

THE PADDINGTON SOCIETY INC
FOR COMMUNITY AND HERITAGE
EST 1964

OBJECTIONS including 5 Appendices

15 March 2026

TO 142-148, 160 OXFORD ST, 13 GIPPS ST, 6 SHADFORTH ST
STATE SIGNIFICANT DEVELOPMENT SSD 97528708

From The Paddington Society

Our objections are organised under the Design Quality Principles found in Schedule 9 of the Housing SEPP and are mandatory considerations in the assessment of this SSD, as set out in SEARs Part 6

Built Form and Urban Design:

Demonstrate how the proposed built form (layout, bulk, scale, separation, setbacks, interface and articulation) addresses and responds to the context, site characteristics, streetscape and existing and future character of the locality.

We find the applicant's response to these Principles in the Design Report, the applicant's Statement of Heritage Impact, EPBC Self Assessment and Visual Impact Assessment, all to be inadequate, as explained below.

1. Context & Neighbourhood Character (see also SEARs Part 8 and Part 22)

- This precinct is the most **historic precinct** in Paddington, with small lots, narrow streets and early 1840s workers sandstone terraces and timber cottages. The proposal does NOT support the precinct's character as it is a much larger development which does little to break down its scale such as genuine façade modulation, upper level setbacks, and storey step-downs adjacent to its 2 storey neighbours in Shadforth St.

- The proposal also does NOT fit into its **Oxford St context**. The Design Report points out all taller structures along Oxford St but fails to note that most of these are 3-6 storey height public or institutional buildings (Town Hall, Post Office, COFA, St Vincents – higher levels of last 2 are well set back) which would become subservient in scale to this 8 storey residential proposal, losing the architectural hierarchy of the heritage High Street.

The applicant's Design Report notes that the Clock Tower to the Town Hall is 32m high, but the application drawings show an average proposed building **height of 31.5m** (max 32.6m), so that this proposal will compete with the Town Hall which should be the dominant element of Oxford St, but is almost 50m wide here vs the Town Hall's slender spire.

The Telstra (25.8m high) and Dinosaur Design (22.94m high) buildings at 361-379 and 339 Oxford St respectively are NOT exemplars to be used to justify the height of the proposal – they are lower, narrower, are detracting in the HCA and show how disruptive the proposal would be in its context. The **heritage DCPs** of both Councils were expressly created to prevent this height after the 1960s.

These DCPs should be considered in this application, including B4.2.1 Built Form, B4.2.2 Environmental Impacts, B4.2.4 Apartment Mix, B4.2.5 Car Parking, C1.2.1 The Significance of the Paddington HCA, C1.2.4 Desired Future Character, C1.3.6 Residential Flat Buildings, C 1.3.8 Commercial buildings including shops, Commercial Development in Oxford St, C 1.3.13 Infill

Development, C1.4.5. Building height, bulk, form and scale, C1.4.7 Excavation, C 1.4.8 Private Open Space, C1.5.10 Gardens and Trees, C1.6.1 Kerbs and Gutters.

- It should be noted that almost all of the remaining HCA lots in Paddington are zoned R1 or R2 and will NOT be able to be developed under the L&MR controls but will instead be developed under Paddington and City of Sydney heritage DCPs where the **desired future character** of the HCA is NOT 8 storeys, but rather 2-3 storeys. Hence, this proposal will always 'stick out' and erode the HCA character, just as a few 60s and 70s residential towers do from previous eras.
- Current and recent infill development at Former Royal Women's Hospital, 432-440 Oxford St, and 60 Oxford St have all been **masterplanned** and guided by the Woollahra DCP (see Ch G7 for the Hospital site in particular), in order to properly knit the development into the local heritage context. We ask that the same attention is given to this site. For an example of masterplanning for this site, refer to *Appendix 4*.
- The location of the proposal directly opposite the gateway to the nationally listed **Victoria Barracks** makes the 8 storey height particularly insensitive. The sandstone gateway and bounding walls are only c 3m high, and should NOT be overwhelmed by this development. The proposal is on axis with the main Barracks building and would be a very prominent intrusion over/through the trees viewed from that building. The EPBC Self Assessment is inadequate as it does not explore this view; we ask that the Department engage an independent heritage consultant to assess the heritage impact on this very significant site. See images in *Appendix 2*

2. Scale & Built Form (see also SEARs Part 6 and Part 8)

- The requested **Clause 4.6 height variation** of 4m above the already-generous LMR provisions of 28.6m, and a huge 22.1m or 210% variation above the Woollahra LEP height of 10.5m, should NOT be granted, and the height should be reduced for compatibility with the HCA. Refer to *Appendix 5* for our detailed objection to this request.
- *An important factor in the significance of Paddington is its exceptional unity, encompassing scale, character, history, architecture and urban form* (Woollahra DCP 2015 C1.2.1)
The significance of the Paddington HCA largely derives from the consistency of built form and scale which attest to its late nineteenth century development. 8 storeys + 4 roof terraces is not a compatible scale with the 2 storey heritage and contemporary buildings adjacent. The proposal, especially since located on the ridgeline, will visually dominate and loom over these properties, eroding the existing village character. This **scale mis-match** has extensive amenity impacts. See *Appendix 2* for images
The street **façade setback** of c 1.5m (not dimensioned) at Level 5 does little to modulate the building bulk – note that **Woollahra DCP 2015 amendment 37** clause B4.2.1 C2 requires a min of 3m setback above the prevailing wall height for housing in accessible areas. Though strictly speaking, the DCP does not apply in State Significant projects, it is a carefully considered guide as to good design and desired future character.
- The applicant's Design Report p. 123 states that *Mature street trees along Oxford Street will obscure the bulk & scale of the development*. These **street trees** are on average 16m high, will be heavily pruned and are deciduous, so **cannot be relied on to obscure the bulk and scale**, and are themselves at risk due to the construction of the proposal. For many months the trees will provide no screening, and they should NOT be a consideration in visual assessment. See images in *Appendix 2*, and *Appendix 3* for Landscape Advice.
- A building width of c 48m is also NOT a compatible scale in a precinct with **lot widths** along Oxford St of c 4-6m. The proposal's 8 storey façade does very little to articulate the long façade

into smaller scaled parts – see South Elevation on DA401, with only a slight curved inlet at mid façade. The result is a monumental building inappropriate for its function and context.

- We note that the proposal's built form is similar to the 70s era **Edgecliff Centre** building (which is 53m long, 30m wide, 28m to parapet high) located on the Edgecliff ridge, and of a commercial/institutional scale completely inappropriate to a residential building in this fine-grained HCA. See *Appendix 2*.

3. Density

- This part of Paddington is already very dense at more than 52 dwellings per hectare (UNSW thesis 'Terrace Housing', Liam Williamz, 2013). The **extra households** proposed over the existing households on the site are **only 8** (40 new vs 32 existing), which does NOT justify the severe impacts on the HCA of this proposal.
- Densities in the area will NOT tangibly increase in line with this proposal as the applicant suggests, as most of the area is R2 and R1 zoned and so is not subject to the LMR area uplift for RFBs. There may be a small increase due to low rise infill development, secondary dwellings & attic conversions.

4. Sustainability (see also SEARs part 15)

- The proposal for 4 basement levels is excessive. Excavation produces much material to be disposed of, and poses risks to street trees, water table levels, neighbouring footings, air quality and noise, and should be limited.
- In this accessible location, there should be fewer cars in fewer basements. As a guide, Woollahra DCP 2015 requires maximum parking rates in inner accessible areas that equates to maximum 35 spaces plus 4 visitor spaces for the proposed apartment mix, in contrast to the proposed spaces of **83 spaces**, also well in excess of the minimum of 50 spaces required in Chapter 2 of the Housing SEPP.

5. Landscape (see also SEARs Part 14)

- The London Plane street trees in Oxford St will be affected by the zero front southern setback of the building and basements. These trees provide significant amenity to both future occupants and the wider neighbourhood. DPHI need to engage an independent arborist to verify that the applicant's Arborist report re these trees is valid. Tree root mapping is required.

