Attachment D4

Submissions

B
Development Proposal
CITY OF SYDNEY
125

From: Julie <[redacted] on behalf of Julie <[redacted] <Julie [redacted]

Sent on: Sunday, March 22, 2026 7:46:30 PM

To: dasubmissions@cityofsydney.nsw.gov.au

Subject: Application DA/2026/97

Caution: This email came from outside the organisation. Don't click links or open attachments unless you know the sender, and were expecting this email.

Dear Sir/Madam,

I am writing to formally object to DA/2026/97. The proposal's excessive height, inadequate setbacks, and boundary-to-boundary construction will result in overshadowing, loss of privacy, and substantial disruption to the surrounding community. For these reasons, I do not approve of this application.

Thank you very much for your consideration.

Best regards,

Julie

Resident of Kent Street

From:	Tony Moody
To:	Elizabeth L Jones
Cc:	HK2; Paul Upham
Subject:	RE: ADAPTIVE REUSE OF EXISTING 3 STOREY BUILDING AND CONSTRUCT NEW 4 PART 5 STOREY EXTENSION AND USE AS A RESIDENTIAL FLAT BUILDING, CONTAINING A TOTAL OF 5 APARTMENTS WITH ROOFTOP COMMUNAL OPEN SPACE, DA D/2026/97, PPTY: 125A KENT STREET, MILLERS POINT
Date:	Friday, 20 March 2026 1:47:23 PM
Attachments:	Photomontages..pdf

Caution: This email came from outside the organisation. Don't click links or open attachments unless you know the sender, and were expecting this email.

ATTENTION: ELIZABETH L JONES, SPECIALIST PLANNER.

RE: ADAPTIVE REUSE OF EXISTING 3 STOREY BUILDING AND CONSTRUCT A NEW 4 PART 5 STOREY EXTENSION AND USE AS A RESIDENTIAL FLAT BUILDING, CONTAINING A TOTAL OF 5 APARTMENTS WITH ROOFTOP COMMUNAL OPEN SPACE, DA D/2026/97, PPTY: 125A KENT STREET, MILLERS POINT

Dear Elizabeth,

I refer to the abovementioned Development Application (DA) D/2026/97, on the property at 125A Kent Street, Millers Point (subject site).

I was requested by the owners and residents of an adjoining Residential Flat Building, known as "Highgate", at 127 Kent Street, Millers Point, to assess the above proposed development and to provide my professional opinions.

My Clients' property lies generally to the southeast of the subject site.

I confirm that I have examined the documents, plans, reports, and Statement of Environmental Effects (SEE) lodged in support of the proposed development.

For the reasons referred to in my submission, I am of the strong professional opinion that the above DA is most unreasonable and objectionable and is not worthy of approval.

Prior to providing my points of objection, I wish to provide the following preliminary comments:-

- By way of introduction, I wish to advise you of my qualifications and experience. I am a Consultant Planner with 15 years' experience in 3 Local Government Councils, including 9 years as a Senior Development Control Planner. I hold a Bachelor of Town Planning Degree from the University of NSW and a Bachelor of Laws Degree (Hons) from the University of Technology, including a High Distinction in Environmental Studies. I have appeared as an Expert Planning Witness for 9 Councils in the Land and Environment Court (Court), and I have also appeared in numerous Appeals as a Court Appointed Expert. I have also previously appeared as the Expert Planning Witness for City of Sydney Council (Council) in the Court.
- On behalf of my Clients, myself and fellow adjoining owners, thank you for your courtesy in

granting an extension to the exhibition period. Your courtesy is greatly appreciated.

My points of objection can be summarised in the following areas of concern:-

1. **RESPONSES TO SEE**

- Figure 4 shows the existing Residential Flat Building, known as "Highgate", which is my Clients' building at 127 Kent Street.
- At Section 2.4 entitled "Pre-DA Meeting", I note that there was a previous Pre-DA Meeting with the relevant Officers of City of Sydney Council (Council). There are references to various comments of Council Officers made not only during the above Pre-DA Meeting but also at a follow up meeting. I consider that the various "Council comments" indicate a range of concerns raised by Council Officers. For the reasons referred to in this submission, I am also strongly of the opinion that the current DA is objectionable, and my objections reflect the majority of Council's concerns. Of particular note is that Council Officers raise the following concerns:-

    i. Council Officers contend that "the apartments will receive substandard amenity and will not meet the objectives of the Apartment Design Guide (ADG) nor demonstrate Design Excellence". I agree with this concern raised by Council Officers.
    ii. Council Officers raise a concern regarding the non-compliant setbacks from the boundaries, visual privacy and obstruction of outlook and solar access. I agree with Council's concerns.
    iii. Council Officers raise a concern that the proposed apartments are not able to be naturally cross ventilated. The Applicant now contends that 4 of the 5 apartments are now cross ventilated.
    iv. Council Officers note that "no private open space is provided, and the common open space is undersized and overshadowed". The Applicant concedes that no private open space areas are provided but contends that the proposed communal open space "adequately offsets the provision of private open space areas". I strongly disagree for the reasons referred to in my submission.
    v. Council Officers consider that there would be "adverse impacts on the adjoining properties with visual and acoustic privacy impacts, loss of outlook, sense of enclosure and possible reduced solar access". I strongly agree with Council's concerns.

- Figures 8 and 9 in the SEE indicate the layout of the proposed development. The SEE acknowledges the "constrained nature of the site". It could be fairly said that the subject site is severely constrained by the following features:-

    i. Small area of only 153sqm.
    ii. Narrow width of the subject site in an east west direction.
    iii. The subject site is enclosed by adjoining developments, including my Clients' property to the southeast, residential terraces to the east and north and other

approved residential developments to the west. The adjoining residential terraces are part of a Heritage Conservation Area (HCA) and are State Heritage Items.

iv. Due to the narrow width of the subject site and the fact that the subject site is surrounded by a range of residential development, I consider that the internal amenity of the proposed development will be inadequate and furthermore the proposed development will generate a range of adverse impacts on adjoining properties.

v. The subject site is also affected by various easements and restrictions including, but not limited to, "easement for drainage", "right of carriageway for easement of light and air", "easement for access", "easement to drain water" and "easement for sewerage purposes of existing line of pipes". Please refer to Deposited Plan 873158 which is included as part of the DA.

The above elements i. to v. reflect a severely constrained site which limits potential redevelopment. The fact that the proposed development breaches numerous Planning Controls evidence the severely constrained nature of the subject site and the excessive bulk and scale of the proposed development. Furthermore, the adjoining locality, primarily the HCA and State Heritage Items, requires a sensitive development on the subject site. Rather than providing the required sensitive development on the subject site, the proposed development reveals numerous breaches of Council's Planning Controls with associated adverse amenity impacts.

- Section 3.6 entitled "Landscaping" indicates the proposed landscaping. It could be fairly said that the "Landscaping Details" do **not** constitute deep soil landscaping but rather are peripheral plantings at various upper levels. The proposed landscaping is essentially small landscaping above structures which do **not** provide appropriate deep soil landscaping. In other words, there is no meaningful deep soil landscaping around the curtilage of the proposed building.
- The bottom of Table 4 refers to the "Design Verification Statement" which seeks to address the 9 Design Quality Principles and assessment against the ADG. Please refer to additional comments later in this submission.
- In relation to Clause 4.4 entitled "Floor Space Ratio" (FSR) and Clause 4.3 entitled "Height of Buildings", the SEE notes that the proposed development complies with both Development Standards.
- Despite compliance with the FSR and Height Standards, there still must be a proper and informed assessment against the full range of matters under Section 4.15 of the Environmental Planning and Assessment Act before one can form a final opinion as to whether the proposed development is worthy of approval. In this case, despite compliance with the FSR and Height Standards, I strongly consider that the proposed development fails on a range of matters under Section 4.15 of the Environmental Planning and Assessment Act which are referred to in my submission.
- In relation to Clause 6.21 "Design Excellence", I do not consider that the proposed development exhibits Design Excellence as required under Clause 6.21 of Sydney Local Environmental Plan 2012 (SLEP 2012) for the reasons referred to in my submission.

- In relation to Section 4.2 entitled "Sydney Development Control Plan 2012" (SDCP 2012), I that the proposed development fails to comply with the following Planning Controls under SDCP 2012:-

  i. Internal Common Areas.
  ii. Private Open Space and Balconies.
  iii. Common Open Space in relation to Unpaved Soft Landscaped Area.
  iv. Side and Rear Setbacks.
  v. A range of Amenity Impact under SDCP 2012.

- There are also breaches of the ADG referred to in my submission.
- Section 5 entitled "Planning Evaluation" assesses the proposed development in terms of various impacts. I consider that the proposed development will result in a range of adverse Amenity Impacts including, but not limited to, the following:-

  i. The SEE claims that the proposed development "maintains its relationship with neighbouring buildings". I strongly disagree. The proposed development does **not** maintain the relationship with neighbouring buildings but introduces a significantly larger building with nil boundary setbacks to the adjoining properties. Simply put, I consider that the proposed building is a significantly larger building than currently exists on the subject site and therefore significantly changes the relationship with adjoining buildings, including my Clients' building. On this point, please refer to the attached "Photomontages". I consider that the Applicant's Photomontages evidence the fact that the proposed building will tower over the adjoining terraces and will generate a Sense of Enclosure to those terraces. The Heritage status of the terraces exacerbates the adverse impact.
  ii. In terms of Visual Impact, I consider that the proposed development, particularly in terms of its height and nil boundary setbacks, is a very unsatisfactory interface with lower scale terraces in the immediate vicinity. Even in relation to the interface with my Clients' building, the proposed development likely generates adverse View Loss and Overlooking Impact from a number of my Clients' lower-level units. Further assessment is required in relation to View Loss.
  iii. In relation to Sense of Enclosure, which was raised by Council Officers, I consider that the proposed development generates adverse Sense of Enclosure, particularly from the terraces and their private open space areas to the east and north.
  iv. In relation to the issue of View Loss, I refer to Section 5.3 entitled "View Impacts-Private View Points". I raise the following concerns relating to the assessment of View Impact from my Clients' lower level units:-

     a. The View Impact Assessment (VIA) is only based on "indicative views". In other words, the Photomontages which accompany the VIA are not based on the Court's protocol for Photomontages. There is no evidence to suggest that the Photomontages have been produced in accordance with the Court's protocol.

b. No representative of the Applicant has ever requested access to my Clients' units to personally observe the current views from my Clients' units.
c. The VIA has not considered the 4 Steps under Tenacity Consulting v Warringah Council (Tenacity), which is a Court Planning Principle.

- Section 5.5 entitled "Visual Privacy" correctly sets out the Building Separation Control under the ADG. The proposed development clearly breaches the ADG Building Separation Control.
- The Design Report claims that a "combination of solid walls, obscure glazing and screen devices have been utilised to ensure adequate visual privacy for future tenants within the proposal and neighbouring developments". Thus, the Design Report acknowledges that without the visual privacy measures, there would be unreasonable and adverse Overlooking Impact into adjoining properties. The concern that I raise is that the various Visual Privacy measures will adversely impact the internal amenity of the proposed development for future occupants. Thus, to solve one problem (that is privacy), a second problem arises (that is poor internal amenity for the proposed units). The severe constraints of the subject site result in a proposed development which generates a range of adverse impacts not only in terms of the amenity of adjoining properties, including my Clients' property, but also the poor internal amenity for future occupants of the proposed development.
- Despite the proposed privacy measures, I also consider that the proposed development will still generate adverse Overlooking Impact from both the proposed lower and roof top Communal Open Space and the proposed northern and eastern glazed surfaces.
- Section 5.6 entitled "Private Open Space" correctly identifies that the proposed development breaches the Private Open Space Control under the ADG. No Private Open Space is proposed. In its place, the Applicant proposes Communal Open Space, but I do not consider that Communal Open Space of itself overcomes the need for Private Open Space. In fact, in the circumstances of the current DA, I consider that Private Open Space is far more essential for future occupants rather than Communal Open Space for the following reasons:-

  i. The Court has previously established that public open space can satisfy Communal Open Space if the public open space is within 400m walking distance. There are public open space areas within 400m of the subject site. In other words, there is ample public open space area within easy walking distance.
  ii. The poor internal amenity arising from the proposed privacy measures referred to above is further worsened by the lack of private open space.

- Section 5.8 entitled "Acoustic" has only assessed "Traffic Noise" and has **not** assessed Acoustic Impact arising from the following noise sources:-

  i. Acoustic Impact arising from the proposed use of the Communal Open Space on Level 2 and the rooftop. The Acoustic Impact likely from the use of the rooftop

Communal Open Space and Level 2 Communal Open Space has not been investigated.

ii. Acoustic Impact from proposed plant and equipment has not been considered. The Acoustic Report advises that "A specific mechanical plant selection has not been provided at this stage".

