

**SSD 6010 - One Residential Building (Student Accommodation) within  
Darling Drive Plot**

**Submission by:**

**Mr Don Smythe**

**Owner of Unit 1111, The Peak**

**2 Quay St**

**Haymarket NSW 2000**

**21 July 2013**

## Summary

The revised proposal now includes shadow diagrams in elevation for the first time. These should have been provided in the original EIS. This submission does not contest the accuracy of the new shadow diagrams. However, there are numerous factual errors and omissions in the statements by the proponent about the shadow diagrams.

The proponent (and apparently also the consent authority) still does not accept, much less take into account, the fundamental fact that many apartments within The Peak are indeed single aspect.

The proponent fails to take into account the existing shadowing of the west façade of The Peak.

The proponent appears unaware that the DCP guidelines refer to sunlight between 9am and 3pm; and not to periods before 9am or after 3pm.

We oppose the application on the grounds of overshadowing of neighbouring dwellings. In particular:

- the proponent still does not understand, much less take into account, the fundamental fact that many apartments within The Peak are single aspect
- the proponent fails to take into account the existing shadowing of the west façade of The Peak
- the DCP guidelines refer to sunlight between 9am and 3pm; and not to periods before 9am or after 3pm
- as a result of the combined effects of existing shadowing and the proposed development, some single aspect apartments on the west façade and the south-west dual aspect corner apartments of The Peak which currently receive less than 2 hours direct sunlight to habitable rooms and 50% of the private open space between 9am and 3pm on 21 June will suffer additional overshadowing.

## **1. Belated provision of overshadowing diagrams in elevation and consequent timing of this submission**

Contrary to the requirements of the Sydney Development Control Plan 2012 ("the DCP"), the overshadowing diagrams in the original EIS were in plan only (Appendix J, pages 74 - 80). The original EIS did not include any overshadowing diagrams in elevation. Therefore it was impossible to assess the extent of overshadowing of individual neighbouring dwellings within tall buildings, i.e. The Peak and The Quay. The elevation studies have now been belatedly provided during the Stage 2 SSDs exhibition phase and a meaningful public response is now possible for the first time.

For some reason, exhibition of the Stage 2 SSDs did not wait until the revised EIS was publicly available. Therefore although this submission is being made in response to the Stage 2 SSDs, it necessarily focuses on the shadow diagrams in the revised SSD 5878.

It is important to note that those elevation studies do flow through to each of the Stage 2 SSDs. As at the date of this submission, SSD3010, SSD6011 and SSD6013 are the only SSDs on exhibition for The Haymarket site.

## **2. Overshadowing Guidelines**

The normally applicable guidelines are those set out in the DCP. These state in Section 4.2.3.1 Solar access:

*(1) Development applications are to include diagrams in plan and elevation that show solar access to proposed apartments and the shadow impact on neighbouring development at hourly intervals between 9am, 12noon and 3pm on 22 March and 21 June. In some cases, Council may require hourly intervals.*

*(2) Proposed apartments in a development and neighbouring developments must achieve a minimum of 2 hours direct sunlight between 9am and 3pm on the dates indicated in provision (1) onto at least 1sqm of living room windows and a minimum 50% of the required minimum area of private open space area.*

*Note: This provision applies to at least 70% of the apartments in a development (in accordance with the requirements of the NSW Residential Flat Design Code 2002).*

*(3) New development must not create any additional overshadowing onto a neighbouring dwelling where that dwelling currently receives less than 2 hours direct sunlight to habitable rooms and 50% of the private open space between 9am and 3pm on 21 June.*

*(4) Where the consent authority considers that the level of daylight access to living rooms of proposed dwellings is inadequate, the applicant may be required to provide a Daylight Report. A Daylight Report is to include an analysis of daylight levels to the principal living room window of residential units and serviced apartments with and compliance with the DCP, unless advised by Council.*

It can be seen that the guidelines do not envisage any trade-off between direct sunlight during the period 9am to 3pm and direct sunlight outside that period.

