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ATTENTION: JASMINE TRANQUILLE, SENIOR ASSESSMENT OFFICER

**RE: STATE SIGNIFICANT RESIDENTIAL DEVELOPMENT WITH INFILL
AFFORDABLE HOUSING, PPTIES: 59-63 TRAFALGAR AVENUE AND 1A&1B
VALLEY ROAD, LINDFIELD, SSD-79276958**

Dear Jasmine,

I refer to the abovementioned proposed State Significant Development Application 79276958 (SSD Application).

I was requested by local residents to provide my professional opinion in response to the SSD Application at 59-63 Trafalgar Avenue and 1A and 1B Valley Road, Lindfield.

I stress that the opinions expressed in this submission are my professional opinions based on my qualifications and experience contained in my attached Curriculum Vitae marked "A".

My primary objections are as follows: -

1. Failure to Consider the Draft Amendments to Ku-ring-gai Local Environmental Plan 2015 (KLEP 2015) and Draft Amendments to SEPP (Housing 2021).

- Over recent times, Ku-ring-gai Council (Council) has exhibited various sets of Draft Planning Controls for community consultation. Following the most recent public exhibition, I understand that the

Officers of Council have prepared a report for the consideration of the Councillors in which they recommend the adoption of a set of preferred Draft Planning Controls “to *explore alternative ways to accommodate new housing as an alternative to the TOD scenario*”. If Council adopts the preferred set of Draft Planning Controls, I consider that the Assessment Officer must give weight to these Draft Amendments. I note that there have been extensive communications between Council and Department of Planning in relation to the Draft Amendments.

- If adopted, the preferred set of Draft Planning Controls will require amendments to KLEP 2025 and SEPP (Housing 2021). The preferred set of Draft Planning Controls will also be made by the Minister for Planning and Public Spaces by way of a “*self-repealing*” SEPP.
- Given the above circumstances, I consider that the above Draft Amendments must be given weight under Section 4.15(1)(a)(ii) of the Environmental Planning and Assessment Act 1979 (the Act) as a “*proposed instrument*” or under Section 4.15(1)(e), being within “*the Public Interest*” of the Act. The Environmental Impact Statement (EIS) and associated documents have **not** considered the above Draft Amendments.
- When the proposed development is assessed against the set of Council’s Draft Amendments referred to above, I strongly consider that the proposed development cannot “*exist in harmony with its surroundings*”, as held in the Land and Environment Court’s (Court) Planning Principle in “*Project Ventures Developments v Pittwater Council [2005] 141 LGER 80*” (Project Ventures). The proposed development would represent a significant overdevelopment in terms of bulk and scale compared to the adjoining existing developments and likely future development under Council’s preferred set of Draft Planning Controls.

2. Failure to Properly Address the Planning Secretary's Environmental Assessment Requirements (SEAR) for the Proposed Development.

- I note the list of SEAR's requirements which must be addressed in the documents, plans, reports and EIS accompanying the SSD Application.
- For the reasons referred to in my submission, I strongly consider that the SSD Application has not addressed a number of mandatory requirements under the SEAR's document.
- My previous comments in section 1. relate to "**Statutory Context**" under Issue 1 of the SEAR's document.
- In relation to the other issues raised in the SEAR's document, I consider that the proposed development does not properly address a number of the mandatory requirements set out in the SEAR's document. Specifically, I note the following: -

- 5) "**Design Quality**". I consider that the proposed development is not of "*Good Design*" for the reasons referred to in this submission.

I strongly consider that the proposed development exhibits the following elements of Poor Design: -

- The proposed development breaches the Height of Buildings Standard, particularly on the proposed southern facade which adjoins low density residential development.
- Due to the fact that there is low density residential development to the south, I consider that the proposed southern facade is required to have a sensitive interface with the neighbouring dwellings to the south. In fact, the proposed southern facade exhibits an insensitive response, particularly by reason of the

breach of the Height of Buildings Standard along a significant portion of the proposed southern facade.