- In relation to Parking, Traffic and Loading, please refer to additional comments below.
- Section 5.15 entitled "Site Suitability" claims that the proposed development "is suitable without adverse impacts on the environment and surrounding Heritage context" and "ensures suitable amenity is maintained for neighbouring developments and the site".
- I disagree with the above claims and say as follows:-

i. For the reasons referred to in this submission, I consider that the internal amenity for future occupants of the proposed units will not be reasonable.

ii. Adjoining properties would also suffer an unreasonable loss of amenity for the reasons referred to in this submission.

- Section 6 entitled "Conclusion" at the 2nd paragraph claims that the proposed development ensures "a high level of amenity is achieved for future residents". I disagree. I consider that the internal amenity for future residents will be poor.
- Furthermore, the SEE in the 2nd paragraph in the "Conclusion" section claims that the "amenity for neighbouring properties will be maintained". This is simply not the case.
- Overall, I disagree with many of the claims in the SEE for the reasons referred to above.

2. **LOSS OF VIEWS**

- As previously advised in my submission, I raise the following concerns relating to the assessment of View Impacts from adjoining residential properties which are generated by the proposed development:-

i. The View Impact Assessment (VIA) is only based on "indicative views". In other words, the Photomontages which accompany the VIA are not based on the Court's protocol for Photomontages.

ii. There is no evidence to suggest that the Photomontages have been produced in accordance with the Court's protocol.

iii. No representative of the Applicant has requested access into my Clients' units to personally observe the current views from my Clients' units.

iv. The VIA has not considered the 4 Steps under Tenacity Consulting.

- Overall, the VIA is inadequate for the reasons referred to in i. to iv. above.

3. **ADVERSE VISUAL IMPACT – INCOMPATIBLE DEVELOPMENT**

- In the 2nd paragraph in Section 3.2 entitled "Built Form and Massing", the SEE claims that

the proposed development is a "**modest** tower extension" (emphasis added). This is a totally unfounded claim. Whilst the proposed tower is described as "a slender 4 storey extension", a proposed extension of 4 storeys cannot be described as a "modest" tower extension. Please refer to the attached Photomontages which evidence the significant proposed tower extension.

- There are references in the current DA claiming that the proposed development is "compatible" with the adjoining developments. I strongly disagree for the following reasons:-

  i. The documents, plans and reports claim, in effect, that the proposed development is compatible with the adjoining character. Based on the Court's Planning Principle in Project Venture Developments v Pittwater Council (Project Venture), the Court established that there are 2 major aspects relating to compatibility which are physical impacts and visual impacts.
  ii. In terms of physical impacts, I reiterate my concerns relating to Overlooking Impact, Overshadowing Impact, Acoustic Impact and Sense of Enclosure.
  iii. In terms of Visual Impact, the Court raised the query in Project Venture as to whether the proposed development is "in harmony with the buildings around it and the character of the street".
  iv. Given the fact that the proposed development is immediately adjacent to a row of State Heritage Items which are contained in a HCA, I consider that the assessment of compatibility must be tested primarily in relation to the adjoining HCA and the row of Heritage Items.
  v. I particularly note the Court's Planning Principle in Project Venture at paragraph 30 which states as follows "Conservation Areas are usually selected because they exhibit consistency of scale, style or material. In Conservation Areas, a higher level of similarity between the proposed and existing is expected than elsewhere. The similarity may extend to an architectural style expressed through roof form, fenestration, and materials".
  vi. Whilst the subject site is not within the HCA, it immediately adjoins the HCA to the east and north and one must obviously take into consideration the bulk, scale, height and design of the proposed development relative to the Heritage listed terraces in the HCA to ensure "harmony with the buildings around it and the character of the street".
  vii. I strongly consider that the proposed development is not in harmony nor compatible in its physical appearance given the following features of the proposed development:-

a. The proposed development is of a height, bulk and scale which are contrary to the adjoining terraces in the HCA. On this point, please refer to the attached "Photomontages".
b. The proposed glazed multi storey tower is also incompatible to the terraces in the HCA in terms of design, finishes, and materials. On this point, please refer to the attached "Photomontages".

  viii. The fact that the proposed development has nil boundary setbacks on 3 sides of the subject site is incompatible with the adjoining terraces.

- The proposed development represents an abrupt change in scale and height compared to

the adjoining terraces contrary to Project Venture. On this point, please refer to the attached Photomontages.

- The SEE claims that the proposed development represents a "minor increase" in height. Clearly, this claim is totally unfounded. Please refer to the attached Photomontages.
- Whilst the adjoining terraces have deep soil landscaping, the proposed development provides no soft deep soil landscaped area.
- Thus, based on the criteria set out in Project Venture, it cannot be said that the proposed development is compatible with the existing character of the area.
- I note that there are numerous references in the SEE and supporting documents to the effect that the subject site is a constrained one. I fully agree for the reasons that I have raised in my submission. I, however, strongly disagree with the Applicant's justification to breach numerous Planning Controls on the basis that the subject site is a constrained one. In circumstances where a subject site is constrained, the Court has previously established that in such circumstances, a proposed development should be more conservative compared to the relevant Planning Controls, including the ADG. In this case, the proposed development breaches numerous relevant Planning Controls.

4. **OVERLOOKING IMPACT**

- There is clearly potential for adverse Overlooking Impact into my Clients' units, the adjoining terraces, and rear yards of the terraces to the east and north. As noted above, there is potential for adverse Overlooking Impact back into the lower-level units of my Clients to the southeast.
- The adverse Overlooking Impact is generated not only by the proposed units themselves, but also by the 2 elevated Communal Open Space. One communal area is at Level 2 fronting the laneway and a second communal area is at the rooftop of the proposed development.
- The Applicant clearly acknowledges the potential for adverse Privacy Impact by reason of proposed privacy measures which include the proposed "facade system" including "horizontal privacy blade interlayer". No proper details have been provided to demonstrate that these privacy measures will be effective. Any privacy blades must be kept in a fixed manner.
- I, however, note my continuing concerns relating to Privacy Impact onto adjoining properties by reason of the following elements:-

    i. The proposed Communal Open Space on the rooftop and at Level 2 do not contain adequate privacy measures to ensure privacy protection to adjoining properties.
    ii. The northern glazed portions of each proposed unit do not contain adequate privacy measures to ensure protection to the adjoining terraces to the east, northeast and north.

- The Overlooking Impact is clearly generated by the fact that the proposed development is to be placed on a site with severe constraints and thus results in a proposed development

which breaches important Building Envelope Controls, particularly in relation to Side Setback Controls. Simply put, the nil boundary setbacks on 3 property boundaries place the proposed development too close to adjoining properties, including the building of my Clients and thus generates the adverse Overlooking Impact.

- I also note that the proposed privacy measures generate adverse impact on the internal amenity of the proposed units. In other words, to solve one problem (that is Overlooking Impact) by privacy measures generates a subsequent adverse impact in terms of the internal amenity of the future occupants of the proposed units.

5. **ACOUSTIC IMPACT**

- There has been no assessment of noise from plant and equipment given that "specific mechanical plant selection has not been supplied at this stage". I particularly note the proposed "pump roof".
- There has been no assessment of the noise from the 2 proposed elevated Communal Open Space at Level 2 and the roof. The open communal areas have the potential for adverse Acoustic Impact subject to further assessment.

6. **BREACHES OF PLANNING CONTROLS OF COUNCIL**

- The Applicant's DCP Compliance Table acknowledges a number of the breaches of Council's Planning Controls, but not all breaches.
- I consider that the proposed development breaches numerous relevant Planning Controls of Council under SDCP 2012 and the ADG including, but not limited to, the following:-

    i. Breach of the "Millers Point Locality Area-Locality Statement", particularly d.,requiring "new development is to respect and maintain the existing heights and established character of the area". Given the fact that the subject site immediately adjoins a HCA and State Heritage Items, the proposed development must be compatible with the HCA and the State Items. Based on Project Venture in the Court's Planning Principle, the proposed development is completely incompatible with the adjoining HCA.
    ii. Breach of Section 3.2.2 in that the proposed development has not been designed to "positively address the street".
    iii. Breach of Section 3.9 entitled "Heritage" due to the incompatible nature of the proposed development based on the criteria set out in the Court's Planning Principle in Project Venture.
    iv. Breach of Section 4.2.3.3 entitled "Internal Common Areas" relating to the width of common corridors.
    v. Breach of Section 4.2.3.7 entitled "Private Open Space and Balconies". The proposed development does not provide any private balconies. On this point, Part 4E of the ADG entitled "Private Open Space and Balconies" of the ADG states that "private open spaces are encouraged to enhance the amenity and indoor/outdoor lifestyle of residents. Furthermore, private open spaces are also important

architectural elements on the outside of an apartment building contributing to the form and articulation on the building with fences, balustrades, and screens". As previously advised, the proposed development does not provide important private open space nor balconies.

vi. Section 5.1.1 entitled "Street Frontage Height and Street Setbacks".

vii. Section 5.1.1.3 entitled "Side and Rear Setbacks and Building". On this point, the proposed development provides no setback to side nor rear boundaries. Of particularly note is the fact that the proposed development has no side boundary setback to the terraces to the east, northeast nor north of the subject site. The lack of required setbacks is of significant concern and contributes to the incompatible nature of the presentation of the proposed development when viewed from the adjoining terraces in the HCA.

- Again, the Applicant asserts that breaches of the Council's Planning Controls are justified because of the "constrained" nature of the subject site. This is not a justification for the numerous breaches of Council's Planning Controls. Where a site is constrained, the proposed development should not propose numerous breaches with consequential adverse impacts on an adjoining sensitive HCA, and my Clients' units to the southeast.

7. **LACK OF ON-SITE PARKING AND LOADING FACILITIES AND TRAFFIC**

- Section 5.12 entitled "Traffic and Parking" in the SEE claims to be an assessment of Traffic and Parking elements of the proposed development.
- I raise very significant concerns relating to the Traffic and Parking elements of the proposed development, particularly noting the following:-

i. In terms of Parking, there are no on-site parking spaces provided. I acknowledge that Council's SLEP 2012 under Clause 7.5 expresses maximum required number of carparking spaces. The proposed development complies but the failure to provide any carparking in response to the scale of the proposed development is of concern, particularly when one considers the adjoining constrained access arrangements to the subject site. Simply put, the adjoining laneway is a very narrow one with no opportunities for parking.

ii. I also note the failure to provide any Loading Dock to serve the future occupants of the proposed development. Obviously, the failure to provide any Carparking and Loading Facility is a direct result of the constrained nature of the subject site which has insufficient area to provide such facilities.

iii. In terms of Traffic, there is a complete lack of assessment in the SEE to properly assess the Traffic circumstances in the immediate laneway. My personal observations reveal that the laneway is severely constrained due primarily to its narrow width and due to the lack of loading facilities. There are frequent occurrences of trucks and other vehicles double parking in the laneway. By any measure, the laneway is a very congested one. The Applicant has clearly not addressed in any way the issues of Traffic and Loading in the laneway.

iv. There are clearly numerous objections raised by adjoining owners in relation to the

issues of Traffic, Parking and Loading. I consider that the evidence of local residents/owners, including my Clients, should be given significant weight in the assessment, particularly in light of the judgement of then Senior Commissioner Moore (subsequently Judge Moore) in Presbyterian Church (NSW) Property Trust v Woollahra Municipal Council (Scots College). Then Senior Commissioner Moore refused the proposed development, primarily on the comments and observations of local residents/owners attesting to the problems and circumstances evident in the immediate locality. Of particular note is the finding of then Senior Commissioner Moore at paragraph 20 who was "fortified" in his view in relying upon lay witness in accordance with the following finding of his Honour Justice Craig in H and R Standen Pty Ltd v Minister for Planning and Infrastructure in which it was observed that "the practise in this Court in hearing evidence of lay witnesses on site is a practice that has been followed in the determination of almost all merit Appeals for many years. Although those giving evidence on-site are not sworn, the evidence has always been treated as if given in Court and in attending witness are usually so advised".

v. Thus, I consider that significant weight should be given to the concerns expressed by local residents/owners relating to the Traffic, Parking and Loading evident in the laneway. My own observations confirm the concerns of local residents/owners.

vi. The introduction of a significant development on the subject site will merely add to the current existing Traffic, Parking and Loading congestion. Again, the Applicant has failed to provide any assessment of such important issues.

