

Submission on SSD-97528708 - Mixed-use development with in-fill affordable housing at 160 Oxford Street, Paddington

Dear Sir/Madam,

I am writing to object to State Significant Development Application 97528708 for development of 160 Oxford Street, Paddington and nearby properties.

My concerns relate to the following issues:

1. Loss of affordable housing, notwithstanding the applicant's utilisation of the affordable housing provisions of the *SEPP (Housing) 2021*
2. The scale and design of the proposed development and resulting impacts on the Paddington Heritage Conservation Area, both generally and in particular on dwellings in Shadforth Street and Gipps Street
3. Inappropriate and legally uncertain intention to vary the development standards in the SEPP
4. Impacts on traffic on Oxford Street and Glenmore Road, both during construction and subsequent occupation of the development
5. Questionable efficacy of the proposed on-site parking
6. Questionable efficacy of the proposed means of disposing waste from the site
7. Risks to the existing trees in Oxford Street.

Loss of affordable housing

The applicant seeks to avail itself of the development bonuses set out in the affordable housing provisions of *SEPP (Housing) 2021* (the SEPP), notwithstanding the proposal will actually materially reduce the supply of affordable housing in this part of Sydney. This is clearly an inappropriate use of the affordable housing provisions. It highlights broader weaknesses with this aspect of the SEPP. Developers are seeking to utilise these provisions to maximise development potential for what are often very large units for wealthy individuals. The proposed development at 160 Oxford Street is a case in point.

Scale and design of the proposed development

The height and bulk of the proposed development are clearly out of keeping with the scale of development in the surrounding Paddington Heritage Conservation Area and along Oxford Street. It might be argued that, as the site is relatively close to the Sydney CBD, that a high-density form of development is appropriate. However, planning controls need to balance a range of objectives and public policy interests. In this case, the proposed development is manifestly inconsistent with the planning controls that have been applied to the conservation area for many decades.

Inappropriate and legally uncertain intention to vary the non-discretionary development standards

A key issue is how the so-called clause 4.6 variation can be assessed in this case. The legal logic is complicated, but seems to be as follows:

- Section 4.15 (3) of the EPA Act enables a consent authority to approve development applications, notwithstanding the development proposal does not comply with relevant non-discretionary development standards. There are no requirements or guidance in

section 4.15 of the Act on how a consent authority is to assess such matters. Section 4.15(3)(a) states simply that a consent authority shall use its discretion in such matters.

- Section 4.15(3)(b) states that “a provision of an environmental planning instrument that allows flexibility in the application of a development standard may be applied to the non-discretionary development standard”. Importantly, there is no such provision in the SEPP (Housing) 2021.

On the face of it, then, it seems there are no limits as to what a consent authority could decide upon when dealing with variations to non-complying development standards; it is utterly a matter of discretion for the consent authority. The question then becomes, ‘What test or criteria should be applied when a consent authority is exercising its discretion? The consent authority still has an obligation to consider the applications in accordance with the Act. There are two possible responses; one relating to the tests applying to variations to other development standards and the other relating to the application of the affordable housing provisions in the SEPP (Housing) 2021.

Tests relating to variations to development standards

The two principal overarching tests are set out in clause 4.6 (3) of the Woollahra LEP. It states that:

Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—

- (a) compliance with the development standard is unreasonable or unnecessary in the circumstances, and*
- (b) there are sufficient environmental planning grounds to justify the contravention of the development standard.*

The Land and Environment Court has provided further guidance on the interpretation of these two broad tests. I understand the leading judgement in these matters is *Wehbe v Pittwater Council* (2007) NSW LEC 827, in which the then Chief Justice (Justice Preston) set out the following five criteria where compliance with a development standard would be unreasonable or unnecessary:

1. The objectives of the standard are achieved not the standing non-compliance with the standard;
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;
3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;
4. The development standard has been virtually abandoned or destroyed by the council. Their actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;
5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel plan should not have been included in the particular zone.

The applicant suggests that the height standard in the Woollahra LEP can be varied. However, the LEP is over-ridden by the SEPP. The SEPP is therefore the relevant instrument. The challenge in this case is that the SEPP does not set out any objectives or purpose for the development standards. So tests 1-3 above are difficult if not impossible to apply. Test 4 above

is not relevant in this case, as there is relatively little experience in dealing with these non-compliant development standards by the NSW Government and certainly by Woollahra Council. Test 5 is probably not relevant, as the SEPP expressly applies to the R3-zoned land; after all, it is what both the NSW Government and the applicant are relying upon.

Character of the Area

Clause 20 of the SEPP (Housing) 2021 deals with design requirements for affordable housing. It states that:

Development consent must not be granted to development under this division unless the consent authority has considered whether the design of the residential development is compatible with—

- (a) the desirable elements of the character of the local area, or*
- (b) for precincts undergoing transition—the desired future character of the precinct.*

The applicant has made various statements about the character of the area. However, those views on this matter are simply those of the applicant. The character of the area and the balancing of planning objectives for the area are matters for governments, not applicants, to determine.

Relevantly, the NSW Government appears not to have defined the desirable elements of the character of the local area around 160 Oxford Street. The Woollahra LEP and DCP are presently the best guide for that. It would therefore be very difficult for the consent authority to argue that the proposed development is compatible with the character of the local area.

Similarly, there does not appear to be a considered, comprehensive statement from the NSW Government as to the desired future character of the precinct around 160 Oxford Street.

It would be inappropriate to consider the application (at least for the affordable housing component and the associated variation of development standards) on the grounds that:

- The application is manifestly out of character with the local area
- The best statement of the desired future character of the area is the Woollahra LEP and DCP
- There is no other desired future character statement.

