

The Smith Street Development Partnership
C/- NSW Department of Planning, Housing and
Infrastructure
4 Parramatta Square
12 Darcy Street
PARRAMATTA NSW 2150

REFERENCE

Date

DE-2024/62

19 July 2024

Att: Mr Andy Nixey
andy.nixey@planning.nsw.gov.au

Dear Mr Nixey

RESPONSE TO PUBLIC EXHIBITION OF SSD-67895459 – DETAILED OBJECTION

Development	Shoptop housing with infill affordable housing Smith Street, Wollongong – State Significant Development - SSD-67895459 Public Exhibition of Environmental Impact Statement (EIS)
Location	120 Smith Street Wollongong 106 Smith Street Wollongong 3A Charlotte Street Wollongong Part lot 2411 DP 1097900; Part lot 2412 DP 1097900; and Part lot 211 DP 1011740.

Further to Council's letter 2 July 2024, we provide the following detailed comments regarding Council's objection to the proposed development.

Statutory Context

- The proponent has indicated an intention to develop the adjacent site at Lot 253 DP 787299 (122 Smith Street Wollongong), identified as Stage 2 in the overall project. The proponent has submitted to Council a scoping report proposing a significant change to the statutory controls namely an increase in building height from 24m to 48m. Given the highly constrained nature of the site at 122 Smith Street and its future relationship with the subject SSD (state significant development), it is essential that the SSD application includes concept level contextual information for 122 Smith Street, similar to a precinct masterplan or concept development application (DA) for the precinct. This will ensure that the following issues are considered holistically:
 - Issues of massing and form;
 - Street interface and vehicle, pedestrian and cycle movement adjacent to and within the eventual precinct; and
 - The timing and impact of any future repairs/reconstruction of the adjacent Council drainage pipe infrastructure, potential planning agreement and creation of a through site link.

This information was requested in Council's response to the Secretary's Environmental Assessment Requirements (SEARs) but has not been provided.

- The land is currently located in the E3 Productivity Support zone under Wollongong Local Environmental Plan 2009 (WLEP 2009). This zone does not permit dwellings other than in a shop

top housing development and its objectives focus on providing a specific range of commercial, recreation and light industrial uses.

1 Objectives of zone

- *To provide a range of facilities and services, light industries, warehouses and offices.*
 - *To provide for land uses that are compatible with, but do not compete with, land uses in surrounding local and commercial centres.*
 - *To maintain the economic viability of local and commercial centres by limiting certain retail and commercial activity.*
 - *To provide for land uses that meet the needs of the community, businesses and industries but that are not suited to locations in other employment zones.*
 - *To provide opportunities for new and emerging light industries.*
 - *To enable other land uses that provide facilities and services to meet the day to day needs of workers, to sell goods of a large size, weight or quantity or to sell goods manufactured on-site.*
 - *To allow some diversity of activities that will not significantly detract from the operation of existing or proposed development or the amenity enjoyed by nearby residents, or have an adverse impact on the efficient operation of the surrounding road system.*
3. The amount of floor area to be used for residential purposes is unacceptable and contrary to the zone objectives, as approximately 98.12% of the total floor area of the development is identified as residential. The zone objectives prioritise employment generating activities, in particular light industry, offices and warehouses and the proposed development fails to provide land uses consistent with the zone objectives.
4. Development for the purposes of shop top housing is permitted with development consent on certain sites via Schedule 1 - 34 Use of Certain land in Zone E3. The shop top housing definition requires the ground floor of the building to be used for specific purposes. The current scheme does not appear to satisfy the definition requirements.
5. The clause 4.6 development standard departure statement should be revised to correct inaccuracies prior to consideration by the consent authority.
- a. The statement describes a departure from a 31.2m height limit, however WLEP 2009 only permits a height of 24m. The tests required by clause 4.6 should be applied to a 24m height limit, and not only the height bonuses possible under State Environmental Planning Policy (Housing) 2021 (SEPP Housing).
 - b. Similarly, references to permitted floor space ratio (FSR) should relate to the permitted FSR under WLEP 2009, and not only the FSR bonuses possible under SEPP Housing.
 - c. The statement refers to consultation with Council and the Design Review Panel, however as noted elsewhere in this letter, only a combined Stage 1 and 2 proposals has been presented to Council.
6. The application seeks to obtain height and floor space bonuses under Chapter 2 of SEPP Housing.
- a. SEPP Housing Chapters 2 and 4 apply to the development.
 - b. Chapter 2 requires affordable housing developments to satisfy clause 20:
(3) 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.*

