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BEFORE THE HEARING EXAMINER
FOR THE CITY OF SEATTLE

In Re: Appeal by ESCALA OWNERS ASSOCIATION of Decisions Re Land Use Application for 1933 5th Avenue, Project 3019699	NOTICE OF APPEAL

I. INTRODUCTION

Appellant Escala Owners Association supports increased density and increased residential development downtown. Any assertion otherwise misunderstands the Escala's intent and reasons for filing this appeal. Escala is not filing this appeal to challenge the general concept of building a tower on the project site. Escala is filing this appeal because SDCI has ignored specific significant adverse impacts that will occur as a result of this project and has violated the most basic legal procedural requirements set forth by SEPA for an environmental impact statement. Escala will show that, as a matter of law, SDCI failed to follow proper process and failed to adequately disclose, analyze, and mitigate the specific and real impacts that this proposal will have on the public and on the residents of Escala.

II. APPELLANT INFORMATION

1. **Appellant**:

Name: Escala Owners Association, c/o John Sosnowy
Address: 1920-4th Avenue, #2308, Seattle, WA 98101
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In what format do you wish to receive documents from the Office of Hearing Examiner?

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Check One: _____ U.S. Mail _____ Fax __X__ Email Attachment

2. **Authorized Representative**:

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III. DECISION BEING APPEALED

1. Escala is appealing the Analysis and Decision of the Director of the Seattle Department of Construction and Inspections dated October 26, 2017 and the Final Recommendation of the Downtown Design Review Board from the December 20, 2016 meeting. These decisions include decisions on Design Review and departure approvals, adequacy of the Downtown Height and Density FEIS and Addendum as they relate to the application, and conditions imposed as a result of environmental review. The applicant name stated in the Decision for this project is Gavin Smith of Perkins+Will Architects.

2. **Property address of decision being appealed**: 1933 5th Ave., Seattle, Washington, 98101.

3. **Elements of decision being appealed. Check one or more as appropriate**:

X	Adequacy of conditions	____	Variance (Departures)
X	Design Review and Departure	X	Adequacy of EIS
___	Conditional Use	____	Interpretation (See SMC 23.88.020)
___	EIS not required	____	Short Plat
___	Major Institution Master Plan	____	Rezone
X	Other (specify: *See* objections to the Decision below)		

IV. APPEAL INFORMATION

1. What is your interest in this decision? (State how you are affected by it)

Douglaston Development has proposed to build a 48 story, 500 foot tall, hotel/residential skyscraper at 5th and Virginia (the "5th and Virginia Proposal") that would be considerably larger, bulkier, and taller than any other building in the neighborhood. Escala is a 30-story residential tower that is directly adjacent to and west of the project site. It is home to 408 residents who are all members of

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the Escala Owners Association. Members of the Escala Owners Association will be significantly and adversely impacted by the proposal.

The proposal will have devastating impacts to the residents of Escala. The building will loom over existing Escala condominiums causing many of the residents to almost completely lose access to sunlight during the day for most of the year. This level of lack of daylight is known to cause serious health impacts. This is a health issue. This is not about periodic shadow impacts depending on where the sun is in the morning or afternoon. The project will also have significant adverse privacy impacts to Escala residents. With not much separation between them, windows for the proposed hotel rooms and residential units will face the windows of the living rooms, kitchens, and bedrooms of the many of the Escala residents.

The project will also have significant adverse traffic circulation, loading, and access impacts as well as vehicular and pedestrian safety issues associated with the alley that runs from Virginia to Stewart between 4th and 5th Avenues. Vehicle traffic and truck loading circulation through the alley is highly constricted given the narrow width of the alley and frequent daily need for service access. Today's traffic taxes the alley already - The alley is too narrow to handle current traffic and servicing demands. This proposal will cause a significant increase in use of the alley and will create significant safety issues for drivers and pedestrians alike. Escala residents who drive in and near the alley, walk in and near the alley, rely on trash service and other services that occur in the alley will be significantly and adversely affected by the proposal's impacts to the alley.