8. **POOR INTERNAL AMENITY WITHIN PROPOSED UNITS**

- For the reasons referred to in this submission, I strongly consider that the proposed units will have poor internal amenity particularly in light of the following breaches of relevant Planning Controls:-

  i. Lack of private open space, by way of proposed balconies. As noted in the ADG, the provision of private open space is a very significant element for internal amenity of future occupants and also provides important articulation and architectural relief. These objectives are not achieved by the proposed development due to the lack of private open space.

  ii. Due to the adverse Overlooking Impact generated by the proposed units into terraces/dwellings on adjoining properties, there is a proposed a range of privacy measures to seek to resolve this adverse Overlooking Impact into adjoining properties. These privacy measures will generate adverse impact in terms of the internal amenity of the proposed units. In other words, trying to cure one problem (that is Overlooking Impact into adjoining properties) by privacy measures, generates a second impact of poor internal amenity for the proposed units.

  iii. Breach of Building Separation Control under the ADG.

9. **ADDITIONAL COMMENTS OF ADJOINING OWNERS**

- There are a number of objectors who have raised various points of concern in response to

the proposed development.

- I wish to particularly note the following points of objection raised by other adjoining owners:-

  i. One of the objectors considers that "any new design needs to seriously consider the existing historic nature of old buildings in Kent Street and fit into this gentle streetscape". I agree. Given the HCA nature of the adjoining locality, the benchmark for future development should not be my Clients' building at Highgate, but rather the State Heritage listed predominant 2-3 storey terraces/dwellings in the HCA.
  ii. The Locality Statement for the HCA requires a much more sensitive development than is currently proposed.
  iii. A further objector states that "the building is without setbacks for an Inner-City neighbourhood it will dominate the neighbouring buildings. Furthermore, there is no meaningful building separation". I agree.
  iv. A further objector states that the "development is inconsistent with the adjacent Heritage buildings, and it erodes the historic Kent Street space with this monolithic glass facade". I agree.
  v. A further objection states the lack of Design Excellence and non-compliance with DCP and ADG objectors". I agree.
  vi. The proposal does not "meet the ADG requirements for privacy, natural ventilation or private open space". I agree.
  vii. An objector claims that "open space has not been provided for either the future occupants, or for the positive benefit of the neighbourhood". I agree. The lack of private open space area, contrary to the ADG, is of significant concern. The establishment of Communal Open Space at Level 2 and on the rooftop are, in my opinion, not an adequate replacement for private open space area and actually generates potential adverse impacts on adjoining properties. Please refer to additional comments in this submission.
  viii. A number of objectors raise concerns relating to the compounding problems in the adjoining laneway and roads.
  ix. As previously advised, the subject site contains numerous easements and restrictions based on Figure 5 in the SEE. Legal advice should be obtained by Council as to whether the easements and restriction as to use would impact on consideration of the DA. Furthermore, there is a right of carriageway with a service easement in the narrow access pedestrian corridor from Kent Street. Query whether, in fact, the likely proposed significant intensification of the use of the right of way is contrary to this right of carriageway. I leave these matters for the consideration of Council's Legal Advisor.
  x. One of the objectors disagree with the comment in the Statement of Heritage Impact which argues that "the proposal is set well behind the Heritage Items". The objector claims that "the proposal in fact has no setback from the Heritage Items that surround it on 3 sides". I agree with the objector's concern.
  xi. A number of objectors refer to the potential adverse Visual Impact, Overshadowing, Sense of Enclosure and Overlooking Impact generated onto the rear yards of adjoining terraces/properties. I agree. Privacy measures need to be

provided on the proposed eastern, northern, and western elevations to preclude adverse Overlooking Impact, but such privacy measures would diminish the internal amenity of the future occupants of the proposed development. Furthermore, there are potential Acoustic Impacts and Overlooking Impacts onto adjoining properties resulting from the proposed Communal Open Space.

xii. I note that one of the objectors is Anne Warr, Heritage Architect, B Arch, (Conservation Studies) with a PHD. Obviously, due to the qualifications and experience of Anne Warr, her comments on the issue of adverse Heritage Impact should be given serious consideration.

- A number of objectors referred to the "constrained site". As I previously advised, I agree with this contention due to the following features of the subject site:-

  i. The subject site is a small site area with a narrow width.
  ii. The subject site is constrained by a range of easements, restriction as to user and serviced by a right of way.
  iii. The subject site is within a HCA, with 3 boundaries adjoining lower scale 2-3 terraces and dwellings which include Heritage Items.
  iv. Numerous objectors referred to adverse impacts during construction should the application be approved. As previously advised, the Traffic/Loading/Parking circumstances in the adjoining laneway are seriously deficient. Construction vehicles during construction will be faced with the inability to park in the adjoining laneway due to existing parking restrictions and no ability to park on the subject site itself due to the lack of any Parking and Loading facilities. My Clients attest to significant adverse Traffic/Parking/Loading inadequacies in the adjoining laneway.
  v. Numerous objectors refer to the breaches of relevant Planning Controls, including Council's Development Control Plan, Local Environmental Plan, and the ADG. I agree.
  vi. The proposed development will have an adverse Visual Impact and Sense of Enclosure, particularly to the rear yards and adjoining terraces. I agree with this concern.
  vii. One of the objectors claims that the adjoining "Heritage terraces are characterised by narrow floor plates, rear rooms with limited solar access, and modest private open space areas that rely heavily on available sky exposure and shared roofscape outlook. In this context, built form at the rear of the properties has a direct and pronounced effect on day to day living conditions. The proposed increase in height and bulk would result in severely reduced access to natural light, particularly to habitable rooms and gardens. It will cause overshadowing of private open space areas, diminish the use of usability and comfort of rear courtyards, and introduce overlooking from the elevated levels resulting in loss of privacy. The scale and proximity of the proposed building would also introduce excessive bulk and a looming presence when viewed from adjoining properties. This would create an acute sense of enclosure and visual dominance, fundamentally at odds with established low-rise character of the area". Similar comments were raised by numerous other objectors. I agree with the above

concerns.

viii. One of the objectors also claim that the right of way across 125 Kent Street was originally granted to a service station. Query whether the right of way can be used for a significant intensification of the existing building on the subject site also for an alternative use. I again defer to Council's Legal Advisor.

ix. Many objectors raise concern relating to the proposed materials and design of the proposed development. The use of extensive glazing appears to be totally inconsistent with the adjoining HCA, whilst a tower block of glazing would also appear to be inconsistent with the HCA.

10. CONCLUSION

- The subject site is acknowledged by the Applicant's Consultants to be a "constrained" site by reason of various features of the subject site. These features include, but are not limited to, a small area, narrow width, various easements, and restrictions impacting the subject site and the fact that the subject site adjoins a range of Heritage terraces within the HCA.
- Due to the severely constrained nature of the subject site, there are numerous breaches of Council's Planning Controls and the ADG referred to in my submission. Furthermore, there will be a range of adverse impacts generated on adjoining properties and these impacts include, but are not limited to, adverse Visual Impact, Incompatibility of the proposed development relative to the adjoining HCA, Overlooking Impact and Sense of Enclosure.
- I strongly consider that the proposed development is incompatible with the adjoining terraces/dwellings in the HCA based on the Court's Planning Principle in Project Venture. By any measure, the proposed multi-storey tower is incompatible in terms of height, bulk, scale and design with the adjoining terraces/dwellings in the HCA. The fact that the Heritage Consultant erroneously describes the proposed development as a "minor" extension also raises significant concerns in my mind. Simply put, it cannot be said that the proposed multi storey tower of glazed finishes is, in any way, compatible with the adjoining terraces/dwellings in the HCA.
- The Applicant's Consultants seek to justify numerous breaches based on the constrained site. It is my professional opinion, echoed by past Court judgements, that a constrained site must reflect a more conservative development than a site which does not have constraints. It is interesting to note the Court's Planning Principle in Parrott v Kiama Municipal Council in which the then Senior Commissioner Roseth considered a "sensitive site" with obvious constraints. Whilst the judgement in Parrott dealt with a subdivision, the site in Parrott was environmentally sensitive because of its features and Senior Commissioner Roseth held that "the likelihood of adverse impact is high. This is not to say that a dwelling cannot be designed on the allotment, only that it would require a higher than usual level of design skill". The current application is on a constrained site of small dimensions, various restrictions and immediately adjoining a sensitive HCA, comprising a range of Heritage terraces. As in Parrott, the sensitive nature of the immediately adjoining properties requires a more skilful design. The current proposed development is not a more

skilful design evidenced by a range of adverse impacts on adjoining properties, including my Clients' property, and numerous breaches of relevant Planning Controls.

- The current application also has not properly assessed a number of matters, including the issue of View Impact. In terms of Traffic and Loading, the Applicant has failed to properly assess the circumstances relating to Loading and Traffic in the adjoining laneway. Local residents/owners have provided detailed concerns about the problems in the laneway. Based on the Scots' College Appeal judgement, I strongly consider that Council should give significant weight to the concerns expressed by local residents/owners.

Accordingly, for the reasons raised in my submission and the various submissions from local residents/owners, I earnestly request that Council not support the current application.

Overall, I strongly consider that the proposed development is most objectionable and is not in the public interest.

Thank you for your consideration of this submission.

My Clients offer you the opportunity to inspect their building and the adjoining locality so that you are fully informed of the above points of objection.

Yours Sincerely,

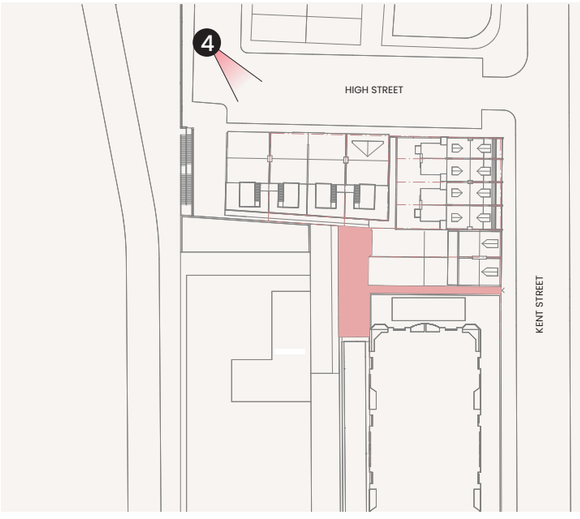
Tony Moody
M
U10/21 Sydney Road, Manly 2095
E:

Disclaimer:
This email and the files transmitted from this Company are confidential and intended solely for the use of the individual or entity to which they are addressed. If you are not the intended recipient you are not permitted to distribute or use this email or any of its attachments in any way. We also request that you advise the sender of the incorrect addressing. Tony Moody Planning and Development Pty Ltd accepts no liability for any consequential damage resulting from email containing any computer viruses.

8.1 Views Back to site - **PROPOSED**

4 View from High St near High St Gardens looking south east.

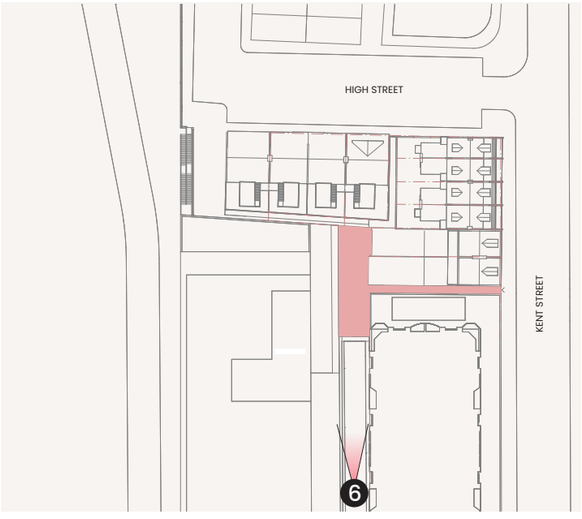
516



8.1 Views Back to site - **PROPOSED**

❻ View from the corner of Jenkins St and Gas Lane looking north.

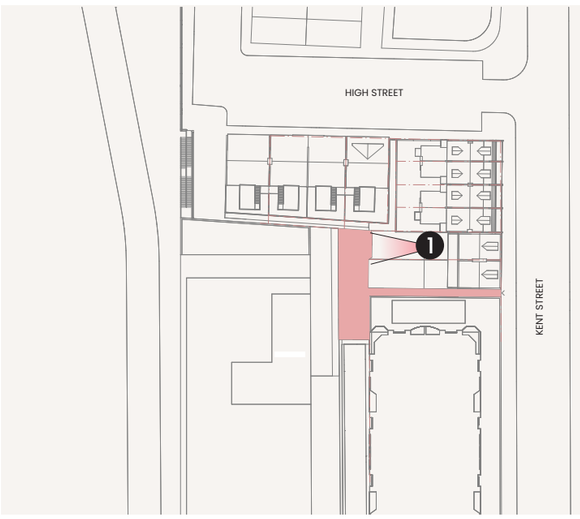
517



8.2 Views from adjacent properties - **PROPOSED**

❶ Indicative view from the backyard of 123 Kent St looking west.

