

## FORMAL OBJECTION

SSD 80626208 — 8–10 New McLean Street, Edgecliff

*Demolition, Two-Lot Torrens Subdivision & 65-Apartment Residential Flat Building*

**Merrill Witt**

*Woollahra Councillor, Vacluse Ward*

## Introduction

Concept images of the proposal are shown in Figure 2.



Figure 2: Extracts from the Design Report by FK(Australia) showing the front façade to be oriented to New McLean Street (left) and the rear

This submission is a formal objection to State Significant Development Application SSD 80626208, which seeks consent for the demolition of existing buildings at 8–10 New McLean Street, Edgecliff, the Torrens title subdivision of the 7,226m<sup>2</sup> site into two lots, and the construction of a 65-apartment residential flat building (24 × 2-bedroom and 41 × 3-bedroom apartments) on the smaller western lot (Lot 11, 2,790.3m<sup>2</sup>). The larger eastern lot (Lot 12, 4,435.6m<sup>2</sup>) is to remain vacant with a further SSD promised for a future ‘Stage 2’.

Woollahra Council has identified this area for increased housing density, but the planning proposal underlying the requested height and FSR uplift (PP-2023-1648) was unsolicited and approved via delegation to the Sydney Eastern City Planning Proposal. The Council voted to refuse it, primarily because the scale of density requested conflicted with the site’s environmental sensitivity, being located at the edge of Trumper Park and within the Paddington Heritage Conservation Area.

Access to the site is also problematic. It can only be reached via New McLean Street, an already busy thoroughfare to the Edgecliff Centre, the railway station, the East Point shopping centre and the Paddington HCA.

In its current form, this SSDA fails the very housing and design standards the planning system requires in exchange for the density uplift being sought.

This objection addresses three categories of failure.

**First, failure to meet Housing SEPP Policy Principles: (a), (c), (d), and (e) and (f).**

The proposal delivers little diversity of apartment sizes on the western lot, imposes disproportionate car parking on a public transport accessible site, fails to provide much needed community infrastructure, and proposes the removal of a large number of trees of high and moderate retention value that contribute to the biodiversity, scenic beauty and ambience of one of Woollahra Council's most valued open spaces -Trumper Park.

**Second, the absence of any enforceable legal mechanism binding the eastern lot to future development.** The proposal's justifications for FSR, dwelling mix, minimum dwelling numbers, and landscape outcomes all depend on Stage 2 proceeding — yet no s88B instrument, VPA, or restriction on title is proposed to ensure that it does.

**Third, multiple non-compliances with mandatory Apartment Design Guidelines (ADG) criteria that are not curable by conditions.** These include an unaddressed mandatory solar access criterion for communal open space, unverified deep soil dimensions, acknowledged visual privacy non-compliance, an insufficient wind assessment, and shadow diagrams that lack the baseline comparison necessary to verify the proponent's core overshadowing claims.

**Part A - Failure to Meet Housing SEPP Principles**

Chapter 1 of the State Environmental Planning Policy (Housing) 2021 sets out the following Principles of the Policy at 3:

- (a) enabling the development of diverse housing types, including purpose-built rental housing,*
- (b) encouraging the development of housing that will meet the needs of more vulnerable members of the community, including very low to moderate income households, seniors and people with a disability,*
- (c) ensuring new housing development provides residents with a reasonable level of amenity,*

- (d) promoting the planning and delivery of housing in locations where it will make good use of existing and planned infrastructure and services,*
- (e) minimising adverse climate and environmental impacts of new housing development,*
- (f) reinforcing the importance of designing housing in a way that reflects and enhances its locality,*
- (g) supporting short-term rental accommodation as a home-sharing activity and contributor to local economies, while managing the social and environmental impacts from this use,*
- (h) mitigating the loss of existing affordable rental housing.*

This section addresses the five principles most directly engaged by this proposal.

### **Principle (a) — Enabling Diverse Housing Types**

The proposal will deliver no 1-bedroom or studio apartments on the western lot — the smaller of the two and only lot being targeted for redevelopment in this SSDA. The 65 apartments are divided entirely between 2-bedroom (37%) and 3-bedroom (63%) units.

The failure to include studios and one bedrooms is an undesirable outcome for the Woollahra Local Government Area (LGA) where the undersupply of smaller dwellings is acute and well-documented.

ABS Census data (2021) reported that only 12.5% of dwellings in the Woollahra LGA are studios or 1-bedroom apartments. While this category of dwellings grew by 38% across the Eastern Harbour City and 43% across Greater Sydney over the preceding decade, Woollahra Council recorded a 1% decline in 1-bedroom and studio dwellings in the same period. These dwelling types are critical for lone-person households, which make up 30% of Woollahra Council's demographic.

