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Sent on: November 27, 2024 12:25:02 PM
To: council@cityofsydney.nsw.gov.au
Subject: Objection to D/2017/349/A and D/2024/854, 201-217 Elizabeth Street, SYDNEY
Attachments: Submission DA-2017-349-A(GS Pearce).pdf (571.97 KB)

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Please find attached submission relating to D/2017/349/A and D/2024/854 both relating to 201-217 Elizabeth Street, Sydney.

The Submission addresses both Applications.

Please acknowledge receipt.

Yours sincerely
G S Pearce

Gregory Stephen Pearce
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27 November 2024

D/2017/349/A (SSD8105-Mod-1) and D/2024/854 (SSD64090972)

As an owner and resident of lots in Strata Plan 51487, known as Victoria Tower, 197 Castlereagh Street, Sydney, I object to the State Significant Modification application D/2017/349/A, and I also object to detailed SSDA -D/2024/854, both lodged on behalf of Charter Hall Holdings Pty Ltd, the Applicant, which are being assessed concurrently, in respect of 201-217 Elizabeth Street, Sydney.

The grounds for objection, which are addressed further below, include:

1. D/2017/349/A Modification

- a) the modification application cannot be considered as the Concept Approval D/2017/349 lapsed on 6/9/20 24 and the application was lodged on 25/10/24,
- b) the application for Modification does not comply with Section 4.55 (2) of the EP&A Act as the proposed modified building envelope is not substantially the same development as originally approved.

2. D/2024/854 Detail Design Stage 2

- a) the 2024 Application does not address or respond to condition 9 of the Consent to approval for D/2017/349.
- b) If the Concept Approval has lapsed, any current application must be considered under the current provisions of Sydney LEP 2012, and the proposed FSR is not permitted under the current LEP.
- c) the proposed building envelope proposes significant additional height, which causes overshadowing of Hyde Park and is prohibited under clause 6.17(2) of the Sydney LEP. It is not sufficient simply to say that the Jury for the Design competition supports the additional height.
- d) the View & Visual Impact Assessment inadequately considers the impact on private domain views and dismisses the impacts of the podium, contrary to the clear direction in the SEARS, that “significant” views are the key view and visual impact issues for the proposal.

SSDA D2017/349

The Application was lodged in 2017 by Ethos Urban on behalf of Charter Hall (“the Applicant”) as SSD – 8105 for a mixed use development with FSR of 15.71:1. The Concept Approval was granted on 15 February 2018.

Of significance is that in the application the Applicant relied upon 2 provisions of the Sydney Local Environmental Plan 2012, which were essential to achieve the height and overshadowing and FSR –

- a) clause 6.18 of the LEP provided an exception to a building causing overshadowing of Hyde Park breaching the relevant sun access plane from 12.00 to 2.00pm on the winter Celsius, June 21 (further explained below), by permitting the consideration of a development which

reduces the overshadowing by an existing building on the land, by at least 50%, at the relevant times.

- b) clause 6.4 which provided bonus floor space of 6:1 for developments which include accommodation space, including apartments and hotel rooms.

The assessment and the Consent Approval would not have been permissible except by application of these two provisions.

Clause 6.18 deleted by amendment to the SLEP Gazetted on 26/11/21, and clause 6.4(A) provides “NIL” bonus FSR from 1/7/23. Reasons for the changes to the SLEP were expressed by the Council and CSPC and accepted and supported by the Minister, notwithstanding submissions, including my own, objecting to the removal of those parts of the LEP.

DA 2017/349 was accompanied by an environmental impact statement and supporting documentation, including overshadowing analysis and diagrams which asserted that the proposed development achieved a reduction in overshadowing of Hyde Park of 50.13% Park between 12 noon and 2 PM on 21 June. The reduction was claimed to be based upon a calculation which purported to show “cumulative” reductions during the relevant period, but in fact demonstrated that the proposed new building created overshadowing, projecting higher than the relevant sun access plane, for the entire period between 12 noon and 2 PM, and further that any reductions when compared to the existing building were less than 50%, at least at 12:00 and 12:30 PM.

The Stage I Concept Approval was granted on 15th February 2018. Key components of the development, according to the Central Sydney Planning Committee Assessment Report for Stage 1 DA for mixed use development D/2017/349, as amended after submissions, is a maximum height of 172.6m comprising a 37-storey tower (RL 198.22) above a 13 storey podium (RL69.89 and RL76.00).

The Concept SS DA permitted GFA of 59551.7 M2, based on a floor space ratio of 15.271, including a 361 room hotel on 26,543 m2 and 262 residences on 28164 m2.