- I also consider that there will be unreasonable Overlooking Impact from the proposed windows and proposed roof top Communal Open Space on the proposed southern facade which will have direct sight lines into the rear yards of the adjoining residential properties to the south.
- For the reasons referred to in my submission, I also consider that the proposed development does not properly consider potential Acoustic Impact arising from the use of the proposed basement levels and the use of the proposed roof top Communal Open Space Areas onto the adjoining residential properties to the south.
- There is also a concern arising as to the impact on Air Quality due to the proposed basement levels. Please refer to additional comments below.
- For the abovementioned reasons, and other reasons raised in my submission, I am strongly of the opinion that the proposed development does not achieve the required “high amenity” for adjoining residential properties as required under Issue 7 of the SEAR’s document. The above adverse impacts on the adjoining residential properties, particularly to the south, are most unreasonable. It cannot be said that the adjoining residential properties to the south will maintain a “*high amenity*” as required under Issue 7 of the SEAR’s document. Simply put, the residential properties to the south, and other adjoining properties, will suffer unreasonable adverse impacts due to the proposed development, contrary to Issue 7.
- The above breach of the Height of Buildings Standard on the southern facade will also result in an excessive Visual Impact on the adjoining properties to the south.

Not only does not the proposed southern facade in part breach the Height of Buildings Standard, but the adjoining owners to the south will be “*looking up at*” the proposed southern facade which will exacerbate the breach of the Height of Buildings Standard. As you are aware, when one looks up at a proposed development, its Visual Impact is increased compared to a scenario when an observer looks down at a building.

- A further poor element of the proposed design is that there will be 17.7% of the proposed units receiving **no** sunlight during mid-winter. This is a numerical breach of 18%, when assessed against 15% guide under the Apartment Design Guide (ADG). This is certainly more than a “minor” breach as claimed in the EIS. For so many units to receive **no** sunlight during mid-winter, contrary to the ADG, represents a further poor element of the design.
- Part of the proposed basement levels extend beyond the building footprint above. This is also contrary to the ADG.
- The fact that part of the proposed basement levels extend beyond the building footprint also diminishes the amount of Deep Soil Zone to accommodate deep soil landscaped area. Thus, the fact that part of the proposed basement levels extend outside of the proposed building envelope is a further flaw in the design.
- The proposed front setback to Trafalgar Avenue is 4.5m which the EIS claims to be consistent with the prevailing front setback. No calculations are provided in the EIS to support this claim. Calculations that I have received evidence that the prevailing front setbacks of the existing dwellings on the opposite western side of Trafalgar Avenue to be approximately 7.5m. Thus, the

proposed front setback of 4.5m is inadequate. On this point, the proposed development occupies the majority of the properties on the eastern side of Trafalgar Avenue. Therefore, the prevailing front setback must be calculated based on the dwellings on the opposite side of Trafalgar Avenue. Simply put, the proposed 4.5m front setback is clearly contrary to the prevailing front setback along Trafalgar Avenue. Furthermore, the very tall front facade facing Trafalgar Avenue exacerbates the adverse Visual Impact when viewed from the street.

- Due to the fact that there is a proposed driveway along the southern setback area of the subject site, the access corridor does not provide for extensive landscaping. The western portion of the proposed access corridor has miniscule landscaping which is a very insensitive response to the adjoining low density dwellings to the south.
- The proposed development does also not represent “*Good Design*” by the failure of the SSD Application to properly assess the following potential impacts: -
 - i. Likely Acoustic Impact resulting from proposed plant and equipment. On this point, the Applicant’s Acoustic Design and Construction Advice (Acoustic Report) advised that details of the proposed plant and equipment have **not** yet been prepared and therefore the Acoustic Report has made various assumptions. It is most unreasonable for assumptions to be made about future proposed plant and equipment which have the potential to create adverse Acoustic Impact on the adjoining properties, particularly those properties to the south. The Applicant should have provided details of the proposed plant and equipment for assessment by its

Acoustic Consultant so as to avoid assumptions being made about the potential acoustic levels. Simply put, the Acoustic Report is based on inadequate information and the issue of Acoustic Impact is unresolved.