Further, the SGS Economics and Planning, *Woollahra Housing: Background Report* (December 2020) highlights that the Woollahra LGA is expected to see significant growth in its population of residents over the age of 75 in the coming years:

*The age profile of the population is projected to change, with a major growth in aged population cohorts. It indicates that the dominant age range of residents will continue to be between 25 and 34. However, there is expected to be major growth in the number of residents aged 75 and over.*

Recently, Woollahra Council responded to the shortfall in dwelling mix by amending its Development Control Plan (DCP) (Chapter B4) to require a diversity of apartment sizes in new RFBs in accessible areas like Edgecliff. Further, the draft site-specific DCP, which

accompanies the planning proposal for this site, requires 30–50% of dwellings to be 1-bedroom.

The proponent has chosen to defer all of the 1-bedroom delivery to Stage 2 on the eastern lot, supposedly for financial feasibility reasons. But as will be demonstrated in this submission, this SSDA proposes no legal obligation for Stage 2 to occur.

Approving this SSDA on the basis that Stage 2 will remedy the dwelling mix failure would set a precedent that mandatory apartment mix controls can be sidestepped by staging a development and promising future compliance without any binding commitment.

### Principle (c) — Reasonable Amenity for Residents

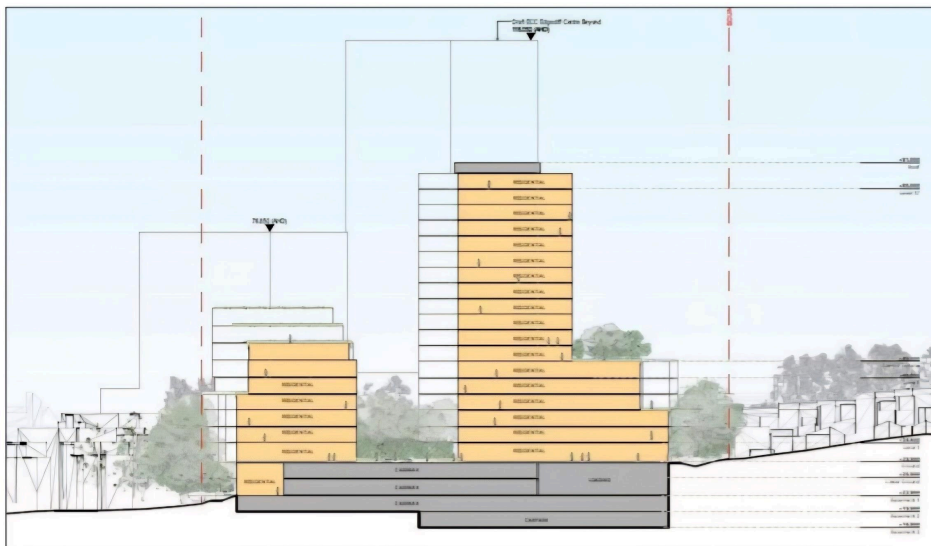


Figure 25: Extract from the Post-exhibition Report by DPHI for PP-2023-1648 with the proposed built form on the western portion of the site shown on the left

The building's common wall at Levels 1–4 is designed specifically for physical integration with a future eastern building. Without Stage 2, this wall is a permanent blank fire-rated facade — a built-form outcome that cannot be remedied by any condition of consent.

The Level 5 communal open space (355m<sup>2</sup>) is designed to link to the future eastern lot. Without the eastern building, it functions as an isolated rooftop terrace rather than the integrated communal amenity the design assumes.

The ground-level communal space is described in the Planning Ingenuity's Environmental Impact Statement (EIS) as an undercroft in the southern corner of the building. Its solar access and therefore likely usefulness to the residents is entirely unanalysed.

These are not minor inconveniences. They mean that a significant proportion of the amenity promised to future residents of the western building is contingent on a future development that has no legal obligation to proceed.

**Principle (d) — Promoting the planning and delivery of housing in locations where it will make good use of existing and planned infrastructure and services.**

**Community Infrastructure in the Woollahra municipality is already stretched**

No new community infrastructure is proposed or planned for the Edgecliff precinct despite the significant uplift in population density that this proposal — and multiple other LMR applications in the vicinity — will deliver.

Woollahra Council has commissioned numerous studies documenting how resources are already stretched. The Woollahra Community Facilities Study (2019), for example, identified a significant gap in the delivery of community, cultural, and creative facilities across the LGA. It also highlighted that the Council's libraries are at or near capacity.

The Woollahra Recreation Strategy observed that the LGA has no indoor sporting facilities, and the Woollahra Local Housing Strategy (2021) offered the following sober analysis of constraints in addressing these issues:

*public open space, recreational facilities and community facilities are in high demand both from locals and residents of the Eastern Suburbs area. There is limited space for growth given the established pattern of development. Recent increases in demand on infrastructure due to growth have raised significant community concern.*

Approving a large residential flat building without a corresponding commitment to community infrastructure investment compounds a problem the Council has formally identified.

