

Director Social and Infrastructure Assessments
NSW Department Planning and Environment
Locked Bag 5022
Parramatta NSW 2124

18 August 2022

Our ref DAL 223208
Your ref SSD-30240120

By Online Submission

Dear Director Social and Infrastructure Assessments,

Objection to Wollongong Private Hospital Expansion | SSD-30240120

We act for Peter and Irene Marantos, registered proprietors of Lot 10, Section 1 in Deposited Plan 5507, known as 370 Crown Street, Wollongong (**370 Crown Street**).

We are instructed to submit the following submission in relation to State significant development application number SSD-30240120 lodged by the Trustee for AA Crown Holdings Unit Trust for:

Demolition of non-hospital buildings and erection of a nine-storey hospital extension with basement carpark, comprising 191 additional beds, emergency department, expansion of operating theatres, radiology and intensive care units and landscaping.

at Lot D in Deposited Plan 402234, Lots 47 and 9 in Deposited Plan 5507, Lots CP and 1-4 in Strata Plan 73256, Lots A and B in Deposited Plan 343680, and Lot 2 in Deposited Plan 1212956, known as 15, 17, 19 and 21 Urunga Parade, Wollongong, and 360, 366 and 368 Crown Street, Wollongong (**Wollongong Private Hospital Expansion**).

Principally, our clients object to the Wollongong Private Hospital Expansion on the basis that if development consent is granted:

1. 370 Crown Street will be isolated; and
2. The redevelopment potential of 370 Crown Street will be significantly affected.

In preparing this submission, we refer to the *enclosed* planning advice prepared for our clients by Mr Bernard Moroz, BMA Urban, dated 16 August 2022 (**BMA Urban Advice**).

Background

370 Crown Street

Our clients purchased 370 Crown Street in 1998.

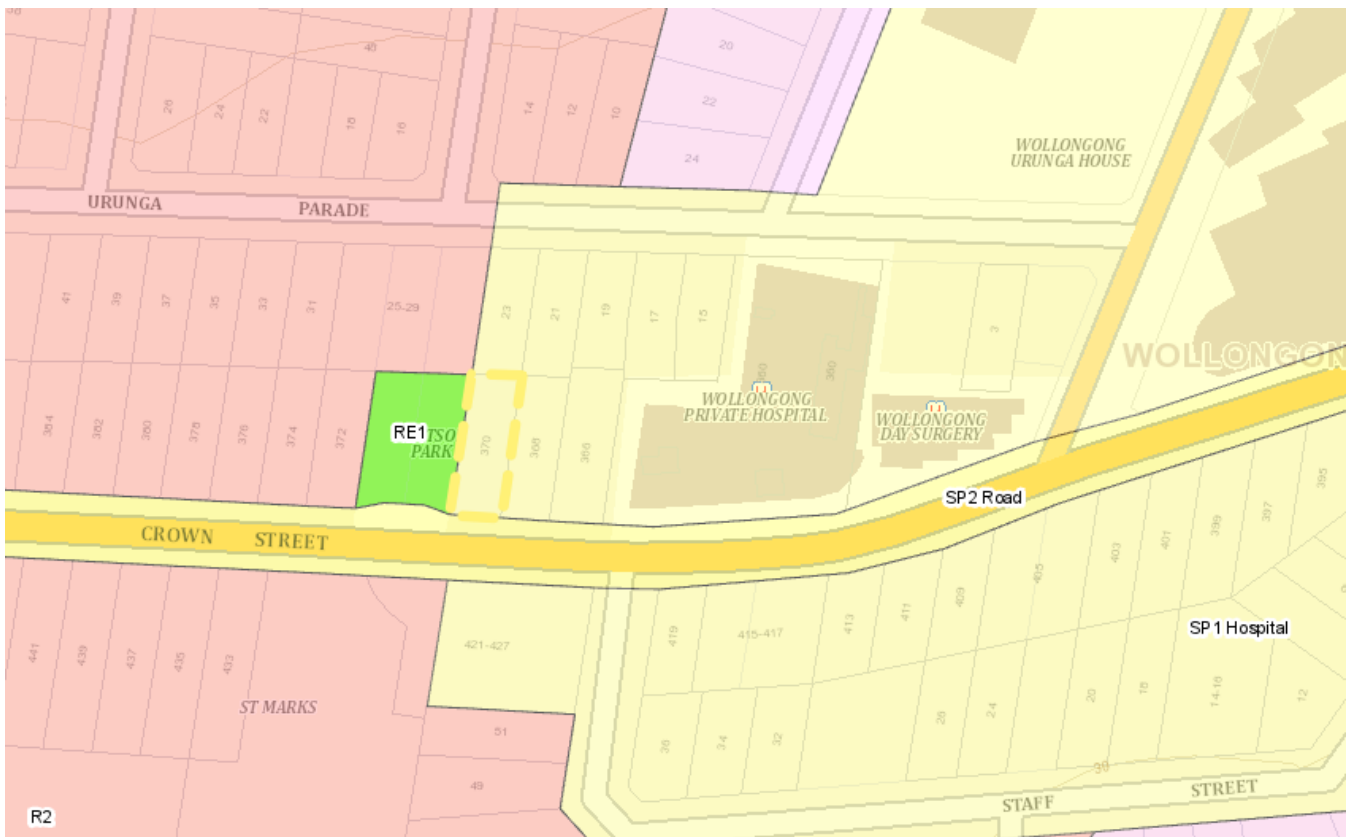
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The ground floor of the building on 370 Crown Street comprises two separate medical practices. Level one comprises one apartment and five additional stand-alone rooms.