- ii. I am also concerned about the likely Acoustic Impact arising from the proposed roof top Communal Open Space Areas. Thus, the Acoustic Impact generated by the roof top Communal Open Space Areas is also unresolved.
- iii. Furthermore, concern is raised in relation to the potential impact on Air Quality in the immediate low-density locality arising from proposed openings and vents associated with the proposed basement levels. Again, the issue of Air Quality Impact is also unresolved.

The above poor elements exhibited by the proposed development, and other elements, represent a *“Poor Design”*. It certainly cannot be said that the SSD Application has demonstrated that adjoining residential properties will enjoy *“high amenity”* as required under Issue 7 of the SEAR’s document. Please refer to additional comments below which list further adverse impacts generated by the proposed development.

6) **“Built Form and Urban Design”**. The proposed development does not comply with Issue 6 of the SEAR’s document for the following reasons: -

- For the reasons previously referred to in this submission, the proposed front setback is not in accordance with the prevailing front setbacks in the

immediate locality. The significantly taller front facade exacerbates this breach of the Front Setback Control.

- The proposed development breaches a number of ADG criteria. Of particular concern is the fact that the proposed basement levels, in part, extend outside of the building footprint which reduces the Deep Soil Zone above.
- Furthermore, a significant concern is that 39 apartments will receive no sunlight during mid-winter, which represents a numerical breach of 18% compared to the 15% Control under the ADG.
- For the reasons referred to above, the breach of the Height of Buildings Standard on the proposed southern facade generates a range of potential impacts including adverse Visual Impact, Overlooking Impact and significant increase in Overshadowing Impact in the rear yards of the adjoining properties to the south.
- When one considers the sensitive locality exhibited by numerous Heritage Items and a Heritage Conservation Area, the above adverse elements are most insensitive.

7) “**Environmental Amenity**”. The proposed development does not achieve a “**high level of environmental amenity for any surrounding residential uses**” for the following reasons: -

- In terms of “*Visual Impact*”, the Visual Impact Analysis (VIA) has **not** included an analysis from nearby residential properties. The VIA has only included an analysis from locations within the public domain under “*Rose Bay Marina Pty Limited v Woollahra Municipal Council and anor [2013] NSWLEC 1046*” (Rose Bay Marina). I note that I was the Planning Consultant for Woollahra Council in the above Rose Bay Marina Appeal.

- Furthermore, the VIA has not included an analysis of “View Loss” from nearby residential properties. Whilst there are very brief comments of View Loss generally, the VIA has not made an assessment of View Loss and Visual Impact from adjoining residential properties.
- The SEAR’s requirement does **not** limit the assessment of Visual Impact and View Loss merely from public locations. On this point, I note that the VIA refers to the Court’s Planning Principal in “*Tenacity Consulting v Warringah Council [2004] NSWLEC 140*” (*Tenacity*) which deals with View Loss from private properties. The VIA also refers to private properties being within the “context”. But the VIA has completely failed to properly consider View Loss and Visual Impact from private properties. The EIS claims that the principles established under *Tenacity* have been “*integrated into the approach adopted for this evaluation*”. This claim is incorrect. The VIA does **not** assess the proposed development under the 4 Steps of *Tenacity* in relation to View Loss from private residential properties. I also note that the author of the VIA has not inspected the adjoining residential properties to undertake an analysis under the 4 Steps of *Tenacity*.
- Not only has there been a totally inadequate Visual Impact and View Loss assessment from adjoining residential properties, I also consider that the proposed development generates likely adverse Overlooking Impact, Acoustic Impact and Air Quality Impact for the reasons referred to in my submission.
- Furthermore, the proposed southern facade will generate significant increased Overshadowing Impact into the rear yards of the adjoining properties to the south.