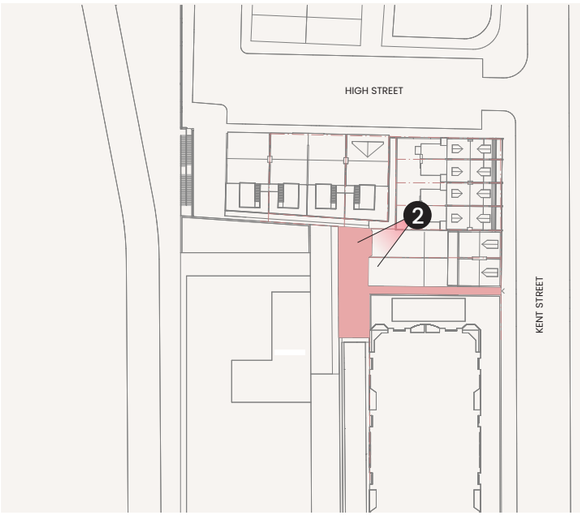
518



8.2 Views from adjacent properties - **PROPOSED**

❷ Indicative view from the balcony of 119 Kent St looking south west.

519



Millers Point Community Resident Action Group (inc.) (MPCRAG)

OBJECTION TO DEVELOPMENT APPLICATION DA/2024/2639931

125A Kent Street, Millers Point NSW 2000
(Also known as 8 Jenkins Street, Lot 1 DP 873158)

Submitted by: Millers Point Community Residents Action Group (inc.)
Date: 20th March 2026
Contact: Annie Crabb, President

To the City of Sydney Development Assessment Team,

1. Executive Summary

This submission objects to the proposed development on the grounds that it fails to achieve design excellence and results in unacceptable impacts within a sensitive heritage context. In a heritage-sensitive locality, the proposal fails to achieve compatibility with the established low-rise character and materially alters the setting of adjoining heritage items. Approval would set an undesirable precedent and would not be in the public interest.

While the proposal nominally complies with height and floor space ratio controls, it demonstrates widespread non-compliance with the *Sydney Development Control Plan 2012* and the *Apartment Design Guide*, and fails to satisfy the matters for consideration under section 4.15 of the *Environmental Planning and Assessment Act 1979*.

The proposal amounts to an overdevelopment of a highly constrained site, generating unacceptable impacts on neighbouring amenity, including visual privacy, solar access, acoustic conditions, and outlook. These impacts are not incidental but are direct consequences of the built form strategy, particularly the absence of boundary setbacks, excessive bulk, and reliance on inadequate mitigation measures.

A fundamental design conflict is also evident: measures introduced to mitigate privacy impacts result in unacceptable internal amenity outcomes. The proposal also fails to demonstrate that acceptable internal residential amenity can be achieved, with units relying on minimal setbacks, compromised outlook, and inadequate separation from neighbouring buildings.

The application is further undermined by critical deficiencies in supporting documentation, including an unreliable View Impact Assessment, a lack of meaningful traffic and servicing analysis, and an incomplete assessment of acoustic and operational impacts.

Critically, the application does not demonstrate that the development achieves design excellence as required under Clause 6.21 of the *Sydney Local Environmental Plan 2012*. These impacts collectively affect approximately 274 neighbouring dwellings, largely arising from an increase in building height and rooftop activation that appears primarily driven by

the objective of accommodating two additional apartments and a rooftop communal terrace.

For the reasons outlined in this submission, the proposal fails to satisfy the planning assessment framework under section 4.15 of the *Environmental Planning and Assessment Act 1979* and should be refused.

2. Introduction

The **Millers Point Community Residents Action Group (inc.)** objects to Development Application **DA/2024/2639931**.

The proposal constitutes **overdevelopment of a constrained and sensitive heritage site**, fails to achieve design excellence, and generates substantial and avoidable impacts on heritage significance, neighbouring residential amenity, and internal residential standards.

The proposal's **height, bulk and boundary-to-boundary massing** overwhelm the adjoining heritage terraces and the broader precinct setting. It materially obstructs established outlooks and water views from **Highgate Apartments**, and introduces predictable acoustic and privacy impacts arising from minimal separation distances between buildings.

The development demonstrates a fundamental disregard for the statutory and policy framework established under:

- the ***Environmental Planning and Assessment Act 1979 (EP&A 1979)***
- the ***Sydney Local Environmental Plan 2012 (SLEP 2012)***
- the ***Sydney Development Control Plan 2012 (SDCP 2012)***

including:

- **Clause 5.10 Heritage Conservation**
- **Clause 6.21 Design Excellence**

Given the systemic and unmitigated nature of these impacts, the application fails to meet the reasonable standards of planning, amenity and design expected within this precinct.

3. Heritage Impacts

Millers Point is one of the most significant intact nineteenth-century harbour precincts in Australia and is recognised for its cohesive urban grain, consistent building scale and strong visual relationship to Sydney Harbour.

The site is located immediately adjacent to, and functionally integrated with, the Millers Point and Dawes Point Village Precinct (State Heritage Register listing).

Although the site is outside the mapped heritage conservation area (C35), it:

- Directly adjoins State-listed terraces;
- Forms part of the immediate setting and visual curtilage of the precinct;
- Contributes to the transition between contemporary and heritage fabric.

Accordingly, the site is clearly within the “vicinity” of heritage items and a conservation area for the purposes of Clause 5.10. Technical exclusion from C35 mapping doesn't exempt 125A Kent Street, Millers Point from its *duty of care* to protect adjacent State heritage fabric of 'outstanding State and National significance' (SHR Statement of Significance). The tower fractures SHR precinct reading from key vantage points.

The proposed development introduces additional height, bulk, and rooftop elements that are **incompatible with the established heritage character of the precinct**.

Key concerns include:

- Excessive building height and nil boundary setbacks overwhelm adjoining heritage terraces;
- Rooftop structures and terraces that disrupt the established roofscape;
- Boundary-to-boundary massing that erodes the fine grain of the historic streetscape;
- The contemporary glazed form is visually discordant in a fine-grain heritage context.

Compatibility (Project Venture Principle)
Compatibility requires both physical and visual harmony. The proposal fails both limbs:

- Physical impacts include overlooking, overshadowing and acoustic intrusion;
- Visual impacts include scale, materiality and form that are not in harmony with the surrounding built environment.

In a heritage context, a higher degree of consistency is required. This threshold is not met.

Additionally, the proposal includes a **50 m² rooftop terrace serving five dwellings, positioned prominently within a sensitive heritage context**. This terrace significantly alters the historic roofscape, introduces visual intrusion, and undermines the consistency of the terrace roofline that characterises the precinct.

Rather than reinforcing the historic urban form of the precinct, the proposal introduces a scale and massing that **overwhelms the surrounding built form and diminishes the heritage significance of the area**.

These impacts are inconsistent with the objectives of **Clause 5.10 of the SLEP, 2012**, which seeks to conserve the environmental heritage of the City of Sydney.

While the SLEP establishes the statutory test, the DCP provides the detailed planning controls and qualitative benchmarks for assessing whether heritage significance is conserved.

DCP Controls – Key Requirements

The Sydney DCP 2012 requires that development:

- Retains and reinforces the significance of heritage items and conservation areas, including their setting;
- Is compatible with the scale, form and character of surrounding heritage fabric;
- Maintains fine-grain subdivision patterns and streetscape rhythm;
- Responds appropriately to laneways and rear interfaces;
- Ensures new development is subordinate to heritage items and does not dominate.

These controls directly mirror and operationalise the Clause 5.10(4) requirement.

Non-Compliance with DCP Heritage Controls

The proposal fails to satisfy DCP heritage objectives:

Requirement	Failure
Scale compatibility	28 m high zero-setback wall dominates 2–3 storey terraces;
Subservience	Dominant built form overwhelms heritage items;
Fine-grain rhythm	Continuous blank wall eliminates articulation and spacing;
Laneway interface	Treated as blank vertical wall, ignoring secondary elevation function;
Heritage setting	Spatial and visual context materially altered;
Streetscape transition	Abrupt interface, visually intrusive gateway.

Weight to be Given to DCP Non-Compliance

Consistent with established reasoning of the New South Wales Land and Environment Court:

- DCP controls, while not statutory, are key indicators of planning merit;
- Systemic non-compliance with DCP provisions—particularly in heritage contexts—carries significant weight;
- Where DCP objectives are not achieved, it is difficult to conclude that the proposal is acceptable in planning terms.

The extent of non-compliance in this case is substantive and outcome-driven, not minor or technical.

Conclusion

The proposal:

- Conflicts with Clause 5.10(4) of the SLEP 2012;
- Fails to satisfy the heritage objectives and controls of the SDCP 2012;
- Results in dominance, loss of rhythm, and degradation of heritage setting.

In a location adjoining State-listed terraces (I884 and I885), architectural quality must be measured not merely by contemporary detailing but by contextual calibration of scale, depth, and shadow. The proposal does not demonstrate that calibration.

4. Amenity Impacts on Neighbouring Residential Amenity

The proposal generates significant impacts on neighbouring residential amenity along High and Kent Streets, and The Bond, particularly in relation to **visual privacy, solar access and acoustic conditions**. It results in direct and elevated overlooking into neighbouring dwellings.

Under E P & A 1979 (NSW) s 4.15(1)(b), the consent authority must consider the likely impacts of development on the environment, including impacts on adjoining land. The NSW ADG and SDCP 2012 establish objectives for maintaining reasonable levels of residential amenity, including adequate privacy, solar access and acoustic conditions.

In residential interface cases, the **Land and Environment Court commonly assesses amenity impacts by reference to whether they are reasonable and unavoidable**, having regard to the design of the development and the potential for mitigation.

In this instance, the amenity impacts arise primarily from two key design elements:

- The **boundary-to-boundary massing of the building**, and
- the **Level 7 communal rooftop terrace**, located approximately **28 metres above ground level**.

These design decisions introduce elevated activity areas and additional building bulk immediately adjacent to neighbouring dwellings.

4.1 Visual Privacy

The proposal results in direct and elevated overlooking into neighbouring dwellings.

Reliance on horizontal blades and internal louvres is inadequate:

- Oblique and downward sightlines penetrate slatted devices;
- Night-time silhouetting exposes occupants;
- Rooftop and upper-level interfaces enable direct overlooking.

Privacy mitigation cannot substitute for adequate building separation, which is absent.

The Level 7 communal terrace creates a direct elevated vantage point overlooking neighbouring properties along High and Kent Streets. From this location, occupants would have clear views into neighbouring **bedrooms, living areas and private open space**.

The **communal nature of the terrace** increases the frequency and intensity of overlooking compared with private balconies. The design does not incorporate effective mitigation measures such as increased setbacks, fixed privacy screening or reorientation of the terrace.

In **Project Venture Developments v Pittwater Council**, the Court recognised that direct overlooking into principal living areas arising from the design of a development weighs strongly against approval.

Reliance on horizontal blades and internal louvres is inadequate:

- Oblique and downward sightlines penetrate slatted devices;
- Night-time silhouetting exposes occupants;
- Rooftop and upper-level interfaces enable direct overlooking.

Privacy mitigation cannot substitute for adequate building separation, which is absent...

4.2 Solar Access

The proposal also generates overshadowing impacts on neighbouring residential properties. Overshadowing arises from:

- Boundary-to-boundary massing;
- Absence of upper-level setbacks.

These impacts are design-driven and avoidable. They arise from the **boundary-to-boundary building envelope and absence of upper-level setbacks**, which increase the building bulk adjacent to neighbouring dwellings.

The Court has consistently held that compliance with numerical controls does not preclude a finding of unacceptable amenity outcomes. In **Veloshin v Randwick Council**, excessive building bulk and resulting amenity impacts were considered determinative.

4.3 Acoustic Impacts

The acoustic assessment is deficient:

- Focuses on internal amenity only;
- Does not assess impacts on neighbouring receivers;
- Does not consider communal terrace or plant noise.

Communal and rooftop uses introduce predictable, ongoing noise impacts that are unmitigated.

The proposal introduces foreseeable noise impacts associated with the **Level 7 communal terrace**.

The acoustic report prepared by **Rodney Stevens Acoustics** focuses solely on the internal acoustic performance of the development and does not assess the potential impacts on neighbouring residential receivers. The report also incorrectly identifies the consent authority as **North Sydney Council**, rather than the **City of Sydney**.

The communal terrace is likely to generate activity noise — including conversation and social use — in close proximity to neighbouring bedrooms. The built form configuration, characterised by **hard reflective surfaces and minimal separation**, increases the likelihood of airborne noise transmission.

The application does not provide evidence of mitigation measures such as acoustic screening or operational controls.