Locality

Both 370 Crown Street and the entire site for the Wollongong Private Hospital Expansion is SP1 Special Activities zoned land under the *Wollongong Local Environmental Plan 2009* (**Wollongong LEP**).

Pursuant to the Land Zoning Map extracted below, development for the purpose of 'Hospital' is 'permitted with consent' within the SP1 Special Activities zone.



Along the western side boundary of 370 Crown Street is Beatson Park, which is land zoned RE1 Public Recreation under the Wollongong LEP.

Along the eastern side boundary of 370 Crown Street is, from west to east, 368 Crown Street, 366 Crown Street, and the existing Wollongong Private Hospital. Both 368 and 366 Crown Street are zoned SP1 Special Activities zoned land. This land is subject to and part of the Wollongong Private Hospital Expansion.

Along the northern side boundary of 370 Crown Street is 23 Urunga Parade, Wollongong. This land is also zoned SP1 Special Activities for the purpose of 'Hospital'. This land is not subject to or part of the Wollongong Private Hospital Expansion.

To the northeast of 370 Crown Street and east of 23 Urunga Parade, Wollongong, from west to east, is 21, 19, 17 and 15 Urunga Parade, Wollongong. This land is subject to and part of the Wollongong Private Hospital Expansion.

The frontage of 370 Crown Street is to Crown Street. On the opposite side of Crown Street to the south and southeast of the Subject Property is SP1 zoned land.

To the northwest and southwest of 370 Crown Street is land zoned R2 Low Density Residential under the Wollongong LEP.

Potential Site Isolation

The Wollongong Private Hospital Expansion includes all SP1 Special Activities zoned land to the west of our client's land, except for 370 Crown Street and 23 Urunga Parade, Wollongong.

Both 370 Crown Street and 23 Urunga Parade, Wollongong, are on the boundary of the SP1 Special Activities zoned area for the purpose of 'Hospital'. Accordingly, both 370 Crown Street and 23 Urunga Parade, Wollongong, are at risk of being 'isolated' by the Wollongong Private Hospital Expansion.

Neither the Wollongong LEP nor the *Wollongong Development Control Plan 2009* (**Wollongong DCP**) make provision for site isolation on SP1 Special Activities zoned land.

In the absence of any provisions that deal with the matter, it is necessary to consider relevant case law. In *Karavellas v Sutherland Shire Council* [2004] NSWLEC 251 (**Karavellas**), Tuor C at [17]-[19] outlined the relevant planning principle for site isolation and amalgamation:

17 The general questions to be answered when dealing with amalgamation of sites or when a site is to be isolated through redevelopment are:

- Firstly, is amalgamation of the sites feasible?
- Secondly, can orderly and economic use and development of the separate sites be achieved if amalgamation is not feasible?

18 The principles to be applied in determining the answer to the first question are set out by Brown C in **Melissa Grech v Auburn Council** [2004] NSWLEC 40. The Commissioner said:

Firstly, where a property will be isolated by a proposed development and that property cannot satisfy the minimum lot requirements then negotiations between the owners of the properties should commence at an early stage and prior to the lodgement of the development application.

Secondly, and where no satisfactory result is achieved from the negotiations, the development application should include details of the negotiations between the owners of the properties. These details should include offers to the owner of the isolated property. A reasonable offer, for the purposes of determining the development application and addressing the planning implications of an isolated lot, is to be based on at least one recent independent valuation and may include other reasonable expenses likely to be incurred by the owner of the isolated property in the sale of the property.