- For the above-mentioned reasons, the proposed development does not achieve “*high level of amenity*” for adjoining residential properties as required under Issue 7 entitled “*Environmental Amenity*” of the SEAR’s document.
- In fact, rather than demonstrating the “*high level of amenity*” required under Issue 7 of the SEAR’s document, I consider that the proposed development demonstrates adverse amenity impacts on the adjoining residential properties, contrary to Issue 7.

8) “**Visual Impact**”. As previously noted, the proposed development does not include a proper VIA for the following reasons: -

- As previously advised, the VIA has **not** included an assessment of the Visual Impact and View Loss from nearby residential properties. Again, the EIS claims that the principles established under Rose Bay Marina and Tenacity have been integrated into the approach adopted for the proposed development. This claim is incorrect. The VIA does **not** assess the impacts on adjoining private residential properties under the 4 Steps of Tenacity. I also note that the author of the VIA has **not** inspected the adjoining residential properties to undertake an analysis under the 4 Steps of Tenacity.
- The SEAR’s document does **not** limit itself to public domain locations to assess impacts. The SEAR’s document clearly requires an assessment from both the public domain **and** the private domain for View Loss and Visual Impact.
- Simply put, the SSD Application is inadequate in terms of an assessment of View Loss and Visual Impact on adjoining residential properties.

9) **“Transport”**. On the issue of Transport, I express concern relating to the adequacy of the Traffic Impact Assessment (TIA) for the following reasons: -

- In relation to *“Traffic”*, I consider the TIA is inadequate due to the lack of assessment of the Cumulative Impact of the proposed development **and** other TOD developments in the vicinity of the subject site. Table 6 in the EIS shows current SSD’s and Development Applications *“in proximity to the site”*, but no Cumulative Impact analysis has been undertaken on the impact on Traffic and Infrastructure Services arising from the current application and other applications proximate to the subject site.
- The EIS accepts that the principle of Cumulative Impact is relevant for consideration, but the TIA fails to undertake this Cumulative Impact assessment in terms of the proposed development and other adjoining TOD developments in the locality.
- Local residents were invited by the Applicant for community consultation. Whilst a number of the residents raised concern about the adequacy of the consultation process, I note that local residents did express observations and concerns relating to adverse Traffic Impact generated by the proposed development.
- The TIA does not appear to acknowledge the specific observations and concerns expressed by local residents.
- The views of local residents should be given weight as they have personal experiences of the local traffic system. In fact, the comments and observations of local residents were given seminal weight by the then Senior Commissioner Moore, subsequently Judge Moore, in

the decision in “*The Presbyterian Church (New South Wales) Property Trust v Woollahra Municipal Council [2014] NSWLEC 1218*”. The Senior Commissioner Moore refused the proposed development based primarily on the evidence of local residents.

11) “**Water Management**”. A number of residents have raised concerns about wastewater and water facilities in the area and I refer to these concerns.

12) “**Ground and Ground Water Conditions**”. The proposed excavation for the proposed basements levels is, in part, to be undertaken within close proximity to the common boundaries which limits Deep Soil Landscaped Area. On this point, I note that the Geotechnical Engineer did not have the Architectural Plans when preparing the “Geotechnical Investigation Report”. This is a most unusual scenario. The Engineer should have been provided with the Architectural Plans before undertaking the required investigation.

14) “**Trees and Landscaping**”. The EIS has not properly considered the SEAR’s requirements for the following reasons: -

- In terms of “*Trees and Landscaping*”, I raise significant concern that 42 of the 72 existing trees will be removed and only 26 trees will be retained. This results in a loss of 58.3% of existing trees. This loss of Tree Canopy is very significant. Page 33 of the EIS claims that the application will result in “*significant tree restoration*”. This claim is wrong. A loss of 58.3% of existing trees does not constitute “*significant tree restoration*”. I also raise concern relating to the extensive footprint of the proposed basement levels

which will inhibit the provision of Deep Soil Landscaped Area throughout the subject site.