The trees are of high significance for their part in the **Approach Avenue** to Paddington's Civic Precinct – ie Oxford St from "The Intersection" to Paddington Town Hall. This Avenue also includes the Oxford St Reserve.

Street trees (pruning and root damage), Victoria Barracks walls (overlooking) and the Reserve (overshadowing) will be negatively impacted by the proposal, while the uncharacteristic bulk and scale of the proposal will destroy the highly significant and consistent 2-4 storey Avenue character.

See Landscape Advice *Appendix 3*

6. Amenity (see also SEARs Part 7)

- Consideration of separation distances for **neighbour privacy** the Apartment Design Guide (ADG) is mandatory, and especially important in this tight urban landscape. Yet, the separation between proposed balconies and the POS of 8 Shadforth St and 23-27 Gipps St is only 9.8m (p. 62 Design Report) and should be 21m. (18m + 3m for change of zone.) 10-12 Shadforth St will all have a less than 21m separation of proposed balconies to Private Open Spaces. Similarly, separation between balconies and windows of 5-7 Shadforth St is only 13m, and should be 21m. The applicant's claim

that solid balustrades mitigate **privacy** concerns is NOT valid as the 1m balustrade height does not preclude overlooking.

- Winter **solar access** from 9am to noon will be lost to Oxford St Reserve and the walls to Victoria Barracks – thus diminishing the Barracks’ heritage significance and the public’s enjoyment of the Reserve, a popular seating spot in winter.
- **Traffic:** the movement of 83 cars in and out of the proposed units into narrow Shadforth St (12 houses) will cause a large upswing in noise, lights, and congestion which will reduce the livability for the current residents. In addition, the applicant advises that construction trucks (30/day for 26+ months) will need to access the site via narrow Glenmore Rd, Liverpool and Shadforth Streets– causing intense congestion to an extensive area of the HCA, including “The Intersection” retail.
- We ask that this and other objections can be raised in a **Public Hearing** in front of the Independent Planning Commission, to allow the community a voice.

7. **Safety** (no comment)

8. **Housing Diversity & Social Interaction (see also SEARs Part 18)**

- The Paddington Society values the diversity of our community and supports more affordable housing in our area.
- But this proposal means a **loss of genuinely affordable housing** since 10 ‘affordable’ units will replace 27 existing studios and 1-bedroom units.
To benefit from the Affordable Housing bonus, the developer only needs to discount the rent of the 10 affordable units by 20% from the market rate – this rent will still be unaffordable for the vast majority of eligible renters.

All **Studio and 1 bedroom units will be lost** – only 2 and 3 bedroom units will be provided, attracting non-affordable rents for many. As a guide, Woollahra DCP 2015 Amendment 37 Clause B4.2.4 requires a **maximum of 20% 3 bedroom plus units** in an accessible housing development, yet this proposal has 67.5% 3 bedroom units – it seems that for this proposal market forces for larger units override the supply of a unit mix that promotes affordability and social diversity.

Moreover, the applicant has used the Affordable Bonus to build 2 more floors of 8 **luxury apartments**, half with rooftop terraces of c 100m² complete with pools and Harbour views, at 180m² in size, ie double the ADG size standard for 3 bedroom units (90m² + 12m² balcony).

- A Social Impact Management Plan, at the least, should be required to manage the current tenants’ eviction and re-housing in a humane manner.
- *The full extent of the in-fill affordable housing bonuses may not be achieved on all sites, due to site constraints and local impacts. The in-fill affordable housing bonuses should not be treated as an entitlement. DAs that propose in-fill affordable housing will be subject to merit assessment by the consent authority. (DPHI, Infill Affordable Housing Practice Note, 2023, p. 12)*
The Affordable Housing **Bonus should NOT be allowed** for this development, as the heritage and amenity impact of the extra storeys is too high, while the social benefit is too low.

9. **Aesthetics** (see Principle 2)

Conclusion

The assessment of this DA is ultimately an assessment of the value of the Paddington Heritage Conservation Area, rather than an assessment for just 8 additional dwellings. The HCA value has been enshrined in various heritage protections since the 1960s and in the evolution of both Council's heritage DCPs to control development. This protection continues to apply to the R1 and R2 zoned areas.

The Paddington Society and the wider community find the HCA to have enormous value – historically, architecturally and socially – indeed Paddington's urban form has become an exemplar of low rise, high density living.

Yet this DA will cause enormous damage to the HCA, with its incompatible bulk and scale and loss of neighbours' amenity, while providing very little new housing and a significant net loss of genuinely affordable housing.

We request that the Department NOT rely on the applicant-engaged heritage consultant, but rather commission their own expert heritage consultant to reliably ascertain the heritage impact both to the HCA and to the Barracks, to fulfill their obligations under the Heritage Act.

We ask that the Department refuse the Application. See *Appendix 1*



Esther Hayter President The Paddington Society M: 0411 109 770 E: hayters@bigpond.net.au

Appendix 1: Letter from DPHI to Jason Li re LMR and HCAs

Appendix 2: Images

Appendix 3: Advice from Landscape Architect

Appendix 4: Planning Principles

Appendix 5: Particular Objection to Clause 4.6 Variation to Height

Highlight added

OFFICIAL

Department of Planning, Housing and Infrastructure



24 February 2025

Subject: Advice application around Low and Mid-Rise Policy

To Jason Li MP,

The Low and Mid-Rise Policy changes allow Development Applications (DAs) to be made for dual occupancies, townhouses, terraces and small and mid-rise apartment buildings within 800 metres of 171 town centres, train and light rail stations across Greater Sydney, the Hunter, Central Coast and Illawarra regions.

The policy applies new low-rise planning controls to R1 and R2 general and low density residential zones, and new mid-rise planning controls to R3 and R4 medium and high density residential zones. Within R1 and R2 zones this includes that DAs can be made for townhouses, terraces, dual occupancies, and small apartment buildings. In these zones, a maximum height of 9.5 metres is permitted with a maximum FSR of 0.7:1 for terraces and townhouses, and FSR of 0.8:1 for small apartment buildings.

The policy applies in Heritage Conservation Areas (HCAs) but does not apply to State or local heritage items. It remains the case that any DA proposal, including changes to existing buildings, must maintain or enhance the heritage value of the HCA in order to be approved.

Nothing in these reforms mandates that council must approve a DA. The council LEP & DCP still apply for all issues beyond the non-discretionary standards. Clause 5.10 of the LEP relating to Heritage Conservation continues to apply, is not overridden by the policy, and must be considered when assessing DAs in HCAs.

Projects will not be automatically approved. Council must still conduct a merit-based assessment. Nothing stops council from assessing heritage significance as well as matters like building materials and colours, front and side setbacks, amount and location of landscaping and gardens, streetscape character, location of car parking, subdivision pattern, and the bulk and scale of buildings. These are all matters that would be part of a merit assessment and if the impact of new development was unacceptable, council can refuse a DA on the grounds of unacceptable heritage impact. If the DA meets all the standards and there are no unacceptable impacts, then it should be approved.

OFFICIAL

OFFICIAL



Department of Planning, Housing and Infrastructure

The Malvern Hill Estate Heritage Conservation Area is zoned R2 low density residential and currently has a height limit of 8.5 metres. The Low and Mid-Rise policy will mean that within the area of the Estate that the policy applies to, landowners will be permitted to lodge DAs for townhouses, terraces and small apartment buildings, to a maximum height limit of 9.5 metres and would be required to demonstrate that the new development would maintain or enhance the heritage value of the area.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Monica Gibson".