In its current form, the development fails to satisfy these requirements. Specifically,

- WLEP 2009 sets a maximum 24m height limit, however 32.28m is proposed.
 - WLEP 2009 sets a maximum 2.50:1 FSR limit, however 2.65:1 is proposed.
 - WLEP 2009 E3 Productivity Zone objectives prioritise industrial, office and commercial development, however 98.12% of the floor space is residential
 - View analysis is incomplete, and therefore impacts upon views to Mt Keira have not been determined
 - A long-term environmental plan for the contaminated site detailing required monitoring, mitigation and regulatory processes has not been provided; and therefore it has not been established whether the proposed land use will adversely impact upon the precinct. The consent authority cannot not be satisfied that the land is suitable for the proposed use under cl 4.6 State Environmental Planning Policy (Resilience and Hazards) 2021.
 - Adequate concept documentation showing Stages 1 and 2 has not been provided, and therefore the relationship between the two sites, and in particular the increased height currently being pursued for Stage 2 and completion of infrastructure works, has not been established.
- c. The letter from the community housing provider is insufficient for the consent authority to be satisfied that the designated affordable rental housing apartments will be used for affordable rental housing as per the requirements of SEPP Housing Chapter 2 clause 21.
7. It is unclear from the documentation provided whether owners consent from all landowners has been given.

Design Quality

8. WLEP 2009 Clause 7.18 Design excellence in Wollongong City Centre and at key sites applies to the site. In its current form, the proposal is not considered to exhibit design excellence. Areas of concern include:
- a. Unacceptably high proportion of residential floor area - clause 7.18(4)(e)(ii)
 - b. Non-compliance with 24m height limit set by WLEP 2009 - clause 7.18(4)(e)(v)
 - c. Non-compliance with 2.5:1 FSR limit set by WLEP 2009 - clause 7.18(4)(e)(v)
 - d. Non-compliance with 31.2m height limit set by SEPP Housing - clause 7.18(4)(e)(v)
 - e. Failure to provide basement parking has compromised active uses at ground level – clause 7.18(4)(a)
 - f. Failure to adequately address flood risk - clause 7.18(4)(e)(i)
 - g. Extent of long term environmental management plan mitigation, monitoring and compliance for the on-site contamination has not been determined - clause 4(e)(i). The consent authority cannot not be satisfied that the land is suitable for the proposed use under cl 4.6 State Environmental Planning Policy (Resilience and Hazards) 2021
 - h. Poor access for disabled users into the development and within the development – clause 7.18(4)(a)
 - i. The Context Landscape Architecture plans show a footpath from Charlotte Street leading to a platform lift in the north-west corner of the northern building. Charlotte Street currently does not extend as far as the proposed footpath, and therefore access for pedestrians on Charlotte Street would be via another allotment that is not part of the DA, and which is not owned by the proponent. The plans should be revised to accurately show the current extent of Charlotte Street. Until such time as Charlotte Street is extended, and the land providing access to the building on the northern boundary is owned by the proponent, no disabled access to the northern building is available other than from Smith Street.