- I note that the proposed Landscape Plans appear to prohibit access to a number of properties to the south which currently enjoy the benefit of a right of way along part of the southern boundary of the subject site. There is a proposed landscaped pathway over part of the right of way which will not allow adjoining owners to enjoy the benefit of their legal access. As to whether the significant increase in vehicle traffic within the right of way was contemplated at the time of its registration, I defer to legal advice on this matter.
- The SEAR's document requires that the Applicant must provide evidence that *"opportunities have been investigated to retain significant trees has been explored and or inform the plan"*. There is no discussion in the Arboricultural Impact Assessment that *"opportunities have been investigated to retain significant trees"* as required under the SEAR's document. For example, the Arboricultural Impact Assessment also does **not** say it considered modifying the proposed development to retain a greater number of significant trees.
- The Arboricultural Impact Assessment does not include *"Tree Root Mapping"* of the significant trees to be removed as required under the SEAR's document. There are general observations provided, but no specific Tree Root Mapping of significant trees has been provided.

17) **"Waste Management"**. A number of residents have raised concerns about wastewater and water facilities in the area and I refer to these concerns.

- 19) **“Flood Risk”**. A number of residents have raised concerns about *“Flood Risk”*. In fact, I note that one of the nearby *“Granny Flats”* was required by Council to be raised above flood levels. I refer to the concerns raised by local residents.

3. Responses to EIS

I wish to make the following responses to the EIS which forms part of the SSD Application: -

- In the middle of page 8, the EIS claims that the subject site “*is **approximately** 400m walking distance from Lindfield Railway Station*” (emphasis added). As you are aware, the distance of 400m walking distance is an essential pre-requisite for the SSD Application to proceed. I consider that the Applicant should produce precise Survey Plans demonstrating compliance with the 400m walking distance from Lindfield Railway Station.
- Page 8 states that the proposed development has a “*architectural character inspired by the existing built character of Lindfield*”. I strongly disagree. There is little resemblance between the architectural character of the proposed development and the existing built character of Lindfield.
- As noted previously, I strongly consider that the proposed development cannot “*existing harmony with its surroundings*”, as held in the Court’s Planning Principle in Project Ventures. The proposed development would represent a significant overdevelopment in terms of bulk and scale compared to the adjoining existing developments and the likely future development under Council’s preferred set of Draft Planning Controls. Furthermore, I consider that the proposed development is not of a “*Good Design*” for the previous reasons in this submission.
- In the middle of page 10, the EIS acknowledges that “*42 trees are proposed to be removed within the site*”. This is a very significant reduction in Tree Canopy which is incompatible with the existing landscape character of the locality.
- At the bottom of page 10, the EIS refers to “*Visual and View Impact*”. I stress that the Visual and View Impact Analysis has **not** undertaken any proper assessment of such impacts when viewed from adjoining private residential properties. The assessment to date has only dealt with View Loss and Visual Impact from the public domain. There is no proper assessment of Visual Impact and View Loss from private properties.

- At the bottom of page 10 and the top of page 11, the EIS refers to “*Traffic, Transport and Accessibility*”, I however, reiterate that the TIA has not considered the following: -
 - i. Local residents express observations and concerns relating to adverse Traffic Impact generated by the proposed development. These concerns do not appear to be included in the TIA.
 - ii. The views of local residents should be given weight as they have personal experiences of the local traffic system, consistent with the Court’s decision in “*the Presbyterian Church*” judgement.
 - iii. The TIA has not considered the cumulative impacts of the proposed development and the other SSD Applications in the immediate locality. This is a further flaw of the TIA.

- The EIS at page 11 claims that “*the character and scale of the development is compatible with the existing and envisaged future surrounding context*”. I strongly disagree for the following reasons: -
 - i. It cannot be said that the proposed development is “*compatible with the existing*”. As previously advised, the proposed development cannot exist in harmony with the adjoining low density residential environment.
 - ii. For the reasons referred to in this submission, I strongly consider that there are numerous breaches of relevant Planning Controls.
 - iii. For the reasons referred to in this submission, I consider that the design of the proposed development does not meet the requisite standard of a “*high level of environmental amenity for any surrounding residential or other sensitive land uses*” as required under Issue 7 of the SEAR’s document. There are a number of adverse impacts which clearly result in a proposed development which is certainly not achieving the requisite “*high level of environmental amenity*” for the adjoining residential properties, particularly to the south, as required under the SEAR’s document.