Thirdly, the level of negotiation and any offers made for the isolated site are matters that can be given weight in the consideration of the development application. The amount of weight will depend on the level of negotiation, whether any offers are

deemed reasonable or unreasonable, any relevant planning requirements and the provisions of s 79C of the Environmental Planning and Assessment Act 1979.

19 In the decision **Cornerstone Property Group Pty Ltd v Warringah Council** [2004] NSWLEC 189, I extended the principles of Brown C to deal with the second question and stated that:

The key principle is whether both sites can achieve a development that is consistent with the planning controls. If variations to the planning controls would be required, such as non compliance with a minimum allotment size, will both sites be able to achieve a development of appropriate urban form and with acceptable level of amenity.

To assist in this assessment, an envelope for the isolated site may be prepared which indicates height, setbacks, resultant site coverage (both building and basement). This should be schematic but of sufficient detail to understand the relationship between the subject application and the isolated site and the likely impacts the developments will have on each other, particularly solar access and privacy impacts for residential development and the traffic impacts of separate driveways if the development is on a main road.

The subject application may need to be amended, such as by a further setback than the minimum in the planning controls, or the development potential of both sites reduced to enable reasonable development of the isolated site to occur while maintaining the amenity of both developments.

1. Is amalgamation of the sites feasible?

Firstly, *Karavellas* provides that it is necessary to determine whether amalgamation is feasible.

In determining this question, the extract at [18] from Brown C in *Melissa Grech v Auburn Council* [2004] NSWLEC 40 (**Grech**) provides the following principles:

1. Where a property is to be isolated and that property will not be able to achieve compliance with planning controls, then negotiations between owners should commence at an early stage and before lodgement of the development application;
2. Where no satisfactory result is achieved from negotiations, the development application should include details of the negotiations; and
3. The level of negotiation and any offers made are matters that can be given weight in determination of the development application.

In relation to 1, for the reasons expounded by Mr Moroz at pages 2-7 of the BMA Urban Advice, it is unlikely 370 Crown Street will be capable of being economically redeveloped at an intensity anticipated by the applicable planning controls.

We are instructed that an informal offer was made to our clients to acquire 370 Crown Street in exchange for commercial suites within Wollongong Private Hospital valued at \$4,000,000, which was ultimately rejected.

In relation to 2, there is no reference to those informal negotiations in the development application.

Accordingly, in relation to 3, the NSW Department of Planning and Environment (**Department**) cannot give weight to those informal negotiations in the determination of the development application.

Having regard to the principles expounded by Brown C in *Grech*, in answer to the first question in *Karavellas* we submit that 370 Crown Street will be isolated by the Wollongong Private Hospital Expansion, and in the circumstances amalgamation is feasible.

2. Can orderly and economic use and development of the separate sites be achieved if amalgamation is not feasible?

The second question in *Karavellas* is necessitated by the objective contained at section 1.3(c) of the *Environmental Planning and Assessment Act 1979* (NSW) (**EP&A Act**):

The objects of this Act are as follows—

...

(c) to promote the orderly and economic use and development of land,

...

In determining the second question in *Karavellas*, the extract at [19] from Brown C in *Cornerstone Property Group Pty Ltd v Warringah Council* [2004] NSWLEC 189 (**Cornerstone**) provides that the key principles are:

1. Whether both sites can achieve a development that is consistent with the planning controls; and
2. If variations to those planning controls are required, whether both sites are able to achieve a development of appropriate urban form and with acceptable level of amenity.

As described above and with reference again to pages 2-7 of the BMA Urban Advice, 370 Crown Street is unable of being economically redeveloped at an intensity anticipated by applicable planning controls.

The Wollongong Private Hospital Expansion is capable of being developed consistent with planning controls, however, as presently proposed, the Wollongong Private Hospital Expansion:

- Exceeds the floor space ratio maximum pursuant to clause 4.4A of the Wollongong LEP; and
- Fails to achieve design excellence pursuant to clause 7.18 of the Wollongong LEP, as expounded by Mr Moroz at pages 5 and 8-9 of the BMA Urban Advice.

A written request for variation pursuant to clause 4.6 of the Wollongong LEP has been submitted only for the floor space ratio exceedance.

Mr Moroz has explained at page 8 of the BMA Urban Advice that the written request for variation fails to provide sufficient environmental planning grounds to justify the exceedance, required by clause 4.6(3)(b).