Monica Gibson

Deputy Secretary Planning, Land Use Strategy, Housing and Infrastructure
Department of Planning, Housing and Infrastructure

APPENDIX 2: IMAGES



South elevation Oxford St showing scale mis match with context, Design Report



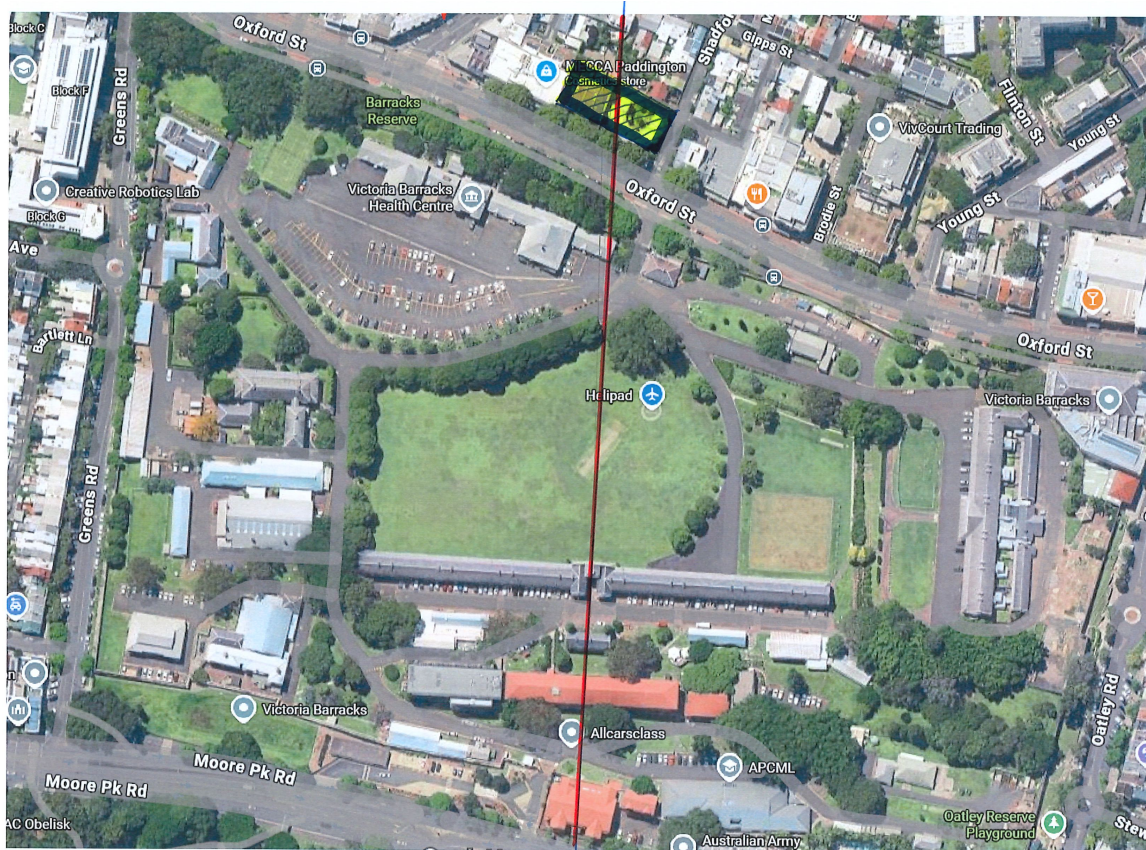
East elevation Shadforth St & Victoria Barracks showing scale mis match with context, Design Report



North Elevation showing scale mis match with context, Design Report



South Elevation of Edgecliff Centre dominating the neighbourhood
Similar in massing to the proposal



Aerial View of Victoria Barracks showing the direct relationship of the Main Building with the proposal, from GBA EPBC Self Assessment, axial line added



Cross Section showing view of proposal from Main Barracks building – the upper 2-3 storeys will be visible, and more in winter from GBA EPBC Self Assessment, blue view line added



Figure 4.9 above from GBA EPBC Self Assessment shows visual impact of proposal from Main Barracks building: upper 2-3 storeys will be visible and will dominate the Parade Ground, an area of exceptional heritage significance.

The Proposal will be much more prominent in winter due to deciduous trees – see above image to right

APPENDIX 3 LANDSCAPE ADVICE

Mixed use development with infill affordable housing

160 Oxford Street SSD 97528708 - Plane tree impacts

To: *The Paddington Society*

9th March 2026.

Thank you for asking me to comment on the impact on the Plane trees resulting from the above Development.

The Plane trees along the north side of Oxford St, labelled TO1-TO6, are of **high significance for their civic value in the landscape.**

These trees are an essential part of the Approach Avenue to the Paddington Civic Precinct of the Town Hall, heritage Post Office, historic private estates, and exceptional Reservoir Park. Not only is this the only civic scale arrival into Paddington, but it is also layered in heritage significance for Cadigal People of the First Nation People as part of the main route to South Head.

The scale of the road, the rising slope, the strong row of mature plane trees, together with the wide south grass area with groves of mature Jacaranda trees bounded by a heritage sandstone wall is a remarkable example of Sydney's civic heritage.

It is recommended that Appendix 1 – Tree Data Schedule, be amended so that trees, TO1 to TO6, are assessed as HIGH landscape Significance according to Criteria 1, 4,5,6, of the six criteria listed.

High Significance in landscape (Criteria 1, 4, 5, 6)

- The tree is in good condition and good vigour. The tree has a form typical for the species.
- The tree is visually prominent and visible from a considerable distance when viewed from most directions within the landscape due to its size and scale and makes a positive contribution to the local amenity.
- The tree supports social and cultural sentiments or spiritual associations, reflected by the broader population or community group or has commemorative values.
- The tree's growth is unrestricted by above and below ground influences, supporting its ability to reach dimensions typical for the taxa in situ - tree is appropriate to the site conditions.

Justification for High Significance

Part of the civic scale arrival into Paddington (Criterion 4)

Heritage significance for Cadigal People of the First Nation People as part of the main route to South Head. (Criterion 5)

The width and scale of the road, the rising slope, the strong row of mature plane trees, together with the wide south grass area with groves of mature Jacaranda trees bounded by a heritage sandstone wall is a remarkable example of Sydney's civic heritage. (Criteria 4,5,6.)

Concerns about the Impact of the Proposed Development

The proposed development will impact the health of this row of trees. For example, the first 5 storeys of the building are effectively on the Oxford St site boundary and are proposed to have significant alteration to the branches from TO2 – TO5. This will alter the form of the trees markedly. (Criterion 1 for High Significance)

