

Re: State Significant Development Application SSD-95997711 – 903–921 Bourke Street, Waterloo

Submitted by: Residents of Morehead Street, Waterloo NSW 2017

1. Interest in the Proposal

We are long-standing residents of Morehead Street, living in immediate proximity to the Danks Street South Precinct and within the Waterloo Heritage Conservation Area (HCA). Our property and broader neighbourhood will be materially affected by the proposal. We submit this objection in response to the public exhibition of SSD-95997711 - 903-921 Bourke St Waterloo

This submission objects to SSD-95997711 on two grounds that are foundational to the assessment.

First, the Housing Delivery Authority pathway is being misused. It was created to unlock housing that cannot be built; this site already has an active development consent, construction underway, and approximately 350 purchased apartments in the ground. The HDA declaration does not remove any planning barrier — it creates new ones. The assessment process itself will delay the delivery of housing that would otherwise be complete.

Second, the proposed built form has not been justified through any genuine planning or design process commensurate with its scale. The application seeks to more than double tower heights above controls established through a State-led precinct planning process completed in 2019, without a competitive design excellence process, without adequate analysis of shadow and cumulative impacts, and without independent demonstration that a lower-density outcome cannot achieve the stated objectives.

Taken together, these grounds support refusal. If the application proceeds to assessment, this submission requests that the Department address the specific deficiencies in the EIS identified in the sections below before the matter is determined.

1. Statutory & Strategic Planning Context

This section addresses SEARs Item 1 — Statutory Context — and focuses on three related concerns:

- whether the Housing Delivery Authority (HDA) pathway has been appropriately applied to this site;
- whether the concurrent rezoning process is consistent with the strategic planning framework for the Green Square/Waterloo precinct;
- and whether the exclusions sought from key protective provisions of the Sydney Local Environmental Plan 2012 (SLEP 2012) are adequately justified.

My central concern is that this application misuses the HDA pathway to secure the developer further uplift after a comprehensive strategic planning process and development application was approved and construction commenced.

The HDA was created to unlock housing that is stuck and this site is not stuck; construction is already underway and this SSD itself, regardless of the outcome, will further delay the delivery of ~350 approved — and largely purchased — homes.

Using the pathway here does not accelerate housing delivery; it undermines it.

A) Misuse of HDA Pathway for development already under construction

The NSW Government established the Housing Delivery Authority to accelerate the delivery of housing by providing a fast-tracked assessment pathway for major projects that face planning barriers preventing them from being built. The HDA SSD Criteria document published by the Department of Planning, Housing and Infrastructure (July 2025) states that the aim of the process is to *"deliver more homes within the Housing Accord period by assessing and determining high-yield housing projects through the SSD pathway."*

Its second objective is specifically to *"identify housing projects that can be assessed and constructed quickly"* by focusing on *"more compliant, major housing proposals that can commence construction quickly."*

This site does not fit that description.

Development consent D/2021/1415 was granted by the Central Sydney Planning Committee in February 2023, activated in May 2024, and construction has commenced. Shoring and remediation is complete and full basement structure is programmed for completion in August 2026.

The EIS does not identify any planning barrier that the HDA pathway is needed to remove, because none exists. Instead, Section 2.1.1 of the EIS argues that the site is *"well placed to deliver additional uplift"* precisely because *"construction has already commenced on site."* This is the opposite of the pathway's purpose. The fact that construction has commenced is the strongest possible evidence that the HDA pathway is unnecessary here, not a reason to use it.

The consent authority and the Department should not accept the HDA declaration as self-justifying. The question of whether the pathway is being used consistently with its policy purpose is a legitimate and important consideration under SEARs Item 1, and the EIS fails to address it.

B) SSDA will delay - not accelerate - housing already under construction

Under D/2021/1415 there are already ~350 apartments approved and under construction with the basement structure scheduled for top-out in August 2026. This is housing under construction now, in one of Sydney's most acute housing shortage areas.

This SSDA and concurrent rezoning process will take time to assess and determine and it is entirely predictable that this process itself will result in delays to completion of the under construction scheme given the determination including likely Independent Planning Commission review will occur well after above-ground construction should have commenced. The structure for

the approved buildings will require redesign to accommodate the significantly increased building heights and thus construction cannot progress until determination unless the developer is willing to eat the cost of an over-designed structure or they are treating approval as a fait accompli.