- ii. Disabled parking spaces are located a long distance from lift lobbies.
 - i. View analysis from the intersection of Keira and Smith Streets to Mount Keira has not been adequately carried out - clause 7.18(4)(c).
 - j. Non-compliance with minimum bedroom size as required by the Apartment Design Guide 4D-3. A minimum dimension of 3m is required measured at any point between facing walls – clause 7.18(4)(a)
 - k. Site access for service vehicles is proposed across land currently in other title and ownership, via a private allotment – clause 4(e)(ix)
9. Face brickwork should be used for all brickwork finishes, and specified on drawings. Brick-like stencilling, brick skims, or brickwork biscuiting must not be installed as primary façade materials.
 10. The landscape plans by Context landscape Architecture are inconsistent with the Cox architectural plans and in the EIS, in relation to site boundaries. The 'blue-green link' is partly outside the Stage 1 site, and it is unclear how the proposed staging will affect construction of this element. If the entirety of the 'blue-green link' is to be completed during Stage 1, the site boundaries for the DA must be adjusted to incorporate the 'blue-green link' extent.
 11. The Design Report (Section 3.2 – pg. 26) identifies the need to prioritise connectivity by activating the Smith Street and Charlotte Street frontages. The commercial tenancy fronting Charlotte Street consists of double height glazing with lower-level privacy screen, atop a screened approximately 500mm high sub-floor floodway. The treatment of this commercial façade does not allow for satisfactory levels of activation of this frontage and associated pedestrian link. Greater modulation and opportunities for outdoor areas along this elevation are required.

Built Form and Urban Design

12. The survey plan provided with the application is a proposed subdivision plan. A survey plan of the existing lot arrangements must be provided.
13. Charlotte Street currently terminates approximately 50m in from Flinders Street. A private roadway across land owned by Collegians continues this road informally to the west. The ownership and access arrangements have not been adequately addressed.
14. Concept level contextual information which includes the Stage 2 land to the east has not been provided. It is therefore unclear how the proposed development will relate to future development on the Stage 2 land, noting the proponent has recently submitted a Scoping Proposal to Council seeking an increase in height under SEPP Housing Chapter 2 affordable rental housing bonuses.
15. The north point should be corrected on the following plans by Cox Architecture
 - a. 'Solar analysis- neighbouring property' plan DA-8502 Rev 1 dated 19 December 2023.
 - b. 'View from the sun – sheet 1' plan DA-8601 Rev 1 dated 19 December 2023.
 - c. 'View from the sun – sheet 2' plan DA-8602 Rev 1 dated 19 December 2023.
 - d. 'View from the sun – sheet 3' plan DA-8603 Rev 1 dated 19 December 2023.
 - e. 'View from the sun – sheet 4' plan DA-8604 Rev 1 dated 19 December 2023.
16. Provision of basement parking would improve edge activation, accessibility and allow provision of more non-residential floor space. In the current scheme, non-residential floor space comprises only 1.88% of the total gross floor area, which is unsatisfactory in an E3 Productivity Support zone.
17. There is extensive underground Council stormwater infrastructure running through the site, being a piped watercourse. Consideration must be given to how this infrastructure can be repaired or replaced over time, including as a known requirement for development of the adjoining site. The application has not detailed how maintenance and repair of this infrastructure will be managed on a contaminated site noting that significant contamination remains in this location. A planning agreement was flagged by the proponent in previous discussion with Council. Any

repair/replacement should occur ideally during the building phase of the proposal to minimise impacts/disruptions on future residents.

18. It is unclear whether the proposed 'green spine' to be provided as part of a future planning application is achievable, as extensive areas of vegetation have been proposed over this stormwater infrastructure, and land contamination/remediation has not been actively considered for this element.
19. A significant safety concern is noted, being the western walkway entrances, and the potential pedestrian link from Smith Street to Charlotte Street. It is possible that this pedestrian link could be misused given that there is limited existing or proposed natural oversight to this linkway and given the narrowness of the walkway itself.

Environmental Amenity

20. It is not clear how the proposed future buildings to the west, or potential future built forms to the north and east, would impact on overshadowing of the building and this must be demonstrated in documentation and considered when assessing solar access calculations.
21. It is noted that some bedrooms do not meet the Apartment Design Guide (ADG) minimum required dimensions.
22. The central communal open space (COS) area on Level 2 is heavily overshadowed and does not meet the ADG target of 50% of COS areas achieving minimum 2 hours solar access.