These are just examples of some of the impacts on the residents of Escala – there are many more that will be summarized at the hearing. Overall, a decision in favor of the Escala on the issues raised in this appeal would substantially eliminate or redress the injuries caused to Escala by this proposal.

2. What are your objections to the decision? (List and describe what you believe to be the errors, omissions, or other problems with this decision.)

The Decision by the Director of SDCI and the Recommendation of the Design Review Board were both made in error and should be reversed for the following reasons:

1. The decisions violate the State Environmental Policy Act (SEPA), ch. 43.21A, and state and local regulations implementing that law.

    a. The environmental review for the 5th and Virginia Proposal was inadequate. The project will have probable significant adverse impacts related to air quality, traffic and transportation, construction, public facilities (the alley), height/bulk/scale, noise, parking, environmental and human health, land use, privacy, lack of daylight, and safety. Regarding land use, bulk and scale, privacy, and light issues, these elements place a far more important role in human health and livability than the responsible official has recognized. These impact were not adequately disclosed, analyzed, or mitigated in the Addendum or in the FEIS. The level of analysis and information on these subjects was inadequate and fell below meeting the burden required by SEPA.

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Fundamental information existed regarding impacts that SDCI failed to disclose and failed to include in its analysis.

b. In some respects, the proposal violates code provisions, which in turn, causes significant adverse environmental impacts. For example, the garage layout violates 23.54.030.H. That provision requires compliance with specific stall dimensions and aisle widths if and when the valet operation ceases. As designed, the garage could never meet that code requirement since columns and elevator core locations make them impossible to meet. In addition, aisle slopes on some parking levels are greater than the code maximum of 15%.

c. The Decision of the Director and the Addendum both err in concluding that the Design Review Process resulted in sufficient review and mitigation of the height, bulk, and scale impacts of the proposal. The height, bulk, and scale of the proposal will cause significant lack of sunlight, privacy, health, and other impacts. The Citywide design guidelines do not adequately address or mitigate all of the adverse impacts of the proposal. There was clear and convincing evidence that height, bulk, and scale impacts documented through environmental review were not adequately mitigated by design review.

d. SMC 25.05.675.G violates SEPA as it was applied to this proposal. When combined with the reality of the Design Review process, this provision created an impossible burden on the public that is inconsistent with the intent and requirements of SEPA.

e. The FEIS and Addendum did not adequately identify mitigation measures that could be implemented or might be required for this proposal. The Addendum fails to identify obvious and feasible mitigation that could be applied to this project as explicitly stated in SMC 25.05.675.G.2 such as increasing the setbacks, limiting the height of the development, modifying the bulk of the development, or repositioning the development on the site to address and mitigate the significant impacts of the proposal. The Addendum also fails to identify other specific mitigation measures that could be implemented pursuant to other provisions of SMC 25.05.675 to address the specific impacts of the project.

f. The Addendum's statement that the substantive SEPA policies in SMC 25.05.675 limit the scope of procedural disclosure and analysis of environmental impacts is incorrect. The scope of procedural disclosure and analysis of impacts that is required under SEPA is broader than and goes beyond substantive limitations in SMC 25.05.675.

g. The scope of impacts that were addressed by the Addendum and FEIS was incomplete. SDCI failed to follow the proper scoping process for a proposal that receives a determination of significance. The Addendum and FEIS did not include specific issues of concern that Escala raised regarding air quality, public facilities, construction, health, land use, privacy, lack of daylight, and safety.