Impacts on traffic, during construction and once the development is occupied

Oxford Street is one of the two major east – west thoroughfares connecting the CBD with the northern parts of Sydney 's eastern suburbs, including:

- Bus priority measures in front of the site and dozens of bus services each hour using those priority measures
- High volumes of motor vehicles and commercial vehicles
- High numbers of cyclists
- High numbers of pedestrians using the footpath along Oxford Street and around the southern end of Glenmore Road (the fashion precinct).

It remains unclear how construction traffic associated with the development can be effectively managed without substantially disrupting those vital transport services. Moreover, it is unclear how the construction traffic can be managed in light of the potential traffic management changes associated with proposed Oxford Street cycleway (that is an issue not just for construction traffic but also for operational traffic).

Clearly, construction traffic will have an unreasonable impact on the safety of pedestrians and residents in Shadforth and Gipps Streets and Glenmore Road.

‘Operational’ traffic impacts on Gipps Street, Glenmore Road and the intersection of Glenmore Road and Oxford Street are also highly likely to be significant. There are real risks of:

- queuing back into Gipps Street and on Glenmore Road, as well as impacts on Oxford Street
- conflicts between pedestrians and vehicles in the area around Oxford Street, Glenmore Road and Gipps Street, not only on weekdays, but also on weekends when the shops and hotels in that area are particularly well-patronised.

Parking

Oxford Street enjoys one of the best range of bus services in Sydney. Given that, there is no need for the proposed apartments for the large number of residential parking spaces. Government policies are clearly aimed at trying to encourage public transport rather than private transport, especially in inner areas. It is inconsistent for the government to be advocating that position but allowing developers to provide more parking than is desirable.

Regardless of the rates of provision, there are material issues about the proposed arrangements for on-site parking. These include:

- A potentially significant increase in traffic movements in and out of the intersection of Shadforth Street Knox Ford Street in peak hours, disrupting bus services to large parts of the eastern suburbs
- Very steep ramps between the levels of basement parking (including extensive use of 1:4 grades). In some cases, the claimed grades shown in the architectural plans do not appear to be achievable with the RLs shown in the same plans, e.g. parts of the descent to Basement Level 1. In other cases, the ability to provide the claimed grades cannot be determined accurately as the plans are not fully dimensioned, e.g. the descent from Basement Level 1 to Basement Level 2 and subsequently. The applicant may be seeking to avoid even deeper parking. However, this may not be possible especially as the site drops steeply (3.9m) from the north-east corner on Shadforth Street to the south-west corner on Oxford Street.
- Tight corners in the ramps which will be difficult to negotiate, especially as they are located immediately prior to or following the ramps. The ‘swept path diagrams’ in the traffic report are optimistic. It appears it will be almost impossible for vehicles operating in different directions to negotiate those corners at the same time. These ramps occur on multiple occasions. This points to serious traffic conflicts within the building, and, in return, the likelihood that occupants will be inclined to park on the surrounding streets. This will place demand on a scarce resource and probably lead to traffic circulating around the streets in search of a car park.
- The architectural plans appear to provide five retail spaces, whereas the applicant’s traffic and transport report claims that six spaces will be provided
- The layout is such that it would be difficult for vehicles to get in/out of some spaces, especially but not only the ‘double-stacked’ spaces proposed for Basement Level 4
- Potential issues regarding the clearance (probably around 2.7m) between finished floor levels and the underside of the slabs overhead and any services suspended off the slab above. This may limit the size of vehicles that can use the car park.

Waste collection

The applicant's request for SEARs demonstrated the challenge in dealing with collecting, holding and disposing of waste from the development. The SEARs request made a vague statement that "the indicative concept design proposes private waste collection from the basement". The SEARs request failed to explain, even in outline, what this might mean in practice. What the request does do is identify the significant constraints in identifying a workable means of disposing waste. The SEARs request confirmed that:

- Council standard waste collection vehicle could not fit within a basement ramp
- A ground floor waste collection area was not viable
- Kerbside collection on Oxford Street is not viable
- Kerbside collection on Shadforth Street is not preferred. Gipps Street presents the same road and idle time problems as Shadforth Street.

In any event, using vehicles smaller than Council's standard waste collection vehicle presents other issues, including:

- The number of movements up and down steep ramps is likely to cause problems for other occupants looking to enter and leave the site
- Uncertainty as to whether even smaller vehicles used for the removal of waste could operate readily within what would potentially be the 2.6–2.7m clearance between the finished floor level of one level of parking and the underside of the slab for the level above
- Whether the proposed Small Rigid Vehicle (SRV) mini rear loaders proposed by the applicant, with a proposed length of 6.4m, can operate readily twice weekly on the ramps from the lower ground level to Basement 1 and then on to Basement 2 (where the on-site waste collection is proposed to occur).

Risks to street trees

Excavation of the site presents real risks to the root systems required to support the trees in Oxford Street. These trees have taken decades to reach their current height and breadth. They represent a fundamental element in the Oxford Street streetscape.

Conclusion

For the reasons set out above, I request that the consent authority refuse to grant approval for the development application. The proposed variation to the SEPP's development standards fails to address the government's own planning strategies and objectives, most notably in relation to the provision of affordable housing and encouraging the use of public transport rather than private transport. Rather, the proposed development is simply an attempt to manipulate the flawed affordable housing provisions in the SEPP in order to facilitate the development of large apartments aimed at the top end of the housing market. The result is a very small increase in the overall number of dwellings (eight only) but a substantial reduction in the availability of affordable housing in Paddington. How can a reduction in the supply of affordable housing be consistent with the SEPP? On any reasonable reading, the development is inconsistent with principles (b) and (h) set out in section 3 of the SEPP.

Beyond those concerns about housing affordability, the development presents a large number of unresolved site-specific issues. Individually, but especially collectively, those issues underscore the inappropriate nature of the proposed development on this site.