Arguments that Woollahra Council should be made to do its fair share of lifting to respond to the housing crisis in Sydney also deserve scrutiny. The Council has in fact already done its share of heavy lifting (it's the 7th densest municipality in NSW), and by the Government's own admission its water and transport infrastructure are ageing and don't have additional capacity. This was the reason why, for example, Edgecliff was not originally designated as a Transport Oriented Development (TOD) Precinct. (See [Minister reveals why Sydney's eastern suburbs were spared housing density push](#) by Michael McGowan, Sydney Morning Herald 11 December 2023)

**Car Parking is Excessive for an Accessible Location**

The proposal seeks consent for 118 resident and 16 visitor car spaces (134 total) across five basement levels. The EIS states that these rates are drawn from the Woollahra

Development Control Plan 2015 (DCP) — but those rates are maximum rates only, not requirements.

The DCP does not oblige this quantum of parking, and Woollahra Council has since amended its maximum parking rates for housing in accessible areas (DCP Chapter B4) to bring them more into line with the Housing SEPP (Affordable) parking rates. It also requires one car share space for every 20 dwellings.

C2 For the avoidance of doubt, the provision of car parking and parking structures are not required. If the applicant elects to provide car parking, Table 2 below sets out the maximum number of spaces that can be included in the development.

**Table 2** Residential uses maximum car parking spaces for land within 800m walking distance of Edgecliff Station and Town Centre, Double Bay Town Centre, Oxford Street Town Centre, Kings Cross Station and Town Centre, Bondi Junction Station and Town Centre, and Rose Bay Town Centre (New South Head Road).

Land use	Maximum parking spaces	
	Within 400m	Between 400m to 800m
Multi-dwelling housing, multi-dwelling housing (terraces) and residential flat buildings		
<i>Number of bedrooms per dwelling</i>		
Studio apartment	0.2 space	0.3 space
1 bedroom	0.4 space	0.6 space
2 bedrooms	0.6 space	0.9 space
3 or more bedrooms	1 space	1.2 spaces
Visitors	0.1 space	0.15 space

C3 If private use car parking is provided under C2, a minimum of one on-site car share space per 20 dwellings is to be provided for any residential development.

The SIDRA traffic analysis for the adjacent Edgecliff Centre planning proposal (203–233 New South Head Road) identified the intersection of New McLean Street, New South Head Road, and Darling Point Road as highly congested and one of the worst-performing intersections in the area.

Providing 134 car spaces at the maximum permissible rate, rather than at a rate calibrated to the site’s public transport accessibility, will generate unnecessary traffic in an already congested location and is inconsistent with Principle (d)’s requirement to make good use of existing infrastructure.

## Principle (e) — Minimising Climate and Environmental Impacts

### Unacceptable tree loss

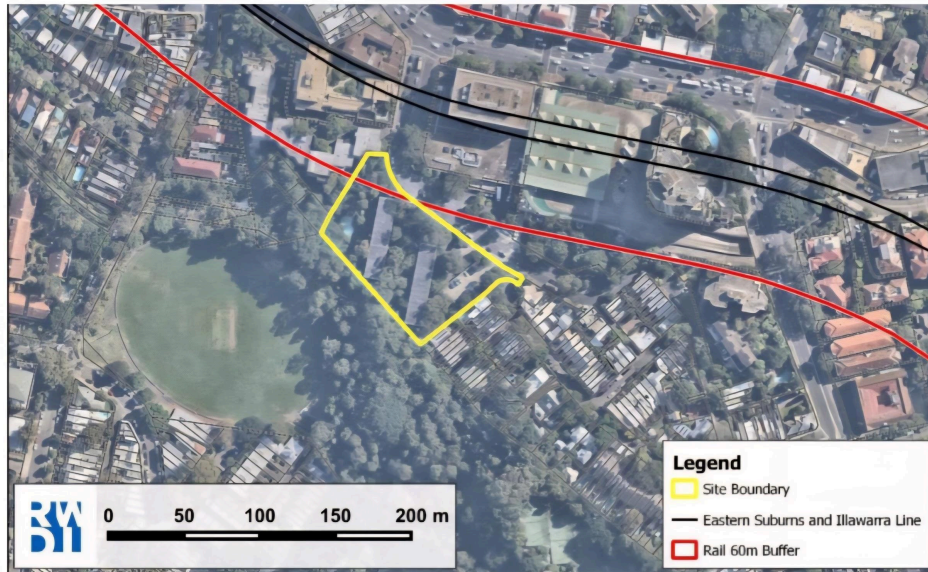


Table 2 of the Urban Arbor Arboricultural Impact Assessment indicates that 152 of 203 assessed trees are recommended for removal. This includes 8 trees classified as Category AA (high retention value) and 49 trees classified as Category A (moderate retention value). Approximately two-thirds of the highest-value trees on the site — and the majority of trees of moderate retention value — are proposed to be removed.

