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File No: SSD-9726
Our Ref: R/2018/32/A

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Attention: David Glasgow
By email: david.glasgow@planning.nsw.gov.au

Dear David,

SSD 9726 - Adaptive Reuse of the Royal Hall of Industries, 1 Driver Avenue, Moore Park.

Thank you for your correspondence dated 8 July 2019, which requests for the City of Sydney Council ("The City") to comment on the State Significant Development (SSD) application for the adaptive reuse of the Royal Hall of Industries (RHI) for high-performance sport and community facilities for the AFL Sydney Swans and NSW Swifts.

The City appreciates the intent to conserve the RHI building, which has historically accommodated a variety of public uses. However, we have serious concerns about the proposal and note the following:

- the submitted documentation does not adequately address the heritage, traffic, landscaping, tree removal, environmental and waste impacts of the development;
- the City is not satisfied that an exemption from payment of Section 7.11 Development Contributions should be granted for the development; and
- the City also challenges the proposed land uses to be inconsistent with the relevant statutory controls and classification of the development as an SSD application.

Accordingly, the City **objects** to the proposed development.

1 Permissibility

The Secretary's Environmental Assessment Requirements (SEARs) require demonstration as to how the proposed land use is consistent with the relevant statutory provisions of the site. The proposal relies on the SSD provisions of the *State Environmental Planning Policy (State and Regional Development) 2011* (SARD SEPP) as well as the land uses of adjacent sites as prescribed by the *State Environmental Planning Policy (Infrastructure) 2007* (ISEPP) for permissibility.

The City challenges the justification provided in the Environmental Impact Statement (EIS) and considers that the proposal cannot be properly assessed as an SSD. To this effect, the reliance on certain environmental planning instruments to enable the development to be permitted under the special provisions that are only applicable to SSD applications as well as the reliance of adjacent land uses is invalid. This is elaborated below:

1.1 Permissibility as a State Significant Development under State Environmental Planning Policy (State and Regional Development) 2011

The site is subject to *State Environmental Planning Policy 47 – Moore Park Showground* (SEPP 47). The EIS states the proposed land uses are “*recreational facilities (indoor), office premises, health services facility, food and drink premises and public events*”. The proposal relies on the “public events” land use for permissibility. However, ‘public events’ is specified in Clause 12 of SEPP 47 as ‘development permissible without development consent’. The other stated land uses are prohibited.

It is also noted that the proposal is reliant upon Clause 4.38(3) of the *Environmental Planning and Assessment Act 1979* (the Act), that grants portions of the development that are prohibited to be made permissible. Importantly, however, this provision is only applicable where the development is a SSD.

For development to be classified as SSD, it must be declared as per Clause 4.36 of the Act. This is effected by either a declaration in a State Environmental Planning Policy or by an order made by the Minister following advice from the Independent Planning Commission. For the subject development, the proposal relies on the State Environmental Planning Policy (State and Regional Development) 2011 (SARD SEPP).

The EIS specifies that the proposed development is an SSD pursuant to Schedule 2 of the SARD SEPP, as the development is located on land identified within ‘Fox Studios, Moore Park Showgrounds and Sydney Sports Stadiums’ and has Capital Investment Value (CIV) of more than \$10 million.

Under Clause 8 of the SARD SEPP, the proposed development must satisfy two components to be an SSD and be both a type of development that is permitted with consent and a type of development that is described in the SARD SEPP. The proposal only satisfies the latter, where the subject site and the CIV of the development is described in Schedule 2 of the SARD SEPP.

In summary, the proposal relies on the “public events” land use to qualify as an SSD in accordance with Clause 4.38(3) of the Act, which enables other proposed land uses that are prohibited to be made permissible. However, the proposal does not satisfy the first test to be classified as an SSD where the SARD SEPP mandates that the proposed development must be development that is permitted with consent. The uses sought to be approved, being recreational facilities (indoor), office premises, health services facility, food and drink premises and public events, are characterised as either “permitted without consent” or “prohibited” under SEPP 47.