Having regard to the principles developed by Brown C in *Cornerstone*, in answer to the second question in *Karavellas* we advise that if 370 Crown Street is not amalgamated to the Wollongong Private Hospital Expansion, orderly and economic use and development of 370 Crown Street, pursuant to objective 1.3(c) of the EP&A Act, will not be achievable.

In consideration of the principles in *Karavellas*, 370 Crown Street will therefore be 'isolated' following the Wollongong Private Hospital Expansion, and will be unable to achieve orderly and economic use and development.

Redevelopment Potential

Following the above, we submit that should development consent be granted to the Wollongong Private Hospital Expansion and 370 Crown Street becomes isolated, 370 Crown Street will not be capable of being economically redeveloped in accordance with relevant planning controls.

The redevelopment options for our clients will be limited to:

1. Redeveloping 370 Crown Street; or
2. Amalgamating 370 Crown Street with the northern neighbour 23 Urunga Parade, Wollongong, and redeveloping both sites together.

In relation to 1, should our clients seek to redevelop 370 Crown Street as it exists, noting that 370 Crown Street is a narrow lot, it is unlikely that redevelopment could achieve full economic use of the land in accordance with relevant planning controls. This is explained by Mr Moroz at page 5 of the BMA Urban Advice.

In relation to 2, the amalgamation of 370 Crown Street and 23 Urunga Parade, Wollongong, would result in a long and narrow lot. At page 3 of the BMA Urban Advice, Mr Moroz explains that there would be utility in that amalgamation, as it would not significantly improve the buildable envelope.

In either redevelopment option, we submit that our clients will not be able to achieve a redevelopment at the intensity anticipated by the applicable planning controls, having regard to its SP1 Special Activities zoning for the purpose of 'Hospital'.

Summary of submission

In summary, 370 Crown Street will be 'isolated' following the Wollongong Private Hospital Expansion.

The Wollongong Private Hospital Expansion will also result in a loss of redevelopment potential for 370 Crown Street, as it will limit any expansion opportunity to an amalgamation with the northern owner at 23 Urunga Parade, Wollongong. However, amalgamation with that property would result in a long and narrow lot, that would not result in a viable redevelopment opportunity achieving the intensity of use anticipated by the applicable planning controls.

Due to the potential site isolation of and redevelopment impact on 370 Crown Street resulting from the Wollongong Private Hospital Expansion, our clients strongly object to the proposed development.

Should you have any questions, please do not hesitate to contact us.

Yours faithfully
Bartier Perry



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enc



16 August 2022

Peter & Irene Marantos
C/O Bartier Perry Pty Limited
Level 10
77 Castlereagh Street
Sydney NSW 2000

Dear Peter and Irene,

Application Number:	SSD-30240120
Address:	15-21 Urunga Parade and 360, 366 and 368 Crown Street, Wollongong
Description:	Wollongong Private Hospital Expansion: Demolition of non-hospital buildings and erection of a nine-storey hospital extension with basement carpark, comprising 191 additional beds, emergency department, expansion of operating theatres, radiology and intensive care units and landscaping.

Reference is made to the abovementioned State Significant Development for which development consent has been sought.

We have reviewed the Environmental Impact Statement (EIS) available as part of the public exhibition on the NSW Planning Portal. We have also reviewed the local planning controls relating to the site you own at 370 Crown Street, Wollongong. In particular, we have reviewed the relevant parts of *Wollongong Local Environmental Plan 2009 (WLEP 2009)* and the *Wollongong Development Control Plan 2009 (WDCP 2009)*.

The site at 370 Crown Street immediately adjoins 368 Crown Street which is not one of the allotments that is sought to be re-developed as part of the broader scheme. The subject site is located to the east and north east. The aerial in **Figure 1** below provides an overview of such:



Figure 1: Aerial view – relationship of 370 Crown Street, the subject site and the existing hospital

Based on the proposed development in its current form, we consider the following planning matters to be the reasonable basis for objection to the proposal:

Site isolation

The site at 370 Crown Street, Wollongong contains the same zoning and development standards to that of the subject site sought to be re-developed. That is, SP1 – Special Activities zoning, maximum permissible height of 32 metres and base floor space ratio (FSR) of 1.5:1 (noting the provisions of clause 4.4A within WLEP 2009 which permit 3:1 for certain land uses). The purpose shown on the Land Zoning Map is *Hospital* and this use is clearly contemplated for the allotment at 370 Crown Street, Wollongong.