The EIS is entirely silent on what happens to D/2021/1415 during this period. It does not address whether construction will continue under the existing consent while the SSDA is being assessed, or whether the two approvals can practically coexist on the same site at the same time. It does not address what happens to those — including purchasers — who have committed to the D/2021/1415 scheme, nor what happens if the SSDA is refused and whether the D/2021/1415 construction programme can simply resume, or whether the uncertainty created by the SSDA process will have caused damage to delivery timelines in the interim.

The EIS claims at Section 4.2.5 that "*as a HDA application, the proposal will quickly facilitate housing development with construction already commenced on site.*" This claim is unsupported, unexplained, and in my view incorrect. There is no analysis in the EIS demonstrating how introducing a 12–18 month SSDA process over an already under-construction site facilitates quick housing delivery. The claim is asserted but never demonstrated.

The consent authority should require the applicant to provide a genuine analysis of the housing delivery timeline implications of this application — comparing the delivery of 347 apartments under D/2021/1415 against the proposed 580 apartments under the SSDA, accounting for assessment time, approval risk, and the potential disruption to the existing construction programme. Without this analysis, the claim that the proposal serves the HDA's housing delivery objectives cannot be assessed.

C) EIS fails to address elements of the HDA Concurrent Rezoning criteria

The HDA criteria state, under Objective 2, in order to facilitate a quicker assessment process that proposals should be "*largely consistent with development standards*" — defined as not exceeding applicable standards by more than 20%.

This proposal exceeds the development standards by a very large margin;

- The base FSR under the SLEP 2012 is 1.5:1. The proposed FSR is 3.2:1 — an increase of more than 113%.
- The Young Street tower height increases from 65m to 126m — an increase of 94%.
- The Bourke Street north tower increases from 40m to 105m — an increase of 163%.

These are transformational departures from the established planning controls thus requiring the application for concurrent rezoning in an area that has undergone a thorough collaborative precinct planning process that has resulted in the already approved scheme.

The EIS's response to the strategic merit question (Section 4.2.1) is entirely circular. It states that the proposed amendments "*are a direct response to the designation of the project as SSD under the HDA.*"

That is a description of the process, not a justification of the LEP amendments' strategic merit. The HDA declaration was made because the EOI was submitted and accepted — it does not, of itself, establish that the proposed controls are strategically appropriate. The EIS does not independently demonstrate why an FSR of 3.2:1 and heights of up to 126m are the right outcomes for this precinct - it is simply what the applicant would like to build.

D) SSDA and LEP amendments circumvent the established Strategic Planning Framework

The existing planning controls including the LEP the SSD is seeking to modify were set through years of proper planning process by the City of Sydney and State of NSW. This application bypasses that work without adequate justification.

The planning controls that this application seeks to override are not arbitrary default settings. They are the product of a planning proposal process that commenced in 2016, involved collaborative work between the NSW Government and the City of Sydney, and culminated in

gazetted controls on 13 September 2019. Those controls were accompanied by site-specific DCP provisions for the Danks Street South precinct, two competitive design processes evaluating alternative built form approaches, and a Voluntary Planning Agreement negotiated to deliver specific public benefits commensurate with the development envelope they permitted. They represent considered, consultative, evidence-based planning for this precinct.

The HDA concurrent rezoning process bypasses the normal planning proposal pathway in which the City of Sydney, as the relevant planning authority, would exercise delegated authority to amend its own LEP. Instead, the Minister makes the LEP amendment directly. This is a significant step that requires correspondingly strong justification.

The EIS does not provide it.

The EIS does not disclose whether the City of Sydney has been consulted on the proposed rezoning, and if so, what its position is - but it is clear from community consultation by the City of Sydney they are absolutely opposed to this SSD.

The EIS does not address whether the proposed controls are consistent with the City of Sydney's Local Strategic Planning Statement (City Plan 2036) in any specific way beyond quoting general housing growth statements - which I will note that the City of Sydney is already on track to exceed. It does not address how the proposed heights and densities relate to the emerging built form character contemplated for the Danks Street South precinct, or what impacts the proposed scale would have on neighbouring sites and the broader precinct structure.

The Ministerial Direction 1.1 (Implementation of Regional Plans) assessment in Table 12 of the EIS consists of a single sentence asserting consistency with the Greater Sydney Region Plan and Eastern City District Plan. No analysis is provided - and regardless these documents are intended to drive local planning processes not be used as a justification to completely bypass them when they have been undertaken and a developer simply wants more yield.

This is inadequate for a rezoning that would increase FSR by more than 100% and nearly double tower heights above controls established through a State-led precinct planning process less than six years ago.

