

Concept Proposal for Mixed-Use Development with in-fill Affordable Housing – 45-53 Macleay Street, Potts Point NSW (SSD-79316759) (“Concept SSDA”)

Submission of the Executive Committee of 10C Challis Avenue, Potts Point (Strata Plan 9941)

28 April 2025

1. By notice dated 1 April 2025, the Department of Planning, Housing and Infrastructure invited submissions from landowners and occupiers neighboring the proposed development, which is the subject of the Concept SSDA.
2. For the reasons which follow, the Executive Committee of 10C Challis Avenue, Potts Point (“**10C Challis Avenue**”) objects to the Concept SSDA.

A. Introduction

The Applicant and the site

3. The Applicant in relation to the Concept SSDA is “Time & Place c/o Urbis”, although the Applicant’s ACN set out in the Scoping Report appears to relate to a different entity, The Chimes PP Partnership Pty Ltd ACN 665 787 342.¹ The Applicant in relation to the development application is T&P Chimes Development Pty Ltd. In these submissions, these entities are collectively referred to as the “**Applicant**”.
4. The Concept SSDA relates to The Chimes, which is an apartment building situated at 45-53 Macleay Street, Potts Point (Strata Plan 934) (“**the site**”). The site has:
 - a. primary frontage to Macleay Street, which accommodates pedestrian access to the building;
 - b. secondary frontage to McDonald Street, which provides vehicular access; and
 - c. laneway frontage to McDonald Lane.

¹ Scoping Report dated 17 January 2025 (<https://majorprojects.planningportal.nsw.gov.au/prweb/PRRestService/mp/01/getContent?AttachRef=SSD-79316759%2120250120T005233.686%20GMT>) (“**Scoping Report**”); ASIC search.

5. The site currently accommodates a 12-storey residential flat building comprising 80 studio apartments, which was constructed in the 1960s.² As set out below, the applicant seeks concept approval for a 13-storey mixed-use development comprising housing atop ground floor retail and three levels of basement parking.
6. The site is not currently used for any retail purposes.
7. The site is within the C51 Potts Point Heritage Conservation Area.³
8. The site was previously subject to a 'local' Concept DA (D/2022/960) submitted to the City of Sydney Council for a 9-storey mixed-use development. The local concept development application has not obtained approval and is the subject of an ongoing Land and Environmental Court appeal. The appeal is set down for hearing in May 2025.⁴
9. The Concept SSDA proposes a shop-top housing development on the site with in-fill affordable housing with a maximum height of 13 storeys for residential and retail uses.⁵
10C Challis Avenue
10. 10C Challis Avenue is an apartment building of 25 units, including 18 of which are studio and small one-bedroom apartments and limited garaging. 10C Challis Avenue neighbors the site from the southwest. 10C Challis Avenue has:
 - a. primary frontage to Challis Avenue, which accommodates pedestrian access to the building;
 - b. secondary frontage to McDonald Lane, which accommodates vehicular and pedestrian access to the building.

² Scoping Report, 7 [2.1].

³ Scoping Report, 9 [2.2].

⁴ *Time & Place The Chimes Pty Ltd v The Council of the City of Sydney*, Land and Environment Court proceeding no. 2023/00115313. See also the Environmental Impact Statement dated 27 March 2025 (<https://majorprojects.planningportal.nsw.gov.au/prweb/PRRestService/mp/01/getContent?AttachRef=SSD-79316759%2120250328T052558.026%20GMT>).