1.2 Reliance on the permissibility of adjacent land uses under State Environmental Planning Policy (Infrastructure) 2007

Moreover, the proposal seeks to rely on the zoning of adjacent land under Sydney Local Environmental Plan 2012 (SLEP 2012) as permitted under State Environmental Planning Policy (Infrastructure) 2007 (ISEPP) and therefore the subject proposal is permissible.

Clause 18 of the ISEPP permits additional uses of certain State land and is detailed as follows with the relevant information in underlined text:

- (1) *In this clause, **prescribed State land** means State land that is:*
 - (a) *not subject to a standard local environmental plan made as provided by section 3.20 (2) of the Act, and*
 - (b) *not zoned for conservation purposes under an environmental planning instrument, and*
 - (c) *not a forestry area within the meaning of the [Forestry Act 2012](#), and*
 - (d) *not reserved under the [National Parks and Wildlife Act 1974](#), and*
 - (e) *not reserved under the [Crown Land Management Act 2016](#) for a public purpose that, in the opinion of the Secretary, is an environmental protection or nature conservation purpose.*
- (2) *Development on land for a purpose that is permitted without consent by the zoning of that land may be carried out without consent on adjacent land that is prescribed State land despite any local environmental plan applying to that adjacent land.*
- (3) *Development on land for a purpose that is permitted with consent by the zoning of that land may be carried out with consent on adjacent land, despite any local environmental plan applying to that adjacent land, if:*
 - (a) *there is a valid site compatibility certificate applying to the development, and*
 - (b) *the adjacent land was prescribed State land when the Secretary issued the certificate.*

It is recognised that the site meets the definition of State Land under the ISEPP. Section 6.2.4 of the EIS relies on subclause (2) above for “recreational facilities (indoor)” to be permitted with consent on the site. However, subclause (2) only applies to uses that are permitted without consent. As such, the proponent’s justification is flawed as it does not appear that “recreational facilities (indoor)” is permitted with consent at the subject site.

Further, subclause (3) deals with uses on adjacent land, which are permitted with consent subject to a valid site compatibility certificate being issued for the development. The EIS makes no reference to a site compatibility certificate being issued for the proposed development. Overall, the proposal inadequately satisfies the provisions of Clause 18 of the ISEPP for permissibility.

Collectively, the proposal relies on the SSD provisions of the SARD SEPP as well as the land uses of adjacent sites as prescribed by the ISEPP for permissibility. Specifically, the EIS relies on Clause 4.38(3) of the Act for the portions of the development that are prohibited to be made permissible. There is a real issue as to whether the proposed development can be properly assessed as SSD given that the uses sought to be approved are characterised as either permitted without consent or prohibited under SEPP 47.

The proposal fails to demonstrate consistency with the relevant statutory provisions of the site. Based on the information provided to date, consent cannot be granted for the proposed development.

2 Public Benefit and Contributions

The site is located within the East Precinct under the City of Sydney Development Contributions Plan 2015 (Contributions Plan) and is subject to the payment of Section 7.11 development contributions.

The EIS provides a written request and seeks an exemption to the payment of Section 7.11 contributions and is summarised as follows:

- The proposal does not deliver residential dwellings, result in a net population increase or provide additional services and amenities;
- The proposal would provide a significant public benefit to the wider community in providing community facilities, by improving the longevity and usability of the RHI building and providing a new function space that is available for use for up to 200 nights per year and a public plaza and thoroughfare; and
- The Sydney Swans are a not for profit organisation and the proposed development would be a significant contribution to the public.

In accordance with Table 2 of Section 1.3 of the Contributions Plan, the proposal does not involve development that can be excluded from the need to pay a contribution.