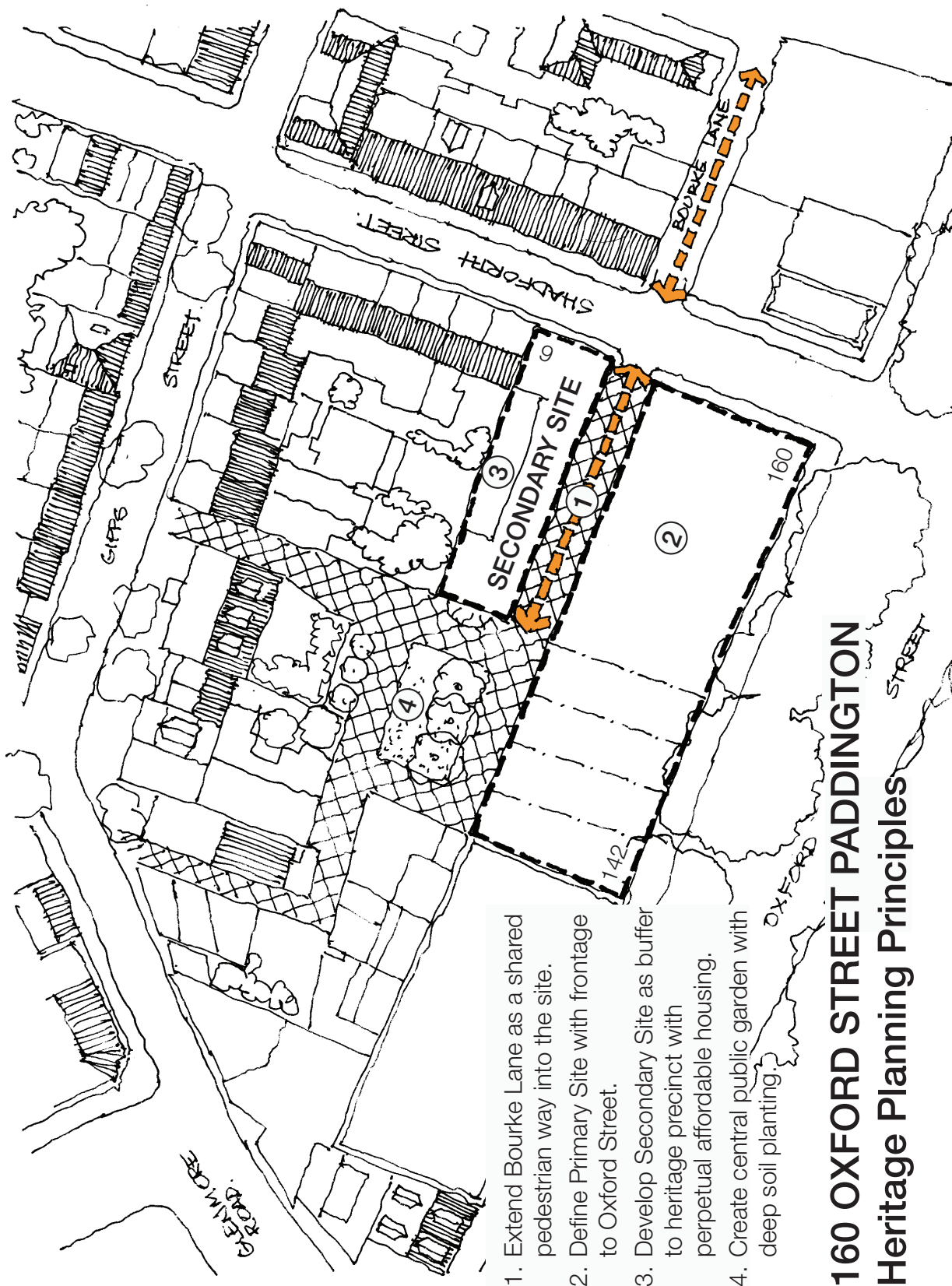
As well, all the trees on the North side of the avenue require undisturbed deep soil to maintain their health and form. Locating 4 basement levels of services and carparking directly on the Oxford St boundary will damage the root system and cause branch dieback. Along with the branch pruning this will alter the shape of the trees, so essential for their avenue status.

Yours sincerely,

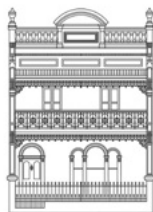
Dr Helen Armstrong AM, FAILA,
Emeritus-Professor in Landscape Architecture, Queensland University of Technology

APPENDIX 4: Planning Principles that could be applied to the site to mitigate heritage impacts & improve amenity of the neighbourhood

showing importance of site masterplanning before detailed design,



by architect Bill Morrison



THE PADDINGTON SOCIETY INC
FOR COMMUNITY AND HERITAGE
EST 1964

Objection Appendix 5

GROUND FOR REFUSAL OF THE CLAUSE 4.6 VARIATION APPLICATION

Development Application SSD 97528708

142–148 & 160 Oxford Street, 13 Gipps Street, 6 Shadforth Street, Paddington NSW

Submitted by The Paddington Society | March 2026

Appendix 5 to the Objection of The Paddington Society to SSD 97528708

1. Introduction

This document submits that there are no grounds for the Independent Planning Commission (IPC), nor the Department of Planning, Housing and Infrastructure (DPHI) to be satisfied that the requirements of Clause 4.6 of the Woollahra Local Environmental Plan 2014 (WLEP 2014) have been met by the Application for a Variation to Clause 4.3 Height of WLEP 2014 included in the Development Application SSD 97528708 (the DA).

SSD 97528708 proposes an 8-storey mixed residential and ground-floor commercial development at 142–148 and 160 Oxford Street, 13 Gipps Street and 6 Shadforth Street, Paddington NSW (the Site). The Site is located within the Paddington Heritage Conservation Area (Paddington HCA), a locally listed heritage conservation area of exceptional and outstanding significance, and sits directly opposite the perimeter wall, sandstone gateway and guardhouse of Victoria Barracks — a Commonwealth Heritage Listed precinct registered under the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act).

The applicant has lodged a Clause 4.6 Variation Request (the Variation Request) seeking to exceed the height of buildings development standard under Clause 4.3 Height of WLEP 2014. As explained in Section 3 of this document, the true extent of the variation, measured against the applicable LEP standard of 10.5 metres, is approximately 210% — not the 7% figure presented in the Variation Request, which is calculated against a different baseline in another instrument.

The Society submits that the Variation Request fails to satisfy either of the two mandatory conjunctive tests imposed by Clause 4.6(3) of WLEP 2014 (as amended November 2023), for the reasons set out in this document. The IPC/DPHI is not permitted to grant development consent that contravenes a development standard unless it is “satisfied the applicant has demonstrated” both tests. A failure to satisfy either test is fatal to the Variation Request.

Importantly, this submission does not merely assert that the applicant has failed to discharge its obligation to demonstrate sufficient grounds for an approval. The Society also argues the affirmative and inverse proposition: that there are positive grounds for concluding that compliance with the 10.5m height standard is both reasonable and necessary in the circumstances of this case. Evidence from a leading heritage architect demonstrates that sensitive, appropriate

development of the Site is achievable within the existing height controls. Three comparable Oxford Street developments, examined in Section 6 below, confirm that compliance with LEP height standards in the Paddington HCA context is not unreasonable — it is the norm.

A plain language summary of this submission, for reviewers who do not require the full technical analysis, is provided in Section 7.

2. The Applicable Legal Framework

Clause 4.6 of the Standard Instrument LEP, as incorporated into WLEP 2014, is the only mechanism available for varying a numeric development standard. Following amendments that took effect from 23 November 2023, Clause 4.6(3) of WLEP 2014 now provides:

“Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated— (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and (b) there are sufficient environmental planning grounds to justify contravening the development standard.”

These are conjunctive tests — both must be independently satisfied. Failing either test is fatal to the Variation Request.

The November 2023 amendments materially changed the statutory language of Clause 4.6. The previous formulation required the consent authority to have “considered a written request from the applicant that seeks to justify the contravention.” The current formulation requires the consent authority to be positively “satisfied” that the applicant has “demonstrated” each element. This is a higher standard. It is consistent with the decision of the Land and Environment Court in *Initial Action Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, in which the Court held (at [23]–[24]) that the consent authority must be actually satisfied — not merely consider an assertion that cannot be rebutted. The onus rests on the applicant; it cannot be discharged by assertion alone.

The Consent Authority

This DA is State Significant Development as classified under Schedule 1 of the State Environmental Planning Policy (Planning Systems) 2021. As SSD, it is assessed by DPHI and determined by the IPC or the Minister for Planning (or delegate). The IPC or Minister is the “consent authority” for the purposes of Clause 4.6 and must be itself satisfied — not merely advised — that the requisite tests are met.

The Interface with the Housing SEPP and Section 4.15(3)(b)

The applicant invokes Section 4.15(3)(b) of the EP&A Act, which allows the consent authority to apply development standards flexibly in their assessment where an Instrument specifically makes provision for this. Section 4.6 WLEP 2014 is such a provision and applies to how the consent authority makes assessments against the WLEP 2014.

There is no Section 4.6 equivalent provision in the State Environmental Planning Policy (Housing) 2021 (Housing SEPP). There is no mechanism for providing flexibility in the standards of (Housing

SEPP) The non-discretionary standard in regarding height in the (Housing SEPP) will remain unaltered even if the 4.6 Variation to the WLEP 2014 is allowed.

Where a Development Application meets the Non-Discretionary Standards, for height in this case, the consent authority is constrained in making their assessment by being unable to consider height. If the Development Application is for a height greater than the Non-Discretionary Standard then they are no longer so constrained and must consider height. They are able to refuse an application on height grounds.

