SSD 6010 – One Residential Building (Student Accommodation) within Darling Drive

Submission by:

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31 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 of 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

Proponent statement	Location of statement	Actual fact
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.	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.
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.*	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.
All apartments in The Peak tower will continue to receive solar access for more than 2hrs during midwinter.	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.
It is also noted that the apartments on the northern and western elevations of the building are dual aspect.	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.
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.*	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.
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.	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.

Proponent statement	Location of statement	Actual fact
It is also noted that the apartments on the northern and western elevations of the building are dual aspect.	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.
Winter solstice - 22 June *9:00 - 1.00 NO IMPACT*	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 *2:00 – The western edge of the Market City podium roof is overshadowed*	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 *3:00 – The Market City podium roof is overshadowed from the north west corner to the Peak Tower;*	SSD5878 Appendix H. Supplementary Design Report, Section 6. Amendments Winter solstice - 22 June	Almost the entire podium roof is overshadowed.
Winter solstice - 22 June *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;*	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 *4:00 – 15-20% of the Peak Tower northern elevation remains in shadow since 3pm;*	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 *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.*	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

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.

Impact on views at the Peak Apartments

1. Objection

We oppose the application on the grounds of inequitable view sharing between the proposed development and The Peak Apartments. In particular:

- the views from some, especially northerly, single aspect apartments will be to solid walls. This does not comply with the guidelines of the Sydney Development Control Plan 2010 section 4.2.3.10 to provide a "pleasant outlook" from all apartments and to give due consideration to views and outlooks from existing residential development when making new proposals
- the proponent and the consent authority do not yet appear to grasp that many apartments in The Peak are single aspect and do not have dual aspect views
- the proponent is maximising view opportunities for its own development at the expense of existing developments and this is inequitable
- while paying lip service to the possibility of additional view sharing, the proponent has not yet offered any concrete solutions as to how this can be achieved

2. Summary

Views from the north and west elevations of The Peak apartments will be severely curtailed by the proposed Darling Harbour Development, in particular the developments on the SW, SE and NE plots.

All N and W levels that currently have views will be adversely affected but the greatest impact will be on those lower level apartments, which still have good, open expansive views, even if not of the water and mid-level apartments, which at the moment have excellent water views and an open outlook. Many north facing central apartments and some west facing central apartments, which have only one aspect, will be badly affected. They are being asked to trade open and water views for the prospect of looking at solid walls.

At the highest levels, residents are being asked to accept an overdeveloped, overcrowded foreground, while, for the most part, retaining good water views of Darling and Sydney Harbour and the Anzac Bridge in the middle and in the longer distance.

Little effort has as yet been made to maximise view sharing between the new and existing developments and no concrete plans about how much view sharing will be possible and how it will be obtained is as yet forthcoming.

3. Guidelines

Guidelines regarding the impact of a proposed development on outlook and views on existing and future residential amenity, set out in the section 4.2.3.10 of the Sydney Development Control Plan (DCP)2010, state:

(1) Provide a pleasant outlook, as distinct from views from all apartments
(2) Views and outlooks from existing residential development should be considered in the design of the form of the new development

The DCP defines outlook as "a short range prospect, such as building to building" while views are defined as "more extensive or long range to particular objects or geographical features."

4. The current position

The affected apartments at The Peak are situated on the N and W facades of the building and only these apartments will be discussed here. They consist of both dual aspect and single aspect apartments. The statement in the proponent's SSD5878 response to Submissions and Amendments to Proposed Development Report July 2013 Section 2.8 that "apartments on the northern and western elevations of the building are dual aspect" is incorrect. There are 110 single aspect apartments on these elevations and views from many of them will be severely disrupted by the proposed development.

All the affected apartments from about level 13 to level 45 currently have extensive, long range views towards Darling Harbour, Sydney Harbour and the Anzac Bridge/Rozelle Bay.

In their Design Report and Architectural Drawings Part 1 Appendix B p9 of SSD 6011, Denton Corker Marshall state: "the towers present to Darling Harbour and the CBD skyline and take maximum advantage of the natural amenity." Just as Denton Corker Marshall proposes orienting the towers in the new development to take maximum advantage of the site's very desirable and sought after views, the orientation of The Peak apartments was designed to take advantage of these same desirable views. Thus, the balconies and living areas of the north facing apartments at The Peak , whether they be NW, N only or NE aspects, have been designed to maximise the ***northerly*** view over Darling and Sydney Harbours. City skyline or Ultimo/Pyrmont are secondary views and are not readily seen from the living areas of the single aspect north facing apartments. Good northerly views can be currently obtained from about Level 17 but even for several levels below that, there are pleasant and expansive views with some water glimpses.