⁵ Notice

(<https://majorprojects.planningportal.nsw.gov.au/prweb/PRRestService/mp/01/getContent?AttachRef=EXH-81472456%2120250401T130015.394%20GMT>)

11. McDonald Lane is a two-way one-lane street which predominately provides pedestrian access and vehicular access to the garages of properties situated on Challis Avenue and McDonald Street.
12. Apartments on the northern side of 10C Challis Avenue face onto McDonald Lane, McDonald Street and the site. These apartments are characterised by large north facing windows.
13. These submissions are structured as follows:
 - a. section B below explains that the proposed development is inconsistent with the Government's policy to increase the supply of affordable accommodation;
 - b. section C below explains the negative impact of the proposed development on the amenity of residents of 10C Challis Avenue;
 - c. section D below explains the adverse impacts on the amenity of residents of the proposed swimming pool;
 - d. section E below sets out the adverse impacts of the proposed retail use in the proposed development; and
 - e. section F below identifies the impacts of traffic and transport in connection with the proposed development.

B. Proposal development is inconsistent with State Government Policy to increase affordable accommodation

14. This proposed development is predicated on the Government's landmark 2024 strategy to increase the supply of accommodation and affordable accommodation across the State.
15. Section 1.4 of the *Environmental Planning and Assessment Act 1979* (NSW) defines 'affordable housing' to mean

housing for very low income households, low income households or moderate income households, being such households as are prescribed by the regulations or as are provided for in an environmental planning instrument.
16. In the Concept SSDA, the Applicant seeks incentives by way of increased building height and gross floor area in compensation for, and to incentivise that they are

providing affordable accommodation in the building. The Applicant's Social Impact Assessment provides:⁶

1.3. PROPOSAL OVERVIEW

The Concept SSDA seeks concept approval pursuant to Section 4.22 of the EP&A Act for a 13-storey mixed-use shop-top housing development comprising three levels of basement car parking, ground-floor retail, and residential above.

The detailed SSDA proposal will include 15% affordable housing for a 15-year period to use the height and floor space bonuses in the Housing SEPP. The proposal will comply with the maximum height and floor space ratio (FSR) controls for the site when using the bonuses provided under the Housing SEPP for affordable housing and the Sydney LEP 2012 for design excellence.

...

17. The proposed development significantly *reduces* the inventory of affordable housing, rather than increase it. The building currently occupying the site provides 80 affordable studio apartments. In its place, supporting the application for incentives, the Concept SSDA proposes to deliver nine affordable units according to the Potts Point Preservation Group,⁷ i.e. 15% of approximately 5,529.8 square metres per the Proposal).⁸
18. It is perverse, counterintuitive and ironic to seek incentives of additional height/floor space for providing affordable housing – when in reality – the proposal represents the removal of approximately 70 affordable housing units.
19. To provide luxury accommodation seems antithetical to the Government's policy goals to increase the supply of low-cost housing, when the proposal seeks additional concessions on height and floor space to provide affordable accommodation (for the 15 years' minimum) term. 10C Challis Avenue queries the length of time of the

⁶ Social Impact Assessment dated 28 February 2025 Section 1.3 (<https://majorprojects.planningportal.nsw.gov.au/prweb/PRRestService/mp/01/getContent?AttachRef=SSD-79316759%2120250328T051505.659%20GMT>).

⁷ Urgent Notice - The Chimes (45-53 Macleay Street) (undated) (https://pottspointpreservation.org/wp-content/uploads/2025/04/The-Chimes--URGENT-NOTICE_14.04.25.pdf).

⁸ Scoping Report 20, [4.2].

commitment to provide affordable accommodation at the site. The Applicant after the period of 15 years would face a commercial incentive to redevelop the affordable accommodation to gain commercial reward of additional luxury accommodation consistent with the proposed building.

C. Negative impact of the proposed building on the amenity of residents of 10C Challis Avenue

20. The proposed development would significantly impact units in 10C Challis Avenue through loss of amenity. In particular, the proposed development would diminish the quality of residences neighboring the site; and impact the physical and mental health and quality of life of residents of 10C Challis Avenue. We expand upon this below.