The 4.6 Variation is effectively written as an application to vary the Non-Discretionary Standard of the Housing SEPP not the WLEP 2014. It is framed on the assumption that the Non-Discretionary Standard in the superior Housing SEPP creates an entitlement which it does not. The 4.6 Variation application is fundamentally flawed and improper and should be disallowed for this reason.

3. The Development Standard the Application seeks to vary: The Correct Analysis

The Variation Request presents the requested variation as “approximately 4 metres above the LMR standard” or approximately 7%. This framing is fundamentally misleading because it misidentifies the standard against which the variation should be measured and implemented.

Clause 4.6 of WLEP 2014 allows for a variation of the WLEP 2014 not the Housing SEPP. In this case, the applicable LEP height standard is that imposed by Clause 4.3 of WLEP 2014, which, as shown on the Height of Buildings Map for this Site, is 10.5 metres. This is the “development standard” to which Clause 4.6 relates.

The Housing SEPP applies a non-discretionary standard that operates to exclude height as a consideration in a merit assessment for certain residential development in designated areas in accordance with section 4.15(b) of the EP&A Act. The non-discretionary standard is available if the Height is 28.4 metres or less (including the affordable housing bonus) for this Site. Regardless of an approval or not of a 4.6 variation to the height standard in the WLEP 2014 the non-discretionary height standard is not available if the Application is for a development higher than 28.4 meters.

The proposed maximum building height is 32.6 metres. Against the WLEP Clause 4.3 standard of 10.5 metres, this represents:

- A variation of 22.1 metres above the LEP standard;
- A variation of an additional 210% above the LEP standard, ie. 310% in total;
- A proposed building is more than three times the height the Woollahra LEP permits on this site.

Even measured against the Housing SEPP non-discretionary standard as the application seeks to do the proposed height of 32.6 metres represents an excess of 4.10 metres — which is 14.0%, not the 7% presented in the Variation Request.

The Clause 4.6 process must be assessed against the applicable LEP objectives and standard. The LEP objectives as discussed below in Section 4 below strongly militate against the granting of a variation of this magnitude. The 242% variation above the LEP standard is not, in any proper sense, a marginal technical adjustment of the kind Clause 4.6 was designed to facilitate. Clause 4.6 allows only “appropriate flexibility”. A variation of 310% of the governing LEP standard is not appropriate flexibility — it is the effective replacement of the planning framework.

4. The Purpose and Objective of the WLEP Height Standard

Clause 4.3(1) of WLEP 2014 provides that the objective of the height of buildings development standard is “to ensure that the size and scale of development is compatible with the desired future character of the locality.” In the context of this Site, that objective has a specific and important meaning.

As held by Preston CJ in *Council of the City of Woollahra v SJD SB2 Pty Ltd* [2023] NSWLEC 115, the “desired future character” of an area is to be derived from the range of applicable LEP controls and the character of existing and recently approved neighboring development. It is not determined solely by a DCP, but the DCP may be one contextual source.

The Woollahra Development Control Plan 2015 (WDCP 2015) is not a mandatory consideration for State Significant Development. The Society explicitly acknowledges this limitation. However, the WDCP 2015 Chapter C1 (Paddington Heritage Conservation Area) — which was developed with extensive expert and community consultation, including the direct involvement of the Paddington Society, the National Trust of Australia (NSW) and the NSW Heritage Office — provides important contextual evidence of what the WLEP 2014 height standard was intended to achieve. In this narrow and specific context only — illuminating the legislative intent of the LEP standard — the Society references the following DCP provisions.

Chapter C1.1.1 of WDCP 2015 states that “conservation of Paddington and its heritage significance should be the foremost outcome of development.” This represents the settled community and expert understanding of the purpose of the LEP’s height standard in this precinct.

Chapter C1.2.1 identifies the Paddington HCA as possessing “exceptional unity, encompassing scale, character, history, architecture and urban form” of national and state significance. The area’s significance derives specifically from the coherence and consistency of its low-scale built form.

Chapter C1.2.4 provides that the desired future character of the Paddington HCA retains “the cohesive character evident in the low scale, high density built form” and “subdivision patterns and buildings which follow the landform.” The 10.5m height standard is the LEP’s quantitative expression of this qualitative planning principle.

Chapter C1.2.5 provides that contemporary infill development must “achieve a cohesive relationship between new and existing urban fabric” and “respect the context, especially the predominant scale, form and articulation.” An 8-storey building in a precinct characterised by 2-storey terrace houses and workers’ cottages cannot achieve this outcome regardless of its architectural quality.

In summary, the 10.5m height standard in WLEP 2014 exists to protect and perpetuate the low-scale heritage character of the Paddington HCA. Any departure from that standard must be assessed against this purpose. A proposed building of approximately 32.5m height — more than three times the standard — is fundamentally inconsistent with that purpose and cannot be said to achieve the objectives of the standard.

5. Is Compliance Either Unreasonable or Unnecessary. No, it is both Reasonable and Necessary.

The applicant bears the onus of establishing, to the satisfaction of the IPC/DPHI, that compliance with the 10.5m standard would be “unreasonable or unnecessary” in the circumstances of this case. The Society submits that onus has not been and cannot be discharged, and that the affirmative case — that compliance is both reasonable and necessary — is made out.

The Land and Environment Court has established a number of Tests and Policies that an applicant can apply to establish that compliance with a Development Standard is unreasonable or unnecessary. Compliance with a development standard is “unnecessary” only where it imposes a burden without a corresponding planning benefit — that is, where strict compliance would not advance the objective of the standard. Where compliance directly advances the objective the standard was designed to achieve, it is plainly necessary.

The applicant’s Variation Request provides no analysis of why the specific height of 32.5m is necessary to achieve the development objectives. Without such analysis, the necessity of the variation is asserted, not demonstrated. As the Initial Action case confirms, assertion is not enough.

In *Wehbe v Pittwater Council* [2007] NSWLEC 827 identified five methodological approaches by which an applicant may establish that compliance with a development standard would be “unreasonable or unnecessary” in the circumstances of the case. These five approaches — which remain the governing framework under the amended Clause 4.6 — are:

- Method 1: The objectives of the development standard would be achieved notwithstanding the non-compliance;
- Method 2: The underlying objective or purpose of the standard is not relevant to the development;
- Method 3: The underlying objective or purpose of the standard would be thwarted if compliance were required;
- Method 4: The development standard has been virtually abandoned or destroyed by the consent authority’s own actions in granting consents inconsistent with the standard; or
- Method 5: The zoning of the proposed development site is unreasonable or inappropriate such that the standard itself is inappropriate because of the zoning.

Only one method need be established. For the reasons set out in Section 5 of this document, the Society submits that none of these methods can be made out on the facts of this application.

In *Veloshin v Randwick Council* [2007] NSWLEC 148, the Land and Environment Court established a planning principle on the reasonableness of compliance with development standards. The principle recognises that development standards are, as a general matter, reasonable instruments of planning control, and that the burden of establishing unreasonableness lies squarely with the applicant. The Society applies this principle to the present circumstances.

The five Wehbe methods in turn.

Method 1: Objectives of the standard achieved notwithstanding non-compliance

The applicant implies that the objectives of the height standard are met despite the proposed 8-storey form, by reference to design quality, setbacks and architectural treatment. This submission fails for three independent reasons.

First, the primary objective of the WLEP height standard is to ensure size and scale compatible with the desired future character of the Paddington HCA. An 8-storey building of approximately 48 metres width rising to 32.5 metres cannot be “compatible with” a streetscape of 2–3 storey Victorian terrace houses. The objective of the standard is not achieved — it is directly undermined.

Second, architectural quality is not a substitute for scale compatibility. As held in *Ricola Pty Ltd v Wingecarribee Shire Council* [2021] NSWLEC 1288, architectural design does not equate to an absence of visual intrusion. The Court in *Ricola* confirmed that the environmental planning grounds must justify both the lateral and vertical extent of the breach — it is not sufficient to rely on design merit or height alone.

