section 2.2.2** of this submission with respect to the suboptimal interface treatments that are proposed along the Little Walker Street frontage.

2.2.2. Interface Treatments

The design scheme for 146 Arthur Street relies excessively on colour, material, and texture distinctions to differentiate the podium from the tower along Little Walker Street. It is evident that greater design emphasis has been placed on enhancing the streetscape amenity of Arthur Street over Little Walker Street.

The PDS envisions a pedestrian-friendly laneway with public art installations and other enhancements along Little Walker Street. The current scheme fails to prioritise the achievement of a high-quality frontage along Little Walker Street. This is not in keeping with the vision for a high-amenity public space along Little Walker Street.

In summary, while the proposed design scheme does appear to satisfy the prescriptive solar access provisions that apply under Clause 6.3(2) and (3) of the NSLEP 2013, it has not sufficiently addressed the following consideration under Subclause (5)(c):

In determining whether to grant development consent for development on land to which this Division applies, the consent authority must consider the following –

(c) Whether the proposed development enhances the streetscape in relation to scale, materials and external treatments.

The level of design emphasis that has been placed on contrasting materials does not address the need for meaningful massing reductions to the scheme. Amongst other essential massing refinements (refer to **Section 3**), a minimum 4m above-podium setback from Little Walker Street should be implemented.

2.2.3. North Sydney CBD Public Domain Strategy

State Significant Development (**SSD**) is required to consider the local strategic planning framework under Part 8, Division 5 of the *Environmental Planning and Assessment Regulation 2021 (EP&A Regulation)*. This requirement is reinforced within the *State Significant Development Guidelines – Preparing an Environmental Impact Statement (July 2022)*.

The proposed design scheme for 146 Arthur Street disregards the local strategic planning framework, in particular the *North Sydney CBD Public Domain Strategy (PDS)*. The scheme fails to prioritise urban design initiatives that are being progressed by Council under the local strategic planning framework, including the envisaged pedestrian-friendly laneway along Little Walker Street.

The proposed design scheme has not made provision for an outcome that prioritises human scale and pedestrian amenity. Increasing the depth of the proposed tower setback along Little Walker Street would be an appropriate design response to Objective (1)(d) under Clause 6.3 of the NSLEP 2013

To promote scale and massing that provides for pedestrian comfort in relation to protection from the weather, solar access, human scale and visual dominance.

The proposal is not consistent with the desired future character of the local area, as envisaged under Clause 6.3 of the NSLEP 2013 and the PDS.

2.2.4. Doris Fitton Park (Northern Interface)

The current design proposal fails to provide an adequate setback from the northern boundary of the site. The northern and western sides of the proposed tower are the primary contributors to the overshadowing of nearby developments to the east, exacerbated by the proposed height variation. The massing strategy results in an elongated tower with a continuous frontage along Little Walker Street, which requires further articulation and segmentation.

To reduce overshadowing and view loss impacts to surrounding developments, the tower should be set back from the northern boundary. In addition to implementing our recommended massing reductions, the design team should also consider incorporating other mitigative interventions, such as:

- Recessed high-rise tower levels at locations that will be the most impactful in terms of reducing view loss and overshadowing.
- Implementing a 'shadow gap', as provided by the approved commercial office tower scheme at 153-157 Walker Street.

In noting the above, we reiterate that while these measures may warrant investigation, they will not supplement the need for significant reductions in massing at the northern interface to achieve a visually amenable outcome that does not compromise solar access or the quality of a key public park.

Increasing the setback from the northern boundary would also help reduce the perceived scale of the development when viewed from Doris Fitton Park, aligning with the public domain vision for North Sydney CBD as outlined in the PDS. The perceived scale of the development from Doris Fitton Park is particularly noticeable at specific points along the frontage, especially where the setback diminishes to just 1 meter at the corner of Little Walker Street and Doris Fitton Park.