The central west facing single aspect apartments are oriented to the **north-west** and their balconies and living areas face excellent views over Darling Harbour, Anzac Bridge and Rozelle Bay from about Levels 13 or 15. In these apartments there is a side window in the living room which is oriented SW and takes in parts of Haymarket towards Sydney University. This , however, is not the principal orientation of these apartments.

The orientation of the SW dual aspect apartments is to the **west** to take in Anzac Bridge, Rozelle Bay and the expansive district view to the west. From the balcony only, there are northerly good views of Darling Harbour from about Level 17.

5. The effect of the new development

Denton Corker Marshall also state at p23 of their Design Report that "the massing and articulation of the towers maximises outlook and views." They are, of course, talking about their own proposed towers.

Peak residents argue strongly that the advantages of the new amenity are at the expense of their existing amenity. It is, however, impossible to discuss the effect of the new development on views at The Peak on a plot by plot basis. It is the overall effect of the whole development that has the cumulative adverse impact.

Judging by the photomontages provided by the proponent, the effects of this development on property at The Peak are:

- northerly views of Darling and Sydney Harbours will be lost to all north facing apartments below at least level 31 due to the construction of buildings on the SE and NE plots
- north facing single aspect apartments below about level 31 will look out onto the solid walls of the new buildings. To go from expansive Darling Harbour views to this restricted view cannot be compliant with the intention of section 4.2.3.10 of the DCP. It is difficult to envisage from the montages provided how any view sharing for these centrally located apartments can be achieved under the current proposals

- north facing apartments above level 31 may have some views of the western side of Darling Harbour and Sydney Harbour but the current expansive view will be lost due to the construction of the proposed 40 storey building on the NE plot
- north-west and north-east facing dual aspect apartments will lose Anzac Bridge views up to about level 25
- west facing central single aspect units will lose all their Darling Harbour and Sydney Harbour views below about level 31. Their orientation will also mean their dominant view will be to the solid walls of the new buildings at least to about level 31, although they will retain some westerly views over Ultimo/Pyrmont.
- SW dual aspect apartments will retain their views over Anzac Bridge and Rozelle Bay above level 25 but will lose all Darling Harbour views below level 31. Even above level 31, views to the NW and N will be at least partially impeded by the existence of the 40 storey buildings on the SW and NE plots. Good views of Ultimo/Pyrmont and to the south towards Botany Bay will be retained.

6. The Proponent's Response to Loss of View Objections in SSD 5878

The proponent's response to objections on the development's impact on views is found at an amended Appendix L to SSD 5878.

The proponent quotes, under section 2.4 p14 from the Sydney Regional Environment Plan (Sydney Harbour Catchment) 2005 *that "**The public good has precedence over the private good whenever and whatever change is proposed for Sydney Harbour or its foreshores."(the proponent's highlighting in bold).***

This is all very well, but as previously stated in submissions to SSD 5878, we are not talking about the public good here. The public will not benefit from a forest of high rise buildings at the southern end of Darling Harbour. We are talking about one private good taking precedence over another private good. The proponent intends to profit from the sale of a very large number of highly desirable apartments with excellent and expansive views at the expense of an already existing apartment block which had, but will no longer have, such views.

It is noted that in relation to the impact on views at The Peak, the proponent comments at p43 of Appendix L that "future detailed development applications (Stage 2 DAs) will need to demonstrate consistency with the objectives and controls. It is not intended for the controls to be prescriptive, but rather provide for flexibility and recognise that there are alternative solutions (supporting creativity and innovation) that can still achieve the overarching objectives." The proponent further states on p43 of Appendix L "There are therefore opportunities at the detailed design stage of individual buildings in The Haymarket precinct for further consideration of view sharing to be made."

At this point, these declarations are very vague and no indication of the extent of view sharing and how this will be achieved is forthcoming.

7. Conclusion

Peak residents remain concerned that many apartments, which currently have very good views, will now be the subject of vastly inferior views . In comparison to the views to be afforded to residents of the new development, the view sharing arrangements are simply inequitable.

There is little confidence, in view of statements that all N and W facing apartments at The Peak are dual aspect, that the proponent and the consent authority have appreciated the layout and orientation of The Peak and thereby the cumulative effect that the whole development will have on its residents. This is despite visits by both parties to a number of Peak apartments.

SSD 6010 does not offer any new creative ideas or opportunities for view sharing. The residents of The Peak await with interest to hear what the proponent will offer in subsequent Stage 2 DAs, to achieve equitable view sharing arrangements between the new development and The Peak apartments.