Third, the applicant’s own heritage consultants (GBA Heritage) assess the impact on “Views to” the Paddington HCA — a value rated as having High contribution to significance — as producing a Moderate impact overall. This is a ludicrous assessment as discussed in the Society’s main Objection. However even with the applicant’s assessment a Moderate impact means a meaningful, discernible negative change to a high-significance heritage value. This is precisely the kind of heritage harm the 10.5m standard was designed to prevent. The objectives of the standard are not met; they are materially compromised.

Method 2: Objective not relevant to the development

The applicant does not appear to advance Method 2, and correctly so. The objective of ensuring scale compatibility with the desired future character of the locality is directly and unambiguously relevant to an 8-storey residential development in the Paddington HCA on Oxford Street. There is no conceivable basis for concluding that the objective is not relevant.

Method 3: Objective would be thwarted by compliance

The applicant implicitly suggests that compliance with a 10.5m height limit would make development of the Site unviable or would somehow produce a worse heritage outcome. The Society rejects this.

Compliance with the 10.5m standard would not thwart the objective of the standard — to the contrary, it would advance it. An appropriately scaled building at or near the LEP height limit would contribute to the cohesive low-scale character of the Paddington HCA rather than disrupting it.

Furthermore, compliance does not make development of the Site economically unviable or physically impractical. As demonstrated in Section 6.2 of this document, William Morrison of CM+ — Managing Director of one of Australia’s most experienced heritage architecture practices — has provided heritage planning principles and schematic analysis demonstrating that the Site can be developed within the existing LEP height controls. A tiered approach is achievable: an Oxford Street principal building at appropriate height, secondary residential buildings at 2–3 storeys on the Shadforth Street side, an extended pedestrian laneway along Bourke Lane, and central deep-soil garden planting. Compliance is practicable.

Method 4: Standard virtually abandoned

The applicant cannot establish abandonment of the 10.5m standard. As confirmed in *Lizzio v Sutherland Shire Council* [2022] NSWLEC 1138, even a small number of approved variations is insufficient to establish abandonment.

The only comparable Clause 4.6 height variation approved on Oxford Street Paddington under the same WLEP 10.5m standard is the 432–440 Oxford Street approval (DA 274/2020/1). That approval involved a variation of 1.0 metre (approximately 11%) for lift overruns and parapet elements only — not a departure from the overall building scale. This precedent demonstrates precisely the opposite of abandonment: that the 10.5m standard remains operative and that departures from it are confined to marginal, technically justified adjustments. This is addressed further in Section 6.3 below.

Method 5: Zoning unreasonable or inappropriate

The applicant does not assert, and could not properly assert, that the zoning of the Site is unreasonable or inappropriate. The Site is appropriately zoned for medium density residential development. The zoning is not in question; only the applicant’s proposed building height exceeds what the zoning’s associated height standard permits. Method 5 is not available.

Conclusion on the Necessity and Reasonableness Test

Applying the Veloshin planning principle in its entirety, the conclusion is clear and unambiguous: Compliance with the 10.5m height standard is reasonable and necessary in every relevant sense. The proposed variation is not marginal, not technical, is not without adverse environmental impacts, and would not be regarded as reasonable by any informed observer. The first mandatory test under Clause 4.6 is not met.

Are there Sufficient Environmental Planning Grounds to justify the variation. No, there are not.

Even where it has been established that the standard is unreasonable or unnecessary which is not the case here the applicant must separately establish that there are “sufficient environmental

planning grounds” to justify the contravention of the development standard. For the reasons set out below, no such grounds are established.

To establish that there are sufficient Grounds the applicant must demonstrate there are Environmental Planning Grounds justifying the contravention that relate to the subject matter of the EP&A Act including its objects under Section 1.3. They must be sufficient to justify the specific variation sought, focused on the variation itself rather than on the general merits of the development. The application must demonstrate planning grounds are “sufficient” to justify the contravention — not merely whether some planning grounds can be identified. The grounds must be directed at and proportionate to the extent of the variation.

Heritage Grounds: An Internal Contradiction

The primary planning grounds advanced in the Variation Request relate to the heritage and design context. The applicant suggests that the replacement of “intrusive” existing buildings with a high-quality contemporary design constitutes a positive heritage outcome justifying the height variation. This submission is circular in its reasoning and is directly contradicted by the applicant’s own heritage evidence.

The Statement of Heritage Impact (SHI) prepared by GBA Heritage assesses the impact on “Views to” the Paddington HCA — a heritage value independently assessed as having High contribution to significance — as producing a Moderate degree of change, resulting overall in a Moderate impact. This is the highest impact rating reached anywhere in GBA Heritage’s assessment. A Moderate impact means a meaningful, discernible negative change to a value of high significance.

Despite reaching this finding, GBA Heritage concludes — without adequate analytical support — that the impact is “acceptable” and that the Department “should have no hesitation, from a heritage perspective, in approving the application.” This conclusion is not supported by the analysis that precedes it. As held in *Pinchgut Operations Pty Ltd v Sydney Harbour Federation Trust* [2021] NSWLEC 117, a cursory or conclusory assertion of acceptable heritage impact, without a reasoned analysis of why the harm falls within an acceptable range, is not sufficient to discharge the applicant’s onus. The GBA Heritage conclusion does not demonstrate why a Moderate impact on a High-significance heritage value is acceptable — it simply states that it is.

The argument that the proposed building is a “positive” heritage outcome because it replaces intrusive existing buildings is legally and factually flawed. As confirmed in *Ricola*, the heritage merit or design quality of a replacement structure is not the same as the absence of heritage impact. The proposed building, at approximately 32.5m, will itself produce significant visual intrusion in the Paddington HCA context. That the existing buildings are also considered intrusive does not make a taller replacement building acceptable.

Furthermore, the applicant’s characterisation of the heritage impact of the existing buildings as “intrusive” appears in Section 4.3.11 of the SHI, which assesses the segment of Oxford Street from 122–168 as having “low heritage sensitivity.” The Society contests this characterisation. The existing buildings at 142–148 and 160 Oxford Street, while not of individual heritage significance, are low-to-medium scale buildings that make a neutral contribution to the streetscape. Their

replacement with an 8-storey building would represent a far greater disruption to the HCA than the existing buildings cause.

Commonwealth Heritage: The Victoria Barracks

The SHI contains an important and revealing admission in its EPBC Act assessment (Section 4.7): “the visual engagement between the Barracks and the Paddington township has significance.” This statement explicitly acknowledges that the visual relationship between Victoria Barracks — a Commonwealth Heritage Listed precinct (including the Perimeter Wall and Gates, Place ID 105281; the VB2 Guard House, Place ID 105282; and the Victoria Barracks Precinct, Place ID 105277) — and the surrounding Paddington HCA is itself a heritage value of note.

Despite this admission, the SHI concludes that the proposed development represents an “acceptable impact” on the Barracks precinct, without adequately demonstrating why. The SHI notes that the proposal will overshadow the Barracks perimeter wall and Buildings 95 and 96 for “a few hours” in winter — meaning the proposal will cast shadow on Commonwealth Heritage Listed structures. No analysis is offered as to why this overshadowing is acceptable, how it has been assessed against the conservation requirements of the Burra Charter (ICOMOS Australia 2013, adopted by WDCP 2015 as the conservation philosophy for heritage conservation areas), or how it has been evaluated against the requirements of the EPBC Act.

The Site is located directly opposite the Barracks perimeter wall and sandstone gateway. These sandstone structures — themselves of the highest heritage significance — are approximately 3 metres in height. An adjacent development complying with the 10.5m standard would maintain a more respectful scale relationship to these Commonwealth Heritage Listed structures. An 8-storey building directly opposite them would visually overwhelm them in a manner that no architectural treatment can mitigate.

The assertion that there are Heritage Planning grounds for allowing the 4.6 variation are nonsense. In fact in any assessment of the sufficiency of the planning grounds the manifest harm from the heritage impact of this proposal would entirely outway any benefit of all other proffered Grounds.

The Grounds Must Justify the Full Extent of the Variation

The planning grounds must be sufficient to justify not merely some departure from the standard but the specific extent of the departure — approximately 22 metres (210% above the 10.5m standard). As confirmed in the Ricola case, the grounds must justify both the lateral and vertical extent of the breach. The applicant has not explained why 8 storeys (rather than 4, 5, or 6 storeys) is required or justified by the asserted planning purposes.