- In the middle of page 16, there is reference to the SEAR's requirements, but I strongly consider that the proposed development does not comply with a number of requirements of the SEAR's document.
- In the middle of page 16, there is a reference to the "*Trafalgar Avenue right of way*". This right of way is also confirmed by the Survey Plan lodged in support of the proposed development. Again, part of the right of way is covered by a proposed landscaped pathway which would prohibit access over the right of way. The EIS clearly states that legal access over the right of way will be retained, but the Landscape Plans appear to prohibit such legal access over part of the Right of Way. As to whether the significant increase in vehicle traffic within the right way was contemplated when the right of way was registered, I defer to Legal Advice.
- In the middle of page 22, there is a reference to "*Environmental Heritage*". I am not a Heritage Expert but await the response of the Heritage Officer of Council as to whether the proposed development will have an adverse impact on the Heritage Conservation Area (HCA) and immediately adjoining Heritage Items. It could be fairly said that the proposed development is within an immediate locality which is characterised by high Heritage values. I await the response from Council's Heritage Officer as to whether the proposed development will have adverse Heritage impacts on the HCA and adjoining Heritage Items.
- At page 25, the EIS speaks of "*future character*" which includes a list of "*current SSDAs and DAs in proximity to the site*". It is obviously an important planning consideration to consider the likely Cumulative Impact of these adjoining applications. In fact, the EIS at page 32 acknowledges the importance of considering the Cumulative Impact on applications in the locality. On this point, the TIA has **not** considered the Cumulative Impact on Traffic in the adjoining streets arising from the proposed development and other proximate applications. The Cumulative Impact on other facilities, such as water and waste water, must also be considered.

- On page 33, the EIS makes comment in terms of “*alternatives considered*”. One alternative not considered is the adoption of Council’s preferred set of Draft Planning Controls which represents a more sensitive response to the immediate locality. On this point, I understand that Council’s preferred set of Draft Planning Controls will achieve the required amount of housing intended to be achieved under the TOD legislation.
- On page 38, there is a reference to the Clause 4.6 Request seeking variation of the breach of the Height of Buildings Standard. I strongly consider that the range of adverse impacts on the streetscape and adjoining properties, particularly to the south, do not justify support of the Clause 4.6 Request. Rather than the Clause 4.6 Request demonstrating positive Environmental Planning Grounds, the breaching portions demonstrate adverse negative Environmental Planning Grounds. Furthermore, the proposed development does not comply with the objectives of the Height of Buildings Standard due to the adverse impacts.
- In the middle of page 39, there is again reference to the removal of 42 trees, with 18 trees requiring “*tree sensitive construction and/or root investigations*” with only 7 trees recommended to be retained. This represents a significant diminution in Tree Canopy which is atypical of the immediate locality.
- At page 50 of the EIS, there is a reference to Clause 6.2 of KLEP 2015 and the proposed excavation associated with the proposed basement carparking. I have the following concerns relating to the proposed basement carparking levels: -
 - i. At various points of the proposed basement carparking levels, there is inadequate side setback to accommodate sufficient Deep Soil Landscaped Area.
 - ii. There is no assessment of the Air Quality Impact on adjoining properties resulting from proposed vents and openings associated with the proposed basement levels. I am concerned with the Air Quality Impact generated on adjoining residential properties arising from vents and openings in the proposed

basement levels, particularly on the properties to the south. The EIS has not considered this issue.