Visual Impact

23. A review of the Visual Impact Assessment (VIA) by Ethos Urban has been undertaken. Council's previous advice to the draft SEARs identified that the intersection of Keira and Smith Streets is a key entry/exit point and allows clear views through the subject site to Mount Keira and also needed to be considered in the VIA. This has not been carried out and only a brief response has been provided noting that the proposal will not impact on the extent or nature of the view. However, no analysis has been presented to confirm the statement.
24. Consequently, based on the significance of this view corridor through the subject site the VIA must be updated to include a viewpoint analysis from the intersection of Keira and Smith Streets to Mount Keira. This updated analysis is to be used to guide design outcomes which demonstrate how the development maintains and enhances views to Mount Keira consistent with Wollongong Development Control Plan 2009 (WDCP 2009) Chapter D13.

Public Space

25. Council's City Centre Public Domain Technical Manual (CCPDTM) is the reference document for footpath pavements. The applicant's Landscape Architect must address the streetscape requirements for the proposal in accordance with the requirements of the CCPDTM available on Council's website.
26. The design of the public domain to Smith Street and Charlotte Street frontages is not supported as it does not comply with the controls in the CCPDTM. The public domain is to be full width paving with street tree planting and street furniture. Detailed investigations are required of subsurface services to determine tree planting locations that do not conflict with service lines. This information is to be included in the landscape plans for the public domain.

Trees and Landscaping

27. Landscape Plan should detail the height and depth of all podium roof top terraces and raised garden beds to demonstrate the size and depth to achieve sufficient soil volumes to allow the establishment of small to medium trees. Insufficient deep soil zone (DSZ) has been provided. DSZ must have a minimum width of 3m and minimum 7% of the site area, which is 389.8m².

Traffic, Transport and Accessibility

28. The swept paths in the Transport Impact Assessment (TIA) by Stantec dated 8 April 2024 do not demonstrate passing on all two-way aisles and corners (as required by AS2890.1) and therefore the car parking layout is not supported as it will result in loss of amenity, manoeuvring and safety issues. This requirement was raised in Council's response to the SEARs to ensure that the applicant provides a compliant car parking layout as per the minimum requirements in AS2890.1.
29. The applicant needs to upgrade the site frontage as a requirement of the development process. As stated in Council's response to the SEARs there is a shared path which ends adjacent to the western end of the site frontage. The frontage of the site needs to include the continuation of the shared path within the verge which would improve the streetscape, provide improved cyclist safety outcomes and increase on-street car parking opportunities.
30. The residential basement does not provide adequate security. This issue was raised in Council's response to the SEARs. Commercial and residential visitors would have unrestricted access to residential parking areas based on the lack of roller door separation proposed. This layout is not supported due to known issues of vandalism and theft from these types of multi-unit parking arrangements elsewhere in the local government area (LGA).
31. Charlotte Street does not connect directly to the development site. A loading zone is proposed off Charlotte Street, but access is via private land (Lot 300 DP 1239092) owned by Collegians Rugby League Football Club. The applicant would need to seek the appropriate consent and private access arrangements via an easement to the proposed development over the Club's land.
32. The location of the proposed access is a concern as it is offset from the Young Street intersection. The preference would be for the access to be aligned with Young Street. A mountable roundabout could calm traffic and facilitate safe pedestrian and cyclist crossing facilities to address the desire lines identified in the previous point.

Noise and Vibration

33. It is understood that the construction of Stage 2 will involve the repair/reconstruction of the Council drainage pipes which run adjacent to the site's western boundary. This works area is in close proximity to the Stage 1 building. Replacement of this infrastructure has not been considered as a short term noise source in the acoustic assessment.

Ground and Water Conditions

34. The 'Surface and Groundwater Impact Assessment' by Aargus does not acknowledge known contaminants present on the site. The report should be revised to include potential risk and mitigation measures arising from the on-site contamination.
35. The location of bore holes referred to in the 'Surface and Groundwater Impact Assessment' by Aargus should be provided in the report.

Water Management

36. The potential contamination risks inherent in the repair/reconstruction of the adjacent Council drainage pipes should be considered. The site has not been fully remediated and the level of remediation undertaken by previous owners in and around these existing pipes is not fully understood.