E) Inadequate justification for exclusion of Clauses 6.14(4) and 6.21D(3)

Clause 6.14(4) – Community Infrastructure

The EIS argues at Section 4.1.2 that exclusion from Clause 6.14(4) is appropriate because community infrastructure obligations are "*already established in the VPA which is registered on title.*"

This argument has a fundamental problem; the VPA was negotiated in connection with the 2016–2019 planning proposal, calibrated to deliver public benefits commensurate with the development envelope then being approved — which has since been modified down to 347 apartments.

The proposed development involves 580 apartments: a 67% increase over what the VPA was sized for.

The EIS contains no analysis of whether the existing VPA obligations — the public streets, plazas, open space and monetary contribution committed under the 2019 framework — remain adequate to service the infrastructure and public benefit demands generated by a 67% larger development.

The exclusion of the site from Clause 6.14(4) removes a mechanism specifically designed to ensure that development in the Green Square urban renewal area contributes proportionately to the community infrastructure it generates. Before that exclusion is accepted, the consent authority should require a specific assessment of whether the existing VPA remains proportionate to the proposed uplift.

Clause 6.21D(3) – Competitive Design Process

The EIS argues at Section 1.3.5 that the exemption from the competitive design process is appropriate because the site has already undergone such a process, and because the proposal is "alterations and additions" to the existing consent.

Clause 6.21D(2) provides that a competitive process is not required where the development "*does not significantly increase the height or gross floor area of the building.*"

That precondition cannot be satisfied here. The Young Street tower increases by 16 storeys, from 22 to 38 storeys. The Bourke Street north tower increases by 18 storeys, from 13 to 31 storeys. These are not minor additions. The competitive design process conducted in 2019 evaluated a scheme of fundamentally different scale — a process undertaken on a 22-storey tower provides no design excellence assurance for a 38-storey tower on the same footprint.

The Alternative Design Excellence Strategy approved by the Government Architect substitutes a State Design Review Panel (SDRP) process. The SDRP process provides iterative design review and advice — it is valuable, and the EIS demonstrates genuine engagement with the panel. But it is not equivalent to a competitive process, which evaluates fundamentally different design responses to the same brief and selects the best. For a development of this scale and impact, the statutory test for exempting it from competition has not been met, and the EIS does not adequately explain why it has.

F) Undermining of the planning framework

This is perhaps the most significant concern raised by this application — if this application succeeds, no approved development consent in NSW can be regarded as stable, nor can the community rely on even the most well developed urban planning frameworks being upheld.

This is perhaps the most significant concern raised by this application, and it is entirely unaddressed by the EIS.

Development consent D/2021/1415 was the outcome of years of planning, community engagement, two competitive design processes, a planning proposal, and a Central Sydney Planning Committee determination. Those who have engaged in good faith with that process — including neighbouring residents and landowners, the City of Sydney and purchasers off the plan — are entitled to rely on its stability. The planning system's integrity depends on consent holders and the community being able to treat a granted and activated consent as a settled planning outcome.

If this HDA pathway can be used to reopen, reframe, and substantially upscale an active development consent simply because developer has submitted an EOI seeking greater density there is no principled limit to this. Any developer who acquires a site with an operative consent could submit an HDA EOI seeking to upscale it under the guise of contributing to the National Housing Accord, regardless of whether the existing consent already met those objectives. The criteria offer no protection against this — they do not require that a site be stalled, refused, or uncontrolled. They require only that a proposal be submitted and accepted.

The Department and the consent authority should be asked to address, directly and specifically: what is the limiting principle that distinguishes this application from any other case where a developer wishes to revisit an approved consent under the HDA framework? If no such principle exists, this application should not proceed.

The EP&A Act's objects include promoting the "*orderly and economic use and development of land*" (s1.3(k)). Orderly land use requires that development consents, once granted and activated, are not routinely reopened by subsequent owners seeking greater uplift through alternative pathways. This application is inconsistent with that objective.

Statutory & Strategic Planning Context - Conclusion

The EIS does not adequately address the statutory context of this application. Its treatment of the HDA pathway is circular, its treatment of the concurrent rezoning criteria is incomplete, and it is

entirely silent on the application's most significant statutory problem: that the HDA pathway is being used on a site with an active, operative consent and construction underway, in circumstances that will delay rather than accelerate the delivery of housing.