Specifically, land use term no. 4 of the development exclusions table outlines development involving “*demolition of an existing dwelling and construction of a replacement dwelling that will not result in the number of rooms capable of being used as a bedroom*” is excluded from the payment of contributions. However, the proposed development does not seek the replacement of an existing residential dwelling, nor are there existing residential dwellings on the site.

Further, land use term no. 5 outlines “*places of public worship and childcare centres by or on behalf of a charity or not-for-profit organisation*”, as registered with the Australian Charities and Not-for-profits Commission, are excluded from payment of development contributions. It is acknowledged that the Sydney Swans has a registered charitable arm known as the Sydney Swans Public Ancillary Fund, which has been established to fundraise for a new training and community facility for the Sydney Swans. Notwithstanding this, the proposal does not provide a place of public worship or childcare centre so as to be exempted from the payment of development contributions.

Overall, the land use terms contained in the Contributions Plan does not specify that uses providing a public benefit is development exempted from payment of development contributions. Accordingly, the City is not satisfied that the development is consistent with the relevant exclusions, and as such, the full amount of Section 7.11 development contributions is payable for the proposal development.

3 Heritage

The RHI has historically accommodated different uses and is considered to be robust enough for the proposed adaptive re-use for the Sydney Swans. Internally, the central barrel roof structure will remain entirely visible being located above the central training area. The mezzanine is proposed to be setback from the line of the colonnade and would not be structurally dependent on significant fabric.

Further, the new Swifts building is considered to be of an appropriate scale. The setback to the significance wall to Lang Road is acceptable and will be located in an area that was historically back of house.

As mentioned above, the site is subject to the provisions of SEPP 47 (Moore Park Showground). Specifically, part (j) of *Clause 15 – Matters for consideration* requires the development to consider “*the provisions of the Conservation Strategy for the Moore Park Showground and the views of the Heritage Council*”.

The Heritage Impact Statement (HIS), prepared by Urbis, is considered to be inadequate and lacks information in order to provide a comprehensive evaluation on the heritage impacts of the development.

The HIS refers to the Conservation Management Plan that was prepared by the Government Architect's Office in 2007. However, this was not included in the attached documents and should be made available to assist in determining the heritage impact of the proposal. More importantly, the HIS does not mention that the site falls under SEPP 47, which is a major omission. The RHI and the neighbouring Hordern Pavilion are identified in the Conservation Strategy to be of exceptional significance as well as the former roads within the plaza area. The proposal does not demonstrate compliance with SEPP 47 and fails to include the provisions of the Conservation Strategy in the HIS. Therefore, an informed heritage assessment of the proposal cannot be carried out.

4 Environmental Sustainability NO SHOWCASE

The development should demonstrate environmental leadership. The ‘Ecologically Sustainable Design Report’, prepared by Aurecon, does not adequately outline how the proposed development responds to best practice in terms of renewable energy, environmental performance and sustainable design and therefore fails to demonstrate ecologically sustainable development (ESD) as required by the SEARs.

Given that the use is primarily for indoor sports facilities, community facilities, offices and other minor uses such as a gym and a blood donation centre, a NABERS and Green Star rating cannot be achieved, which is identified in the report. The report also identifies that the development would comply with the *National Construction Code (NCC) - Section J 2016*, which sets out the energy efficiency measures of a building. However, considering that the construction of the building will most likely commence in 2020, which is when the transition period for the NCC ends and given its inability to achieve a NABERS or Green Star rating, the City requires that the development is at least 10% more efficient than the 2019 NCC Section J requirements. This is in accordance with the requirements of the Green Building Council of Australia’s Green Star for New Buildings Guideline. Modelling to demonstrate compliance with this should be provided to demonstrate a commitment to ESD.

The City encourages renewable energy generated by photovoltaic solar panels. The proposal includes the installation of solar panels; however, it is stated that the amount that can be installed is limited due to the heritage nature of the building, which creates constraints in terms of visibility of the panels and structural integrity of the building. Whilst this is acknowledged, a measure of the renewable energy generated from photovoltaics compared to the energy imported from the main grid electrical supply is required to determine the energy consumption of the development and whether it is aligned with the NSW Government's 'Net Zero Emissions by 2050' carbon abatement ambition. This information is lacking with the proposal.

