

Jason Leong  
25 Vine Street  
Redfern NSW 2016

30 April 2025

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

Attn: Thomas Piovesan, Planning Officer  
Re: SSD-70066710, Hudson Vine Mixed Use Redevelopment

Dear Thomas,

Thank you for the opportunity to make a submission on the Hudson Vine Mixed Use Redevelopment State Significant Development 70066710.

I am writing to object to this proposal for five major reasons:

1. Significant overshadowing impacts on residential properties in a heritage conservation area
2. Inappropriate height, bulk, and scale relative to the surrounding built form
3. Unacceptable visual impact, including the loss of sky views
4. Overlooking and privacy concerns for adjoining properties
5. Inadequate justification for non-compliance with planning controls

I have elaborated on each reason further in the sections below.

# 1 Overshadowing impact on neighbouring properties

Chapter 4 of the *State Environmental Planning Policy (Housing) 2021* (“Housing SEPP”) aims to improve the design of residential apartment development in NSW to maximise the amenity, safety and security of the residents of residential apartment development and the community.<sup>1</sup> Development consent must not be granted unless the quality of the design of the development, evaluated in accordance with design principles and the Apartment Design Guide (“ADG”), is considered.<sup>2</sup>

The application should be refused or amended due to:

- (a) Failure to meet SEARs
- (b) Failure to meet BEP1 due to overshadowing on Vine St terraces
- (c) Failure to meet ADG due to overshadowing on Vine St terraces
- (d) Failure to meet Housing SEPP design guidelines due to overshadowing on Vine St terraces

## 1(a) Failure to meet SEARs

The Environmental Impact Statement (“EIS”) must comply with the notice of the Planning Secretary’s Environmental Assessment Requirements (“SEARs”).<sup>3</sup> The SEARs require the applicant to “provide a solar access analysis of the overshadowing impacts of the development ... when compared to the existing situation.”<sup>4</sup>

The applicant has not provided any shadow diagrams or assessments of the existing situation for solar access.

As the applicant has not provided the required information, the application does not comply with the SEARs and must not be approved.

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<sup>1</sup> *State Environmental Planning Policy (Housing) 2021* Chapter 4, s 142(1)(c)

<sup>2</sup> *State Environmental Planning Policy (Housing) 2021* Chapter 4, s 147(1)

<sup>3</sup> *Environmental Planning and Assessment Regulation 2021*, section 191

<sup>4</sup> SSD SEARs Industry Specific Cover Letter4390643

(<https://majorprojects.planningportal.nsw.gov.au/prweb/PRRestService/mp/01/getContent?AttachRef=SSD-70066710%2120240506T224302.349%20GMT>) pages 2-3, issue 5 “Environmental Amenity”

## 1(b) Failure to meet BEP1 due to overshadowing on Vine St terraces

The applicants consider that the Redfern-Waterloo Built Environment Plan August 2006 (“BEP1”) is relevant to the development.<sup>5</sup> BEP1 states:

- “The massing and design of building must maintain solar access to adjacent development, open space and the public domain in accordance with best practice.”<sup>6</sup>
- “A 3 storey limit along Vine Street has been maintained to ensure solar access for properties to the south.”<sup>7</sup>

The applicant’s EIS assessment against BEP1 states that “The massing of the proposed development steps up ... to maintain solar access”.<sup>8</sup> It is not possible to determine from the information provided in the EIS whether the application will “maintain solar access”, as the applicant did not provide the information required by the SEARs about the existing solar access.

A calculation of the existing solar access can be determined using the ShadeMap website. This shows existing solar access on 21 June is available between approximately 8am and 5pm, providing ~9 hours of sun:<sup>9</sup>

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<sup>5</sup> *Environmental Impact Statement*, 11 February 2025  
(<https://majorprojects.planningportal.nsw.gov.au/prweb/PRRestService/mp/01/getContent?AttachRef=SD-70066710%2120250218T024114.850%20GMT>) page 63

<sup>6</sup> *Redfern-Waterloo Built Environment Plan August 2006*  
([https://web.archive.org/web/20120321105015/http://www.redfernwaterloo.nsw.gov.au/other/reports/rwa\\_bep.pdf](https://web.archive.org/web/20120321105015/http://www.redfernwaterloo.nsw.gov.au/other/reports/rwa_bep.pdf)) p.29, General urban design principles

<sup>7</sup> *Redfern-Waterloo Built Environment Plan August 2006* p 44, Land Use and Design Concepts for RWA’s Strategic Sites

<sup>8</sup> *Environmental Impact Statement*, 11 February 2025, page 63.

<sup>9</sup> *ShadeMap* (<https://shademap.app/@-33.88964,151.19891,19z,1718952974284t,0b,0p,0m!1718917283238!1718952903325,qMjUgdmluZSBzdCBYZWZWRmZXJlG5zdyBhdXN0cmFsaWEgMjAxNg==!-33.8897!151.19869>)