C.1. Loss of views from 10C Challis Avenue

21. The Proposal does not explore the impact on the views and sightlines of 10C Challis Avenue. This is despite the fact that 10C Challis Avenue diagonally neighbors the site and as set out above the apartments on the northern side of 10C Challis Avenue face onto the site and are characterised by large north facing windows.
22. The Visual Impact Assessment & View Sharing Report (“**VIA**”) for the proposed development does not depict the view aspects of the proposed building on 10C Challis Avenue.⁹
23. The Applicant has done substantial work on the view impact for nearby blocks of units - Selsdon, Pomeroy, Yellow House, and Macleay Regis – but none on 12-16 Challis Avenue or 10C Challis Avenue.
24. The VIA states:¹⁰

7.1 VIEW INSPECTIONS

Given the relatively uniform height and nature of the continuous built forms (terrace development and nil setbacks) along Macleay Street, McDonald Street, Challis Avenue and McDonald Lane, we consider the private domain visual

⁹ Visual Impact Assessment & View Sharing Report, 28 (<https://majorprojects.planningportal.nsw.gov.au/prweb/PRRestService/mp/01/getContent?AttachRef=SSD-79316759%2120250328T051120.813%20GMT>).

¹⁰ VIA, 28

catchment of the site to be small, constrained to the closest roads and neighbouring residential buildings.

7.3 VIEWS SELECTED FOR MODELLING

... Dwellings were selected to provide to [sic] a representative sample of the types of view compositions that are available from neighboring residential dwellings to the subject site. ...

25. 10C Challis Avenue submits that it is disingenuous to suggest that the impact will fall on “the closest roads and neighbouring residential buildings” in circumstances where the Applicant has not examined the impact which falls on the neighbouring buildings, which include 10C Challis Avenue. The Applicant has instead elected to examine the impact on less impacted buildings with higher priced/less affordable housing, rather than focusing on low cost/affordable housing and found minimal impacts.

C.2. Reduction in solar access/overshadowing of 10C Challis Avenue:

26. Solar criteria applicable to the proposed development include those set out in the City of Sydney draft Apartment Design Guide,¹¹ which governs solar access regarding design principles for multi-unit residential buildings. The Environmental Impact Statement submitted by the Applicant provides solar charts in Appendix H.¹² They conclude:¹³

This analysis demonstrates that in summary 10-12 Macleay Street, 57-59 Macleay Street and 10C Challis Avenue maintain the same number receiving greater than 2 hours direct sunlight in mid-winter to the existing scenario. With respect to the other properties and based off the proposed envelope a total of nine neighbouring apartments, including seven at 14 Macleay Street and two at 12-16 Challis Avenue will receive less than 2 hours solar access between 9am and 3pm in mid-winter because of the proposal.

¹¹ City of Sydney, Development guidelines & policies, Minimising overshadowing of neighbouring apartments published 12 December 2019 (<https://www.cityofsydney.nsw.gov.au/development-guidelines-policies/minimising-overshadowing-of-neighbouring-apartments-documentation-guidelines-draft>).

¹² Environmental Impact Statement 45-53 Macleay Street, Potts Point Annexure H.

¹³ Environmental Impact Statement 45-53 Macleay Street, Potts Point, 45; Appendix H, Concept SSDA Design Report (<https://www.planningportal.nsw.gov.au/major-projects/projects/concept-proposal-mixed-use-affordable-housing-45-53-macleay-street-potts-point>).

27. Appendix H shows that there would be a loss of amenity to residents of 10C Challis Avenue by the reduction of solar access. The shadow diagrams provided also show overshadowing of 10C Challis Avenue.¹⁴ This will impact the quality of life, mental health and physical health of the residents in the following ways:

- a. Reduction in natural light and need for artificial light: The reduction in natural light to some units from the proposed building will necessitate greater reliance on artificial lighting for the impacted units, leading to increased energy consumption and costs.
- b. Impact on ventilation: If the overshadowing also impacts the ability to open windows for natural ventilation or affects airflow around the building, this can negatively impact air quality within the apartments. and potentially impacting residents' well-being.