The scale of removal indicates that the building and basement footprint have not been designed to respond to the existing vegetation, which serves as a valuable biodiversity corridor to Trumper Park. No alternative design with a reduced footprint was tested or presented. The ADG design guidance under 3E specifically recommends that basement car parking be consolidated beneath the building footprint to maximise deep soil and retain significant trees. Instead, extensive excavation for the over provision of car parking spaces will lead to the destruction of most of the existing tree canopy and provide only limited opportunities for deep soil landscaping.

### Overshadowing of Trumper Park

The EIS acknowledges that the potential cumulative impacts of overshadowing on Trumper Park are detrimental, but categorises this impact as ‘not unreasonable’, noting that the overshadowing is compliant with Woollahra DCP 2015 requirements and the shadow profile was considered acceptable in PP-2023-1648.

However, DCP 2015 Control C29 — currently the adopted standard — states:

Solar access to the Trumper Park Oval is provided between the hours of 10am and 2pm on 21 June. Where existing overshadowing is greater than this, sunlight is not to be further reduced.

The EIS compares the predicted shadowing to lower standards proposed in the Edgecliff Commercial Centre Planning and Urban Design Strategy (ECCP & UDS). But this is not a valid comparison. As the EIS itself concedes, this site was not included within the ECCP & UDS. It proceeded as an unsolicited planning proposal, that Council voted to refuse, precisely because of its location in the Paddington HCA and its close proximity to Trumper Park.

The shadow diagrams do not include a baseline comparison showing the shadow cast by the two existing buildings. Without this overlay, the proponent's claim — that the proposed building does not create additional shadow to Trumper Park after 10am — is unverifiable. This is addressed further under Ground 11.

**Principle (f) reinforcing the importance of designing housing in a way that reflects and enhances its locality.**

As previously highlighted, this SSSDA is not in keeping with the character of the area.



The Design Response and Overview offers the following glowing description of how the proposed apartment complex relates to Trumper Park, but the accompanying photo montage makes for a very different impression, especially because only the top 6 floors are recessed:

*Viewed from Trumper Oval, the development presents a calm and finely stepped built form that sits gently above the tree canopy. The podium terraces create a layered profile that mirrors the natural slope of the valley, allowing the building to recede visually and maintain the dominant presence of the parkland landscape. The absence of heavy ground level elements ensures the green edge remains uninterrupted, with the lower levels concealed behind the existing vegetation. Warm materials, slender framing and generous planting on the terraces soften the façade and blend the development into its surroundings. Together, these moves create a respectful and coherent interface that enriches the parkland outlook while reinforcing Trumper Park as the primary landscape character of the precinct.*

## **Part B – Legal and Planning Framework**

### **B.1 Ground 1 – Eastern Lot: No Enforceable Legal Mechanism**

The western building is physically designed for integration with a future eastern building: common wall at Levels 1–4, linked communal open space at Level 5, and a future central landscaped space. The EIS explicitly acknowledges that apartment mix compliance, minimum dwelling numbers, and landscape outcomes depend on Stage 2 proceeding.

Despite this, the EIS proposes no legal instrument binding the eastern lot to development. There is no:

- s88B instrument (restriction on the use of land) under the Conveyancing Act 1919 requiring development of Lot 12 consistent with the concept plan;
- Voluntary Planning Agreement (VPA) under s7.4 of the EP&A Act 1979 committing any future owner to develop the eastern lot;
- Restriction on title preventing independent alienation of the eastern lot; or
- Positive covenant requiring development consistent with the concept plan lodged with this SSDA.

The only protection suggested is that apartment mix compliance “could” be secured by a condition of consent on SSDA 80626208. A condition of consent on the western lot development cannot bind a subsequent purchaser of the eastern lot, and it is not an adequate substitute for a binding legal instrument.

The proponent owns the entire site as a single holding. Consequently, unless proven otherwise, the subdivision is not a practical necessity for staged delivery, it’s a deliberate financial structuring decision.

Lot 12 will acquire very attractive development rights once PP-2023-1648 is gazetted. Under that planning proposal, Lot 12 (4,435.6m<sup>2</sup>) will be entitled to an FSR of 3.7:1, yielding approximately 16,411m<sup>2</sup> of permissible GFA, on a site with a height limit of RL91 — approximately 18 storeys — adjacent to Edgecliff Station and overlooking Trumper Park.