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h. SDCI failed to adequately analyze, disclose and mitigate the cumulative impacts that this proposal will have along with other developments that are in the pipeline to be permitted in the area with respect to the impacts described above. There will be cumulative impacts to land use, environmental health, height/bulk/scale, traffic and transportation, public facilities (the alley), and construction impacts from this project combined with other projects in the area. SEPA requires that SDCI conduct a cumulative impacts study of impacts that will be caused by the known developments that are proposed in the immediate area.

i. The FEIS and Addendum do not contain all of the information for the 5th and Virginia Proposal that is required by WAC 197-11-440. There is no "Summary" for the proposal as described and required by WAC 197-11-440(4) and there is no discussion of the existing environment for many of the elements of the environment as is required by WAC 197-11-440(6).

j. SDCI erred in its exercise of its substantive authority under SEPA issues, including failure to adequately mitigate the significant adverse impacts described above pursuant to SMC 25.05.675 and other SEPA regulations. SDCI erred when it failed to consider and/or exercise its authority under those provisions to mitigate the proposal. The City has the authority and should have exercised the authority to place an increased limitation on lot coverage, require a greater alley setback, and/or modify the bulk and scale of this project to address the significant adverse impacts to Escala.

k. The Design Review process violated SEPA regulatory and case law requirements that disclosure and analysis of environmental impacts must occur before a decision maker commits to a particular course of action. SEPA review must inform decision makers and the public of environmental impacts and mitigation measures that would avoid or minimize those impacts of the proposal *before* decisions are made. In direct violation of law, the Design Review Board's decisions were not informed by SEPA. The Design Review Board issued its Final Recommendation at its December 20, 2016 meeting, before SEPA review had been completed. The Design Review Board improperly made decisions that locked in the design during the Design Review process before SEPA review was completed. The Board's Recommendation unlawfully built momentum in favor of the facility without the benefit of environmental review in violation of SEPA. The Design Board's action also improperly limited the choice of alternatives before SEPA review was conducted. As it stands, the Addendum misrepresents and downplays the impacts in an attempt to justify approval of the design approved by the Design Review Board before SEPA review was completed. To the extent that the Seattle code requires this, we challenge the legality of those provisions as applied in this case.

l. By relying on an Addendum instead of preparing an EIS for the proposal, SDCI violated the process that is required by SEPA for environmental review of the 5th and Virginia Proposal. On December 15, 2016, SDCI issued a Determination of

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Significance for the 5th and Virginia project. Based on that, SDCI was required to follow the specific process set forth in SEPA and its accompanying regulations for environmental review of a project that receives a DS. A project that has significant impacts must follow the rules for proper scoping, the Draft EIS, comments on the DEIS, and then issuance of the final EIS for the proposal. The Addendum was not an EIS, did not contain the proper content for an EIS, and did not follow the proper process for an EIS. SDCI instead relied on a Draft and Final EIS that were issued 15 years ago for the Downtown Height and Density Changes, which were area wide programmatic rezone proposals for downtown Seattle. To state the obvious: The Downtown Height and Density Changes is not the same thing as the 5th and Virginia Proposal. It was error for SDCI to take the position that that this old EIS for a completely different underlying government action could be relied on as the EIS for the 5th and Virginia proposal. At the very least, SDCI violated (among other rules and regulations) with this approach: RCW 43.21C.031; WAC 197-11-310; WAC 197-11-360; WAC 197-11-400; WAC 197-11-408; WAC 197-11-440; WAC 197-11-460; WAC 197-11-500 through 570; WAC 197-11-600; WAC 197-11-736; WAC 197-11-980; WAC 197-11-535. The issues presented on this are set forth in full in the letter from Newman to Papers dated January 12, 2017 and the letter from Newman to Papers dated July 17, 2017, both of which are in the record for this project. SDCI created its own makeshift process for review of this proposal - preparing an "Addendum" to a 12 year old programmatic EIS – without even purporting to meet the requirements of SEPA for environmental review of this site specific project. This approach constitutes an outright obvious and bold violation of SEPA that is simply not credible. SDCI's conclusion that the "project produces no probable, significant, adverse environmental impacts that were not already studied in the [2005] EIS" is incorrect and made in error. SEPA rules concerning Addenda, WAC 197-11-600 and WAC 197-11-625, do not support this process.

m. SDCI cannot rely the 2003 DEIS and 2005 FEIS for environmental review of the 5th and Virginia Proposal because they do not adequately address environmental considerations for the 5th and Virginia Proposal set forth in SEPA as is explicitly required by RCW 43.21.030 and .034.