In **Newcastle & Hunter Valley Speleological Society Inc v Upper Hunter Shire Council**, the Court emphasised that where environmental impacts are foreseeable and capable of mitigation, failure to implement mitigation measures weighs against approval.

4.4 Reasonableness and Avoidability

When considered collectively, the amenity impacts arising from the proposal are:

- **Foreseeable**, given the elevated communal terrace and minimal building separation;
- **Design-generated**, arising directly from the chosen building envelope and rooftop activation;
- **Capable of mitigation**, through reduced building bulk, increased setbacks or relocation of communal spaces.

The proposal therefore fails to demonstrate that the resulting impacts on neighbouring amenity are **reasonable in the circumstances**.

4.5 Cumulative Amenity Impacts

The amenity impacts identified above should not be considered in isolation. The proposal introduces **a combination of privacy intrusion, overshadowing and foreseeable noise impacts** affecting neighbouring dwellings along High and Kent Streets and The Bond.

These impacts arise from the same underlying design strategy, namely:

- The **boundary-to-boundary building massing**, and
- the **elevated communal rooftop terrace** positioned approximately **28 metres above ground level**.

When experienced together, these impacts materially reduce the residential amenity currently enjoyed by neighbouring properties. The cumulative effect includes increased overlooking into private living spaces, reduced solar access, and the introduction of activity noise in close proximity to bedrooms and living areas.

Importantly, these impacts are **not inherent to the site** but are the consequence of design choices that maximise building bulk and rooftop activation. Alternative design approaches,

including increased setbacks, reduced upper-level bulk, or relocation of communal spaces, could materially reduce these impacts.

Accordingly, when assessed cumulatively, the proposal results in **unreasonable and avoidable impacts on neighbouring residential amenity**, contrary to the objectives of the **Sydney Development Control Plan 2012** and the assessment framework under **Environmental Planning and Assessment Act 1979 (NSW)** s 4.15.

4.6 Planning Outcome

For the reasons outlined above, the proposal results in **unreasonable and avoidable impacts on neighbouring residential amenity**, including direct overlooking, reduced solar access and foreseeable noise impacts arising from the elevated communal terrace and boundary-to-boundary building massing.

These impacts arise primarily from the **scale, height and configuration of the proposed development**, rather than unavoidable site constraints, and could be materially reduced through alternative design responses.

Accordingly, the development fails to demonstrate acceptable planning outcomes under **Environmental Planning and Assessment Act 1979 (NSW)** s 4.15 and is inconsistent with the amenity objectives of the **Sydney Development Control Plan 2012**.

Conclusion

The proposal introduces **direct privacy intrusion, overshadowing and foreseeable noise impacts** on neighbouring dwellings along High and Kent Streets and The Bond.

These impacts arise primarily from the **scale, height and configuration of the proposed building and rooftop terrace**, rather than unavoidable site constraints.

Accordingly, the development fails to achieve acceptable residential amenity outcomes under **s 4.15 of the Environmental Planning and Assessment Act 1979** and the objectives of the **Sydney Development Control Plan 2012**.

5. Impacts on Highgate Apartments

Some of the **most significant impacts** of the proposal occur in relation to **Highgate Apartments**, located immediately adjacent to the site.

The proposed 28m building at 125A Kent Street, with setbacks ranging from **0-2 metres**, will result in **substantial and unreasonable impacts on the amenity of Highgate Apartments**.

The proposed increase in building height and bulk would materially obstruct established outlooks and harbour views currently enjoyed by residents of Highgate Apartments.

These views form a significant component of the residential amenity of these dwellings.

The proposal would introduce a substantial built form immediately adjacent to Highgate, effectively **blocking existing sightlines and replacing them with a close-range built interface**.

Given the extremely limited separation distances between the buildings, the resulting loss of outlook would be severe and permanent.

The proposal also creates direct and unavoidable privacy conflicts between the proposed development and neighbouring dwellings.

The proposal introduces multiple noise sources with both airborne and structure-borne transmission pathways to neighbouring dwellings, particularly **Highgate Apartments**.

These impacts arise from excessive height, bulk, proximity and poor interface design, and are inconsistent with:

- Clause 6.21 of the *Sydney Local Environmental Plan 2012* (design excellence);
- The amenity and interface objectives of the *Sydney Development Control Plan 2012;*
- The assessment framework under section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979.*

5.1 Loss of Established 30-Year Sky Gap

A ~30 metre sky gap has existed for more than 30 years between Highgate Apartments and The Bond building. This separation forms an established and relied-upon component of residential amenity, providing:

- Open outlook and visual relief;
- Access to sky and daylight;
- Acoustic dispersion between buildings.

The proposed development would substantially erode this long-standing condition, introducing a tall built form within 0–2 metres of the boundary, resulting in:

- A pronounced sense of enclosure;
- Loss of openness and sky visibility;
- Compression of the spatial relationship between buildings.

5.2 Loss of Water Views to Sydney Harbour

The proposal would introduce a substantial built form immediately adjacent to Highgate, effectively **blocking existing sightlines and replacing them with a close-range built interface**.

Given the extremely limited separation distances between the buildings, the resulting loss of outlook would be severe and permanent.

The proposal causes substantial and unreasonable obstruction of outlooks and water views from north-facing Highgate apartments. Key points:

- Bulk and height implemented solely to accommodate two additional apartments and a rooftop terrace materially compromises multiple dwellings;
- Existing water views over Barangaroo toward Sydney Harbour will be lost;
- Visual material is misleading, portraying water views as more distant than reality;
- The Statement of Environmental Effects (SEE) misrepresents baseline conditions, preventing proper impact assessment.

5.3 Misleading Visual Material and Failure of Proper Assessment

The Visual Impact Assessment is unreliable:

- Uses “indicative” photomontages;
- Not prepared in accordance with Court protocols;
- No verified viewpoints or site inspections;
- Does not apply the *Tenacity* assessment methodology.

The consent authority cannot rely on this material.

For example, the developers provide the current views from Level 7 of Highgate as:

Figure 16 – View from Highgate Apartments Level 7 looking northwest
Source: Cortese Gilder

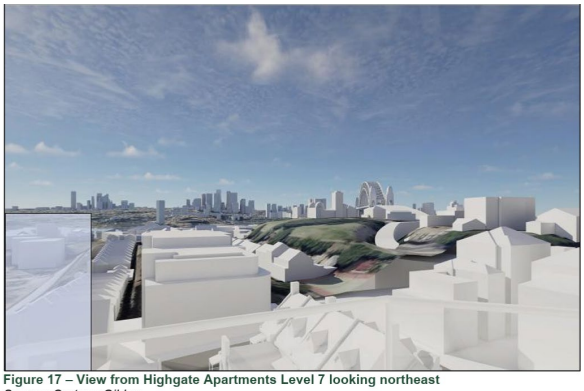


Figure 17 – View from Highgate Apartments Level 7 looking northeast
Source: Cortese Gilder

Photographs taken from Level 7 balconies of Highgate demonstrate a different reality:

Actual photographic view north-west from balcony of Apartment 702 of Highgate

Actual view to the north-east from balcony of Apartment 703 of Highgate

- No Harbour Bridge or North Sydney views exists from Level 7 north-facing Highgate apartments;
- Images distort the baseline and underestimate impacts;

Photographs confirm the proposal materially obstructs established outlooks.

The View Impact Assessment (VIA) is based on “indicative views” and does not demonstrate compliance with the photomontage methodology required by the Land and Environment Court of New South Wales. No verification is provided that images are prepared in accordance with accepted geometric accuracy, view line mapping, or camera position protocols. In addition, no access to affected dwellings has been undertaken to verify baseline conditions. Accordingly, the VIA is of limited evidentiary weight and cannot be relied upon to accurately assess view loss impacts.

5.4 Acoustic Conflict with Highgate Apartments

The proposal creates a **foreseeable and unreasonable acoustic conflict** with adjoining Highgate Apartments, arising from the siting of communal spaces and mechanical plant within extremely limited separation distances of approximately 0–2 metres.

The development introduces **multiple sources of noise with both airborne and structure-borne transmission pathways** affecting neighbouring dwellings. Primary noise sources include:

- Mechanical plant, including HVAC systems and pumps;
- Level 2 communal area; and
- Rooftop communal terrace.

The **Statement of Environmental Effects** fails to adequately demonstrate that acceptable acoustic amenity can be achieved.

In particular, the application does not provide:

- Receiver-based noise modelling;
- Plant noise specifications or predicted operational noise levels;
- Effective mitigation measures such as acoustic screening, isolation or attenuation.

Given the close proximity of residential receivers, these omissions represent a **significant deficiency in the assessment of environmental impacts**.

Although the Level 2 communal outdoor area is located below the floor level of Highgate Apartments, the built form configuration significantly amplifies its potential acoustic impact.

The space is effectively located within a confined vertical "canyon" formed by surrounding building façades, with separation distances of approximately **0–2 metres**.

In such a configuration, established acoustic principles indicate that sound generated within the space will be amplified and directed toward neighbouring receivers.

Relevant acoustic effects include:

- **Reverberation and reflection**, where hard surfaces such as masonry and glazing reflect sound and increase persistence of noise;
- **Vertical channelling**, where the geometry of the surrounding built form directs sound energy upward;
- **Line-of-sight transmission**, allowing speech to remain highly intelligible at receiver locations;
- **Lack of absorption**, due to the absence of vegetation or deep soil landscaping that would otherwise dampen sound.

As a result, noise generated within the Level 2 communal space will be reflected and projected upward toward the north and north-west facing apartments of Highgate.

The communal nature of the space introduces additional amenity concerns, including:

- Repeated and intermittent noise events;
- Evening and weekend peak usage;
- Conversational noise with high speech intelligibility, which is widely recognised as a primary driver of residential noise complaints.

In assessing acoustic impacts, the Land and Environment Court consistently applies a test of reasonableness and avoidability when assessing acoustic impacts on neighbouring residential properties.

In this instance:

- The impacts arise directly from the design and siting of the communal space;
- No effective mitigation measures are demonstrated;

- The resulting impacts are predictable, ongoing and avoidable.

The proposal therefore gives rise to **unreasonable acoustic impacts contrary to the amenity objectives of the Sydney Development Control Plan**.

5.5 Bulk, Proximity and Absence of Deep Soil Buffer

The proposal creates a hard, unbuffered interface between residential buildings, with no meaningful separation and no deep soil zone.

The proposal

- Provides no meaningful separation or deep soil zone;
- Eliminates landscape-based mitigation;
- Reinforces sense of bulk and enclosure;
- Increases acoustic reflectivity of the interface;
- Results in unmediated and incompatible interface with adjoining residential uses.

Conclusion

Impacts are substantial, systemic, and unmitigated. Under s4.15(1)(b), they weigh heavily against approval.

6. Internal Residential Amenity and ADG Non-Compliance

The proposal demonstrates a fundamental design failure:

- Without screening → unacceptable overlooking;
- With screening → poor daylight, outlook, and ventilation.

This confirms the design cannot satisfy ADG objectives in an integrated manner and fails the requirements of design excellence.

The proposal raises significant concerns regarding the internal amenity of the proposed residential units. The development exhibits multiple internal design deficiencies indicative of overdevelopment:

- Minimal setbacks to neighbouring buildings;
- Compromised outlook
- Common corridors below 2m width;
- No compliant private open space for the majority of apartments;
- Insufficient deep soil provision;
- Non-compliant façade setbacks;
- Excessive floorplate depth preventing effective cross-ventilation (ADG 4B-3);
- Sub-minimum internal widths creating constrained habitable rooms (ADG Part 4D);

- Reduced ceiling heights below ADG 4C objectives;
- Insufficient solar access to certain units.
- No private open space is provided.
- Communal space:
    - Is undersized and impacted by overshadowing;
    - Introduces additional amenity conflicts;
    - Does not provide functional outdoor space for residents.

  Private open space cannot be substituted in this manner.

The Level 1 studio lacks cross-ventilation and receives negligible sunlight due to single-aspect orientation toward a service lane. This is inconsistent with ADG natural ventilation and solar access objectives.

The constrained nature of the site, combined with the proposed building envelope, raises questions as to whether acceptable residential amenity standards can realistically be achieved.

These issues further indicate that the proposal represents **overdevelopment of the site**.

7. Design Excellence Failure

Clause 6.21 of the ***SLEP 2012*** requires that development achieving additional height or floor space must demonstrate **design excellence**. The ***SDCP 2012*** and the ***NSW ADG 2015*** provide qualitative benchmarks to operationalise these objectives. Failure to meet these requirements cannot be justified.