I request that the Department:

- Require the applicant to provide a specific analysis of what planning barrier the HDA pathway is removing on this site, and why the pathway is consistent with its policy purpose in circumstances where D/2021/1415 is active and construction is already underway to deliver a significant amount of housing.
- Require the applicant to provide a housing delivery timeline analysis comparing delivery under D/2021/1415 against the SSDA, accounting for assessment time and construction programme impacts, and demonstrate how any delay meets the objectives of the HDA in speeding up delivery of housing.
- Require the applicant to address why the infill affordable housing bonus provisions were not utilised as a means to increase housing delivery, why the scheme provides no affordable housing and how this meets HDA and NSW Government objectives for increasing affordable housing.
- Require the applicant to provide evidence of the City of Sydney's position on the proposed LEP amendments and to demonstrate how those amendments are consistent with the Green Square/Waterloo precinct planning framework.
- Require the applicant to assess whether the existing VPA obligations remain proportionate to the 67% increase in apartment numbers before agreeing to exclude the site from Clause 6.14(4).
- Address the precedent implications of this application pathway to the Green Square and Waterloo Urban Renewal strategic planning process in its assessment report.

2. Built Form and Urban Design

A) FSR Increase

The EIS seeks to amend the LEP FSR from 1.5:1 to 3.2:1. The approved DA (D/2021/1415) achieved an effective FSR of 2:1 — the base 1.5:1 plus a 0.5:1 bonus under cl.6.14 of SLEP 2012 for provision of community infrastructure (parks, roads, and public domain). That bonus was legitimately earned through tangible public benefits already locked into the VPA. The leap from 2:1 to 3.2:1 — a 60% increase over the approved density — has no equivalent justification in public benefit or site-specific planning merit.

B) Misrepresentation of the context

The EIS invokes heights of 20–33 storeys in Waterloo Metro Quarter and Waterloo Estate, a proposed 35-storey tower to the north, and older public housing towers on Morehead Street to contextualise the proposed 38- and 31-storey towers. Each of these comparators is flawed.

The applicant's own section 2.2.2 describes the actual immediate context: a recently completed 5-storey City West housing building immediately to the north-east; a Toyota showroom and light industrial park opposite; and mixed-use development to the south-east ranging up to approximately 11 storeys. This is the built form the proposal must actually respond to — not precincts several blocks away.

The Waterloo Metro Quarter and Estate towers are in a distinct precinct under distinct planning controls. The older public housing towers on Morehead Street that the applicant references were built to substantially lower floor-to-floor heights than contemporary residential standards — their apparent storey count overstates their height equivalence in metres, and they are not a legitimate benchmark for new development under current ADG and BCA requirements.

Critically, none of the tall-building comparators that the EIS relies upon represent the existing planning framework for this area. They are either legacy public housing, or future expectations premised on other developers also bypassing the strategic planning framework via HDA applications.

Using unapproved SSD applications to justify another creates a circular logic that, if accepted, would render LEP height controls irrelevant in any area where HDA applications are being lodged.

C) Emerging character arguments

Throughout sections 3.3 and 7.3, the applicant repeatedly justifies the proposed heights by reference to "the emerging context of the area" and the objectives of "transit-oriented development." Both arguments are substantially overstated.

The "emerging character" the EIS relies upon is not an approved planning outcome. It is a collection of HDA applications — including the Coronation development to the north (SSD-80441462), itself lodged but not determined — that have bypassed the strategic planning framework entirely. The approved and existing character of this precinct, as reflected in LEP controls and the approved DA, is materially lower in scale. Speculative future character derived from a pipeline of unapproved HDA applications cannot substitute for the planned character as the baseline for assessment.

The TOD argument is also misconceived. The site is located approximately 850 metres from both Green Square train station and the Waterloo metro station. This places it well outside the 400-metre primary catchment and at the outer edge of even the 800-metre secondary catchment under TOD policy frameworks. TOD principles justify density uplift at interchanges, not at nearly 1km remove. The EIS's invocation of TOD objectives to justify 38-storey towers at this location misapplies the underlying policy rationale.

D) Internalise height argument is misleading

The EIS's central design justification — repeated verbatim across sections 3.3, 7.3.1, and the alternatives analysis — is that height increases are concentrated "internally and at the northern end of the site," thereby preserving street wall continuity and minimising off-site impacts.

This characterisation is misleading for the Bourke Street north building. A 31-storey, 105m tower that directly fronts Bourke Street and sits immediately adjacent to a 5-storey building cannot meaningfully be described as "internally located." The podium may be held at 7 storeys, but the tower rises from a Bourke Street-facing building with no meaningful transition.