The ESD report identifies that gas fired hot water systems are to be utilised. The City requires that gas fired hot water systems are not used. This is consistent with the approach taken by the Green Building Council of Australia's Green Star for New Buildings Guideline. The ESD report identifies that solar hot water is being investigated. The installation of solar hot water should be required.

Further, ESD Report does not refer to State Government strategies and documents such as the revised Eastern City District Plan or the Greater Sydney Region Plan. One of the key priorities of these Plans is to demonstrate sustainability through reducing carbon emissions and managing energy, water and waste efficiently. This has not been adequately demonstrated by the proposal.

5 Transport and Access

The Transport Assessment Report, prepared by GTA Consultants, includes traffic modelling that confirms that Lang Road/Driver Avenue and the Lang Road/Errol Flynn Boulevard intersections will perform at an acceptable Level of Service (LOS B) for the proposed development. LOS B means that the traffic signals, roundabouts, give way and stop signs would be good with acceptable delays and spare capacity.

Notwithstanding the above, **the Green Travel Plan (GTP) contained in the Transport Assessment Report does not demonstrate targets to reduce private vehicle use to access the site**. The proponent is reasonably expected to clearly demonstrate their efforts to encourage a behavioural shift in staff, players and visitors travelling to the site to use more sustainable transport modes as opposed to private vehicles necessitating car parking on the site.

The City requires an annual performance report to be submitted for 5 years as a minimum as well as details of the bicycle parking and end of journey facilities layout to be provided in the GTP. These details are lacking and the monitoring of the GTP is unclear. As a requirement in the SEARs, the proposal must include the measures to promote sustainable travel choices for employees and visitors through the implementation of a location-specific travel plan and provision of end of journey facilities. The proposal does not adequately address this requirement.

6 Public Domain

It is considered that the design of all publicly accessible areas within and surrounding the site can include improvements to pedestrian, cycle and vehicular movements by allowing more space and increased connectivity to adjacent areas.

The proposal is expected to significantly increase local patronage using all modes of transport. For this reason it is strongly recommended that the surrounding public domain works include the following:

- A shared path for pedestrians and cyclists along the western side of Errol Flynn Boulevard, and that these works connect beyond the extents of the site to improve movement and circulation.
- Additional pedestrian crossings across Errol Flynn Boulevard be provided and designed to ensure clear and safe passage for pedestrians walking to and from the building and opposite footpaths.
- There is concern about the proposed angled parking reserved for football players and the executive team. Vehicles will be required to reverse to exit the parking area which is not ideal for public safety in this vicinity. It is our preference that these parking spaces are removed from the proposal..

It is recommended that the design incorporate coach parking.

- Where pedestrians and vehicle movements conflict, it is recommended that pedestrian paths are highlighted to show pedestrian priority and right of way through the use of raised paths, signage and separated walkways.
- The substation kiosk be relocated to within the building to reduce public domain clutter.
- The planting bed at the entrance to Errol Flynn Boulevard should be realigned to widen this footpath area and entrance to the Entertainment Quarter. An on-grade (or close to on-grade) garden bed is recommended as well as lifting and replanting of the existing palms into this bed.
- The proposed fire services and refuse ancillary building be relocated so that the refuse facilities are within the existing or new building and the fire services are set back against the existing boundary fence line to Errol Flynn Boulevard to improve circulation around the main entrances area.
- The lighting design must include compliant public domain lighting for all footpaths including the Lang Road footpath.
- To improve public amenity, it is recommended to include street trees along the Driver Avenue frontage.
- A MUSIC-Link report (Model for Urban Stormwater Improvement Conceptualisation) be submitted to demonstrate compliance with the water quality requirements.