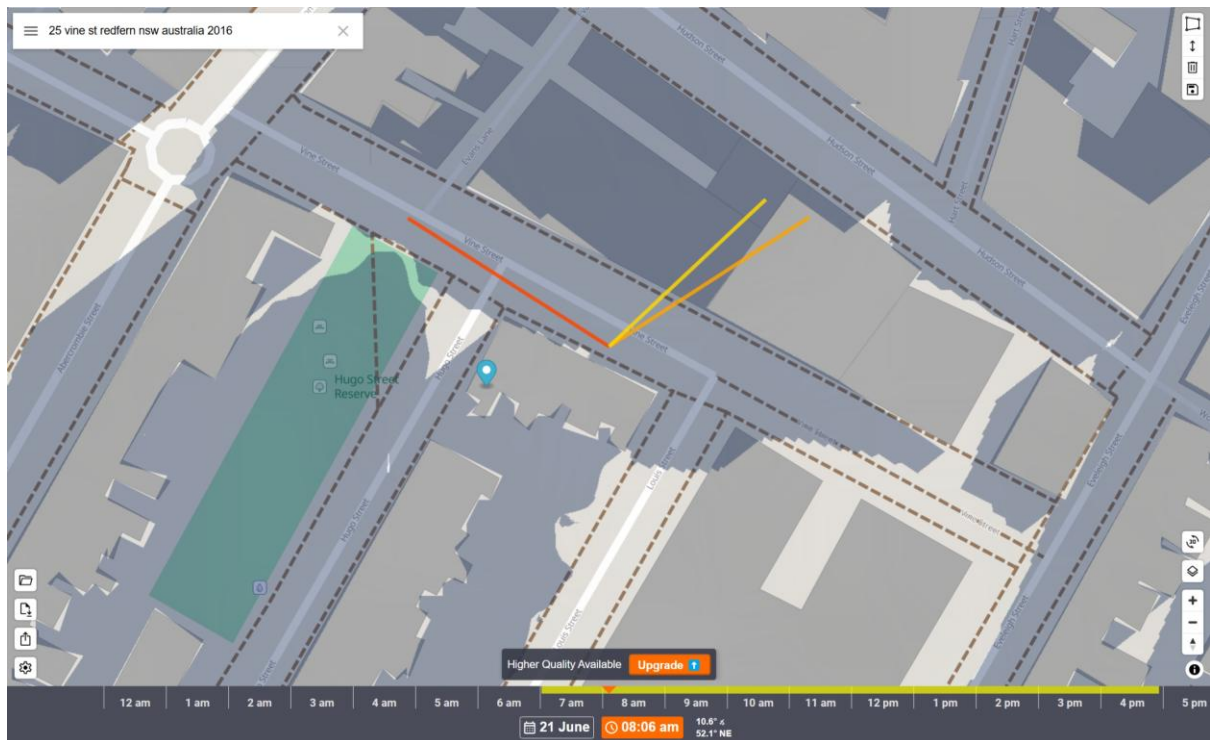


Figure 1 Sunlight begins to reach Vine St front windows around 8 am

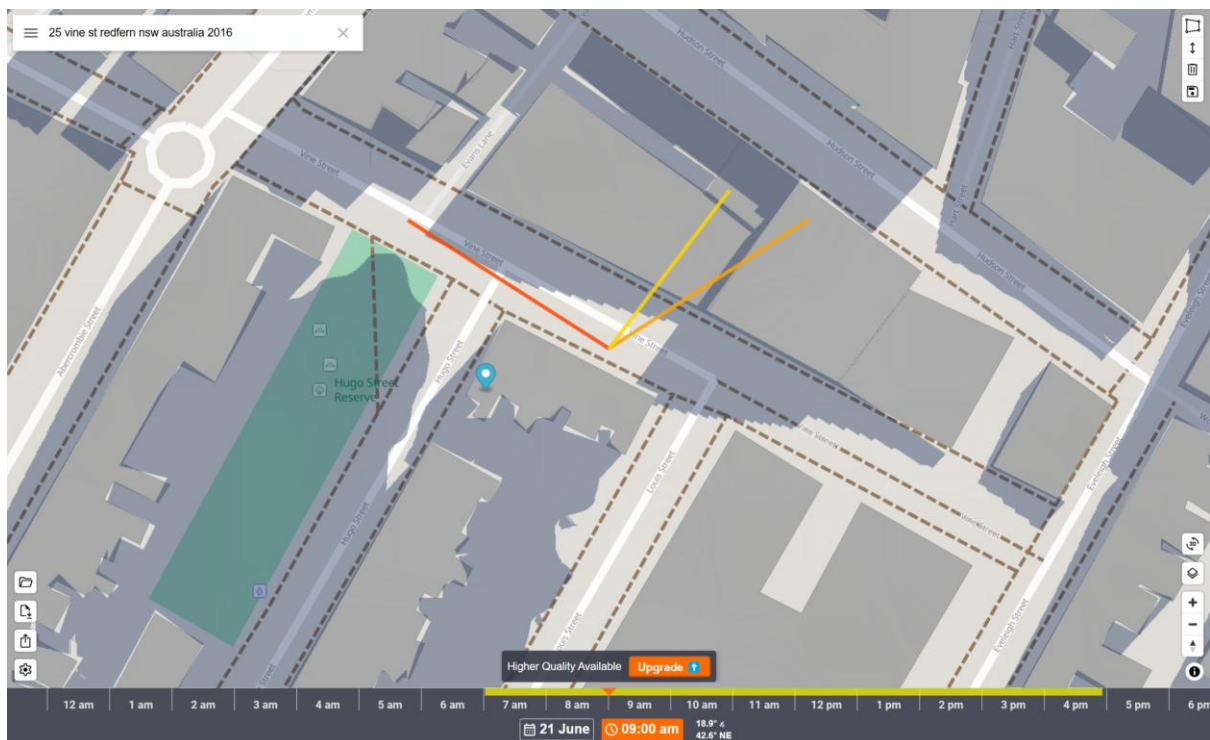


Figure 2 Sunlight reaches all Vine St terrace front windows by 9 am

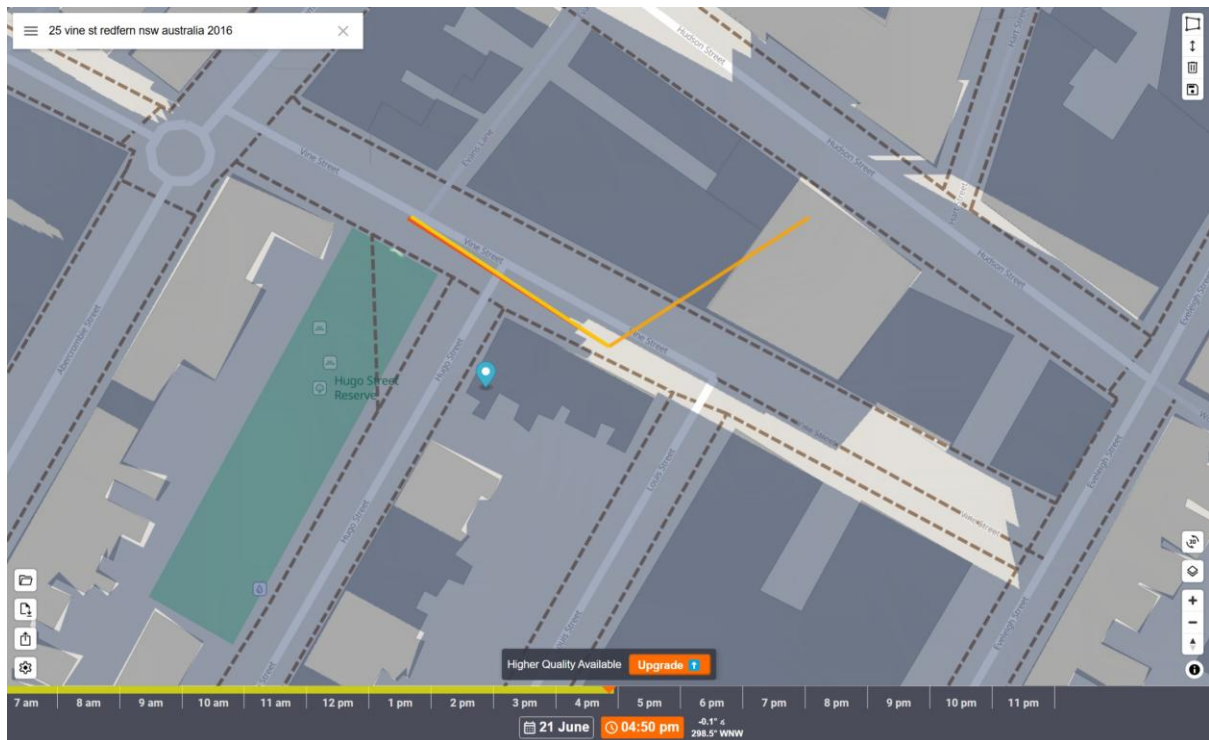


Figure 3 Sunlight leaves Vine St terrace front windows around 5 pm

The proposed building overshadows the Vine St terraces' main living area until 1 pm:<sup>10</sup>

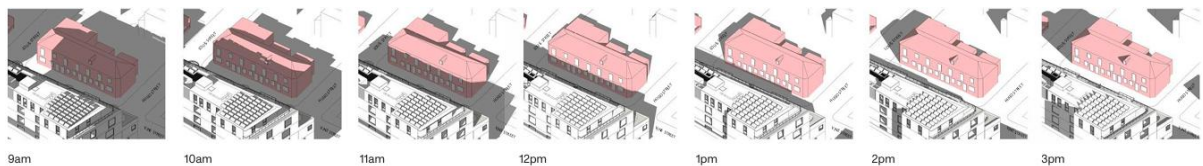


Figure 4 Proposed Envelope shadows

The proposed building will cause a loss of 5 hours of sunlight when compared to the existing situation, a 55% reduction. Between 9 am and 3 pm, 4 hours of sunlight are lost and only 2 hours are retained, a 66% reduction. This results in a major reduction in the amenity of the Vine St terraces to receive warmth and light from the sun.

The proposal should be rejected or amended to maintain solar access to the Vine St terraces because:

- More than halving the amount of available sunlight cannot be considered to “maintain solar access” as required by BEP1.
- The statement made in the EIS that the proposal will “maintain solar access” in accordance with BEP1 is unsupported by the evidence.

<sup>10</sup> Appendix C Design Report

(<https://majorprojects.planningportal.nsw.gov.au/prweb/PRRestService/mp/01/getContent?AttachRef=SD-70066710%2120250218T051603.388%20GMT>) p 63

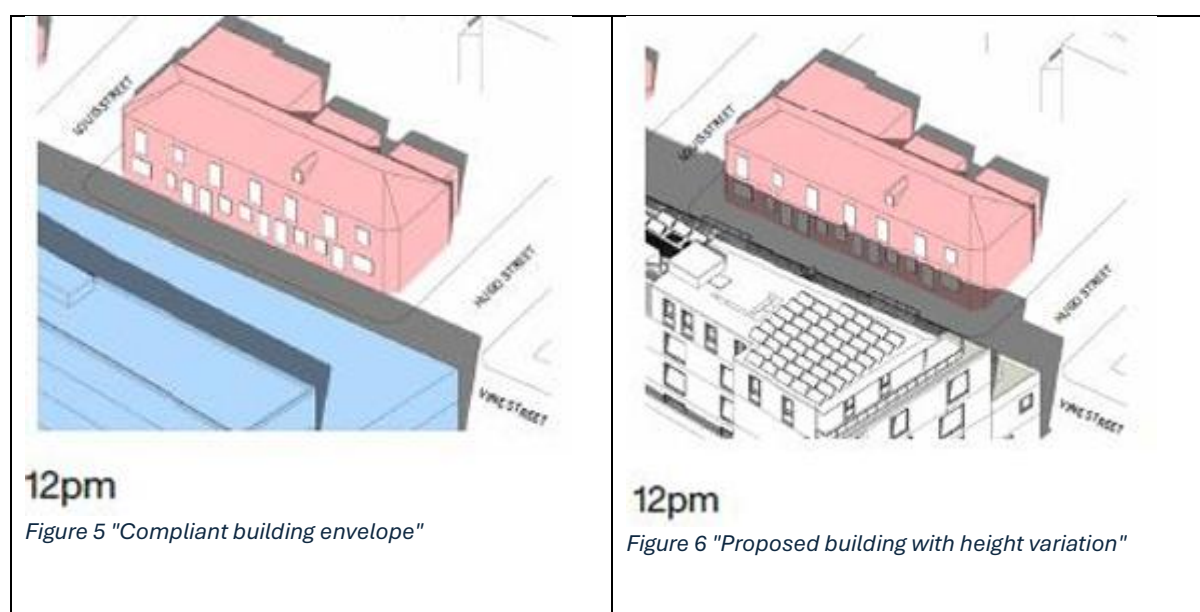


## 1(c) Failure to meet ADG due to overshadowing on Vine St terraces

Overshadowing of neighbouring properties should be “minimised” during mid winter. If the proposal will significantly reduce the solar access of neighbours, building separation should be increased beyond minimums. Overshadowing should be minimised to the south or down hill by increased upper level setbacks.<sup>11</sup>

The EIS does not demonstrate how overshadowing to the Vine St terraces is “minimised” as required by the ADG.