7.1 The proposal fails to meet this standard.

Rather than exhibiting exemplary architectural design, the proposal demonstrates:

- Excessive bulk and massing;
- Poor integration with the surrounding heritage context;
- Unresolved amenity conflicts with neighbouring properties;
- Compromised provision of high-quality internal amenity;
- Lack of integration of sustainable and accessible design;
- Reliance on minimal setbacks and boundary-to-boundary development.

The resulting building form appears driven primarily by the objective of accommodating additional floor space, rather than by a coherent design response to the site and its heritage context.

Accordingly, the proposal cannot reasonably be said to achieve design excellence.

7.2 Respect for Special Character Areas

Clause 6.21C(xi) requires consideration of whether the proposal responds appropriately to the character of the locality.

The site sits immediately adjacent to State-listed heritage terraces (I884 and I885) within the Millers Point context. The proposed bulk:

- Disrupts established spatial relationships;
- Overwhelms adjoining low-scale heritage buildings;
- Compresses laneway character;
- Erodes the transition between heritage fabric and contemporary infill.

The outcome is not a respectful insertion but a volumetric intrusion.

7.3 Failure to Achieve Appropriate Relationship with Neighbouring Development

Clause 6.21C(d)(iv) requires consideration of whether the building achieves appropriate relationships with neighbouring development in terms of separation, setbacks, amenity, and urban form.

The proposal provides effectively zero setbacks to Highgate Apartments along key interfaces. The result is the creation of a 28-metre high vertical boundary wall at a separation distance of approximately 0–2 metres. This configuration:

- Eliminates or severely compromises north-west outlook from multiple Highgate dwellings (Levels 6–15);
- Substantially reduces sky exposure and perceived openness;
- Compromises western solar access;
- Intensifies acoustic reflection and vertical noise transmission from communal areas.

The built form does not mediate scale transition. It imposes full-height bulk directly at the boundary. This is not a contextual response; it is a maximisation response.

Design excellence requires generosity in separation and modulation where adjoining residential interfaces are sensitive. The absence of setbacks or articulation is fundamentally inconsistent with that requirement.

7.4 Architectural Quality and Material Resolution

Clause 6.21C(a) requires high architectural quality, appropriate materials, and contextual responsiveness.

The proposal presents:

- Extensive blank boundary walling;

- Minimal façade articulation;
- Repetitive louvred treatments presented as privacy mitigation;

7.5 View Sharing and Protection of Visual Corridors

Clause 6.21C(c) requires consideration of the impact on significant views.

Highgate Apartments currently obtain north-west outlook toward Barangaroo and Sydney Harbour over the existing three-storey roofline of 125A Kent Street. The proposed 28m extension would materially obstruct that outlook.

While there is no absolute right to a private view, the established planning principle of equitable view sharing requires that:

- Impact be minimised where feasible;
- Height and bulk be moderated where severe view loss occurs;
- The development demonstrate public benefit commensurate with private loss.

Here, the view loss is substantial and arises from avoidable vertical amplification on a constrained site. The proposal does not balance that loss with any evident urban benefit.

7.6 Visual Privacy and Neighbouring Amenity

Clause 6.21C(d)(vii) of the Sydney Local Environmental Plan 2012 requires that development minimise adverse environmental impacts, including impacts on **visual privacy, solar access and acoustic amenity**.

A fundamental planning principle reflected in the NSW Apartment Design Guide is that visual privacy should primarily be achieved through **adequate building separation, setbacks and careful building design**, rather than reliance on architectural screening devices.

In the present case, the proposal provides **minimal to no effective separation** along key interfaces with neighbouring residential buildings. Instead, the design relies on **internal louvres and horizontal façade blades** as the principal privacy mitigation strategy. This approach is inconsistent with the objectives of the Apartment Design Guide, particularly **Design Criteria D5.P1 and Objective 3F-1**, which emphasise spatial separation as the primary mechanism for protecting residential amenity.

Architectural screening devices cannot reliably substitute for physical separation. The proposed façade treatment is unlikely to prevent overlooking for several reasons:

• **Upward and oblique sightlines** remain possible between horizontal blades when viewed from elevated neighbouring dwellings;
• **Operable windows located behind screening elements** allow direct viewing pathways through façade openings;
• The **Level 7 communal terrace** creates an elevated vantage point from which direct overlooking into neighbouring rear elevations may occur;
• **Night-time silhouetting** will occur when internal lighting illuminates occupants behind

horizontal screening elements; and
• The blades or louvres are not **fixed or permanently configured**, meaning their effectiveness as privacy mitigation is minimal for neighbours.

Planning authorities and the NSW Land and Environment Court have consistently recognised that façade screening alone does not provide a reliable or enforceable privacy outcome, particularly where windows remain operable and where habitable rooms or communal spaces are positioned in close proximity to neighbouring residential windows.

Importantly, the privacy impacts in this case are **not an unavoidable consequence of urban density**, but arise directly from the **design decision to maximise building envelope and minimise setbacks on a constrained site**. The resulting overlooking is therefore **design-generated and avoidable through alternative built-form arrangements**.

In this context, the proposal effectively **substitutes architectural screening for physical separation**, creating predictable and direct overlooking of neighbouring residential windows and private open space.

The development therefore fails to demonstrate that reasonable levels of visual privacy can be maintained for adjoining residents.

In addition, **acoustic impacts associated with the Level 7 communal terrace and rooftop plant** have the potential to further affect neighbouring residential amenity. The application does not adequately demonstrate how **activity noise, plant noise, or structure-borne transmission** will be mitigated given the limited spatial separation between buildings.

Design excellence under Clause 6.21 requires development to demonstrate **high environmental performance and sensitivity to surrounding residential context**. Rather than protecting neighbouring amenity, the proposal effectively **externalises privacy and acoustic impacts onto surrounding dwellings**, contrary to the intent of the planning framework.

7.7 Building Separation and Spatial Privacy

ADG 3F-1 establishes separation benchmarks (e.g. 3m window-to-window, 9m floor-to-floor across sites) to achieve equitable privacy outcomes.

The proposal:

- Provides no meaningful separation across the laneway to heritage terraces;
- Introduces full-height development at near-zero boundary offset;
- Attempts to rely on façade devices rather than spatial buffering.

The cumulative effect is a 28m high louvred wall forming an oppressive interface inconsistent with the spatial intent of the ADG.

7.8 Bulk, Height, and Boundary-to-Boundary Massing
The proposal fails to meet design excellence objectives in multiple respects:

- A 28-metre-high building on a 154.3m² site represents excessive scale for the context, dominating adjoining heritage terraces;
- Zero or minimal setbacks eliminate transitional spacing, creating abrupt interfaces with both heritage fabric and neighbouring apartments;
- The boundary-to-boundary massing generates a continuous blank façade, eroding streetscape rhythm and visual amenity;
- The minor additional yield (two apartments and a rooftop terrace) does not justify the substantial built form impacts.

Conclusion

Under s 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, the consent authority must consider the **likely environmental impacts of the development**, including impacts on adjoining land.

In this case, the proposal generates **direct and foreseeable impacts on neighbouring residential amenity**, including visual privacy intrusion, potential acoustic disturbance from communal spaces and rooftop plant, and reduced environmental quality resulting from the minimal spatial separation between buildings.

These impacts arise primarily from the **boundary-to-boundary massing and absence of meaningful setbacks**, which place habitable rooms and communal areas in close proximity to neighbouring residential windows and private open space. The application attempts to mitigate these impacts through **façade devices such as horizontal blades and internal louvres**, rather than through appropriate built-form design.

However, privacy and amenity outcomes are ordinarily achieved through **adequate spatial separation, building articulation and careful orientation**, consistent with the objectives of the NSW Apartment Design Guide and the design excellence provisions of the Sydney Local Environmental Plan 2012.

Accordingly, the amenity impacts generated by the proposal are **design-generated, foreseeable and capable of mitigation through alternative design approaches**, but have not been adequately addressed in the submitted scheme. In these circumstances, the consent authority cannot reasonably conclude that the development provides an acceptable level of amenity protection for neighbouring residential properties.

8. Internal Amenity and Functional Deficiencies

The development does not achieve acceptable design standards for residential use:

- Level 1 studio apartment lacks direct sunlight and cross-ventilation, rendering it effectively uninhabitable;
- Communal spaces (Level 2 and Level 7) are poorly oriented, lack solar access, and fail to support active recreation;

- Internal layouts are constrained by deep floorplates and limited site area, reducing functionality and liveability;
- These design-driven deficiencies represent over-intensification of a constrained site.

Conclusion

The proposal fails to achieve design excellence as required under Clause 6.21 of the Sydney Local Environmental Plan 2012. The development's excessive height, bulk, and boundary-to-boundary massing dominate the adjoining heritage terraces and precinct, materially altering heritage context and streetscape rhythm. Internal amenity is compromised, with at least one studio apartment rendered effectively uninhabitable due to lack of sunlight, poor ventilation, and constrained floor area. Accessibility provisions are inadequately demonstrated, and communal terraces generate predictable acoustic and privacy impacts on neighbouring Highgate Apartments. These impacts are direct, foreseeable, and avoidable, yet the design provides no credible mitigation.

The combination of overdevelopment, poor interface design, and unmitigated impacts demonstrates a fundamental disregard for statutory and policy frameworks, including the EP&A Act 1979, SLEP 2012, and Sydney DCP 2012.

Accordingly, the consent authority cannot be lawfully satisfied that the proposal exhibits design excellence as required by Clause 6.21 of the Sydney LEP 2012.

9. Accessibility Failures

The report cites AS 1428.1-2009 that has been superseded. The currently mandated reference under the NCC is AS 1428.1-2021 (as adopted by the relevant NCC edition applicable at the time of determination).

Reliance on a superseded standard is not a minor technical error — it indicates that the assessment is not aligned with the current regulatory framework. Compliance is assessed against the version of the Standard adopted by the NCC in force at determination.

The Accessibility Statement is materially inadequate:

- No dimensioned evidence of compliance with NCC 2022 and AS 1428.1-2021;
- Principal access relies on a stairway platform lift in a manner likely impermissible under NCC for new residential dwellings;
- Required accessible common facilities are omitted;
- Lift and corridor geometries are not demonstrated to comply with circulation and clearance standards;
- Tactile Ground Surface Indicators (TGSIs) are not detailed in location, extent, or luminance contrast;
- Multiple compliance matters are impermissibly deferred to the Construction Certificate stage.

These failures indicate that the building, as proposed, cannot be demonstrated to be safe, accessible, or equitable.

10. Traffic, Access and Servicing

The application fails to properly assess traffic and servicing impacts.

- No on-site parking or loading;
- No analysis of existing laneway constraints;
- Increased servicing demand placed on already congested infrastructure.

The absence of a substantive assessment represents a failure under s4.15.

The design does not adequately address operational functionality:

- Waste management strategy is insufficient for a seven-storey building; manual handling and storage in constrained areas create hygiene and safety risks;
- Zero on-site parking for five dwellings generates cumulative traffic and kerbside pressure in a constrained heritage precinct.

Observed congestion and operational constraints within the surrounding laneway network are corroborated by local resident evidence. The Presbyterian Church (NSW) Property Trust v Woollahra Municipal Council confirms that consistent, site-based observations from residents may be afforded significant weight in merit assessment, particularly where technical analysis is absent or incomplete. In this case, the absence of a robust traffic and loading assessment heightens reliance on such evidence.

11. Easements and Legal Constraints

The site is further burdened by multiple easements and restrictions, including rights of carriageway, drainage and services infrastructure. These constraints are not merely physical but legal in nature and may limit the capacity to intensify use or alter access arrangements. The proposal does not demonstrate that the increased intensity of use is compatible with the terms or practical operation of these encumbrances. This raises unresolved legal and operational risks relevant to site suitability under s4.15(1)(c).

The proposal may:

- Overburden access arrangements;
- Conflict with easement purposes;
- Introduce operational and legal uncertainty.
- These matters are unresolved and weigh against approval.

12. Fire and Safety Deficiencies

The development presents significant fire and safety deficiencies that compromise occupant safety and appear inconsistent with the requirements of the National Construction Code

(NCC). These deficiencies are critical in assessing the suitability of the proposal for approval and include:"

- Egress and lift discharge arrangements are unclear and potentially inconsistent with NCC fire safety requirements;
- Rooflight proximity and site constraints may contravene external fire spread provisions;
- No evidence of a safe evacuation strategy is provided.

In the absence of clearly demonstrated compliance with fire safety and evacuation requirements, the development cannot be considered safe or acceptable. These unresolved risks weigh heavily against approval of the application.

13. Construction Access and Safety Impacts

13.1 Constrained Access Route

Jenkins Street is the sole access route for the proposed development at 125A Kent Street and also serves the parking garages of four high-rise buildings: Highgate, The Georgia, Stamford Marque, and Stamford on Kent. While nominally two-way for light vehicles, the street functions as a narrow lane where two vehicles can pass only if one mounts the pavement. The street lacks turning capacity for heavy vehicles, creating unavoidable conflicts between construction traffic and resident access.