- (a) Doris Fitton Park is a crucial element of the PDS, requiring a design approach that is sensitive to the site's north-western corner. Little Walker Street is expected to become a pedestrian-friendly laneway and a primary access route to Doris Fitton Park. Given the PDS and overshadowing concerns, the proposed design's imposing proximity to Doris Fitton Park at this important nodal point lacks any sufficient environmental planning justification. This issue has immediate relevance to clause 6.3(5)(a) and (c) of the NSLEP 2013, which outline discretionary considerations that are to be considered by the consent authority. Meaningful massing reductions at the interface with Doris Fitton Park are necessary to provide a sufficient urban design response to the objectives under clauses 6.3(1)(b) and (d): *Promote a height and massing that has no adverse impact on land in Zone RE1 Public Recreation [i.e. Doris Fitton Park] in the North Sydney Centre or land identified as 'Special Area' on the North Sydney Centre Map or on the land known as the Don Bank Museum at 6 Napier Street, North Sydney.*
- (b) *To promote scale and massing that provides for pedestrian comfort in relation to protection from the weather, solar access, human scale, and visual dominance.*

The proposed massing strategy is at significant odds with the above-listed objectives. A substantial re-design will be essential to address the intent of Clause 6.3 and the inherent community expectation to support the implementation of the PDS in its full intended effect.

2.2.5. 140 Arthur Street (Southern Interface)

The design scheme proposes a 6m building separation distance from the south-adjacent commercial building at 140 Arthur Street, which is not consistent with the 12m building separation distance that applies to this project under the ADG. The EIS provides the following justification for this departure from the required building separation distance:

The proposed development provides various setbacks along this boundary, ranging from 6-10.5 metres. To mitigate privacy concerns along this boundary, aluminium "baguettes" are provided, to maximise privacy opportunities. It should also be noted that above RL 60.5, an air and sky easement prevents construction along the site's south-eastern boundary. The proposed development complies with this easement.

The justification that has been provided indicates that opportunities for outlook from residential apartments have been compromised by the proposed variation to the required separation distance of 12m. This outcome is not acceptable from an amenity perspective, notwithstanding the resulting view loss impacts to Affinity Place (refer to **Section 2.1.1** and **Figure 1**). The installation of aluminium 'baguette' screening is a superficial design intervention that contributes towards a burdensome design outcome for future residents and surrounding development. It is clear that the need for an appropriate building separation distance to be achieved between the scheme and the south-adjointing development is a terminal design matter that must be addressed through meaningful massing reductions.

3. Recommendations

The following is recommended in summary of this submission:

- It is clear that there are insufficient merit-based grounds for the proposed height variation. The scheme presents design deficiencies that cannot simply be resolved with an embellished written argument in the Clause 4.6 Variation Request. Meaningful massing reductions must be implemented to reduce the overall bulk and height of development.
- A minimum above-podium (tower) setback of 4m should be implemented along the Little Walker Street frontage to address the desired future character of the local area, as envisaged under Clause 6.3 of the NSLEP 2013 and the PDS. The scheme must be reduced to achieve appropriate building

separation distances with regard for the required separation distances under the ADG, view loss and the level of amenity that is afforded to future residents.

- While the proposed design scheme does appear to satisfy the prescriptive solar access provisions that apply under Clause 6.3(2) and (3) of the NSLEP 2013, it has not sufficiently addressed the overarching objectives and discretionary considerations that underpin these provisions. The height of development must be reduced to ensure that the intended effect of Clause 6.3 is achieved.
- The provision of communal open space has been utilised by the Applicant in an attempt to justify the extent of the proposed height variation *and* a deficit in private open space under the ADG. This form of 'double dipping' is not consistent with the level of design and environmental planning integrity that is commanded in relation to State Significant Development. The quantum of communal open space would need to be increased significantly to address these two matters, which are entirely unrelated.
- An itemised response to this submission should be provided within the Response to Submissions **(RTS)** Report.

Stockland appreciate the opportunity to make this submission to SSD-61000021. We trust that DPHI and the Applicant will fully consider and address the grounds for our objection through implementing the recommendations above.

Yours sincerely,

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