- iii. A further issue that has not been considered in the Acoustic Impact arising from the use of the basement levels and the use of the roof top Communal Open Space Area.
 - iv. Given that Issue 7 of the SEAR's document requires "*high amenity*" for adjoining residential properties, the adverse impacts referred to in this submission will not achieve the requisite "*high amenity*" for adjoining private residential properties.
 - v. The Acoustic Report does not assess noise from proposed mechanical plant and equipment, particularly in the basement levels, due to the fact that no details of mechanical plant have been determined at this stage of the proposed development. I raise strong concerns relating to the deferment of details of the proposed plant and equipment. Simply put, the proposed development is deferring assessment of potential Acoustic Impact on adjoining residential properties. To defer an essential matter is legally impermissible and the issue of amenity of adjoining residential properties is an essential matter given the SEAR's requirement under Issue 7 that adjoining residential properties must enjoy a "*high amenity*".
 - vi. The failure of the SSD Application to adequately assess various amenity issues such as Air Quality and Acoustic Impact arising from the use of the basement levels and roof top Communal Open Space cannot satisfy the Consent Authority that adjoining residents will enjoy a "*high amenity*" as required under Issue 7 of the SEAR's document.
- At the bottom of page 54, the EIS claims that "*the bulk of the proposed development, contributing to the height exceedance, has been transferred from the southeastern corner to the roof of the western side to enable greater solar access to the residents to the south*". This claim is wrong. Simply put, a portion of the proposed southern façade breaches the Height of Buildings Standard and there will be significant additional Overshadowing Impact into the rear yards of the adjoining

properties to the south. By any measure, the proposed development does not achieve “*high amenity*” for the properties to the south as required under Issue 7 of the SEAR’s document. There are also further adverse additional impacts generated onto the properties to the south.

- At page 55, there is again reference to the VIA prepared by the Applicant’s Consultant. I reiterate my previous comment to the effect that the VIA is inadequate as it does not properly address the View Loss and Visual Impact from private residential properties. There is no proper analysis of the View Loss and Visual Impact on these adjoining residential properties based on the Court’s Planning Principles in Rose Bay Marina and Tenacity. I have been advised by the adjoining owners that no consultant for the Applicant inspected their properties to obtain photographs and to undertake a detailed View Loss and Visual Impact analysis. Accordingly, the Applicant’s View Loss and Visual Impact analysis are inadequate. Without a proper analysis of Visual Impact and View Loss, one cannot make an assessment as to whether the adjoining residential properties will achieve “*high amenity*” as required under Issue 7 of the SEARs requirement.
- The proposed 4.5m setback to the western boundary along Trafalgar Avenue does not align with the established front setback. Calculations received indicate that the adjoining dwellings on the opposite side of Trafalgar Avenue have front setbacks of approximately 7.5m. The current proposed setback of 4.5m is not consistent with the prevailing front setback of the dwellings fronting Trafalgar Avenue, particularly on the western side of Trafalgar Avenue.
- In relation to Solar and Daylight Access to the proposed units, the EIS acknowledges that “*39 apartments receive no sunlight during mid-winter (17.7%)*”. The proposed variation of the minimum 15% design criteria is described in the EIS as “*minor*”. I strongly disagree. This is a significant breach of the Solar and Daylight Access criteria under the ADG. It represents a numerical breach of 18%. This is certainly more than a “*minor*” breach.

- Furthermore, for the reasons referred to previously, the rear yards of the adjoining properties to the south will suffer unreasonable Overshadowing Impact.
- It cannot be said, as claimed in the EIS, that the proposed units in excess of the 15% guide under the ADG which receive no sunlight will enjoy “*good residential amenity throughout the year*”. How can this be the case?
- Page 56 of the EIS states that the proposed development “*reduces mass adjacent to the existing properties to the south*”. This claim is wrong. Part of the southern façade of the proposed development breaches the Height of Building Standard, thus increasing mass facing the southern properties. I also note the adverse amenity impacts likely to be suffered by the adjoining properties to the south.
- At page 59, the EIS claims that “*The VIA assessed impact on public views using the 4 step test as established in Tenacity*”. This comment is clearly wrong for the following reasons: -
 - i. Tenacity relates to “*private views*” **not** “*public views*”
 - ii. The VIA does not make a proper assessment of “*private views*” under the 4 Steps in Tenacity.
- In terms of “*Environmental Heritage*” commencing at page 71, it could be fairly said that the location of the subject site within a Heritage Conservation Area and adjoining a number of Heritage Items reflect a locality of high Heritage sensitivity. Whilst acknowledging the increase in density reflected by the TOD legislation, I consider that a more sensitive response is necessary to ensure the requisite “*high amenity*” for adjoining properties as required under Issue 7.
- In the second paragraph on page 74, the EIS states that the proposed development has been “*carefully considered to ensure that potential impacts are suitably mitigated or minimised*”. I strongly disagree for the following reasons: -
 - i. A number of potential impacts have not been considered or not properly considered, such as Air Quality Impact from use of the basement levels.