### 3. Factual errors in statements by the proponent about The Peak and Market City

<b>Proponent statement</b>	<b>Location of statement</b>	<b>Actual fact</b>
<i>At mid-winter (22 June) there is some additional overshadowing impact to the Markey City podium and to the western elevation of The Peak Apartments after 2 pm. There is no additional overshadowing during the morning period, or the early afternoon.</i>	SSD5878 Response to Submissions and Amendments to Proposed Development Report, July 2013, Section 2.8 Overshadowing	That statement is misleading; in fact the podium additional overshadowing starts at 9 am and increases throughout the morning and early afternoon.
<i>At mid-winter (22 June) By 4pm, approximately 45-50% of the western elevation is in shadow, however the shadow has substantially moved off the northern façade such that only approximately 15-20% of the façade remains in shadow.</i>	SSD5878 Response to Submissions and Amendments to Proposed Development Report, July 2013, Section 2.8 Overshadowing	That statement is false, as can be seen from the diagram. The proponent has confused the western and northern facades.
<i>All apartments in The Peak tower will continue to receive solar access for more than 2hrs during midwinter.</i>	SSD5878 Response to Submissions and Amendments to Proposed Development Report, July 2013, Section 2.8 Overshadowing	The proponent fails to address the direct sunlight specifically between 9am and 3pm as per the DCP guidelines.
<i>It is also noted that the apartments on the northern and western elevations of the building are dual aspect.</i>	SSD5878 Response to Submissions and Amendments to Proposed Development Report, July 2013, Section 2.8 Overshadowing	Many apartments on the northern and western elevations are single aspect only. See detailed discussion in Sections 4 and 5 below.
<i>At mid-winter (22 June) As the afternoon progresses the length and extent of shadow increases and by approximately 3pm approximately 40-45% of the western and northern tower elevations are overshadowed. By 4pm, approximately 45-50% of the western elevation is in shadow, however the shadow has substantially moved off the northern façade such that only approximately 15-20% of the façade remains in shadow.</i>	SSD5878 Appendix G. Response to Public Submissions. Proponent's Response	That statement is false, as can be seen from the diagram. The proponent has confused the western and northern facades.
<i>The extent of additional overshadowing to the northern and western elevations of The Peak is considered appropriate and reasonable. All apartments in The Peak tower will continue to receive solar access for more than 2hrs during midwinter.</i>	SSD5878 Appendix G. Response to Public Submissions. Proponent's Response	The proponent fails to address the direct sunlight specifically between 9am and 3pm as per the DCP guidelines.
<i>It is also noted that the apartments on the northern and western elevations of the building are dual aspect.</i>	SSD5878 Appendix G. Response to Public Submissions. Proponent's Response	Many apartments on the northern and western elevations are single aspect only. See detailed discussion in Sections 4 and 5 below.

<b>Proponent statement</b>	<b>Location of statement</b>	<b>Actual fact</b>
Winter solstice - 22 June <i>9:00 - 1.00 NO IMPACT</i>	SSD5878 Appendix H. Supplementary Design Report, Section 6. Amendments Winter solstice - 22 June	That statement is false; in fact the podium roof additional overshadowing starts at 9 am and increases throughout the 9 am to 1 pm period (and continues to increase thereafter)
Winter solstice - 22 June <i>2:00 – The western edge of the Market City podium roof is overshadowed</i>	SSD5878 Appendix H. Supplementary Design Report, Section 6. Amendments Winter solstice - 22 June	Most of the western and northern podium roof is overshadowed.
Winter solstice - 22 June <i>3:00 – The Market City podium roof is overshadowed from the north west corner to the Peak Tower;</i>	SSD5878 Appendix H. Supplementary Design Report, Section 6. Amendments Winter solstice - 22 June	Almost the entire podium roof is overshadowed.
Winter solstice - 22 June <i>4:00 – The Market City podium roof is overshadowed from the north west corner to the in front of the north elevation of the Peak Tower;</i>	SSD5878 Appendix H. Supplementary Design Report, Section 6. Amendments Winter solstice - 22 June	True, and this has substantially been the case since 2pm.
Winter solstice - 22 June <i>4:00 – 15-20% of the Peak Tower northern elevation remains in shadow since 3pm;</i>	SSD5878 Appendix H. Supplementary Design Report, Section 6. Amendments Winter solstice - 22 June	Actually 45-50% of the Peak Tower northern elevation remains in shadow since 3pm.
Winter solstice - 22 June <i>4:00 – A portion of the Peak Tower north elevation (15-20%) now receives direct sunlight when compared to the maximum building envelope model – portions of which were previously overshadowed at 3pm.</i>	SSD5878 Appendix H. Supplementary Design Report, Section 6. Amendments Winter solstice - 22 June	The reduction compared with the maximum building envelope model can be seen from the diagram to be only about 5-10%.

#### **4. The Peak apartment aspects: data**

In SSD5878 Response to Submissions and Amendments to Proposed Development Report, July 2013, Section 2.8 Overshadowing, the proponent makes the assertion that "*It is also noted that the apartments on the northern and western elevations of the building are dual aspect.*"

That assertion is repeated without comment by the consent authority in SSD5878 Appendix G. Response to Public Submissions.

That assertion is totally false.

The Peak apartments belong to Strata Plan 54036. The apartment aspects are publicly available from NSW Land and Property Information (the former Land Titles Office). Here are their contact details:

[http://www.lpi.nsw.gov.au/about\\_lpi/contact\\_us](http://www.lpi.nsw.gov.au/about_lpi/contact_us)

For the convenience of the proponent, an extract from SP54036 appears at the end of this submission.

The attached extract is for levels 6, 7, 8, 9, 15, 16, 18, 19, 31, 32, 38, 39, 43, 44, 45.

Levels 10-14 (not attached) are the same as levels 9 and 15.

Levels 17 (not attached) is the same as levels 16 and 18.

Levels 20-30 (not attached) are the same as levels 19 and 31.

Levels 33-37 (not attached) are the same as levels 32 and 38.

Levels 40-42 (not attached) are the same as levels 39 and 43.

Because The Peak floor numbering system omits any number ending in '4', levels above level 13 do not correspond exactly to floor numbers in the Peak. This submission uses the level numbers as shown in the Strata Plan.