7.12 There is no analysis of alternative building heights, no demonstration that the asserted planning grounds specifically require a building of 32.6m rather than a lesser height, and no meaningful attempt to minimise the extent of the variation. As held in *Pallas v Canterbury-Bankstown Council* [2023] NSWLEC 1077, while a breach need not be eliminated entirely, the determination requires an assessment of whether the breach is appropriate in the circumstances and whether it has been minimised. No such minimisation analysis has been conducted. The failure to consider alternative, lower building heights that might better reconcile development objectives with heritage constraints is a material deficiency in the Variation Request.

7.4 Contrast with Choker v Georges River

7.13 In *Choker v Georges River Council* [2022] NSWLEC 1021, the Court held that a 7% height variation — in circumstances where there were no significant amenity impacts and the breach was genuinely minor — could be supported by sufficient environmental planning grounds.

The present application is factually distinguished from the *Choker* case in every material respect: the variation is not 7% but 210% against the LEP standard; the heritage impacts are not absent or minor but are assessed by the applicant's own consultants as Moderate; the affected heritage values are not incidental but are of national and potential international significance; and Commonwealth Heritage Listed structures are directly affected by overshadowing. The principle in *Choker* does not assist the applicant; it highlights the profound inadequacy of the planning grounds advanced in the Variation Request.

The applicant also relies, explicitly or implicitly, on the *Western Grammar School* principle — that general assertions of design quality can support a Clause 4.6 request. As held in *Western Grammar School* [2021] NSWLEC 1067, however, general design assertions without a specific visual impact assessment are insufficient. The SHI in this case provides a cursory treatment of the visual impacts on the Paddington HCA and on the Victoria Barracks, precisely of the kind the Court in *Western Grammar School* found to be inadequate to discharge the applicant's onus.

The Veloshin Planning Principle

The following considerations from the *Veloshin* case principle are each addressed below.

Whether the standard serves a legitimate planning objective

The 10.5m height standard exists to protect the Paddington HCA which is a locally listed heritage conservation area of exceptional significance, recognised for its contribution to the cultural and historical heritage of New South Wales. The conservation of this precinct is a legitimate and significant planning objective of the highest order. Compliance with this standard directly and materially advances that objective. This is a weighty consideration favouring compliance.

Whether compliance would prevent a reasonable use of the land

Compliance with the 10.5m standard does not prevent a reasonable use of the Site. The Site can be developed for multi-unit residential housing at a compliant height, as demonstrated by the CM+ heritage planning principles and by the precedent of the former Royal Women's Hospital site. Compliance constrains the form of development to one appropriate to the heritage context — it does not prevent development. There is no demonstrated evidence that a compliant building would be commercially unviable or physically impractical.

Whether the non-compliance is of a minor or technical nature

The proposed variation of approximately 22 metres — 210% above the LEP standard — is not minor or technical. It represents a wholesale departure from the scale of development contemplated by the applicable planning framework. For comparison, the only approved Clause 4.6 height variation on this stretch of Oxford Street under the same WLEP standard (432–440

Oxford Street) involved a variation of 1.0 metre (approximately 11%) for roof services elements only. The present application seeks a variation 19 times greater. These are not comparable categories of variation.

Whether the breach produces adverse environmental impacts

The applicant's own heritage evidence assesses the impact on heritage views to the Paddington HCA as Moderate. The proposed development will overshadow Commonwealth Heritage Listed structures. The visual impact on the Oxford Street streetscape — including on the Victoria Barracks gateway, which the Society submits is a particularly sensitive and significant viewpoint — has not been adequately assessed. These are not minor or negligible impacts; they are significant adverse environmental impacts that bear directly on the question of reasonableness.

Whether a reasonable person would regard the breach as minor or reasonable

A reasonable person cognisant of the heritage significance of the Paddington HCA, the Commonwealth Heritage status of the Victoria Barracks, and the pattern of development on Oxford Street would not regard a 210% breach of the applicable height standard as minor or reasonable. The Paddington Society, whose membership includes experts in heritage conservation, planning and architecture, submits emphatically that the proposed variation is not within the range of outcomes a reasonable and informed observer would consider acceptable in this context.

Comparison with the 432–440 Oxford Street precedent

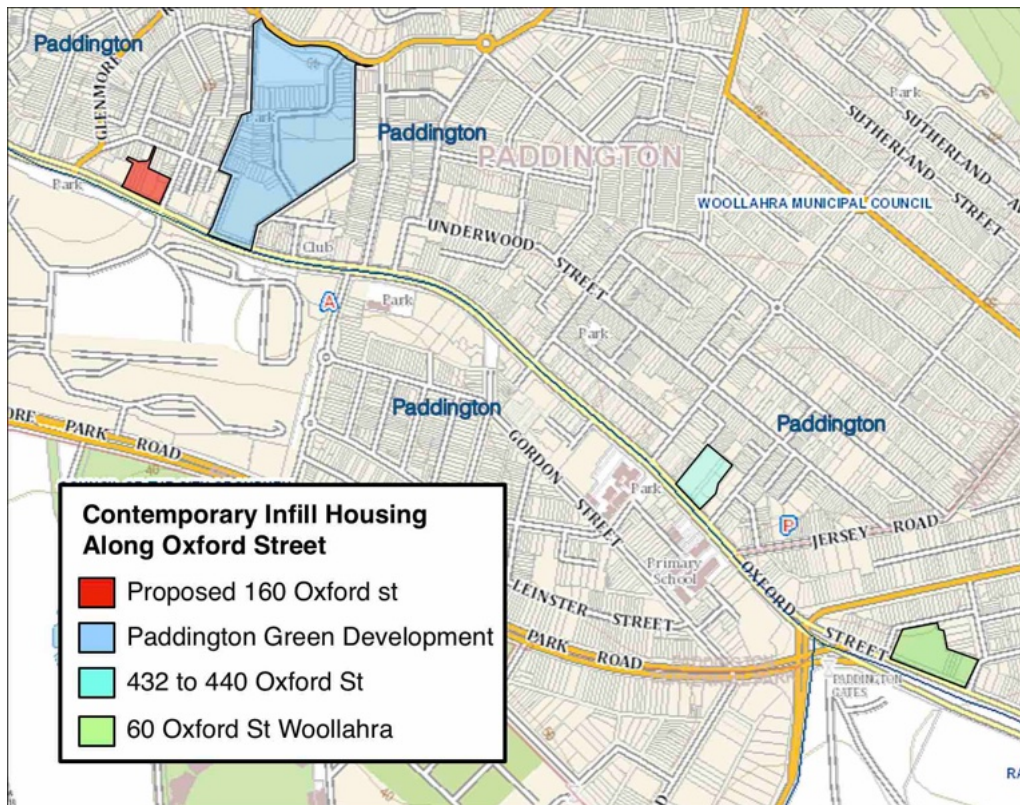
Under the Veloshin principle, regard may be had to the range of previously approved variations in the locality. The only relevant precedent on Oxford Street Paddington under the same WLEP standard is the 432–440 Oxford Street variation of 1.0 metre (approximately 11%). Applying the Veloshin principle, this precedent confirms that variations of approximately this marginal magnitude may, in appropriate technical circumstances, be considered reasonable. A variation of 22 metres (210%) cannot be considered reasonable by reference to the same principle. The two are not comparable.

Conclusion

The application fails on all these measurers. It should not be allowed.

6. Comparable Oxford Street Developments: Compliance with the Objectives of the WLEP 2014 including Clause 4.3 Height is in fact demonstrably Achievable

A central element of the Paddington Society's case is that compliance with the 10.5m height standard is achievable, reasonable and consistent with the pattern of development on and near Oxford Street within or adjacent to heritage conservation areas. Three comparable developments are set out below.