Flooding Risk

37. The site is within the Fairy Cabbage Creek Flood Precinct, and the site is identified as subject to flooding risk.
38. The 'Flood Impact Risk and Management Report' by IGS has not adequately addressed Council's adopted 'Fairy and Cabbage Tree Creeks Flood Study' (Advisian June 2020) [Fairy & Cabbage](#)

[Tree Creeks Flood Study - Final Report and Mapping - Datasets - NSW Flood Data Portal](#). Figures 40-2 and 41-2 of Volume 2 show the parts of the site identified as floodway.

39. Council does not support building over floodway in any way. Clause 5.21 of WLEP 2009 states that consent cannot be granted unless the consent authority is satisfied flood risk has been adequately addressed in the development:
- (2) Development consent must not be granted to development on land the consent authority considers to be within the flood planning area unless the consent authority is satisfied the development—*
- (a) is compatible with the flood function and behaviour on the land, and...*
40. In this regard, Council maintains that floodways are areas that pose significant risk to life and property. Building over a floodway, i.e. placing buildings, or people within or over a high flood risk area, or floodway areas is not compatible with the flood function.

Contamination and Remediation

41. The site remains contaminated and has not been fully remediated.
42. The contamination and remediation consultant reports are based upon the proponent's decision to leave contaminants on the site. An Interim Environmental Management Plan (ITEMP) and Long Term Environmental Management Plan (LTEMP) have been recommended by the consultants to manage the residual contaminants. The site auditor recommended the development not provide basement car parking as basement excavation may potentially disturb those residual contaminants. As a result of the decision to not remove contaminants from the site, the site auditor recommends in-perpetuity use of gas vents and monitoring at ground level. Full details of how these practices would be implemented once the site was occupied have not been provided.
43. The ongoing financial and environmental risks to Council's community from costs associated with contamination incidents has not been identified. Council would become the regulatory authority for the site and have responsibility for environmental monitoring and regulatory compliance. Council has previously asked the developer to provide examples of sites with similar contaminants which have been successfully managed under a Long Term Environmental Management Plan, however this information has not been provided.

Waste Management

44. The proposed waste arrangement is not supported. The scheme involves vehicle access via a private allotment instead of a defined road. A turntable is proposed and it is noted that Council's contracted waste service provider does not allow the use of turntables for public waste collection. Private contractors are not an acceptable solution as Council has poor experience with legacy developments where this has occurred in the past. Council must charge owners a waste levy irrespective of whether Council or private waste contractors are used. Private contractors are typically engaged by the developer at building completion. When the owner's corporation realises that they are paying both Council and the private contractor, they naturally seek to save money by cancelling the private contract and reverting to Council. If the proposal is not designed to Council contractor standards and the Council contractor ends up servicing the site, Council will bear a considerable financial burden. This is why it is most important for the proponent to work to Council contractor standards.
45. There is a significant distance between waste chute rooms to the bin stores. This is likely to require a significant ongoing management issue in swapping bins, and in transporting bins between locations. It is also noted that spaces for bin trolleys have not been allowed.
46. Evidence of consultation with Council's waste service provider and in-principle agreement for waste collection has not been provided.
47. The Waste Management Plan needs to be revised to show bins allocated as per the following waste generation rates:

- a. General waste: 120L per unit regardless of the number of bedrooms
 - b. Recycling: 120L per unit regardless of the number of bedrooms
 - c. FOGO/Green waste: 40L of per unit regardless of the number of bedrooms
48. The waste room is likely to need expanding to accommodate the revised generation rates.
 49. The bulky waste room is located a significant distance from some residential lifts, which may discourage placement of waste items in the correct area.
 50. A bin for FOGO waste should be available in residential waste rooms on each level.
 51. In addition, the waste collection arrangements need to reflect the draft (soon to be in force) Sustainability Chapter A2 of the Wollongong Development Control Plan 2009 (WDGP 2009) which requires dedicated FOGO/green waste chutes as well as chutes for general rubbish and recycling. If additional chutes are not provided for FOGO/organic waste, residents will be tempted to put the organic waste in the general rubbish bin which is unsustainable and inconsistent with best practice.