By obtaining consent for SSDA 80626208 with the proposed subdivision, the proponent simultaneously is approved to develop Lot 11 independently and crystallise the development rights on Lot 12, creating a separately titled, shovel-ready 18-storey development site that can be sold on the open market at a premium reflecting those approved entitlements.

The subdivision is therefore the mechanism by which the planning proposal uplift is converted into a separately tradeable asset. The consent authority is being asked to approve the creation of that asset while accepting, on the developer's assurance alone, that it will not be monetised by sale.

The EIS's reliance on design features such as the common wall and the linked Level 5 communal space as evidence of an integrated two-stage vision does not answer this concern. Those features are compatible with a future eastern development if it occurs, but they do not require it to occur. If the proponent genuinely intends to develop Stage 2, a s88B restriction or VPA is required to remove the uncertainty. The only reason to resist such a condition is to preserve the option to sell Lot 12 — with its 16,411m<sup>2</sup> of approved GFA and RL91 height entitlement — without ever building it.

## **B.2 Ground 2 — FSR Calculated Against the Western Lot Only**

The current WLEP 2014 imposes an FSR of 0.75:1. Planning proposal PP-2023-1648 seeks to increase this to 3.7:1 for the entire 7,226m<sup>2</sup> site. That proposal has been recommended for finalisation but is not yet gazetted.

The proposed GFA of 9,534m<sup>2</sup> on the western lot of 2,790.3m<sup>2</sup> yields a lot-specific FSR of 3.42:1. But the 3.7:1 control was designed as a site-wide cap — not a per-lot entitlement — and applying it in isolation to each half of the site could allow the combined total to approach the maximum whole-of-site envelope with no planning mechanism to control the outcome.

## **Part C — Apartment Design Guide Non-Compliances**

Chapter 4 Section 147 of the Housing SEPP states that development consent must not be granted to residential apartment development that is State Significant Development unless the consent authority has considered (a) the quality of the design evaluated in accordance with the design principles in Schedule 9, and (b) the Apartment Design

Guide (ADG). This section of the submission addresses the proposal's failures against the ADG in detail.

### **C.1 Ground 3 — ADG 3B: Orientation — Incomplete Justification**

The EIS acknowledges non-compliance with ADG Objective 3B. The building's south-west aspect and site slope result in 14 of 65 apartments (21.5%) receiving no direct midwinter sunlight, against the ADG maximum of 15%.

ADG Design Criterion 3B-1 guidance states that for south-facing sloping sites, design drawings must demonstrate "how site constraints and orientation preclude meeting the design criteria and how the development meets the objective." The guidance also recommends that on south-facing slopes, the rear wing of the building should be "orientated east to west to maximise solar access." The EIS provides no alternative massing study and no modelling of alternative configurations. The assertion that non-compliance is 'unavoidable' is unsupported by design testing.

ADG Objective 3B-2 requires that where a neighbouring property does not currently receive the required hours of solar access, the proposed building must not reduce it by more than 20%. The shadow diagrams show only the proposed building's shadow and existing tree canopy — there is no baseline diagram showing the existing buildings' shadows. Without a baseline, neither the consent authority nor objectors can verify compliance with this threshold, particularly given the building's height increase from approximately 3–4 storeys to 10 storeys.

### **C.2 Ground 4 — ADG 3C: Public Domain Interface — Three Unresolved Issues**

#### **(a) Free-Standing Substation**

ADG Objective 3C-2 requires that substations and other services be located in basement car parks or out of view. The EIS compliance table acknowledges a free-standing substation north-west of the vehicle crossing, and states its final design and location are pending Ausgrid specifications. A free-standing substation visible from the public domain is contrary to the ADG. The consent authority cannot assess compliance with this objective from the documents as lodged.

#### **(b) Pedestrian Entry Along the Side Boundary**

The common accessible pedestrian entry runs along the south-eastern side boundary of the western lot, not directly from New McLean Street to the building. Residents must walk the length of the site boundary to reach the lobby. ADG Objective 3G-1 requires entries to relate to the street and pedestrian network and activate the street edge. Ground floor apartments also lack direct street access, with all access via the internal lobby only.

### **(c) Vehicle Entry Conflict with the Public Right of Footway**

The vehicle turntable and entry are located at the northern corner of the site — the same corner through which the publicly accessible right of footway connecting New McLean Street to Trumper Park runs. ADG Objective 3H-1 requires clear sight lines at pedestrian and vehicle crossings. The EIS provides no pedestrian-vehicle conflict analysis or swept path drawings for this interface, which is a specific public safety concern.