The EIS states that, “The setbacks proposed ensure there is no additional overshadowing to the surrounding properties beyond the compliant envelope”.<sup>12</sup> A diagram is provided for a figurative “compliant building envelope” versus the proposed building:<sup>13</sup>



The assertion in the EIS that “there is no additional overshadowing” is unsupported. The diagrams show that increased solar access would be achieved with a “compliant building”. At 12pm of the “compliant building envelope”, there are no shadows cast on the living room windows of the Vine St terraces. In contrast, the proposed building will cast shadows on the living room windows until 1pm.

The EIS refers to solar analysis and the stepped form of the building as evidence of careful design that minimises overshadowing impacts.<sup>14</sup> Neither are compelling

<sup>11</sup> *Apartment Design Guide* (<https://www.planning.nsw.gov.au/sites/default/files/2023-03/apartment-design-guide.pdf>) p.49, Objective 3B-2

<sup>12</sup> *Environmental Impact Statement*, 11 February 2025, p. 68

<sup>13</sup> *Environmental Impact Statement*, 11 February 2025, p. 70

<sup>14</sup> *Environmental Impact Statement*, 11 February 2025, p. 17, 44, 63, 69

evidence of careful design. Solar analysis is a requirement of SEARs. The stepped form of the building is a requirement of the Eastern Harbour SEPP due to height controls.

The proposal should be rejected or amended to minimise overshadowing of neighbouring properties because it breaches the ADG design guidance:

- A figurative “compliant building envelope” would minimise overshadowing when compared to the proposed building envelope
- The proposal significantly reduces the solar access of terraces on Vine St but does not increase building separation accordingly
- The proposal does not demonstrate increased upper-level setbacks to minimise overshadowing to the south; instead, the proposal is non-compliant and encroaches the setbacks required by the height controls

### 1(d) Failure to meet Housing SEPP due to overshadowing on Vine St terraces

Design principle 6 of the Housing SEPP is “amenity”. Good design positively influences internal and external amenity for residents and neighbours. Good amenity contributes to positive living environments and resident well-being. Good amenity includes access to sunlight.<sup>15</sup>

The Land and Environment Court of NSW have several planning principles that state appropriate matters to be considered in making a planning decision.

The planning principle for assessing impact on neighbouring properties is stated in *Davies v Penrith City Council* and includes:<sup>16</sup>

- How does the impact change the amenity of the affected property? How much sunlight, view or privacy is lost as well as how much is retained?
- How reasonable is the proposal causing the impact?
- How vulnerable to the impact is the property receiving the impact? Would it require the loss of reasonable development potential to avoid the impact?
- Does the impact arise out of poor design? Could the same amount of floor space and amenity be achieved for the proponent while reducing the impact on neighbours?
- Does the proposal comply with the planning controls? If not, how much of the impact is due to the non-complying elements of the proposal?

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<sup>15</sup> [State Environmental Planning Policy \(Housing\) 2021](#) Schedule 9, Section 6

<sup>16</sup> *Davies v Penrith City Council* [2013] NSWLEC 1141 at [116] to [121]

The planning principle relating to solar access is stated in *The Benevolent Society v Waverley Council* and includes:<sup>17</sup>

- The ease with which sunlight access can be protected is inversely proportional to the density of development. At low densities, there is a reasonable expectation that a dwelling and some of its open space will retain its existing sunlight. (However, even at low densities there are sites and buildings that are highly vulnerable to being overshadowed.) At higher densities sunlight is harder to protect and the claim to retain it is not as strong.
- The amount of sunlight lost should be taken into account, as well as the amount of sunlight retained.
- Overshadowing arising out of poor design is not acceptable, even if it satisfies numerical guidelines. The poor quality of a proposal's design may be demonstrated by a more sensitive design that achieves the same amenity without substantial additional cost, while reducing the impact on neighbours.

The proposal should be rejected or amended because it fails to consider these planning principles appropriately:

- (i) The density of development
- (ii) The amount of sunlight lost
- (iii) The vulnerability of the properties receiving the impact
- (iv) Overshadowing can be avoided with a more sensitive design

#### 1(d)(i) The density of development

The site is located “in an area that has been relatively untouched and comprised predominantly of Victorian style low density post-war townhouses and warehouse with a number of small parks and reserves.”<sup>18</sup>

Due to its low density, there is a reasonable expectation that a dwelling and some of its open space will retain its existing sunlight, unlike what is proposed.

#### 1(d)(ii) The amount of sunlight lost

As stated above in 1(b) *Failure to meet BEP1 due to overshadowing on Vine St terraces*, 5 hours of sunlight are lost and only 4 hours are retained. Between 9 am and 3 pm, the situation is worsened, as 4 hours of sunlight are lost and only 2 hours are retained.

The amount of sunlight lost is unacceptable. It is more than the number of hours retained. Twice as much sunlight is lost than retained between the ADG times of 9 am and 3 pm.

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<sup>17</sup> *The Benevolent Society v Waverley Council* [2010] NSWLEC 1082 at 133-144

<sup>18</sup> *Appendix C Design Report* p. 12



### 1(d)(iii) The vulnerability of the properties receiving the impact

The Vine St terraces are highly vulnerable to the impact as they have little prospect to change their design to mitigate the problems caused by the proposed development.

As the Vine St terraces are in the Darlington Heritage Conservation Area,<sup>19</sup> they are contributory buildings that must be conserved.<sup>20</sup>

The only window of the primary living area of terraces on Vine St will lose significant solar access and will have no means to regain solar access. They cannot access sunlight through the ceiling as they are on the ground floor of a two-storey building. They cannot enlarge windows as the façade is protected by heritage conservation.

Solar access to the walls of the terraces will also be lost, cutting the passive heating naturally achieved to the living areas of the homes. It will eliminate the main source of sunlight to the Vine St terraces (having only front and rear terrace windows) and turn them into cold and dim environments that will compromise the comfort and well-being of the residents.

Without sufficient natural light and warmth, the terraces will become reliant on artificial lighting and heating, increasing energy consumption and associated costs. This not only impacts the residents but also poses environmental concerns by undermining sustainability efforts. It is crucial to consider and address these adverse effects in the planning and approval process of the proposed development, preserving both the heritage value and liveability of the Vine St terraces.

### 1(d)(iv) Overshadowing can be avoided with a more sensitive design

The applicants focus on satisfying numerical guidelines with statements like, “although there is additional overshadowing by the proposed built form, the existing developments along Vine Street still receive 2 hours solar access at mid-winter between 1pm to 3pm.”<sup>21</sup> The applicants admit that the proposed design increases overshadowing. There could be steps taken to change the design to reduce overshadowing, as shown by the “compliant envelope”.

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<sup>19</sup> Sydney Local Environmental Plan 2012 Heritage Map – Sheet HER\_009

([https://eplanningdlprod.blob.core.windows.net/pdfmaps/7200\\_COM\\_HER\\_009\\_005\\_20221215.pdf](https://eplanningdlprod.blob.core.windows.net/pdfmaps/7200_COM_HER_009_005_20221215.pdf))

<sup>20</sup> Sydney Heritage Development Control Plan 2006 ([https://www.cityofsydney.nsw.gov.au/-/media/corporate/files/2020-07-migrated/files\\_a-1/approvedheritagedcp2006.pdf?download=true](https://www.cityofsydney.nsw.gov.au/-/media/corporate/files/2020-07-migrated/files_a-1/approvedheritagedcp2006.pdf?download=true)) p. 17, 4.3 Contributory buildings

<sup>21</sup> Appendix C Design Report p. 63

Notably, there are no measurements provided for the “compliant envelope”. Under the ADG, a 6-storey mixed-use building with minimum ceiling heights would be approximately 18.6 metres high:<sup>22</sup>

Floor number	Floor type	Minimum floor to ceiling height	Implied minimum floor to floor height (+0.4m/floor)
Ground	Mixed use	3.3 m	3.7 m
First floor	Mixed use	3.3 m	3.7 m
Second floor	Non-habitable	2.4 m	2.8 m
Third floor	Non-habitable	2.4 m	2.8 m
Fourth floor	Non-habitable	2.4 m	2.8 m
Fifth floor	Non-habitable	2.4 m	2.8 m
<b>TOTAL</b>		<b>16.2 m</b>	<b>18.6 m</b>

Table 1 Minimum building height in accordance with ADG

The proposed building that overshadows the Vine St terraces is almost 23 metres high. This is 4.4 metres higher (or approximately 1.6 storeys higher), than an ADG compliant building. There is no evidence provided by the applicant how they considered reducing the height to produce a more sensitive design, such as:

- Reducing the height of each level to the minimum, keeping the same amount of floor space and amenity, and reducing the impact on neighbours. (See for example, *Etherington v North Sydney Council*).<sup>23</sup>
- Converting the fifth floor of the proposed building to communal open space, reducing commercial GFA by only 164m<sup>2</sup>, still achieving 97.6% of the allowable GFA, and increasing amenity for all commercial tenants.<sup>24</sup>
- Redistributing the commercial and residential uses of the buildings to reduce the maximum height of the building.