More fundamentally, the EIS's entire focus on street wall preservation misses the real urban design issue at this height. A 38-storey tower and a 31-storey tower do not merely affect immediately adjacent sites — at these heights, their shadow, visual bulk, and wind effects extend to sites well beyond the immediate boundary. The shadow analysis itself acknowledges impacts reaching Divercity at 830–840 Bourke Street and 1–9 Lachlan Street. The relevant question is not whether the street wall looks similar from the footpath, but what the built form does to the broader precinct at the scale it is actually operating.

E) Design Excellence

The approved DA achieved design excellence through a genuine competitive process across three separate architectural firms. The proposed development now seeks to exempt the site from Clause 6.21D(3) — the competitive design process requirement — on the basis that a Government Architect waiver has been granted and the proposal has undergone two SDRP review sessions.

Two advisory SDRP reviews are not equivalent to a competitive design process.

Design excellence was certified for buildings of a particular scale — 21 storeys for the tower and 12 storeys for Bourke Street north. It has not been re-established for buildings 2-3 times those heights, with a partly different architectural team following the departure of Richards and Spence.

The EIS's assertion that the revised proposal "*retains design excellence as per the approved development D/2021/1415*" is without logical foundation.

Design excellence is not a quality that transfers automatically to a materially different and substantially larger building.

The SDRP's own input is instructive; the panel specifically suggested refinements to tower proportions and recommended introducing gaps between stacked volumes for wind dispersion. This is advisory guidance aimed at mitigating problems with the scheme — it does not constitute endorsement of the proposed heights.

F) Shadow Impacts

The shadow analysis in Table 18 reveals impacts to multiple surrounding properties. Most concerning is the Divercity building at 830–840 Bourke Street, which already achieves only 53% solar access to its apartments — well below the ADG-compliant 70% threshold. The proposal results in additional overshadowing of 10 units in that building. While the EIS asserts these units still receive at least 2 hours of solar access, it does not address the principle that a building already in non-compliance should receive no additional shadowing.

More seriously, the EIS does not adequately address cumulative shadow impacts. The proposed development will operate alongside the approved and proposed SSD development to the north on the Coronation site (SSD-80441462), which proposes buildings of 13 to 36 storeys directly adjacent. The combined shadow envelope of these two large developments will significantly affect the development capacity and solar amenity of sites along the western edge of the precinct — particularly those between Young Street and Morehead Street — none of which are individually assessed in the EIS. This is a material gap in the cumulative impact assessment required under the assessment guidelines, and the consent authority should require a comprehensive cumulative shadow analysis before this application is determined.

The EIS's own language in section 2.3 effectively concedes the shadow issue, stating that overshadowing impact "*must be balanced with the dire need to optimise housing supply.*" This is not an urban design justification — it is an explicit acknowledgement that shadow impacts are real and that the applicant's response to them is to invoke housing policy rather than demonstrate built form acceptability.

G) Building Separation

Section 7.3.3 claims that separation distances "*are retained as previously approved, or slightly improved, and generally consistent or exceed those suggested in the Apartment Design Guide.*"

This is technically accurate but substantively inadequate.

The horizontal distances that provided appropriate privacy, solar access, and visual amenity for 12- and 21-storey buildings do not provide the same outcomes when those buildings become 31 and 38 storeys. Separation adequacy scales with height. The EIS's assertion that unchanged distances demonstrate design quality, when the buildings have nearly doubled in height, does not engage with the actual urban design test that would occur through a proper design excellence process.

H) No genuine alternatives considered

Table 5 of the EIS dismisses alternative built forms in a single paragraph, asserting that the proposed massing "*is the result of a considered analysis of the emerging context of the site.*"

No quantitative or graphic comparison of lower-density alternatives is provided.

No analysis demonstrates that the proposed heights represent the minimum built form necessary to achieve the stated planning and housing objectives, as distinct from the maximum that the site could physically accommodate.

The distinction between these two tests is fundamental: the planning system requires the former, not the latter.

Built Form and Urban Design - Conclusion

The proposed built form represents a wholesale departure from the approved envelope that the applicant has not justified through genuine site-specific urban design analysis. The height comparators relied upon are either inapplicable to this location, derived from unapproved applications, or historically anomalous. The "emerging character" argument is circular and speculative. Shadow, separation, and cumulative impacts are understated. Design excellence has not been re-established for buildings of this scale.

This submission requests that the consent authority refuse the application, or in the alternative, require the applicant to demonstrate — through an independent design review process — that a materially lower built form outcome complying with the existing planning framework for the area cannot deliver the stated public benefits.