Relevantly, the assertion that the clause 6.18 exemption for 50% reduction in overshadowing was not accepted and Condition 9 of the Concept Approval for D/2017/349 states:

Sun access modelling is to be submitted with the Stage 2 Development Application confirming that those parts of the development that exceed the Hyde Park west sun access plane will achieve a minimum 50 %reduction in overshadowing of Hyde Park between 12pm and 2pm on 21 June.¹

Condition 44 of the Consent provides that the consent will lapse five years from the date of the consent becoming operational. The Concept Approval conditional requirements were satisfied, ie the consent became “operational” on 6/9/2018 (see Modification Report page 5) and accordingly pursuant to section 4.53 of the EP&A Act the Approval was due to lapse five years later on 6/9/2023, however pursuant to amendments in 2021, the Approval was entitled to a further two years to 6/9/2024 (see Modification Report, page 7).

Notwithstanding having seven years in total to progress to the Stage 2 application, the Modification Application was only lodged late, on 25 October 2024.

DA/2017/349/A Modification

Ethos Urban, on behalf of Charter Hall ('the Applicant'), applied to the Department of Planning and Environment for consent to modify D/2017/349 on 25/10/24. At the same time, the Applicant lodged Detailed Design application D/2024/854:

The applicant seeks to modify the height, setbacks and footprint of the building envelope to be consistent with the detailed design SSD application D/2024/854. The proponent argues that a Section 4.55(2) modification is sufficient and may authorise the proposed changes.

The Applicant has submitted that the proposed development remains substantially the same development as the original Concept Approval (SSD8105, D/2017/349).

The current Modification Application, brazenly, is an attempt to retain the benefits in floor space, height and overshadowing which were only possible because of the previous clause 6.18 exemption and the clause 6.4 bonus, which were both removed by Council and the CSPC and the Minister. The Modification Application is noteworthy as it has only been lodged after the Concept Development Consent ceased to be in effect. Therefore, the Modification cannot be approved.

Section 4.55(2) provides that a consent authority may modify consent if "... It is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted". The onus is on the Applicant to persuade the consent authority that the development is substantially the same as the approved development as provided in the Concept Approval for D/2017/349.

The Applicant has applied to increase height of the building from RL 198.22 RL 208.6, which is a 5% increase, to increase the number of hotel rooms from 361 to 441, an increase of almost 20%. Further the height of the building is proposed to be increase by approximately 10 m. Cumulatively, these changes represent the addition of a new building on top of the approved development which will overshadow Hyde Park and contains floor space which is currently not permitted.

Given the scale of the Elizabeth Street building, the existing overshadowing of Hyde Park and the extent of the changes proposed in D/2017/349 /A, the development cannot be construed as substantially the same.

The proposal does not satisfy condition 9 of the Concept Consent. The proposal incorporates and affects the entire site and does not maximise sunlight access to Hyde Park and does not operate to protect and improve sunlight access to Hyde Park throughout the year. It does not result in a reduction of overshadowing of Hyde Park at the protected times and in fact results in a building projecting higher than the sun access plane described in Schedule 6A and higher than the building in the Concept Approval.

Relevantly, the objectives of clause 6.17 are to:

Ensure that buildings maximise sunlight access to the public places set out in this clause, and... to protect and improve sunlight access to important public parks and places in and near Central Sydney throughout the year, and during periods in the day when the parks and places are most used.²

Further, clause 6.17(2) provides:

The consent authority must not grant development consent to development on land if the development will result in any building on the land projecting higher than any part of a sun access plane described in Schedule 6A.³

Schedule 6A, S 6.17(4) includes a sun access plane for Hyde Park, all year, from 10:00 AM to 2:00 PM.

If the Concept Approval has lapsed, the new proposal is required to comply with clause 6.17 and overshadowing in excess of the Hyde Park sun access plane is not permissible. However, the applicant is proceeding and arguing on the basis that the Modification will succeed and, presumably, the exemption for a 50% reduction in overshadowing compared to the existing building, continues to apply.

The Applicant's approach to the 50% overshadowing reduction, uses a 'cumulative' calculation, is flawed and inconsistent with the ordinary interpretation of the expression- ...“between (certain hours)”. Words should be given their ordinary and common meaning. Consequently, the requirement for at least 50% reduction in overshadowing commencing at 12:00 on the relevant day and continuing uninterrupted until 14:00 must mean that there is a continuous reduction for the whole period. The Proponent's own shadow diagrams and calculations show non-compliance at least between 12:30 and 13:00.