As per the ADG, “it is important to note that FSR controls set the *theoretical maximum* capacity. It may not always be possible to reach the maximum allowable floor space due to other development controls or constraints specific to the site such as lot size or shape, existing landscape features, neighbouring properties or heritage considerations.”<sup>25</sup>

The proposal should be refused or amended because:

- The applicant does not demonstrate how overshadowing to the Vine St terraces is in accordance with the design guideline on amenity as required by the Housing SEPP.

<sup>22</sup> *Apartment Design Guide* p. 87, Objective 4C-1 (Ceiling heights) design criteria 1

<sup>23</sup> *Etherington v North Sydney Council* [2021] NSWLEC 1324 at 69

<sup>24</sup> *Appendix B Architectural Drawings* p. 27, GFA Diagram 01

<sup>25</sup> *Apartment Design Guide* p. 32, 2D (Floor space ratio)

- The applicant does not provide any evidence that the “compliant envelope” is compliant (no dimensions are given, nor any explanation why it should be accepted as compliant), making it an inadequate comparison.
- A suitable guideline is the ceiling heights design criteria in the ADG. The applicant does not explain why they did not reduce the ceiling heights to acceptable minimum heights to reduce the overshadowing impact.

## 2 Inappropriateness of height, bulk and scale

As stated above in “1(d)(iv) Overshadowing”, the height of the proposed building is 4.4 metres higher than necessary to achieve the minimum floor-to-floor heights required under the ADG.

The planning principles on height, bulk and scale in *Veloshin v Randwick Council* include:<sup>26</sup>

- The appropriateness of a proposal’s height and bulk is most usefully assessed against planning controls related to these attributes, such as maximum height, floor space ratio, site coverage and setbacks. The questions to be asked are:

*Are the impacts consistent with impacts that may be reasonably expected under the controls?* (For complying proposals this question relates to whether the massing has been distributed so as to reduce impacts, rather than to increase them. For non-complying proposals the question cannot be answered unless the difference between the impacts of a complying and a non-complying development is quantified.)

*How does the proposal’s height and bulk relate to the height and bulk desired under the relevant controls?*

- Where the planning controls are aimed at creating a new character, the existing character is of less relevance. The controls then indicate the nature of the new character desired. The question to be asked is:

*Is the proposal consistent with the bulk and character intended by the planning controls?*

The proposal should be refused or amended because of:

- (a) Inconsistency with impacts reasonably expected
- (b) Failure to meet form and massing urban design principles of BEP1
- (c) Failure to meet the aims of height controls under the ADG

### 2(a) Inconsistency with impacts reasonably expected

The proposal is non-complying in height so automatically fails the first test in *Veloshin v Randwick Council*.

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<sup>26</sup> *Veloshin v Randwick Council* [2007] NSWLEC 428 at 32-33

There are no stated aims to the height controls under the Eastern Harbour SEPP.<sup>27</sup> Understanding the height and bulk desired under the relevant controls should therefore refer to the context when first implemented under BEP1 and carried over to the Eastern Harbour SEPP.

Based on heights of buildings around the area, the approximate equivalent of height in metres to height in storeys is shown in the table below:

Old Planning Instrument	Old Height of Building in Metres	→	New Planning Instrument	Equivalent Height of Building in Storeys
South Sydney DCP 1997	6 m	→	BEP1	2 storeys <sup>28</sup>
South Sydney DCP 1997	9 m		BEP1	3 storeys <sup>29</sup>
South Sydney DCP 1997	15 m		Sydney DCP 2012	5 storeys <sup>30</sup>

Table 2 Conversion of height of building in metres to storeys based on planning instrument history

It could not have been reasonably expected at the time that a 23-metre-high building would be built, as that would have matched the form of a 7-storey building in the area. In other words, if the aim of the height control was to allow a 23-metre-high building, then the height controls would have been expressed as “7 storeys” rather than “5 storeys”.

The impacts reasonably expected from a 15-metre-high building (e.g. overshadowing) would be considerably less than a 23-metre-high building.

The proposal should be refused or amended to have impacts consistent with reasonably expected impacts of a 15-metre-high building.

## 2(b) Failure to meet form and massing urban design principles of BEP1

The first general urban design principle in BEP1 states, “Built form and massing of new development is to respond to the immediate context and character of the site and should provide a transition between scales.”<sup>31</sup>

<sup>27</sup> State Environmental Planning Policy (Precincts—Eastern Harbour City) 2021 Appendix 3 Part 3 s 21

<sup>28</sup> Summary of Built Environment Plan (Stage One)

([https://web.archive.org/web/20120320182645/http://www.redfernwaterloo.nsw.gov.au/other/media\\_releases/F1\\_summary\\_BEP.pdf](https://web.archive.org/web/20120320182645/http://www.redfernwaterloo.nsw.gov.au/other/media_releases/F1_summary_BEP.pdf)) p. 4, Eveleigh Street Site (including the ‘Block’)

<sup>29</sup> South Sydney DCP 1997: Urban Design (2 July 1997, as amended) Maps: Height south

[https://www.cityofsydney.nsw.gov.au/-/media/corporate/files/2020-07-migrated/files\\_a/a3-height-south-140610.pdf?download=true](https://www.cityofsydney.nsw.gov.au/-/media/corporate/files/2020-07-migrated/files_a/a3-height-south-140610.pdf?download=true)

<sup>30</sup> See e.g. corner of Cleveland Street and Buckland Street on South Sydney DCP 1997 vs Sydney DCP 2012

<sup>31</sup> Redfern-Waterloo Built Environment Plan August 2006 p.29, General urban design principles



The EIS states that the proposed building is “respecting the prevailing scale of the surrounding buildings.”<sup>32</sup>

The following graphic is provided by the applicant of the surrounding building storeys:<sup>33</sup>

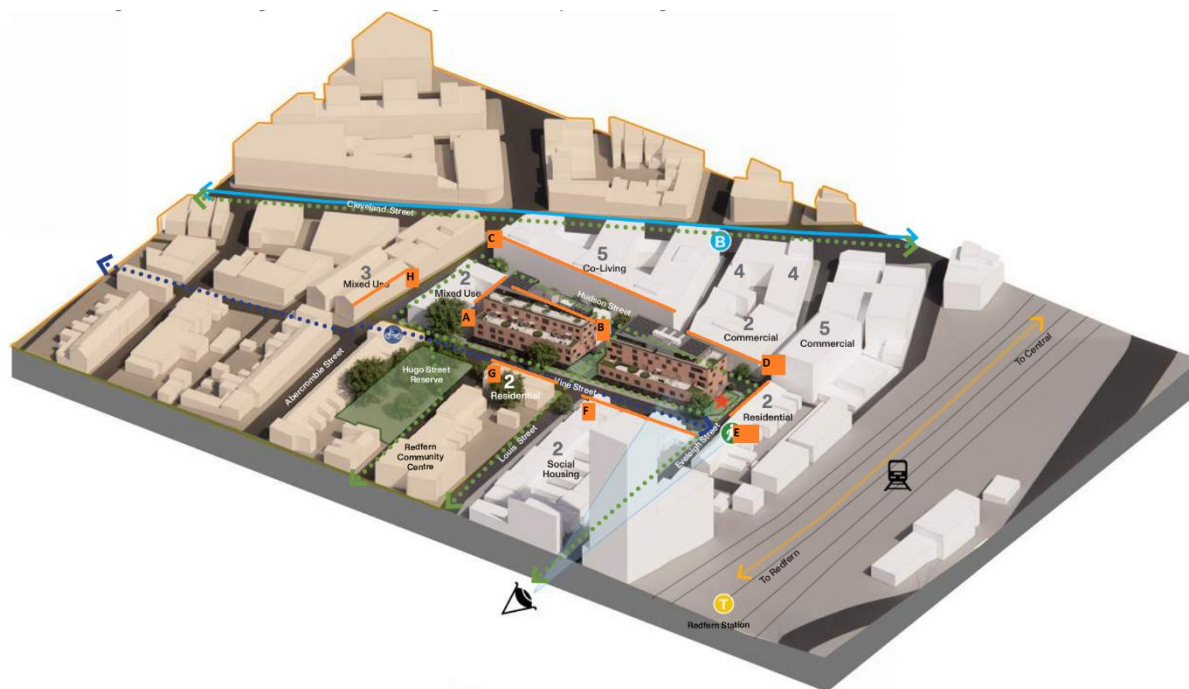


Figure 7 Design Report "context analysis" (with orange lines added)

The graphic has been amended with orange lines marked with letters A-H to highlight the sudden changes in building heights. The height of the tallest proposed building (RL 42.650) is significantly higher than the surrounding buildings:

Building	Storeys	RL	Difference in height	
<b>A</b> 146-156 Abercrombie St <sup>34</sup>	2	27.41	+15.24 m	+5.1 storeys
<b>B</b> 5 Hudson St <sup>35</sup>	4	31.63	+11 m	+3.6 storeys
<b>C</b> 144 Abercrombie St <sup>36</sup>	5	33.98	+8.67 m	+2.8 storeys
<b>D</b> 16 Eveleigh St <sup>37</sup>	2	29.64	+13.01 m	+4.3 storeys
<b>E</b> 31A-47 Eveleigh St <sup>38</sup>	2	27.93	+14.72 m	+4.9 storeys
<b>F</b> 36 Eveleigh St/1-3 Vine St <sup>39</sup>	2	27.53	+14.12 m	+5.0 storeys
<b>G</b> 13-25 Vine St <sup>40</sup>	2	28.04	+14.61 m	+4.8 storeys
<b>H</b> 145-161 Abercrombie St <sup>41</sup>	3	28.80	+13.85 m	+4.6 storeys

<sup>32</sup> *Environmental Impact Statement*, 11 February 2025, p. 44

<sup>33</sup> *Appendix C Design Report* p.59, 7.1 Design Response to SDRP Comments, Site Strategy and Landscape

<sup>34</sup> *Appendix E Survey Plan* p.4, Image 7

<sup>35</sup> *Appendix E Survey Plan* p.5, Image 8

<sup>36</sup> *Appendix E Survey Plan* p.3, Image 1

<sup>37</sup> *Appendix E Survey Plan* p.3, Image 2

<sup>38</sup> *Appendix E Survey Plan* p.4, Image 4

<sup>39</sup> *Appendix E Survey Plan* p.4, Image 5

<sup>40</sup> *Appendix E Survey Plan* p.4, Image 6

<sup>41</sup> *Appendix E Survey Plan* p.7, Image 17

Table 3 Difference in height of opposing buildings. Storeys measured by 3 metre increments.

The EIS is factually incorrect to state that the proposed building matches the prevailing scale of the surrounding buildings.

- There is a significant 5-storey difference between 146-158 Abercrombie St (“A”) and the proposed building. The applicant has not provided any evidence to show how this matches the prevailing scale.
- The proposed building almost doubles the number of storeys of the adjacent 5 Hudson St (“B”) with a 3.6-storey difference. Notably, the applicant’s diagram (Figure 7 Design Report “context analysis” (with orange lines added)) omits displaying the number of storeys of this building, illustrating how the proposed scale overwhelms its surroundings.
- Most buildings in this area, as shown on the diagram, are 3 storeys or lower. The average building height of surrounding buildings noted in the table is 10.6 metres, contrasting sharply with the proposed building’s 6 storeys or 23 metres. It is wrong to contend that such a height represents the prevailing scale.

The proposal should be refused or amended to respond and transition to matches the prevailing scale.

## 2(c) Failure to meet the aims of height controls under the ADG

Building height controls ensure development responds to the desired future scale and character of the street and local area. Building height controls consider the height of existing buildings that are unlikely to change. This diagram demonstrates the aims of the height controls:<sup>42</sup>

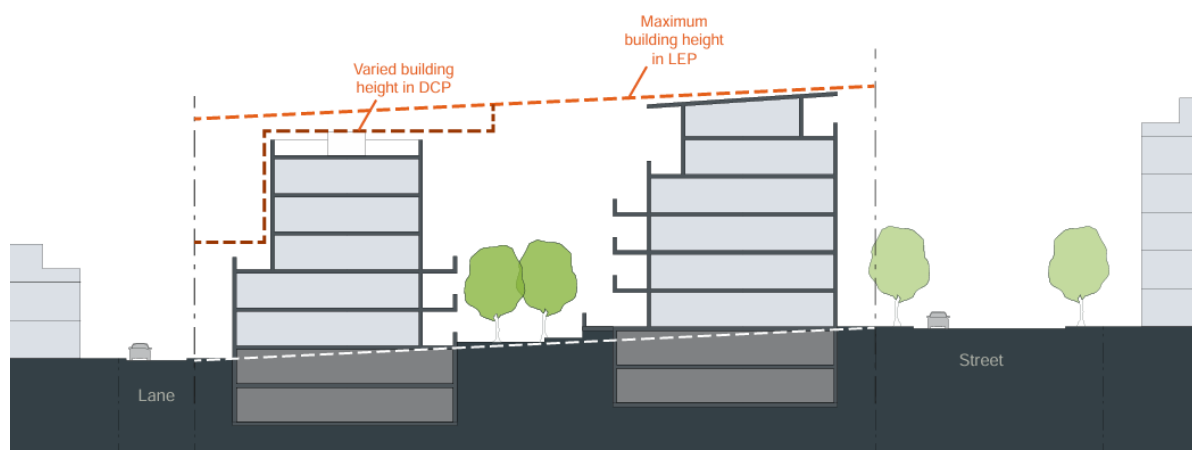


Figure 2C.2 Building height controls in a development control plan should reflect the existing or desired future character of an area. Height controls may need to step or change within a site while still being within the maximum set in the local environmental plan. This diagram shows how the height of proposed buildings responds to the lower and higher densities along each street frontage

Figure 8 ADG height controls example

<sup>42</sup> Apartment Design Guide p. 30, 2C (Building height)

Note how the height controls step down to match the height of the existing building on the left side of the graphic. The height controls also step up to match the height of the existing building on the right.

Looking at the height controls of the area, it is obvious that they intend to step down from higher buildings along Cleveland Street to the north and the railway line to the east of the subject site:<sup>43</sup>



Figure 9 NSW Planning Portal Spatial Viewer Height of Buildings Map

The NSW Planning Portal Spatial Viewer equates the height controls of 5 storeys to 16 metres, and the height controls of 3 storeys to 9 metres.

<sup>43</sup> NSW Planning Portal Spatial Viewer Height of Buildings Map, 16-30 Vine Street Redfern NSW 2016

In contrast, the height of the proposed building contradicts the aims of height controls. This can be seen in Short Section A:<sup>44</sup>

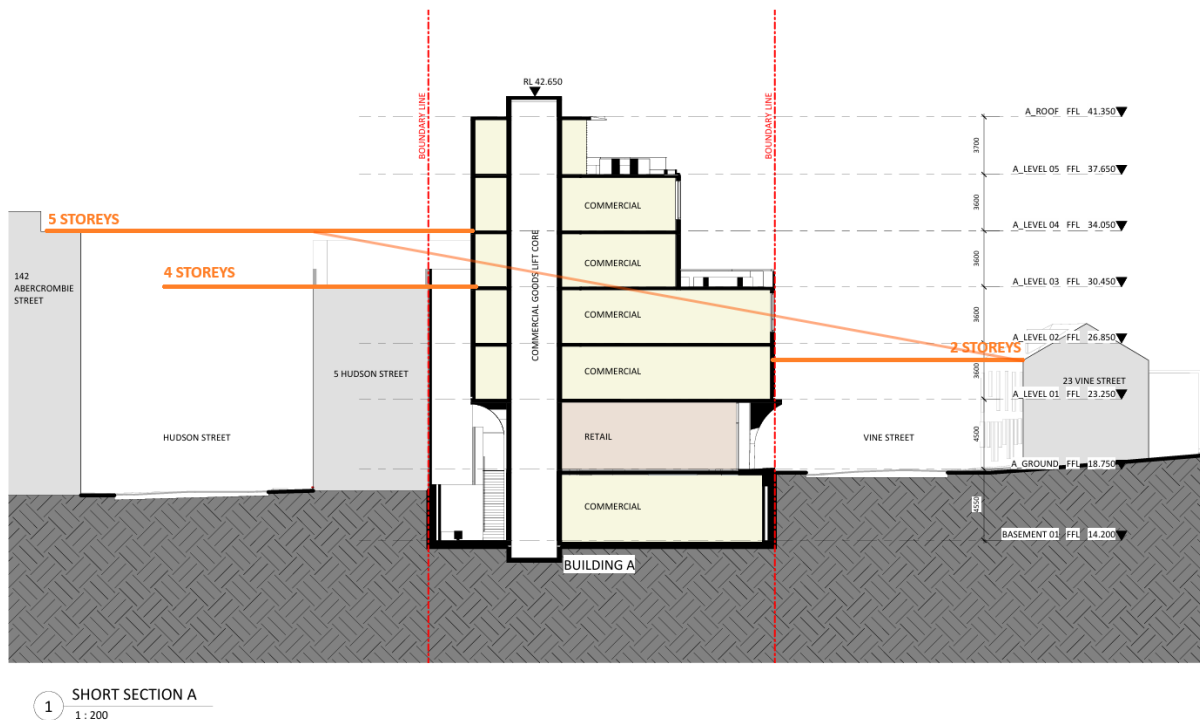


Figure 10 Short Section A (with additional notes in orange)

Additional notes have been added in orange, highlighting:

- 2 storeys of the proposed building already exceed the height of the 2 storey terraces at 23 Vine Street
- 3 storeys of the proposed building match the height of the 4-storey mixed use building at 5 Hudson Street
- 4 storeys of the proposed building match the height of the 5-storey residential building at 142 Abercrombie Street
- A building with a responsive design should follow the diagonal line from 5 storeys to 2 storeys

Considering the scale of the surrounding buildings, the proposed building matches the size of a 7-storey development. In contrast to *Figure 8 ADG height controls example*, the proposed building exceeds the height of the immediately adjacent building (5 Hudson St), plus both buildings on the other sides of the road (23 Vine Street and 142 Abercrombie Street). Due to most of the surrounding buildings falling within the Darlington Heritage Conservation Area, it is unlikely that their height will change.<sup>45</sup>

<sup>44</sup> Appendix B Architectural Drawings p.23, Short Section

<sup>45</sup> Sydney Local Environmental Plan 2012 Heritage Map – Sheet HER\_009

([https://eplanningdlprod.blob.core.windows.net/pdfmaps/7200\\_COM\\_HER\\_009\\_005\\_20221215.pdf](https://eplanningdlprod.blob.core.windows.net/pdfmaps/7200_COM_HER_009_005_20221215.pdf))

It cannot be found that the proposed building meets the aims of height controls provided by the ADG, given how much higher each storey is compared to the surrounding buildings. A compliant 5 storey building should be similar in height to 142 Abercrombie Street, yet this proposed building is 7.3 metres taller than that 5-storey building.