All levels of the Peak other than Levels 44 and 45 (the penthouse levels) contain apartments which are single aspect west or single aspect north, and many levels have both types. Only the corner apartments are dual aspect. (There are also apartments which have single south aspect or single east aspect, but they are not counted in this submission.)

Levels 6 and 7 each contain two apartments with single west aspect , i.e. 4 single aspect apartments.

Levels 8-15 each contain two apartments with single west aspect and two apartments with single north aspect , i.e. 4 single aspect apartments per level, giving 32 single aspect apartments.

Levels 16-38 each contain one apartment with single west aspect and two apartments with single north aspect, i.e. i.e. 3 single aspect apartments per level , giving 69 single aspect apartments.

Levels 39-43 each contain one apartment with single north aspect, i.e. 5 single aspect apartments.

In total there are therefore 110 apartments in The Peak with single aspects which are either west only or north only.

## **5. The Peak apartment aspects: discussion**

It is disappointing that at this late stage in the development application process, despite numerous site visits by the proponent, and despite the apartment aspects being publicly available from NSW Land and Property Information, the proponent is still unaware of the actual apartment aspects within The Peak.

It is also disappointing that at this late stage in the development application process, despite a site visit by the consent authority, and despite the apartment aspects being publicly available from NSW Land and Property Information, the consent authority allows a false statement by the proponent about apartment aspects to be included without comment in a report assembled by the consent authority.

In total there are 110 apartments in The Peak with single aspects which are either west only or north only.

On levels 8-15, which are lower levels which will experience the most overshadowing, the number of single aspect apartments per level is the highest.

110 apartments with single aspects which are either west only or north only is hardly a negligible number whose existence can be falsely denied by the proponent.

## **6. Existing shadowing of the west façade of The Peak on 21 June**

The proponent provides diagrams but fails to discuss the existing shadowing of the west façade of The Peak.

This submission discusses it now.

We refer to the shadow diagrams in SSD5878, Appendix H. Supplementary Design Report, Section 6. Amendments, Winter solstice - 22 June. This is not 21 June, but there would be no noticeable difference.

The south façade is not shown. On 21 June it would never receive any direct sunlight.

At 9am, 10am and 11am the west façade is totally in shadow due to other parts of The Peak building itself.

At 12pm there is still substantial existing shadowing on the west façade caused by the irregular shape of the west facade.

At 1pm the existing shadowing has been substantially removed, but not totally removed.

It can be concluded that some single aspect apartments on the west façade and some south-west dual aspect corner apartments currently receive less than 2 hours direct sunlight to habitable rooms and 50% of the private open space between 9am and 3pm on 21 June.

By 2pm the existing shadowing has been totally removed, but that is too late to achieve two hours of direct sunlight before 3pm.

## **7. Combination of the proposed development with existing shadowing of the west façade of The Peak on 21 June**

The proponent provides diagrams but fails to discuss the combination of the proposed development with existing shadowing of the west façade of The Peak.

This submission discusses it now.

At 9am, 10am and 11am the west façade is totally in shadow due to other parts of The Peak building itself.

At 12pm there is still substantial existing shadowing on the west façade caused by the irregular shape of the west facade.

At 1pm the existing shadowing has been substantially, although not entirely, removed. However, overshadowing of lower levels of the west façade by the concept proposal parameter plan shadows for the N,NE and SE plots has already started.

By 2pm the existing shadowing has been totally removed. However, overshadowing of the west façade by the SSDA4 and SSDA5 buildings has appeared and risen further up the west façade than the concept proposal parameter plan shadows for the N,NE and SE plots, which is still present.

At 3pm, the proponent states correctly that 45-45% of the western façade is overshadowed by the SSDA4 and SSDA5 buildings.

It can be concluded that, as a result of combination of the proposed development with existing shadowing of the west façade, some single aspect apartments on the west façade and the south-west dual aspect corner apartments which currently receive less than 2 hours direct sunlight to habitable rooms and 50% of the private open space between 9am and 3pm on 21 June will suffer additional overshadowing. It is beyond our skills to count the number of such apartments. We note that the proponent has made no attempt to do so.

Rather than counting the number of units which will not meet the DCP guidelines, the proponent attempts to trade-off direct sunlight at 4pm for lack of direct sunlight during the period 9am to 3pm. There is no provision in the DCP guidelines for such a trade-off.

## **7. Our submission**

We oppose the application on the grounds of overshadowing of neighbouring dwellings. In particular:

- the proponent (and apparently also the consent authority) still does not accept, much less take into account, the fundamental fact that many apartments within The Peak are indeed single aspect.
- the proponent fails to take into account the existing shadowing of the west façade of The Peak
- the DCP guidelines refer to sunlight between 9am and 3pm; and not to periods before 9am or after 3pm
- as a result of the combined effects of existing shadowing and the proposed development, some single aspect apartments on the west façade and the south-west dual aspect corner apartments of The Peak which currently receive less than 2 hours direct sunlight to habitable rooms and 50% of the private open space between 9am and 3pm on 21 June will suffer additional overshadowing.