The meaning of “between (hours)” as I suggest has been applied consistently on all of the other buildings along the western side of Elizabeth Street facing Hyde Park since the 1970s. A glance at the streetscape photographs and drawings in the applications shows this.

It is notable that the Applicant appears to accept that the extra height of 10m proposed, at least, is not permitted arguing that a breach is acceptable as the competition Jury accepted that such a breach could be permitted where the detailed design results in a reduction in overshadowing of more than 50%, without reference to clause 6.18 of the LEP. Any such exemption is a discretionary matter and should be supported on very strong grounds. At the least there must be strong verifiable improvements in sun access, calculated in appropriate intervals, rather than cumulatively.

The Applicant's own shadow diagrams, Figure 55, which are reproduced below, clearly indicates significant overshadowing of Hyde Park in breach of the requirements of the Hyde Park sun access plane from 12 noon to 2 PM on 21 June (shown green). In addition, the diagrams also show new “Additional” overshadowing (shown blue) which breaches the prohibition.

The table of calculations, Table 21, establishes that the proposal would create overshadowing during the 12.00-2.00 period of 13086m², or 1.3086 hectares, during the busiest part of the day for users of the Park! The overshadowing at 13.00 to 13.30 is shown as 4,031m², a greater area than the entire site at 201-217 Castlereagh Street which is 3901m².

A comparison of the overshadowing impacts of the proposed development in comparison to the existing development on the site between 12 and 2pm on 21 June are provided in **Figure 55** below.