The proposal should be refused or amended to ensure that:

- The height, bulk and scale are consistent with impacts reasonably expected for 5 and 3 storey building heights e.g. by lowering the height to 15 metres
- The form and massing respond and provides transition between scales as per the urban design principles of BEP1 e.g. by adding setbacks from 146-158 Abercrombie St and 5 Hudson St
- The aims of the height controls are met under the ADG e.g. by stepping the building down from Hudson St to Vine St, rather than raising the building higher than 142 Abercrombie St.

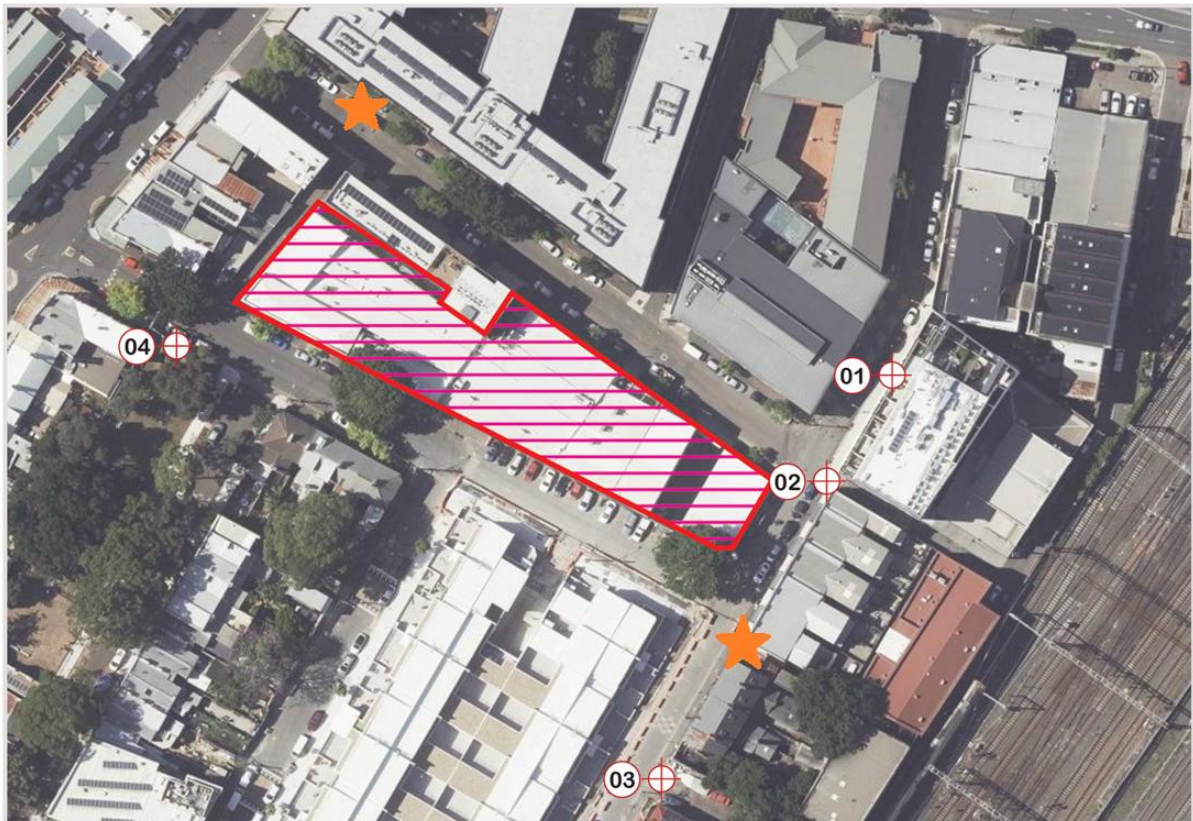


### 3 Visual impact

The visual impact assessment omits key viewpoints and do not provide a complete basis for assessing visual impact, as required under the SEARs.

#### 3(a) Visual impact assessment is missing key viewpoints required by SEARs

The visual impact assessment has been taken from four viewpoints:<sup>46</sup>



Camera positions map with proposed D.A site in magenta

Figure 11 Visual Impact Assessment camera positions map (with added orange stars)

Additional viewpoints, marked with orange stars, should be provided with the proposal:

- A viewpoint at the corner of Vine and Eveleigh Streets, looking down Vine St
- A viewpoint at the corner of Hudson St and Evans Ln, showing the height contrast of the Abercrombie St shop-top housing and 5 Hudson St buildings

The additional viewpoints would demonstrate how significant views of the sky and sense of appropriate scale are lost by the proposed buildings.

<sup>46</sup> Appendix K Visual Impact Assessment p.2

The proposal should be refused or amended unless all key viewpoints are shown, as required by SEARs.

### 3(b) Viewpoint 4 fails to show the full extent of views lost

Viewpoint 4 is not taken from the sidewalk, but rather from within the Hugo Street Reserve, so that 50% of the photo shows the ground and street:<sup>47</sup>



Photomontage of Proposal

*Figure 12 Viewpoint 4 Photomontage*

The photo fails to show the full extent of the views lost. Most of the views lost due to the proposed building is cut off at the top of the photo. The photo also omits the Vine St terraces and shop-top housing at Abercrombie St that would have significantly affected views by the proposed building and provide a sense of the incongruent scale.

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<sup>47</sup> Appendix K Visual Impact Assessment p. 9



### 3(c) Significant views of the sky would be lost by Vine St and Abercrombie St residents

Currently, looking out from the first-floor front windows of Vine St terraces and shop-top housing at Abercrombie St would present views of the sky:



*Figure 13 View from 25 Vine St first floor bedroom window looking towards the applicant site*

It is an important amenity for residents to feel the sense of openness afforded by views to the sky. The proposed building will loom over these homes and deny residents any such view – instead it will be blocked by a wall of commercial offices.

The proposal should be refused or amended because:

- The viewpoint 4 photomontage is deficient and does not show the full extent of views lost, preventing the loss of views from being assessed correctly
- There is no consideration of the views lost by the surrounding low-level housing, such as the Vine St terraces and shop-top housing at Abercrombie St

## 4 Visual privacy

### 4(a) Outlook into private rear windows of 146-158 Abercrombie St

The proposed building windows look directly into the private rear windows of the shop-top housing in 146-158 Abercrombie Street:<sup>48</sup>

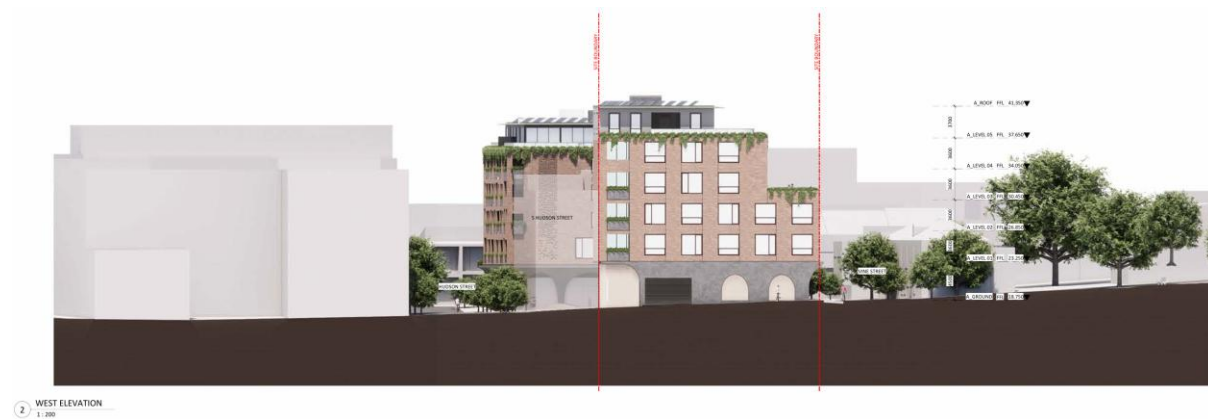


Figure 14 West Elevation with proposed building windows

This is an unacceptable loss of privacy.