### **C.3 Ground 5 — ADG 3D: Communal Open Space — Mandatory Solar Criterion Unaddressed**

ADG Objective 3D-1 contains two mandatory design criteria: (1) communal open space equal to at least 25% of the site; and (2) a minimum of 50% direct sunlight to the principal usable part of the communal open space for at least 2 hours between 9am and 3pm on 21 June.

The EIS addresses Design Criterion 1, claiming 27% (752m<sup>2</sup>). It does not address Design Criterion 2 at all. No sun-eye diagrams, shadow analysis, or solar access calculations for the communal open space are provided anywhere in the EIS.

This omission is particularly serious because the ground-level communal space is described in the EIS as located “in the southern corner of the building footprint as an undercroft space.” A 10-storey building on a south-westerly facing site will cast substantial shadow over a ground-level undercroft space in its southern corner during winter. It is highly likely that this space does not receive 2 hours of direct sunlight on 21 June, let alone that 50% of its area does. The consent authority has no basis on which to find compliance with a mandatory criterion that the EIS has not addressed.

The Level 5 communal space (355m<sup>2</sup>) is designed to link to the future eastern lot. Without Stage 2, it functions as an isolated rooftop terrace. Its communal value is entirely contingent on a development that is not legally secured.

### **C.4 Ground 6 — ADG 3E: Deep Soil — Dimension Unverified and Calculation Potentially Overstated**

ADG Design Criterion 3E-1 requires a minimum deep soil dimension of 6m for sites greater than 1,500m<sup>2</sup>. The western lot is 2,790.3m<sup>2</sup>. The EIS claims 215m<sup>2</sup> of deep soil (7.7%) but provides no plan confirming how the 6m minimum dimension is achieved. Deep soil described as being within a north-western setback strip shared with infrastructure is likely to be a narrow linear configuration that does not satisfy this requirement.

The ADG definition explicitly excludes “services, swimming pools, tennis courts and impervious surfaces including car parks, driveways and roof areas” from deep soil. The

claimed deep soil area is co-located with the publicly accessible right of footway, the free-standing electricity substation, and variable-width electricity easements — all of which should be excluded from the deep soil calculation. The 215m<sup>2</sup> figure may therefore be overstated and the nominal 7.7% compliance may mask actual non-compliance with the mandatory 7% criterion.

The ADG design guidance also recommends 15% deep soil for sites greater than 1,500m<sup>2</sup>. On a regularly shaped 2,790m<sup>2</sup> site, this should be achievable if the basement footprint is consolidated beneath the building in accordance with ADG 3J-4. The EIS does not demonstrate that the basement layout has been optimised for this purpose.

### **C.5 Ground 7 — ADG 3F: Visual Privacy — Acknowledged Non-Compliance and R2 Adjacency**

The EIS formally acknowledges non-compliance with ADG Objective 3F-1 at the north-western boundary. Setbacks to that boundary fall as low as 1.2m to balconies at Basement 1 through Level 4, against ADG minimums of 9m for habitable rooms (5–8 storey buildings). The proponent relies on a claimed 15m building-to-building separation (subject to survey). This separation has not been confirmed by survey and represents the total gap between buildings, not the boundary setback required by the ADG criterion.

A separate and unaddressed issue arises at the eastern boundary. ADG Objective 3F-1 design guidance states that apartment buildings must increase their separation distance by 3m (in addition to standard criteria) when adjacent to a different zone permitting lower density residential development. The land to the east along Cameron Street is zoned R2 Low Density Residential, occupied by two-storey heritage terraces within the Paddington Heritage Conservation Area. The EIS notes that the separation to Cameron Street properties is approximately 60m and concludes there are no privacy impacts — but it does not acknowledge the ADG's zone transition requirement or confirm that the eastern boundary setbacks incorporate the required additional 3m.

### **C.6 Ground 8 — ADG 4A and 4K: Solar Access and Apartment Mix**

ADG Design Criterion 4A-1 requires a maximum of 15% of apartments to receive no direct midwinter sunlight. 14 of the 65 apartments (21.5%) receive none — approximately 4 apartments beyond the ADG maximum. These are the larger family-sized units at Level 4 and below with south-western aspects. The absence of any 1-bedroom or studio apartments means there are no smaller, better-orientated units to offset this impact within the mix.

ADG Part 4K requires a range of apartment types and sizes. As addressed under Principle (a) of the Housing SEPP above, the proposal delivers zero 1-bedroom or

studio apartments, with the entire smaller-dwelling allocation deferred to the unbound eastern lot.

## **Part D — Further Grounds of Objection D.1 Ground 9 — Net Loss of Dwellings**

The draft site-specific DCP (Section 2.4, Control C1) requires a minimum of 106 dwellings to ensure no net loss. The existing site contains 106 apartments; Stage 1 delivers 65. The net shortfall is 41 dwellings (39%). The EIS describes this as ‘temporary non-compliance’, relying on Stage 2 yielding approximately 150 apartments to rectify it.