13.2 Construction Vehicle Conflicts

Using Jenkins Street for construction will require heavy trucks, concrete vehicles, and delivery trucks to navigate an already congested lane used continuously by residents. This will inevitably result in:

- Repeated blockages of garage entries;
- Queuing and gridlock;
- Dangerous manoeuvres, including reversing and mounting pavements to pass;
- Compromised pedestrian safety at the Bond lift and Gas Lane shared zone;
- Potential obstruction of emergency vehicle access.

No Construction Traffic Management Plan has been submitted demonstrating safe access, servicing, and movement of construction vehicles without impeding existing parking or damaging kerbs, pavements, and building frontages. In its current state, Jenkins Street lacks the physical and functional capacity to accommodate construction traffic in addition to its existing role. Council should not approve the DA unless a viable alternative access arrangement is provided. Failing this, consent should be refused on traffic, access, and safety grounds.

13.3 Construction Noise and Dust Impacts

The extreme site constraints—zero setbacks, shared party walls, and sole reliance on Jenkins Street—will expose neighbouring residents to significant construction impacts.

Anticipated activities include demolition, jackhammering, and fit-out works. Expected outcomes include:

- Noise levels exceeding EPA construction guidelines by 5–10dB(A) above background (LAeq 53dB);
- Low-frequency vibration transmitted through shared party walls directly into Highgate Apartments, causing disturbance to bedrooms and living areas;
- Dust from Class 5 acid sulfate soils, concrete cutting, and scaffolding infiltrating unsealed windows, impacting air quality and health;
- Exacerbated dust entrapment due to the cul-de-sac configuration, affecting garages and apartments across three buildings.

13.4 Vibration Risks

Due to zero side setbacks, construction will transmit damaging vibrations through party walls to Highgate Apartments. Structural coupling bypasses normal ground attenuation, likely breaching residential PPV limits (<12.7mm/sec for internal plasterboard walls) from standard piling, jackhammering, and vibratory compaction required on the constrained 153m² site. The DA provides no:

- Vibration management plan;
- Pre-construction condition surveys of Highgate;
- Real-time seismograph monitoring; or
- Developer-funded indemnity mechanisms.

Without these, structural damage—including cracking, misaligned doors/windows, and tile fractures—is highly probable, leaving Highgate strata liable for remediation.

13.5 Waste and Skip Management Constraints

The 153m² site cannot accommodate multiple 4m³ skips for demolition/fit-out or temporary bin storage. Storage within site boundaries is impossible, forcing bins/skips onto Jenkins Street and potentially blocking garage ramps, in direct contravention of SDCP 3.8 (which requires on-site storage). The DA incorrectly states Highgate waste is collected from Jenkins Lane, when it is collected from Kent Street, further complicating logistics. There is no waste collection from Jenkins Street north.

13.6 Public Domain Encroachment

Nil setbacks necessitate scaffolding overhang into Jenkins Street, obstructing pedestrian and vehicle access. The narrow footpath cannot accommodate compliant 2.1m-high temporary fencing, making encroachment inevitable. No Public Domain Works Certificate or verge occupation plan has been provided to manage these conflicts or ensure safe pedestrian bypass.

Conclusion

Given the constrained street geometry, shared party walls, and lack of mitigation measures, construction at 125A Kent Street will:

- Cause severe traffic and access conflicts;
- Create significant safety hazards for residents and pedestrians;
- Expose neighbouring apartments to elevated noise, dust, and vibration;
- Generate unresolvable operational challenges for waste and skip management;
- Result in inevitable public domain encroachments.

Council cannot satisfy its obligations under s4.15 of the EP&A Act without a fully resolved access, safety, and operational strategy. Approval in the absence of such measures would impose unacceptable risk on the community and neighbouring residents.

14. OVERALL CONCLUSION

While adaptive reuse of existing buildings is supported in principle, the scale, bulk and configuration of the proposed extension represent **overdevelopment of a constrained heritage-adjacent site**.

The proposal introduces significant and avoidable impacts on heritage significance, neighbouring residential amenity and internal residential quality.

In particular, the proposal results in:

- Unacceptable heritage impacts;
- Significant and avoidable amenity impacts;
- Poor internal amenity;
- Non-compliance with key planning controls;
- Fundamental design conflicts;
- Inadequate supporting documentation.

These impacts affect approximately **274 neighbouring dwellings** and arise largely from an increase in building height and rooftop activation that appears primarily driven by the objective of accommodating **two additional apartments and a rooftop terrace**.

For these reasons, the proposal fails to satisfy the planning assessment framework under **section 4.15 of the Environmental Planning and Assessment Act 1979**.

Accordingly, **Development Application DA/2024/2639931 should be refused**.

15. Public Interest and Precedent Considerations

Approval would:

- Establish an undesirable precedent in a heritage-sensitive area;
- Undermine the integrity of planning controls;
- Encourage overdevelopment of constrained sites.

The proposal is not in the public interest.

The proposal at 125A Kent Street is inconsistent with the public interest as defined under s4.15(e) of the Environmental Planning and Assessment Act 1979. The development prioritises minimal additional yield over the long-term protection of heritage, streetscape, and amenity. Approval would expose residents and the broader community to substantial and avoidable impacts, including overshadowing, loss of views, acoustic conflicts, and visual intrusion, while undermining confidence in planning controls designed to protect one of Australia's most intact maritime heritage villages.

Further, Millers Point is exceptionally sensitive to precedent. The approval of a boundary-to-boundary, 28 m tower on a constrained site would create a highly undesirable benchmark for future developments, encouraging overdevelopment and intrusive bulk within this finely grained heritage precinct. Such an outcome would erode the objectives of Clause 5.10 and the Sydney DCP 2012 heritage controls and set a precedent inconsistent with established Land and Environment Court decisions that emphasise the cumulative protection of heritage precincts. In this context, the public interest and precedent considerations weigh decisively against approval.

16. Recommendations

Public interest demands protection of Australia's most intact heritage maritime village over opportunistic infill.

There exists cumulative amenity harm, unresolved access liabilities, and precedent for boundary-hugging adaptive reuse.

This development fails design excellence (SLEP 6.21) by prioritizing density over neighbour impacts.

The extent of inconsistency with both Clause 5.10 and the Sydney DCP 2012 heritage controls demonstrates that the proposal is not a case of acceptable impact with variation, but a fundamental failure to conserve heritage significance.

Council must **reject** the Development Application for 125A Kent Street Millers Point.

Yours sincerely,
Annie Crabb
President
MPCRAG

Appendix: Table 1 – Summary of Non-Compliances and Key Risks

Category	Specific Issue	Reference / Standard	Risk / Impact
Heritage	Scale, bulk and height dominate adjoining 2–3 storey terraces within HCA context	Sydney LEP 2012 Clause 5.10; Sydney DCP 2012 Heritage Controls	Loss of heritage setting and subservience; erosion of fine-grain streetscape; visually intrusive built form
	Nil/near-nil setbacks and boundary-to-boundary massing	Sydney DCP 2012; ADG separation principles	Overwhelms heritage curtilage; eliminates transitional scale; incompatible interface
	Incompatible architectural expression (multi-storey glazed form)	Design Excellence Clause 6.21; Project Venture principles	Not in harmony with conservation area; disrupts consistency of scale, materiality and character
	Laneway interface presents as abrupt, blank or unresolved edge	Sydney DCP 2012	Poor urban design outcome; breaks established rhythm and permeability
	Spatial and visual context of heritage precinct materially altered	Clause 5.10 LEP 2012	Diminishes ability to read heritage precinct from key vantage points
Neighbouring Amenity – Highgate & Terraces	Loss of established ~30m visual separation (“sky gap”)	s4.15(1)(b) EP&A Act	Sense of enclosure; loss of openness; diminished outlook and amenity
	Material loss of harbour and district views	Tenacity Consulting Pty Ltd v Warringah Council	Unreasonable view sharing outcome; inequitable distribution of impact
	Visual privacy impacts from elevated and proximate built form (Levels 2–7 and rooftop)	ADG Part 3F; Sydney DCP 2012; Clause 6.21C	Direct overlooking into bedrooms, living areas and private open space; predictable and avoidable

Category	Specific Issue	Reference / Standard	Risk / Impact
	Reliance on horizontal blades/louvres rather than separation	ADG D5.P1; 3F-1	Ineffective mitigation (penetrable sightlines, night-time silhouetting); privacy not resolved
	Overshadowing from bulk and absence of upper-level setbacks	Sydney DCP 2012; case law (e.g. Veloshin reasoning)	Reduced solar access to dwellings and courtyards; diminished usability
	Acoustic impacts from communal rooftop, plant and reflective built form	NSW Noise Policy for Industry; s4.15(1)(b)	Ongoing, foreseeable noise conflict; airborne and structure-borne transmission; no demonstrated mitigation
	Hard interface with no deep soil or landscape buffer	Sydney DCP 2012 Landscape provisions	Increased reflectivity, heat, noise and visual harshness; no transition between sites
Internal Amenity	No private open space (balconies)	ADG Part 4E; Sydney DCP 2012	Poor residential amenity; lack of outdoor access; non-compliant living environment
	Deep, narrow floorplates limit solar access and ventilation	ADG	Reduced daylight penetration; compromised liveability
	Questionable cross-ventilation outcomes	ADG	Non-compliance or marginal compliance; reliance on compromised openings
	Privacy mitigation measures degrade internal amenity	ADG; design excellence principles	Loss of outlook, daylight and ventilation; design conflict unresolved
	Studio/apartment layouts below acceptable habitability thresholds	ADG; s4.15(1)(b)	Substandard living conditions

Category	Specific Issue	Reference / Standard	Risk / Impact
Design Excellence	Yield-driven built form with minimal modulation	Clause 6.21 LEP 2012	Bulk and scale not design-led; fails contextual and human-centred design
	Failure to resolve key environmental impacts (privacy, solar, noise)	Clause 6.21C(d)(vii)	Cannot demonstrate design excellence; externalises impacts
	Inadequate landscaping and articulation	Sydney DCP 2012	Visual dominance unresolved; poor integration with context
Site Suitability / Constraints	Severely constrained site (narrow width, surrounded, easements)	s4.15(1)(c) EP&A Act	Limits capacity for compliant development; intensification inappropriate
	Multiple easements (carriageway, drainage, services) not resolved	s4.15(1)(c)	Legal and operational conflicts; uncertain access and servicing
Visual Impact / Evidence Integrity	View Impact Assessment not compliant with accepted methodology	Land and Environment Court of New South Wales; Tenacity principles	Impacts understated; unreliable evidence; reduced weight in assessment
	No verified viewpoints or access to affected dwellings	Tenacity principles	Baseline conditions not established; impacts misrepresented
Accessibility / NCC Compliance	Stair/platform lift proposed as primary access	NCC Volume One F6D6; AS 1428.1-2021	Non-compliant accessible path; inequitable and unsafe
	Incomplete dimensional compliance (lifts, corridors, circulation)	NCC; AS 1428.1	Cannot verify compliance; risk deferred improperly
	Superseded standards referenced	AS 1428.1-2009	Assessment not aligned with current code

Category	Specific Issue	Reference / Standard	Risk / Impact
	Tactile and accessibility elements not resolved	NCC; TGSIs	Incomplete design; non-compliance risk
	Deferral of compliance to CC stage	s4.15(1)(a) EP&A Act	Design not capable of compliance at DA stage
Fire and Life Safety	Lift discharge and egress arrangements unclear	NCC 2022	Potential life safety risk; non-compliant exit strategy
	Rooflight proximity to boundaries	NCC 2022	External fire spread risk
	No demonstrated evacuation strategy	NCC 2022	Unresolved occupant safety
Traffic, Parking & Loading	No on-site parking for five dwellings	Sydney DCP 2012; s4.15(1)(c)	Increased kerbside demand; congestion and safety impacts
	No loading/unloading provision	DCP / RMS guidelines	Unsafe ad hoc loading in laneways
	Inadequate traffic assessment of constrained laneway	s4.15; case law	Existing congestion exacerbated; impacts not quantified
	Reliance on resident evidence due to lack of technical analysis	Presbyterian Church (NSW) Property Trust v Woollahra Municipal Council	Lay evidence carries weight; increases refusal risk
Waste Management	No compliant waste storage or handling strategy	Sydney DCP 2012; Council WMP Guidelines	Overflow, hygiene, vermin risks
	No bulky waste or PDWC strategy	Council Guidelines	Unsafe collection; public domain impacts
	Collection vehicle access unresolved	DCP	Operational impracticality; noise and disruption

Category	Specific Issue	Reference / Standard	Risk / Impact
Construction Impacts	Constrained access via narrow laneway	Sydney DCP 3.8	Unsafe vehicle movements; conflict with residents
	Noise, dust and vibration impacts	EPA Guidelines; PPV limits	Amenity and structural damage risk
	No demonstrated construction logistics plan	s4.15	High disruption; unmanaged impacts
	Public domain encroachment likely	Council requirements	Pedestrian and safety impacts

Objection to Development Application

D/2026/97

125A Kent Street, Millers Point

Must be Rejected

The proposed development of the site 125A Kent Street, Millers Point, at the South end of the Millers Point Heritage Conservation Area, demonstrates a blatant disregard for the heritage buildings and the residents that surround the site on three sides who will be significantly impacted by this development. By aligning the proposal against a backdrop of blending-in with existing high-rise development it fails to recognise its own historical footprint in the area and the heritage sandstone the existing building stands on. With the proposed main access only through a state heritage-listed laneway at 125A Kent Street, the applicant has dismissed any direct relationship to the heritage importance of its surrounds.