The proposal should be refused or amended to ensure that privacy is maintained to the rear windows. E.g. removal of windows or adding window treatments

### 4(b) Overlooking into private windows and private open spaces of Vine St terraces

The proposed building places open balconies and windows facing into Vine St terraces' private windows (bedrooms on the first floor) and private open spaces (backyards):<sup>49</sup>



Figure 15 Laneway Elevation - East

<sup>48</sup> Appendix B Architectural Drawings p. 20, West Elevation

<sup>49</sup> Appendix B Architectural Drawings p. 21, Laneway Elevation - East



The proposal should be refused or amended to ensure that privacy is maintained to these areas. For example, by incorporating screening devices, increasing building separation or setbacks, or tall vegetation along the Vine St open areas of the building (such as level 3 of Building A).

## 5 Clause 16A Variation Request has insufficient justification that compliance with the standard is unreasonable or unnecessary

While some variation requests are acceptable, this Clause 16A Variation Request should not be accepted because:

- (a) The variation request contains unsubstantiated information
- (b) The variation request does not meet the *Wehbe* test
- (c) There are insufficient environmental planning grounds to justify contravention of the development standard

### 5(a) The variation request contains unsubstantiated information

The Clause 16A Variation Request contains unsubstantiated information. This includes statements such as:<sup>50</sup>

- i. “Does not create any adverse solar access impacts to the surrounding residential buildings”
- ii. “Is commensurate with the height of existing development in the surrounding area and seamlessly integrates with the surrounding buildings”
- iii. “the height of the proposed development is modest when compared to the existing and approved heights within the Immediate context of the site”

Note that false or misleading information is not permitted under the EP&A.

#### 5(a)(i) “Does not create any adverse solar access impacts”

The non-compliance to height is directly attributable to adverse solar access impacts to Vine St terraces. An additional hour of solar access is lost to the main living areas of these houses.

It is factually incorrect to state that the variation “does not create any adverse solar access impacts to the surrounding residential buildings”. The variation should be refused or amended to remove this statement.

#### 5(a)(ii) “Commensurate with height of existing development”

The non-compliance to height is not commensurate with height of existing development. As indicated in *Table 3 Difference in height of opposing buildings* (on page 15), the proposed building exceeds the height of all of the opposing buildings by more than 8 metres.

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<sup>50</sup> Appendix EE Clause 16A Variation Request pp. 7-8

It is factually incorrect to state that the variation “is commensurate with the height of existing development in the surrounding area and seamlessly integrates with the surrounding buildings”. The variation should be refused or amended to remove this statement.

### 5(a)(iii) “Height of the proposed development is modest”

The non-compliance to height is greater than all other existing and approved heights within the immediate context of the site. For example, the non-compliant height of the recently approved Redfern Mixed Use Co-living Development is still lower than the proposed building, despite it also being non-compliant.

It is factually incorrect to state that “the height of the proposed development is modest when compared to the existing and approved heights within the immediate context of the site” and the variation should be refused or amended to remove this statement.

## 5(b) The variation request does not meet the *Wehbe* test

### 5(b)(i) Method 1: The objectives of the standard are achieved notwithstanding non-compliance

The applicants have acknowledged the importance of BEP1 in the EIS,<sup>51</sup> which explicitly states its objective: “a 3 storey limit along Vine Street has been maintained to ensure solar access for properties to the south.”<sup>52</sup> This height limit was originally established in BEP1 and remained unchanged when incorporated into the Eastern Harbour SEPP. Since the Eastern Harbour SEPP does not provide specific objectives, BEP1 must be relied upon to interpret its intent.<sup>53</sup>

By extension, the 5-storey height limit on Hudson Street should also prioritise solar access for properties to the south. Otherwise, the intent behind the original 3-storey limit would be rendered meaningless. The applicant’s own shadow diagrams reveal that non-compliance with the height standard directly causes additional overshadowing, significantly reducing solar access to the Vine Street terraces. This undermines the stated objective to “ensure solar access.”

The variation request completely fails to address the BEP1 objective. The variation request should be refused or amended to ensure solar access for properties to the south.

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<sup>51</sup> *Environmental Impact Statement* pp. 63-64, 5.6 Redfern-Waterloo Built Environment Plan (Stage One)

<sup>52</sup> *Redfern-Waterloo Built Environment Plan August 2006* p. 44, Land Use and Design Concepts for RWA’s Strategic Sites

<sup>53</sup> *Aids to interpreting Acts – NSW legislation* (<https://legislation.nsw.gov.au/information/aids-to-interpreting-acts>)

## 5(b)(ii) Methods 2-5

The variation request does not attempt to rely on methods 2 to 5 of *Webb*. These methods would not apply because:

- The objective of the height limit is still relevant as the properties they seek to protect solar access to are still existing. (Second Method)
- The purpose would not be defeated or thwarted if compliance is required. Reducing the height of the building to comply will help to meet the purpose. (Third Method)
- The development standard has not been abandoned or destroyed by Council actions. (Fourth Method)
- The zoning of the land is not in contention by the variation request. (Fifth Method)

It is possible to build a 5 and 3 storey building that does not cause additional overshadowing to the Vine St terraces and others it seeks to protect. The variation request should be refused or amended to ensure solar access to these properties is maintained.

## 5(c) There are insufficient environmental planning grounds to justify contravention of the development standard

### 5(c)(i) Ground 1: Contextually appropriate

#### 5(c)(i)(1) Human Scale Streetscape

The variation request states, “The 6<sup>th</sup> storey is generously setback and recessed ... mitigating the impact of the height non-compliance.”<sup>54</sup>

The applicant does not include any image of the proposed building from the corner of Hudson Street and Evans Lane. There is no rendering of Building A included in the

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<sup>54</sup> Appendix EE Clause 16A Variation Request p. 17

variation request at all. An image of the north and west elevations of Building A are only provided in the Architectural Drawings:<sup>55</sup>



Figure 16 North Elevation



Figure 17 West Elevation

Notably, the contention that the 6<sup>th</sup> floor is “generously setback” is unsupported when viewed from the north and west elevations. It would be readily apparent to observers from Hudson Street (facing the north elevation) or Evans Lane (facing the west elevation) that the non-compliant 6<sup>th</sup> floor has added bulk and scale to the building. When viewed in relation to the existing 5 storey building on the other side of Hudson Street, the additional non-compliant height detracts from the streetscape.

### 5(c)(i)(2)Appropriate Height Transition

The variation request states that the additional storey “aligns with the intent of the height controls which aim to position the taller buildings along the northern edge of the site, stepping down to a 3 storey street edge to the south. The proposal achieves this harmonious transition between the taller buildings along Cleveland Street to the lower scale and fine grain nature of the nearby residential terraces as shown in Figure 8.”<sup>56</sup>

<sup>55</sup> Appendix B Architectural Drawings p. 20, East West Elevation

<sup>56</sup> Appendix EE Clause 16A Variation Request p. 18

The variation request shows a cross-section as an attempt to provide evidence for this claim:<sup>57</sup>



**Figure 8 Section showing the height transition**

Source: Koichi Takada Architects

*Figure 18* Cross-section graphic omitting the larger building A

This cross-section graphic shows the shorter “Building B” and not the taller “Building A” in context to existing buildings. It is not explained why Building A is omitted from the graphics, especially considering that it has more significant non-compliance with the height controls. In fact, both Building A and B are taller than all surrounding buildings. When compared the 13 Eveleigh Street, the current tallest 5-storey commercial building:

- Building A (RL 42.65)<sup>58</sup> is 2.32 metres taller than 13 Eveleigh Street (RL 40.33).<sup>59</sup>
- Building B (23.3 metres high from lower ground)<sup>60</sup> is 1.26 meters taller than 13 Eveleigh Street (22.04 metres high from lower ground).

It is not supported by the facts that the proposed building “steps down” or is a “harmonious transition” when it juts further out into the sky.