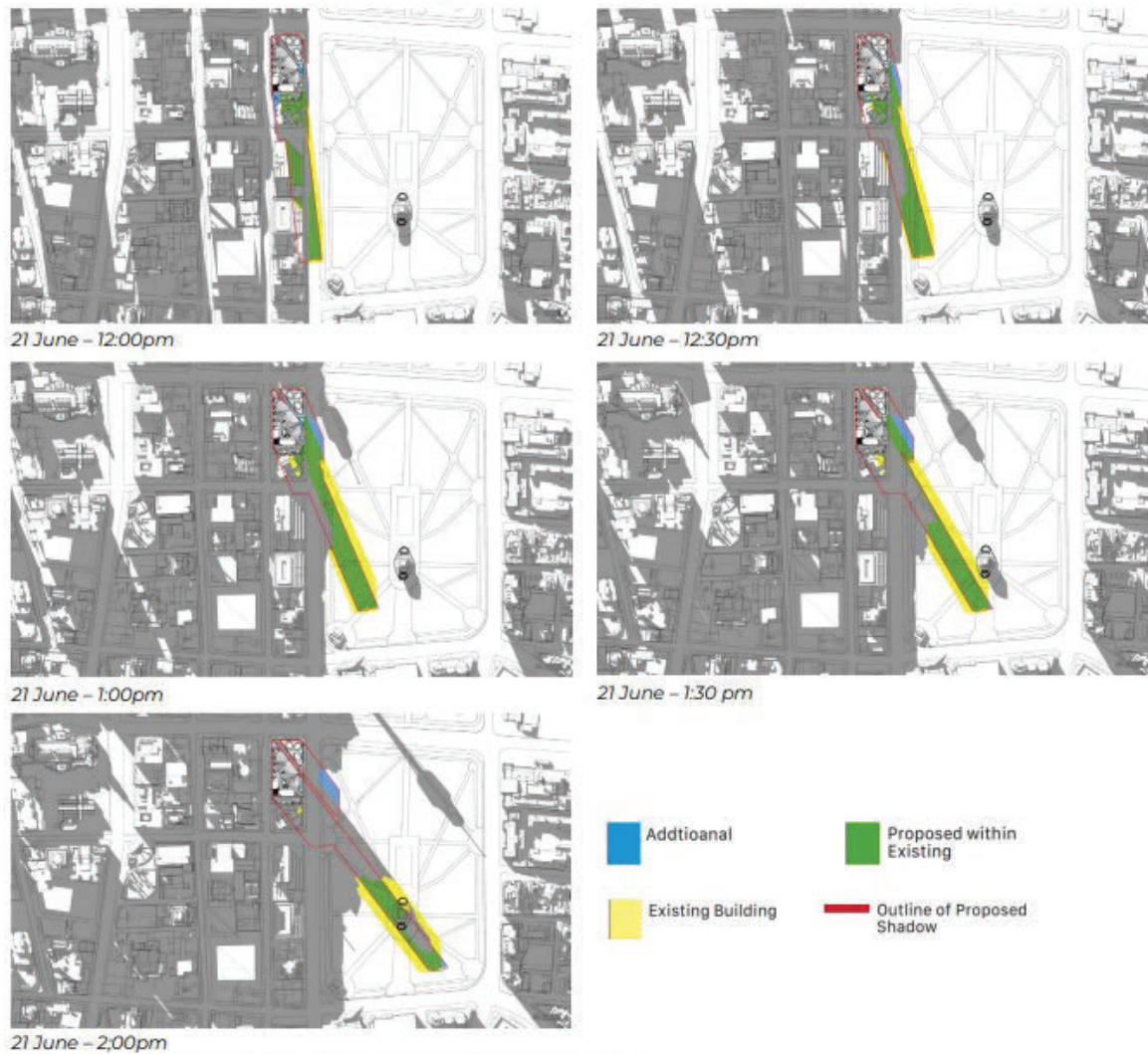


Figure 55 Overshadowing Diagrams – 12 and 2pm 21 June

Source: FJC

Table 21 Hyde Park Overshadowing Reduction Summary – 12pm and 2pm on 21 June

Time	Existing Condition	Approved Concept SSDA	Proposed Concept SSDA	Proposed Detailed SSDA
12:00	64m ²	0m ²	0m ²	0m ²
12:30	4,115m ²	2,593m ²	2,333m ²	2,243m ²
13:00	7,431m ²	4,087m ²	4,115m ²	4,031m ²
13:30	8,578m ²	3,841m ²	4,103m ²	4,025m ²
14:00	6,749m ²	2,913m ²	2,883m ²	2,787m ²
Total	26,937m ²	13,434m ²	13,434m ²	13,086m ²
Percentage	100%	49.87%	49.87%	48.58%
Reduction	-	50.13%	50.13%	51.42%

Source: FJC

The View & Visual Impact Assessment inadequately considers the adverse impact on private views, at least for the lower part of the building at 197 Castlereagh Street, dismissing the impact of the podium altogether, and fails to note that the existing views are significant views. The conclusion is – “The minor and negligible impacts on views identified as a result of the proposed tower are considered to be reasonable. There are no impacts on existing views arising from the height of the proposed tower.”

The SEARS identified that the proposal’s impact on private domain views and public domain views, in particular “significant” views, are the key view and visual Impact issues for the proposal.

The Tenacity assessment, as contained in clause 10.3 of the View and Visual Impact Assessment notes that from apartment 1403 there are water views of Sydney Harbour and that these are iconic elements in the form of Sydney Harbour and North Head. Further, high-value elements of Hyde Park and St Mary’s Cathedral are visible in the view, and that the effect is enhanced by the relationship of the St Mary’s view with the pedestrian pathway leading from the corner of Elizabeth Street and Park Street into Hyde Park. There are also partial views of the lower North Shore, Woolloomooloo, and Potts point.

Similar comments are included in paragraph 10.4 in relation to the view from the living room of apartment 1403.

I strongly argue that the existing views are “significant.”

Whilst the commentary refers to the views being from a standing position and acknowledges that there may be similar views when seated, the actual situation is that the views are clear when seated throughout the rooms and extending to the kitchen. Similar views exist from apartment 1404 although there is slightly additional blocking by the existing building at 201-217 Elizabeth St. There is also passing reference to the glazing which on inspection comprises full floor-to-ceiling windows and sliding doors to Castlereagh Street of each of the apartments.

Noting the commentary that “The qualitative level of impact of the proposed concept building envelope and the detailed building - compared to the existing situation is severe.” Clause 10.3.3. It is simply wrong to then conclude that from the dining room the same impact is “low” Clause 10.4.3.

Conclusion

It cannot be in the public interest to accept or approve the Modification, when the 2018 approval clearly lapsed, after an extended period of operation. The Modification application was lodged significantly after the lapse date.

The modification cannot be approved because it relates to a building proposal significantly different from the original proposed building.

The Detailed Design Application failed to address or satisfy condition 9 of the original consent, must comply with clause 6.17 of the SLEP 2012 and fails to do so in relation to height and overshadowing and breaching the Hyde Park sun access plane.

The view and visual Impact assessment inadequately considers the impact on private domain views, inappropriately dismisses the impacts of the podium and that significant views are clearly available as disclosed report from apartments in 197 Castlereagh Street.

Yours sincerely



Greg Pearce (Nov 27, 2024 10:54 GMT+11)

GS Pearce