C.3. Negative impacts on the health and well-being of residents of 10C Challis Avenue

28. The proposed development would adversely affect the health and well-being of residents. Below are set out these effects:

- a. Impact on Mental Health: Reduced natural light and loss of outlook can contribute to feelings of confinement, isolation, and negatively affect residents' mental health and overall quality of life.
- b. Reduced Exposure to Vitamin D. Lack of sunlight can negatively impact residents' health by reducing their exposure to Vitamin D.

C.4. Neighbourhood Character

29. The scale and bulk of the proposed development and its overshadowing of 10C Challis Avenue is inconsistent with the existing neighbourhood character and amenity. The significant scale and bulk of the proposed 13-storey development, coupled with its

¹⁴ Drawing name "Envelope Uplift - Shadow Plans – 21 June" dated 10 March 2024, in the Concept Envelope Drawings
<https://majorprojects.planningportal.nsw.gov.au/prweb/PRRestService/mp/01/getContent?AttachRef=SSD-79316759%2120250328T050927.857%20GMT>

demonstrable overshadowing of 10C Challis Avenue, is fundamentally inconsistent with the prevailing low-to-mid-rise neighbourhood character and the existing amenity enjoyed by its residents.

C.5. Devaluation of Property

30. The loss of natural light, views, and overall amenity due to overshadowing will negatively impact the market value and desirability of apartments in 10C Challis Avenue.

D. Impact of swimming pool on amenity of residents of 10C Challis Avenue

31. The location of a swimming pool and recreation area on the third floor of the proposed development will significantly impact the amenity of residents of 10C Challis Avenue, particularly those residents in units closest to the swimming pool and recreation area.

32. The amenity of residents of 10C Challis Avenue will be significantly compromised by the increased noise emanating from the third-floor pool area including daytime and potentially evening noise from water splashing, raised voices, pool equipment operation, music, and the discernable odour of chlorine and other pool chemicals. There would also likely be nudity or partial nudity. This will significantly impact the amenity of residents of 10C Challis Avenue, particularly those residents in units closest to the swimming pool and recreation area. The impact on residents of 10C Challis Avenue will be exacerbated as the design has the pool located on a raised podium area on the third floor of the proposed development.

33. The increased noise pollution generated by the pool will occur in a quiet residential area.

E. Impact of retail premises on amenity of residents of 10C Challis Avenue

34. The location of significant retail space as part of the ground floor of the proposed development will significantly impact the amenity of the residents of 10C Challis Avenue, particularly those residents in units close to the retail areas.

35. The impacts include:

- a) increased noise including from deliveries of food and beverage to restaurants and other outlets, food preparation, waste collection, noise pollution from human voices, music and singing, movement of furniture;
- b) increased attraction of rodents and other vermin;
- c) cooking smoke and the odour of food and food preparation; and
- d) cigarette and cigar smoking and vaping by staff and patrons.

36. This increased noise pollution would occur in a quiet residential area.

F. Impact of Traffic and Transport

37. A traffic impact assessment has not yet been prepared. At this stage the Applicant has not attempted to address the impacts the proposed development would have on the traffic conditions in the area during the development's construction and if the development is completed.

38. 10C Challis Avenue submits that the area surrounding the site is relatively congested already and that there is limited street-parking. It is not clear how large vehicles would be able to access the site during construction without significant disruption to the surrounding streets, putting aside other impacts such as noise and pollution. If the proposed development is completed, retail trading on the site would increase the congestion in the area and indeed, customers are likely to find it difficult to find parking.

G. Conclusion

39. The Scoping Report sets out feasible alternatives to the proposed development as required by Section 192 of the *Environmental Planning and Assessment Regulation 2021* (NSW).¹⁵

¹⁵ Scoping Report 21, [4.2.2].

40. 10C Challis Avenue submits that the only feasible option in relation to the site is to do nothing, i.e. the Concept SSDA should be not be granted.

Annexure – Photographs