7 Landscape and Tree Management

The proposal involves landscaping works and removal of 6 trees. The 'Landscape Plans' prepared by Arcadia as well as the 'Arboricultural Impact Assessment & Tree Protection Specification' prepared by Allied Tree Consultancy, has many inconsistencies and contradictions. Therefore, the discrepancies in the information provided does not enable the City to evaluate the viability of the landscaping for the site with respect to tree removal and tree planting.

7.1 Tree removal

The marking of the trees is not to scale or indicative of the existing tree size and canopies. The trees proposed for removal on the northern side are the largest and healthiest trees within the group planting. Due to the lack of detail in the

plans of the proposed driveway crossovers, it is likely that more than 6 trees will be removed. The exact impact on the trees is difficult to determine as the provided information was limited. The trees, identified as trees 10-79 on Errol Flynn Boulevard have been planted closely together as a linear verge planting and it is most likely that the group of trees will have interconnecting root systems. Cutting into the verge for the proposed driveway crossover will have an adverse effect on the neighbouring trees as it will be difficult to determine which roots belong to the which tree.

Overall, **the trees identified as Nos. 58 and 59 on Errol Flynn Boulevard that are proposed for removal must be retained**. All other trees, particularly all trees surrounding the site on Council owned land must be retained and protected in accordance with the Australian Standards 4970-2009 *Protection of Trees on Development Sites* and other relevant regulations. It is also recommended that the proposed north-eastern driveway crossover be amended to utilise the existing driveway crossover and prevent impacts on other trees. The existing raised planter and part of the existing wall that is also proposed to be demolished must be retained. The pedestrian access to the new Swifts building must be relocated outside the existing 'Door 4' of the RHI building where there is a gap in the group of tree planting on Errol Flynn Boulevard.

7.2 Tree Planting

The submitted landscape package suggests that planting for 18 trees of mixed species is proposed. When mature, the majority of the selected tree species will be less than 10 metres in height. Only 7 out of the 18 selected tree species may grow greater than 10 meters height at maturity. The species selection should be amended to include a greater number of trees that will grow taller than 15 metres in height and meet The City's canopy coverage requirement of 15%. The newly planted trees must also meet *Australian Standard 2303: Tree Stock for Landscape Use (2015)*.

No information has been provided for the width of the tree pits and the planters on-slab. The Landscape Specification states that on-slab areas will cover the bottom of the planter with a geotextile of 300mm and taped to the side of the planter. This is likely to result in turning and circling of the roots, which is likely to impact the future growth and structural condition of the trees. Young trees should be self-supporting without ties attached to their trunk. Stakes are to be used as protection and not as supports.

8 Waste

The submitted Waste Management Plan, prepared by Dickens Solutions, is insufficient and does not clearly identify the path of access for all users including collection vehicles. The architectural drawings also do not illustrate the locations and spaces allocated to the waste and recycling storage areas. The waste generation calculations to support the proposed number and configuration of bins is not prepared in accordance with the provisions of the City's *Guidelines for Waste Management in New Developments*. The guidelines provide clear estimates for events and conferencing facilities and as such, the proponent must use these to estimate the bins and appropriate storage locations.

The required storage facilities are omitted from the proposed development. Specifically, dedicated areas for bulky waste, problem waste for recycling, collection, storage and recycling of food waste are lacking in the documentation submitted with the application.

Further, it is required that commercial tenancies must have a commercial waste contracts in place prior to commencement of business trading. Commercial waste service collection services and waste storage arrangements must be conducted in accordance with the City's *Waste Policy –Local Approvals Policy for Managing Waste in Public Places* (2017).

Should you wish to speak with a Council officer about the above, please contact Reinah Urqueza, Specialist Planner, on 9265 9333 or at rurqueza@cityofsydney.nsw.gov.au.

Yours sincerely,



Graham Jahn AM
Director
City Planning | Development | Transport