This is unsatisfactory. The DCP control exists to prevent net housing loss during a consent period. Demolishing 106 existing dwellings and replacing them with 65 reduces housing supply in a municipality where that supply is already constrained. The existing residents of 106 strata apartments are displaced by the demolition; the EIS does not address this impact. Without a binding legal obligation on the eastern lot, the shortfall of 41 dwellings could become permanent.

### **D.2 Ground 10 — Wind Assessment: Desktop Study Insufficient**

The wind assessment (Appendix 22) is a desktop study by SLR Consulting — a preliminary exercise that does not involve site-specific modelling of the final building form. The draft DCP (Section C4) requires modelling of the detailed design, including CFD or equivalent analysis addressing Helmholtz resonance, internal flow issues, high winds on roof terraces and balconies, and pedestrian-level conditions for stationary activities.

This is not a technical formality. The building is 10 storeys on a steeply sloped site adjacent to an active public park. The pedestrian right of footway between the proposed western building and the neighbouring north-western building creates a potential wind corridor. The ground-level undercroft communal space and the Level 5 terrace are key amenity resources whose usability is critically dependent on wind conditions. The EIS defers detailed wind mitigation to Construction Certificate stage; the DCP requires it to inform the design before consent is granted.

### **D.3 Ground 11 — Shadow Diagrams and Moreton Bay Fig Trees**

#### **Shadow Diagrams: No Baseline, Not Independent**

The shadow diagrams (Figures 41 and 53, extracted from the Design Report prepared by FK Architects) show the proposed building’s shadow and existing tree canopy line at each hour from 9am to 3pm on 21 June. They do not show the shadow cast by the two existing buildings on the site.

The proponent’s core claim is that the proposed building does not create additional shadow to Trumper Park after 10am midwinter. Without a baseline diagram, this is unverifiable. ADG Objective 3B-2 and DCP Control B3.5.2 both require that existing

shadow conditions not be worsened. The diagrams were produced by the project architect, not an independent consultant. For a 39.8m building where shadow compliance is central to the Clause 4.6 height variation justification, independent modelling is appropriate and expected.

### Moreton Bay Fig Trees: Inadequate Assessment Against 16.2m Excavation

Two Moreton Bay fig trees on the Trumper Park boundary, estimated to be over 100 years old and listed on Woollahra Council’s Register of Significant Trees (2024), are immediately adjacent to the development footprint. The Geotechnical Investigation (Appendix 12) confirms basement excavation reaches 16.2m at the southern edge — the edge closest to these trees.

The EIS asserts that the TPZs will be ‘avoided’ and clearing limited to within the property boundaries. However, the Structural Root Zone (SRZ) of a 100-year-old Moreton Bay fig may extend onto the subject site. No TPZ or SRZ analysis in relation to the basement footprint is provided. Construction vibration from 16.2m excavation poses risks to root integrity that are not addressed. A hollow-bearing branch overhangs the site; its protection during a 16.2m basement excavation and dewatering program is not analysed.

## Summary of Objection Grounds

Ground	Key Issue	Action Required
<b>A.1 SEPP Principle (a) — Diversity</b>	Zero 1-bed or studio apartments. Deferral to unbound eastern lot. Contrary to DCP Chapter B4 amendment and SEPP housing diversity objective.	Redesign or binding VPA for eastern lot mix delivery.
<b>A.2 SEPP Principle (c) — Amenity</b>	Common wall becomes permanent blank facade without Stage 2. Level 5 communal space non-functional without eastern building. Undercroft space without sun analysis.	Binding legal obligation on eastern lot required.
<b>A.3 SEPP Principle (d) — Infrastructure</b>	No community infrastructure planned. Car parking exceeds accessible area rates. Intersection already at capacity.	Parking to comply with DCP Chapter B4 accessible area rates.
<b>A.4 SEPP Principle (e) — Climate/Environment</b>	152 of 203 trees recommended for removal including high-value specimens. Overshadowing of Trumper Park unverified without baseline. Comparison to ECCP standards invalid.	Independent shadow analysis. Reduced building footprint to retain significant trees.
<b>B.1 Ground 1 — Eastern Lot</b>	No s88B, VPA, or restriction on title. FSR, mix, dwelling numbers, and landscape all contingent on unenforceable future development.	s88B or VPA before subdivision registered.
<b>B.2 Ground 2 — FSR</b>	3.42:1 on 38.6% of site vs 1.32:1 whole-site. 356% Clause 4.6 variation. Planning proposal ungazetted. No GFA cap on eastern lot.	Assess against entire site or impose GFA cap.
<b>C.1 Ground 3 — ADG 3B</b>	No alternative massing study. No baseline shadow for 20% residential reduction threshold.	Massing study + residential baseline shadow overlays.