Former Royal Women’s Hospital, Paddington (“Paddington Green”)

The former Royal Hospital for Women occupied a large and complex heritage-sensitive site within the Paddington HCA, with frontage to Oxford Street and surrounding residential streets. The hospital closed in the mid-1990s. Woollahra Council rezoned the site in November 1995 to allow a mix of residential, commercial and open space uses, and a site-specific development control plan was adopted in January 1997.

The site was subsequently redeveloped — now known as Paddington Green — within the existing planning controls. The redevelopment was substantial and complex, involving: terrace-type housing on multiple street frontages; apartment buildings; mixed-use commercial buildings with ground-floor colonnades along Oxford Street; the retention of significant heritage buildings including the Oxford Street Gatehouse; public open space; and the integration of existing heritage fabric into the new development. A site-specific chapter of the WDCP 2015 (Chapter G7) remains in force to guide any future additions to this development.

Critically, the entire redevelopment of the former Royal Women’s Hospital site — a larger and more complex heritage project than the present application — was achieved within the existing planning controls, including the height standard, without any Clause 4.6 variation for building height. This demonstrates conclusively that sensitive, large-scale heritage site redevelopment on Oxford Street in the Paddington HCA can deliver high-quality outcomes in full compliance with the applicable LEP height limit. The former Royal Women’s Hospital site is the most compelling evidence that the applicant’s implicit claim — that compliance is not achievable — is simply wrong.



Paddington Green development on Oxford St

60–80 Oxford Street, Woollahra (DA 607/2021/1)

The development at 60–80 Oxford Street and 2A James Street, Woollahra (DA 607/2021/1) provides a directly relevant contemporary precedent. This site is located immediately east of the Paddington/Woollahra boundary on Oxford Street, within the Woollahra Heritage Conservation Area — a heritage precinct of comparable character and significance to the Paddington HCA.

The development — a residential flat building development across multiple lots, with the new flat building at 2A James Street designed as a two-storey form with a mansard roof — was consented by Woollahra Municipal Council on 15 September 2022. The Statement of Environmental Effects prepared by GSA Planning confirmed that the proposal complied with the 10.5m LEP height standard applicable to that site under WLEP 2014. No Clause 4.6 height variation was sought. The development is currently under construction.

This development demonstrates that a contemporary, high-quality residential flat building can be approved on Oxford Street, within a Heritage Conservation Area, in full compliance with the applicable LEP height standard. The heritage context — comparable to that of the present Site — did not require or justify a height variation.



60–80 Oxford Street



60–80 Oxford Street rear interface to HIS

432–440 Oxford Street, Paddington (DA 274/2020/1, amended by DA 554/2021/1)

The development at 432–440 Oxford Street, Paddington is the most directly comparable precedent for a Clause 4.6 height variation on Oxford Street under the same WLEP 2014 standard.

This development involved a Clause 4.6 variation of 1.0 metre above the 10.5m standard (approximately 11%), applicable to lift overruns and parapet elements — not to the overall building form or massing. The original DA (DA 274/2020/1) was determined by the Land and Environment Court. An amending DA (DA 554/2021/1) was subsequently consented by Woollahra Council's Local Planning Panel on 21 April 2022, with the Panel noting that the amending DA provided a better planning outcome.

This precedent is instructive for two reasons. First, it illustrates what a legitimate, appropriately marginal Clause 4.6 height variation on Oxford Street Paddington looks like: a 1.0m (11%) technical departure for specific building services elements, not a wholesale override of the height standard. Second, the approved variation — 1.0m for roof features — stands in stark contrast to the present application's request for 22m (210%) above the LEP standard. The two cases are not comparable in any relevant respect.

The 432–440 Oxford Street precedent does not support, and cannot support, the present variation. It demonstrates that this stretch of Oxford Street has previously been assessed under a careful, restrained approach to Clause 4.6, granting only truly marginal and technically justified height variations. The present application is of an entirely different character and scale.



432–440 Oxford from rear. Currently under construction

7. Summary

This section summarises the Paddington Society’s objection to the Clause 4.6 Variation application in plain language for reviewers who do not wish to engage with the full technical analysis.

What is the Clause 4.6 Variation?

The applicant wants to build an 8-storey apartment building on Oxford Street, Paddington. The Woollahra Local Environmental Plan says buildings on this street may be no more than 10.5 metres tall — roughly 3 storeys. The State Government’s Housing SEPP provides a bonus that allows up to approximately 28.6 metres in this zone for the kind of development proposed. The applicant wants to go even higher than that — to 32.6 metres. To do this, they need special approval under a legal provision called Clause 4.6, which allows departures from development standards in exceptional circumstances.

What does the applicant have to prove?

The law is clear: the consent authority must be satisfied that the applicant has demonstrated two things. First, that following the height limit is “unreasonable or unnecessary” in this specific case. Second, that there are good planning reasons — sufficient environmental planning grounds — that justify exceeding the standard. Both tests must be satisfied. If either fails, the variation must be refused.

Why the Society says this must be refused

The proposed building is more than three times the height the local planning rules allow. The true variation, measured against the Woollahra LEP standard of 10.5m, is approximately 22 metres — 210%. Despite being presented as a modest 7% variation in the application documents, that figure is calculated against a different baseline. The scale of this departure from the planning framework is extraordinary.

Following the height standard is both reasonable and necessary. The Paddington Heritage Conservation Area is one of the most significant heritage precincts in Australia. Directly opposite the Site are the sandstone walls and gateway of Victoria Barracks — heritage listed under federal law. The 10.5m height standard exists precisely to protect these values. A standard that protects irreplaceable national heritage is not one that can reasonably or appropriately be set aside.

Comparable developments prove that compliance is achievable. Three nearby developments demonstrate this:

- The former Royal Women’s Hospital site in Paddington — a larger and more complex heritage site than this one — was redeveloped at the appropriate scale entirely within the existing planning controls. No height variation was sought or needed.
- 60 Oxford Street, Woollahra — immediately east of Paddington, also within a Heritage Conservation Area, also on Oxford Street — was approved in September 2022 for a contemporary residential development that complies with the LEP height standard. It is currently under construction.
- 432–440 Oxford Street, Paddington — on the same street, subject to the same LEP and the same 9.5m standard — received the only comparable Clause 4.6 height variation on this stretch of Oxford Street. That variation was 1.0 metre (approximately 11%), for roof equipment only. That is what an appropriate marginal variation looks like. The present application asks for 23 times that variation.

The applicant’s own heritage experts found a “Moderate” heritage impact. GBA Heritage’s Statement of Heritage Impact rates the impact on views to the Paddington HCA — a value of High significance — as Moderate. Moderate means meaningful and discernible harm to something of high value. This is not an acceptable heritage outcome. Yet the SHI concludes “no hesitation” in recommending approval — without adequately explaining why a Moderate impact on a High-significance heritage value is acceptable. This internal contradiction weakens rather than strengthens the case for variation.

A leading heritage architect says the Site can be developed within existing controls. William Morrison, Managing Director of CM+ Architects — a practice with extensive experience in heritage-sensitive development in Sydney — has provided analysis and sketches demonstrating

that the Site can be developed within the existing LEP height controls, with a respectful scale relationship to the Paddington HCA and to Victoria Barracks. This directly and expertly refutes any suggestion that height compliance is unworkable.

In Summary

The Variation Request asks the IPC or DPPI to set aside a planning standard that exists to protect an irreplaceable national heritage precinct, in favour of an 8-storey building that the applicant's own consultants acknowledge will cause harm to heritage values of Highly significance cultural assets. The request fails both mandatory tests of Clause 4.6. Neither has the applicant shown that compliance is unreasonable or unnecessary, nor has it demonstrated sufficient environmental planning grounds. The Society submits that the IPC or DPPI must refuse to be satisfied that the Clause 4.6 tests are met, and must assess the DA without granting the height variation. On that basis, the proposed development, in its current 8-storey form, cannot be approved.

Submitted by The Paddington Society Inc | March 2026

*PO Box 99 Paddington NSW 2021 | heritage@paddingtonsociety.org.au |
paddingtonsociety.org.au*