n. SDCI cannot rely the 2003 DEIS and the 2005 FEIS for environmental review of the 5th and Virginia Proposal because they are not accurate and are not reasonably up to date as is required by SMC 25.05.600. The information in the old review is 15 years old. It is outdated and no longer accurate.

o. Even if SDCI could rely on the 2003 DEIS and 2005 FEIS for environmental review of this proposal, SDCI was still required to prepare a supplemental EIS for the 5th and Virginia Proposal pursuant to WAC 197-11-405, WAC 197-11-600, and WAC 197-11-620. There are substantial changes to the proposal (in fact it's not even the same proposal) and there is new information about environmental impacts. The Addendum that was issued was not an SEIS, did not contain the proper content for an SEIS, and did not follow the proper process for an SEIS.

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p. SDCI failed to conduct an alternatives analysis for the 5th and Virginia Proposal as is required by RCW 43.21C.030; WAC 197-11-070(1)(b); WAC 197-11-400; WAC 197-11-402; WAC 197-11-440(5); and WAC 197-11-792(2)(b). None of the environmental documents contain an analysis of alternatives and their impacts as is required by law. SDCI did not evaluate a "no-action" alternative to the proposal. These are fundamental errors that renders the Addendum inadequate on its face.

2. The design review decisions and the process leading up to those decisions violated state and local laws.

a. The 5th and Virginia Proposal is inconsistent with the Downtown and Belltown Design Guidelines A.1., B.1, B.2, B.3, C.6, D.6, and E. SDCI and the Design Review Board misapplied and misconstrued these Design Guidelines regarding access to sunlight, type and amount of separation between lots, height/bulk/scale, urban form/architectural attributes, alley access/circulation/loading and vehicular access and parking.

b. The 5th and Virginia Proposal is inconsistent with the Design Review Board's direction and requirements. The project should not have been approved because, to a significant degree, the design changes that were required by the Board in the Early Design Guidance meetings were not properly addressed by or responded to by the applicant.

c. The Design Review Board decisions were made in error and were not fully informed because the Design Review process did not allow for meaningful public participation.

d. The Design Review Board decisions were made in error because they were not informed by environmental review as is required by SEPA. As a matter of law, design review decisions should not have been made until after the SEPA process was completed. To the extent that SDCI argues that the Seattle code required the process that was followed in this case, this appeal challenges the relevant code provisions as they were applied.

e. The Design Review Board violated SMC 23.41.014 because the members of the Board did not review the written public comments that were submitted regarding design review issues.

f. SDCI erred when it concluded that the decision and recommendation of the Design Review Board was consistent with the Downtown and Belltown Design Review Guidelines.

g. SDCI erred when it approved the Design Review Board recommendation because the recommendation conflicted with conditions and mitigation that should have been

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applied by SDCI pursuant to SEPA and because the recommendation itself violated SEPA.

3. Relief Requested.

Appellants request that the Hearing Examiner reverse the Director's decision and remand with instructions to prepare an Environmental Impact Statement for the 5th and Virginia Proposal as required by law. Appellants also request that the remand include specific instructions requiring that SDCI mitigate the adverse impacts to Appellants pursuant to the city's substantive SEPA authority as is authorized by law. Appellants request that the Hearing Examiner reverse the Recommendation of the Design Review Board with an order requiring that the Board reconsider its decision after SDCI has prepared a proper Environmental Impact Statement for the 5th and Virginia Proposal. Appellants request that the order direct the Board to require changes to the proposal to make it consistent with the Design Guidelines.

Appellant requests any and all additional relief that is necessary to address and alleviate the errors raised by the objections to the Decisions that are presented in Appellant's appeal.

Filed on behalf of ESCALA OWNERS ASSOCIATION this 9th day of November, 2017.

By: _____
John Sosnowy, on behalf of Escala Owners Assoc.

And by: _____
Claudia M. Newman
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