Ground	Key Issue	Action Required
<b>C.2 Ground 4 — ADG 3C</b>	Free-standing substation location pending. Entry via side boundary. Vehicle/footway conflict at northern corner.	Substation to basement. Conflict analysis required.
<b>C.3 Ground 5 — ADG 3D</b>	Mandatory Design Criterion 3D-1.2 (50% sun to communal space) entirely unaddressed. Ground space is undercroft almost certainly non-compliant.	Solar access analysis for communal spaces before determination.
<b>C.4 Ground 6 — ADG 3E</b>	6m minimum dimension unverified. Deep soil co-located with services — potentially disqualified under ADG definition.	Dimensioned plans + revised calculation excluding services.
<b>C.5 Ground 7 — ADG 3F</b>	NW boundary non-compliance (1.2m vs 9m ADG). R2 zone adjacency (+3m requirement) not addressed.	Survey confirmation + R2 transition assessment.
<b>C.6 Ground 8 — ADG 4A/4K</b>	21.5% no midwinter sun (ADG max 15%). Zero 1-bed apartments. Mix deferral unenforceable.	Redesign to reduce non-complying apartments.
<b>D.1 Ground 9 — Net Dwellings</b>	65 proposed vs 106 existing and DCP minimum. Permanent loss risk if eastern lot not developed.	VPA requiring minimum 41 additional dwellings from eastern lot.
<b>D.2 Ground 10 — Wind</b>	Desktop study insufficient. DCP requires CFD modelling of detailed design.	Full CFD or wind tunnel assessment before determination.
<b>D.3 Ground 11 — Shadows / Figs</b>	No baseline shadow comparison. Not independently prepared. 16.2m excavation near registered 100-year-old figs; no TPZ/SRZ analysis.	Independent shadows with baseline. AS4970 arboricultural report.

## Conclusion

This objection has identified eleven substantive grounds for refusal or, at minimum, fundamental redesign. They fall into three categories and, taken together, they are not capable of resolution through conditions of consent.

The grounds relating to Housing SEPP Principles (a), (c), (d), (e) and (f) establish that the proposal delivers housing of the wrong type in the wrong configuration, with excessive car parking, inadequate regard for existing community infrastructure, and unjustifiable loss of established trees.

The grounds relating to the absence of a legal mechanism for the eastern lot are the most serious. The proposal's justifications for FSR, apartment mix, minimum dwelling numbers, and landscape compliance are all predicated on a second development that no legal instrument requires to occur. The consent authority is being asked to approve a building that is, by the proponent's own admission, incomplete — with critical design and compliance outcomes deferred to a future stage that may never arrive.

The EIS's repeated description of these failures as 'temporary non-compliances' inverts the purpose of planning standards: they are not temporary indulgences to be corrected by goodwill. They are conditions the law requires to be satisfied before consent may be granted.

The ADG grounds compound this picture. Ground 5 — the complete absence of any solar access analysis for the mandatory 50% sunlight criterion for communal open space — is particularly stark. Design Criterion 3D-1.2 is not guidance; it is a mandatory

criterion. It has not been addressed in the EIS at all. A consent authority cannot lawfully find compliance with a criterion that has not been assessed. Ground 6 similarly reveals that the 7.7% deep soil compliance figure may be an overstatement once services, easements, and impervious surfaces in the claimed zone are correctly excluded under the ADG's own definition.

The shadow diagrams, which are central to the proponent's overshadowing justification for the Clause 4.6 height variation, lack the baseline comparison that would allow the consent authority to verify the proponent's core claim of no additional shadow to Trumper Park. That the diagrams were produced by the project architect rather than an independent consultant is a further reason why they should not be accepted without independent verification.

For these reasons, SSD 80626208 should be refused in its current form. Should the consent authority be minded to consider a modified scheme, the minimum preconditions would be:

- Registration of a s88B restriction or execution of a VPA binding the eastern lot to development consistent with the concept plan, as a precondition of subdivision consent;
- A material redesign that addresses the solar access non-compliance for apartments and the wholly unaddressed mandatory solar access criterion for communal open space;
- Verification of deep soil dimensions and recalculation excluding co-located services and impervious surfaces;
- Independently prepared shadow diagrams with existing-building baseline overlays;
- An AS4970-compliant arboricultural assessment of both registered Moreton Bay figs against the 16.2m basement excavation footprint; and
- A full CFD or wind tunnel wind assessment of the final building design.

The proposal, as currently lodged, falls well short of the standard of design and compliance the planning framework requires for a development of this scale and significance on the boundary of Trumper Park and the Paddington Heritage Conservation Area.

Note. The views expressed in this submission are my own.