There appear many technical and planning faults in the Development Application, that even as a novice in building and construction, stand out. The application makes a poor attempt to meet building standards and objectives for an inner-city land-locked location that borders significant heritage properties on three side. My objection to this development application will focus on the following areas that directly impact me:

- Loss of Amenity
- Visual impact on heritage property and surrounds
- Environment and health
- Pressure on existing infrastructure and services.

Loss of Amenity

The proposed development has an enormous impact of the amenity of 121 Kent Street. With most windows and balconies located on the west side of the heritage terrace and servicing 4 bedrooms, kitchen and dining room, this development affects every aspect of my home. The distances between my property and the redevelopment of an existing building with an additional five stories will create for me, and the surrounding heritage terraces, a boxed in and overlooked environment that would impact considerably with the health and well-being of occupants. The following visual representation provides some idea of the closeness of the site to my property and the impact it will have.

The Development Application does not include the impact on its surrounds in any measure other that a choice of building materials would mitigate any issues. As is obvious from the representation images this is from the effect it will have on the lives of many people who occupy these heritage home 115-125 Kent and 3-9 High Street.

Visual impact on heritage property

Owners of the state heritage-registered properties of Millers Point must comply with a stringent set of regulations in restoring their homes to the highest level of heritage compliance, including the laneways that service them and redundant washing lines etc as features of the precinct's history, and as contained in their individual Conservation Management Plans.

As an owner of 121 Kent Street since 2011 a key feature in these plans is to ensure the integrity of the building is not disrupted and changes to adapt the external structure of the building to include air-conditioning systems, solar panels, skylights, ventilation windows etc were likely not approved. These additions, it is argued, created a negative visual impact for surrounding heritage sites, views from established high rise buildings, and vistas of heritage architecture seen from Wulugul Walk, from Balmain, from the water traffic, from Observatory Hill, from aerial perspectives, as well as the street-level Millers Point.

Against this background, 125A Kent Street is positioned on a 152 sqm block built flush to the boundary of two unique garden properties (123-125 Kent), the natural sandstone wall of Jenkins Street, and the boundary of the laneways that services the heritage properties 115-125 Kent and 3-9 High Street.

The proposed development overlooks and shadows all heritage properties to the East - two 1840s sandstone garden terraces (123 and 125 Kent Street), to the East and Northeast a row of four (4 story – not 2 story as stated in the proposal) 1880s Victorian Terraces (115-121) Kent Street, and to the North (3-9 High Street), a row of 1915 Federation two-level apartments with roof balconies. Each of these heritage-listed residences will be impacted significantly by the proposed height of the redevelopment, that they will have little natural light, absolutely no privacy, and will have little or no view and light corridors to the South Barangaroo high-rise developments and south city views. This complete loss of amenity in an area of significant heritage must not be approved.

Throughout the.Heritage.Impact.Statement.attached to the Application, it claims there is little impact on the heritage surrounds and low visibility, and the site will blend with the existing high-rise building.

It states:
The proposed works will have a minimal and acceptable impact on these items for the following reasons:

> • The existing building has no visibility within significant view corridors to and from the items.
>
> Response: As outlined above, the existing building borders at rear fence line 123-125 Kent Street and hence fully visible, it is highly visible from each level of the four-story terraces of 121 -115 Kent Street, and from 9-3 High Street where it will form a highly-visible seven-story wall of building fabric from the roof terraces and the south-facing windows. The existing building is clearly visible from the Barangaroo waterway walk where it is clearly seen in the foreground of the heritage properties. The addition of a further five levels will completely obscure the roof lines of 123-125 Kent Street and Richmond Villa Kent Street from this significant park and walkway development. It will detract focus away from the heritage sites to other vistas.

- The increase in height will result in it becoming slightly more visible at street level on Kent Street. …….. This will have an acceptable impact as the proposal will form the backdrop to much taller contemporary buildings.

Response: The proposed development only heightens the visibility of the site from 3 stories to 8 stories. It will have a major impact on residents' access to view corridors and air flows to the south and the west. It will completely obscure the

view of these heritage buildings from surrounding existing high-rise buildings in Kent Street, South Barangaroo and the waterfront walkways of Barangaroo.

- to ensure it remains visually recessive and contrasting to the more highly decorative architectural style of the heritage item

Response: The proposed development will obscure visibility of the roof lines and rear windows and dormers of the heritage items from 125-115 Kent Street, and Richmond Villa Kent Street and 114-110 Kent Street, when viewed from South Barangaroo in the existing high-rise towers and Central Barangaroo.

- Significant view corridors to and from heritage items and Conservation Areas will be retained with minimal impact and will still enable the significance of the heritage items to be read and understood.

Response: The current view corridors from South and Central Barangaroo, the waterways, Pyrmont and Balmain to the south end of the Millers Point Heritage Precinct will be blocked.

Health and environmental impact

For the residents of Millers Points - the high-rise development at the southern border of the Millers Point Heritage Precinct, comprising Crown and the three towers of the One Sydney Harbour complex, has had a notable impact on the local environmental conditions. Having lived here prior to their construction I have first-hand experience of this impact. This includes serious changes to the wind tunnels along Kent Street, Gas Lane, Jenkins Street, Hickson Road, Barton Street and the Barangaroo waterfront. Residents have already had a significant loss of sky vision, significantly less sunlight on many properties, increased reflective light from the glass and metal materials used in construction, and all-night white light from the surrounding (occupied and vacant) high-rise apartments that are lit 24/7.

The development proposal of 125a Kent Street is a further impost on the health and well-being of residents. The proposed height and profile will potentially add to the wind tunnel problem (which is extremely dangerous for the young and the frail), and will seriously impact the amount of light, sun and ventilation that is needed to achieve a healthy environment.

The proposed development will fully overlook all west and south facing windows and balconies of 125-115 Kent and 9-3 High Street. It will exacerbate the pollution trap for air quality which already suffers from the Barangaroo developments and the White Bay shipping terminal. The distance from the perimeter of the proposal site to the heritage properties is a metre laneway for 8-1 High Street and115-121 Kent Street and flush to the boundary at 123-125 Kent Street.

Without adequate sun these properties will have increased in damp and mould. The lack of sunlight to the ground poses an extreme health problem for residents and a breeding ground for rodents.

The proposed access for the development of 125A Kent Street, is a heritage-listed laneway owned by 125 Kent Street, with right of carriageway. Millers Point is serviced by many laneways which are used for storing garbage bins, emergency exits, community planting etc and generally assigned to one ratepayer. However, to propose that the lane at 125A be used as the main gateway to the proposed development site, raises many concerns around personal security, surveillance, fire and emergency access, liability and so on. These issues have not been addressed in the application.

In addition, in the proposed construction stage, it is not clear how access to the site will be made that is safe for residents including transport, noise, movement of machinery etc. As the existing building site is built to the boundary of the lot, the use of cranes and other machinery would pose a higher risk danger for the heritage properties and the high rise, as well as their occupants.

Pressure on existing infrastructure and services.

Parking

The development provides no car parking only bicycle park space. If the residences are used as short-term rentals and Air BnB it would add to many issues faced by residents of the area in respect of garbage and unacceptable excess waste, food delivery, share-rides and e-bikes used by visitors in the area. It would also impact the security of the access lane from 125 Kent Street. If the residences are used as long-term rental then parking on Kent and High Streets is extremely competitive for existing residents who compete with tradespeople, metered parking and the excessive number of Mobility Parking Permit users that are attached to cars all day, week/s. Occupants in this development would add to this pressure.

Waste services management

Waste management in Millers Point is a major issue, with Air BnB residences across the neighbourhood abusing the residential waste management collection.

The application states that council waste collection will continue as current. As I am aware only 161 Kent Street Apartments has its waste management collected from the corner of Gas Lane and Jenkins Street daily. Waste collection for 155 Kent Street is collected in bins on Kent Street and Highgate waste is cleared daily from Kent Street. For the residents 115-125 Kent St, waste bins are stored in the rear and side laneways and placed on High Street for collection each week.

In conclusion

As the owner and resident of 121 Kent Street for over 14 years I have witnessed the rebirth of Millers Point through a guided planning process for the restoration and maintenance of a significant heritage precinct.

There can be no argument for extending development on the border of a heritage precinct for a few rental apartments. The area is overserviced by 1000 new residences in the South Barangaroo precinct – and many remain vacant.

This proposed development -a mix of studio, one and two bed apartments offers nothing to its surrounding environment but a blank façade that overlooks and shadows the heritage buildings that makes Millers Point a unique and highly visible heritage precinct. The Development takes from its neighbouring heritage terraces and streetscape and provides no amenity in return.

The application must be rejected.

Cathryn Hlavka
121 Kent Street, Millers Point 2000

From: Robert Merrick
To: Elizabeth L Jones
Subject: D 2026/97
Date: Sunday, 22 March 2026 2:17:17 PM

Caution: This email came from outside the organisation. Don't click links or open attachments unless you know the sender, and were expecting this email.

Hello Elizabeth,
Thank you for sending the plans and details of the proposed development. Not being expert in the field, I make comment on what a lay person might conclude from the drawings. I shall add my general remarks after that.

1. The drawings are deceptive in relation to the site occupied by Highgate. The residential tower is set back from the ground level footprint and is not nearly as big as the drawings suggest. Therefore, the view from neighbouring buildings is not obstructed by the existing Highgate to the extent that the drawings might imply. The sight lines from the north-west facing apartments in Observatory Tower will be significantly affected by the proposed building. The same applies to other buildings looking west towards the upper harbour.

2. The drawings show a calculated shadow line for 3.0pm on 21 June (the shortest day). The inference is that the effect that the resulting shade only lasts till that time. The shadow of course persists to 5.0pm or so at that time of year and thus the total time of shadow introduced by the mini-tower is quite long. That must be a concern for all buildings to the east of "125A".

3. From my reading of the architectural drawings, there would appear to be issues in relation to emergency services access. Fire Brigade access carrying emergency equipment is a lengthy narrow walkway along the easement from Kent Street. Ambulance paramedics with a stretcher face a more difficult path, particularly on exit. First the internal lift (which I assume does meet minimum size standards, although the doors look narrow). The outside lift is clearly too small, and stairs are not easy with a heavily built patient on a stretcher. Then the exit past the letter boxes at the Kent Street end of the easement have to be navigated. It all looks quite awkward, so say the least.

I would like to comment generally on the suitability of the proposed mini-tower development. For decades, the Millers Point precinct has been labelled as a village. Lord Mayor Clover Moore refers to it as such in newsletters. Buildings in the area are mostly heritage listed, and the streets are not overcome by contrasting architectural styles and size.
When the Esso Building (now Highgate), the IBM Building (now Observatory Tower) and Caltex House (now The Grand) were built in the mid-1960s, they represented the north end of the city's commercial development. Beyond that was a collection of early buildings to house dockworkers and shipping associated businesses. Most of the buildings in Kent Street, High Street, Argyle Street, Fort Street etc. are heritage listed. The Langham Hotel would be an exception, but it is in any case no higher than the surrounding terraces.

As it happens, the terraces numbered 119 to 125 Kent Street are among the best in the street.

Exterior stonework which suffered fretting from exposure to weather has been restored, and interiors updated. The balustrade iron work is in very good order. I walk these streets every week and have on occasions introduced this iconic area to visitors to Sydney. Then I would direct them to the Observatory Hill to note the historic time-ball, one of only six still in working order around the world.

This area is part of Sydney's history. It should remain in its original form although upgraded to meet health and safety standards. The idea of having a mini-tower inserted in complete contrast to its surrounds seems totally inappropriate. I am surprised that Council has accepted the proposal, and on behalf of others I have spoken to, I object to the DA.

Thank you for giving me a voice in the debate.

Regards,

Robert Merrick