- ii. There is also a lack of proper assessment of the potential Acoustic Impact arising from the use of proposed plant and equipment associated with the basement levels and the use of the proposed roof top Communal Open Space Areas.
- iii. The EIS has used the wrong test. The Applicant must demonstrate “*high amenity*” for adjoining residential properties as required under Issue 7. Rather than demonstrating “*high amenity*” for the adjoining residences, I consider that the proposed development generates adverse amenity impacts on adjoining properties.
 - Simply put, the potential impacts have not been assessed or have not been adequately assessed on a range of matters.
 - Furthermore, despite the claims in the EIS and the VIA, there has been **no** proper assessment of the proposed development in terms of Visual Impact and View Loss generated by the proposed development on adjoining private residential properties.

4. Conclusion

In conclusion, assuming that Council will shortly adopt its preferred set of Draft Planning Controls, I strongly consider that the SSD Application has failed to consider the Draft Amendments to KLEP 2015 and SEPP (Housing 2021). When one considers these Draft Amendments, the proposed 9-storey development is totally inconsistent and incompatible with the bulk and scale of the existing developments and/or likely future development under Council's Draft Amendments.

Irrespective of the first significant concern above, the proposed development also fails to properly address various SEAR's requirements. This failure to provide adequate information and to undertake a proper assessment as required under the SEAR's document represents a breach of the EP&A Regulation 2021 and State Significant Development guidelines

The EIS in the "*Conclusion*" section states that the proposed development will protect the "*Visual Privacy, Overshadowing, and Amenity of surrounding residential properties*". I strongly disagree. I consider that the proposed development generates a range of adverse impacts, particularly on adjoining properties to the south (and potentially other properties). These adverse impacts include, but are not limited to, the following: -

- i. Significant increase in Overshadowing Impact on the adjoining rear yards of the properties to the south.
- ii. Adverse Overlooking Impact from the proposed southern façade and roof top Communal Open Space into the rear yards of the adjoining properties to the south.
- iii. Adverse Visual Impact generated by the proposed breaching southern façade which is exacerbated by the fact that the residents of the properties to the south will be "*looking up at*" the proposed southern facade.

- iv. No assessment of the potential adverse Acoustic Impact from proposed plant and equipment, particularly in the basement levels, and the use of the proposed roof top Communal Open Space areas.
- v. No assessment of Air Quality Impact arising from use of the proposed basement levels on adjoining properties, particularly the adjoining properties to the south.

The claim in the EIS at page 80 that the proposed development “*will not result in adverse environmental impacts*” is, in my opinion, simply wrong. There is a range of adverse impacts as referred to above. Issue 7 of the SEAR’s document requires that the proposed development must demonstrate a “*high level of environmental amenity for any surrounding residential or other sensitive land uses*”. I consider that rather than achieving a high level of environmental amenity for surrounding properties, there will be significant adverse amenity impacts on surrounding properties, particularly to the south.

I also consider that there will be adverse Streetscape Impact on Trafalgar Avenue due to a combination of the inadequate proposed front setback and the excessive bulk and scale of the proposed front façade.

Thus, in its current form, I strongly consider the application is not worthy of approval.

If, however, the Applicant seeks to lodge additional information which was not part of the original notification, the community is entitled as a matter of procedural fairness to be given time to assess and comment on any additional information.

Yours faithfully,

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