Environmental Heritage

52. No details have been provided in relation to future interpretation links to the former historic uses of the site.
53. A preliminary Historic Archaeological Assessment (or similar) is recommended. The history of the site as the Wollongong Gas Works, and its significant role in providing an early and long running energy supply for the City makes it a significant enterprise. Whilst the past demolition and removal of the built form, and the subsequent remediation process is likely to have removed much of the potential for archaeological remnants related to the Gas Works operations, the long running use of the site from the 1880's-1977 represents a significant historic use and function. The site was also linked to significant historic infrastructure components including a railway siding and junction point of the Main South Coast Line and the former Mount Keira Colliery Tramline. These aspects of the site's history should inform some level of onsite interpretation to link the future redevelopment with the historical use, function and layout to acknowledge the significance of the site in the history of Wollongong's growth and development.

Social Impact

54. The documentation is unclear as to whether the 16 NDIS dwellings are simply the 16 adaptable dwellings or 16 of the 22 affordable housing dwellings. This uncertainty comes from conflicting references to 'NDIS rental units' (page 43 of the Social Impact Assessment), '16 adaptable/NDIS units' (page 42 of the Accessibility Compliance Report) and '16 accessible apartments are National Disability Insurance Scheme (NDIS) rental units' (page 13 of the EIS).
55. It has not been demonstrated how the NDIS units will remain 'rental units' as claimed in the application.
56. The EIS contains conflicting references to 22 and 25 affordable rental housing units. The number of affordable rental dwellings should be clarified.
57. Council is critical of the decision to allocate a higher proportion of apartments with the worst-performing solar access and ventilation to affordable housing.

Construction, Operation and Staging

58. The drainage easement burdening Lot 2411 DP 1097900 must be kept clear from any encroachments to ensure access and long-term maintenance can be undertaken. The documentation provided does not include analysis of any future stormwater infrastructure upgrade or replacement and it is therefore unknown whether the proposed Stage 1 works area will provide adequate separation from the drainage easement. Full investigation of future works in the easement is required during Stage 1 planning to ensure there is no conflict with the Stage 2 construction program, and long term access and maintenance within the easement.

59. Additionally, stormwater upgrade/replacement specifications will need to be finalised to determine whether the existing easement width is adequate for the new/upgraded infrastructure.
60. A Construction Environmental Management Plan (CEMP) has not been provided.

61. Engagement as required by the Department's SEARs and '*Undertaking Engagement Guidelines for State Significant Projects*' dated March 2024 has not been carried out.
62. Part 3.1 of the 'Community Engagement Report' dated April 2024 by Urban Property refers to consultation undertaken with Council and the Wollongong Design Review Panel between March 2022 and March 2024. The method of consultation is listed as 'online and in-person meetings', 'emails' and 'proponent/relevant technical expert to undertake'.
63. The accuracy of information is questioned, as Council was not formally presented with the proposal until the Department contacted Council requesting input on SEARs.
64. During the period March 2022-March 2024, Council and the Design Review Panel considered a different proposal for a combined DA across the Stage 1 and Stage 2 sites . (Council reference DE-2022/69). The proposal considered by the DRP in June 2022 and March 2023 is shown in Figures 1 and 2 below.

Figure 1: 'DRP Presentation' by Blaq Projects and Cox Architects dated 26 July 2022 page 39



Figure 2: 'DRP Submission' by Urban Property and Cox Architects dated March 2023 page 13

65. The DRP comments included in Appendix D of the 'Community Engagement Report' relate to the combined Stage 1 and 2 proposal (DE-2022/69) and not the current EIS development.
66. An online meeting between the proponent and Council on 12 September 2023 indicated an intention to lodge a DA for stage 1, but no pre-lodgement meeting or DRP meeting have been held.
67. To date, Council's Design Review Panel has not seen the proposal.
68. On 6 July 2024 the applicant contacted Council advising that the Department had provided them with the initial Council feedback in relation to the SSDA. They requested a meeting to discuss Council's concerns, and this has been arranged as a pre-lodgement meeting which is scheduled for early August. The matters raised above could be points for discussion.

If you have any questions regarding the above, please contact me on the telephone number below.

This letter is authorised by

Pier Panozzo
City Centre and Major Development Manager

Wollongong City Council
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