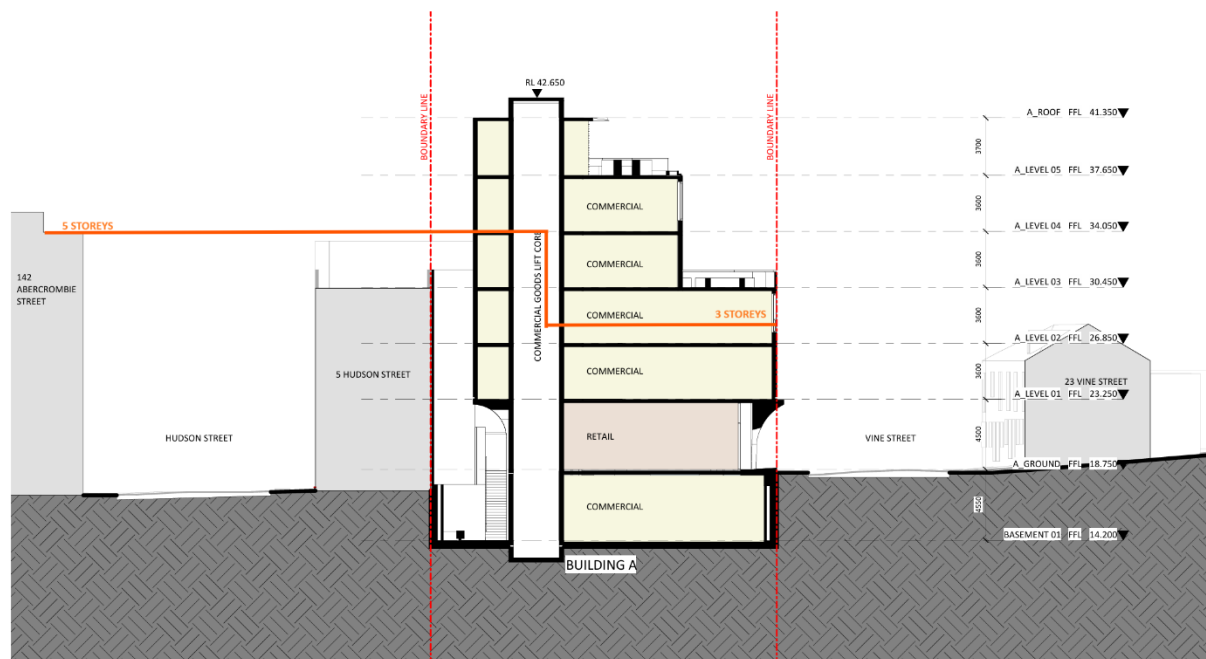
<sup>57</sup> Appendix EE Clause 16A Variation Request p. 19, Figure 8

<sup>58</sup> Appendix B Architectural Drawings p. 22, Long Section

<sup>59</sup> Appendix E Survey Plan p. 3, Image 3

<sup>60</sup> Appendix B Architectural Drawings p. 22, Long Section

The non-compliance causes the height transition to step up, rather than step down as claimed. This is evident when viewing the proposed Building A in context to the existing buildings:<sup>61</sup>



1 SHORT SECTION A  
1 : 200

Figure 19 Short Section A (added orange lines showing 5 and 3 storey step down)

Orange lines have been added to the drawing to demonstrate stepping down from a 5-storeys to 3 storeys. 142 Abercrombie Street is a 5-storey building. The proposed building steps up, not down, to add the non-compliant 6<sup>th</sup> storey. The proposed building upper levels also extend their non-compliant height further south, towards Vine Street.

## 5(c)(ii) Ground 2: Acceptable Amenity Outcomes

### 5(c)(ii)(1) Overshadowing

The variation request incorrectly states that “the proposed height-non compliance does not generate any additional overshadowing”.

This is contradictory to the diagrams that the height variation causes further overshadowing to Vine St terraces (see 1(c) *Failure to meet ADG due to overshadowing on Vine St terraces* on page 6).

### 5(c)(ii)(2) Visual Impact

The variation request does not explain how the additional height (breaching both the 5 and 3 storey height limits and loss of setback from Vine St terraces) has any specific tangible reasons that justify a variation from established development standards.

<sup>61</sup> Appendix B Architectural Drawings p. 23



The variation request is general about the visual impact being “considered acceptable”. It refers to the visual impact of the entire building (e.g. “large brick facades”) rather than being specific to the visual impact of the non-complying height. It does not follow the principle in *Four2Five* to demonstrate why the site’s specific conditions make the strict compliance unreasonable or unnecessary.

The additional height causes additional visual impact loss to the sky. This is clearly shown in the artist impression:<sup>62</sup>



*Figure 20 Artist Impression from the corner of Vine and Eveleigh St*

The non-complying sixth storey is clearly visible, as well as the increased width of the building due to non-compliance with the third storey height limit. Notably the applicants have failed to provide an artist’s impression that has a clear view of the taller Building A, hiding the building that more severely exceeds the height controls that the variation request is meant to justify.

The contention that the “proposed development seamlessly integrates with the immediate context, providing a consistent scale and mass that is compatible with the existing development located to the north and south of the site” is not supported by the

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<sup>62</sup> *Appendix B Architectural Drawings p. 2 Perspective 01*

evidence. (See 2(b) *Failure to meet form and massing urban design principles of BEP1* on page 13 above)

The variation request should be rejected or amended to:

- Explain the reason why compliance is unreasonable or unnecessary in reference to the height non-compliance specifically rather than in reference to general features of the building (such as “large brick facades”)
- Remove reliance on general benefits that could apply to any development (such as “delivering further housing and employment”) in accordance with the decision of *Four2Five*
- Provide evidence that visual scale is consistent by adding more imagery to the Visual Impact Assessment showing the building height in relation to existing buildings such as the Abercrombie St shop-top housing, Vine St terraces, and 5 Hudson Street (see 3 *Visual impact* on page 19 above), especially of Building A

#### 5(c)(ii)(3) Privacy

See 4 *Visual privacy* on page 23 above.

#### 5(c)(iii) Ground 3: Consistency with Objects of the EP&A Act

The variation request refers predominantly to general features of the building rather than the specific impact of the height non-compliance.

As established in *Initial Action* at [24], “The environmental planning grounds advanced in the cl 4.6 written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole.”<sup>63</sup>

The variation request should be rejected or amended to refer specifically how the height non-compliance has environmental planning grounds to “justify the contravention”.

#### 5(c)(iv) Ground 4: Improving public benefit

The variation request states, “The proposed height variation is essential to achieving the maximum permissible FSR” and that this is to offset the loss of creating public open spaces.

As mentioned earlier, the ADG states “it is important to note that FSR controls set the *theoretical maximum* capacity. It may not always be possible to reach the maximum allowable floor space due to other development controls”.<sup>64</sup>

In *RebelMH Neutral Bay Pty Limited v North Sydney Council*, the court agreed with the primary judge reasoning that there is no entitlement to develop to the full extent allowed by planning controls. In that case, the appellant argued that exceeding the height limit

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<sup>63</sup> *Initial Action Pty Ltd v Woollahra Municipal Council* (2018) 236 LGERA 256; [2018] NSWLEC 118

<sup>64</sup> *Apartment Design Guide* p. 32, 2D (Floor space ratio)

was necessary to avoid losing floor space, as the extra FSR “would have to be accommodated elsewhere.” They also argued that keeping the FSR while exceeding the height limit would be a better outcome than reducing the building’s setback from a nearby heritage-listed property, which would be undesirable. The primary judge rejected this argument, stating that “The building envelope is merely a target, a target which is subject to other planning constraints”.<sup>65</sup>

The variation request should be rejected or amended to remove the argument that there is an entitlement to achieve the maximum permissible FSR.

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<sup>65</sup> *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [29-31], [53]

## 6 Recommendations

To better align with planning controls, design guidelines, and the public interest, the proposed development should be refused in its current form and only reconsidered if the following changes are made:

- **Reduce building height** to comply with the 5-storey and 3-storey controls, consistent with the Redfern-Waterloo Built Environment Plan (Stage One) and the Eastern Harbour SEPP.
- **Increase upper-level setbacks** along Vine Street to minimise overshadowing of heritage terraces and improve solar access in accordance with the Apartment Design Guide.
- **Respect privacy of adjoining properties** by removing or screening windows and balconies facing directly into private rear yards and bedrooms.
- **Provide accurate visual impact assessments** from all key public viewpoints, including from street level along Vine Street, to comply with SEARs.
- **Revise the Clause 16A variation request** to remove inaccurate statements and ensure any request is based on site-specific constraints, not generic justifications.
- **Explore alternative compliant designs** that maintain allowable floor space through adjusted floor-to-ceiling heights or changes in building footprint, without breaching height controls.
- **Demonstrate heritage sensitivity** by ensuring the development transitions in scale and respects the character and amenity of the Darlington Heritage Conservation Area.

## 7 Conclusion

The Hudson Vine Mixed Use Redevelopment, in its current form, should not proceed. It represents an overreach in height, scale, and impact—one that significantly diminishes the residential amenity, privacy, sunlight, and character of a sensitive and heritage-rich area. The proposed development fails to comply with multiple statutory and design guidelines, disregards established planning principles, and offers no substantive justification for breaching reasonable and necessary planning controls.

This objection highlights how the proposal:

- Substantially reduces sunlight and thermal comfort for neighbouring homes, undermining their liveability and sustainability
- Fails to transition appropriately to the surrounding built environment, overwhelming lower-scale heritage contributory housing with excessive bulk
- Eliminates vital sky views and privacy for residents
- Submits unsupported statements to justify planning variations; and
- Shows that compliant alternatives exist that would better balance development goals with community well-being.

Planning policy exists to ensure growth does not come at the cost of liveability. Approving this proposal would set a harmful precedent—one that elevates developer yield over human-scale, context-sensitive design. For these reasons, the application should be refused or fundamentally amended.

Thank you for considering this submission.

Kind regards,  
Jason Leong