Despite the above, the re-development of the subject site has not sought to integrate 370 Crown Street into a larger, consolidated development. The same could be said for 23 Urunga Parade to the north.

The following planning matters are of note in this respect:

- To the west, the site adjoins a public reserve (Beatson Park) which is RE1 – Public Recreation zoned land and contains a locally listed heritage item (Moreton Bay Fig). Accordingly, there are no consolidation opportunities with the adjoining western lot. Refer to **Figure 1** on the previous page;
- The site has a frontage to a Classified Road (Crown Street). *Part 2.119(a) – Development with frontage to classified* within State Environmental Planning Policy (Transport and Infrastructure) 2021 states that *the consent authority must not grant consent to development on land that has a frontage to a classified unless it is satisfied that, where practicable and safe, vehicular access to the land is provided by a road other than the classified road*. The proposed re-development effectively nullifies any opportunity of this occurring and mandates that access off the classified road to 370 Crown Street, Wollongong would remain in perpetuity, contrary to the ambitions of this clause in the SEPP;
- Given the development standards which apply, the site width of 370 Crown Street, Wollongong is relatively narrow. There would be little utility in a potential amalgamation with the adjacent site at the rear (No.23 Urunga Parade) as it would effectively perpetuate this and would not significantly improve the buildable envelope/footprint; and
- The land uses permitted with consent in the SP1 - Special Activities is limited as it only permits:

Advertising structures; Aquaculture; Centre-based child care facilities; Community facilities; Information and education facilities; Recreation areas; Recreation facilities (indoor); Recreation facilities (major); Recreation facilities (outdoor); Respite day care centres; The purpose shown on the Land Zoning Map (hospital)

It is unlikely that the allotment at 370 Crown Street, on its own, would be capable of being economically re-developed in accordance with the aforementioned planning controls. There does not appear to have been conceptual diagrams provided which contemplate how 370 Crown Street might be re-developed in the future to otherwise satisfy the consent authority that this could occur.

In light of the above, No.370 is effectively isolated by the proposed development. This would be contrary to Part 1.3(c) – Objects of Act within the Environmental Planning and Assessment Act 1979 which seeks *to promote the orderly and economic and development of land*.

Built form impacts and proposed interface

Whilst acknowledging Part 2, Clause 2.10 of SEPP (Planning Systems) 2021 which establishes that development control plans do not apply to state significant development, the DCP is a useful reference tool in informing design expectations and understanding whether a proposal achieves the desired future character of the area or not. Wollongong Development Control Plan 2009 requires detailed setback requirements for the City Centre as follows:

- 4 metre street setback along Crown Street and Urunga Parade
- 6 metre side setbacks along the east and west boundaries

The current proposal incorporates a 6 metre side setback to the western boundary in respect of the floors above ground level only. The design resolution on the ground floor level adjacent to the western boundary is however significantly compromised. The proposed driveway encroaches into the 6m side setback as demonstrated in the Lower Ground Floor plan extract that has been re-produced below:



Figure 2: Lower Ground floor plan extract identifying inadequate spatial separation to the western allotments

The resultant outcome is a narrow strip (1415mm) of landscaping which is inadequate to support meaningful landscaping (such as native canopy trees) that would assist in creating a more appropriate interface to west. The 1415mm setback and associated extent of deep soil landscaping within the western side boundary would be commensurate the expected outcome of say a single residential dwelling, but not a large, 32 metre high building.

It is unlikely that the allotment No.370, once being effectively isolated, would be capable of re-developing at the intensity anticipated by the applicable development standards within the LEP being a maximum permissible height of 32 metres and base floor space ratio (FSR) of 1.5:1 (noting the provisions of clause 4.4A within WLEP 2009 which permit 3:1 for certain land uses). The effect of this is that there will be a significant juxtaposition between the scale of the proposed development and the future re-development of No.370, despite the same controls applying.

The proposed development, in its current form, does not offer any appropriate mediation between the two forms. Rather, it seeks to exceed the expand the available footprint/envelope as evidenced through the breach to the floor space ratio development standard which is at the expense of the interface with the adjacent western properties.

Design Excellence

The subject site is land within the Wollongong city centre and the proposal involves the construction of a new building. On this basis, clause 7.18 – Design excellence in Wollongong city centre and at key sites applies and development consent must not be granted unless, in the opinion of the consent authority, the proposed development exhibits design excellence.

The State Design Review Panel, in advice issued by the Government Architect in correspondence dated 20 April 2022, makes the following remarks:

Further design development is required for this project to achieve the supported urban “big moves” and to improve amenity and well-being outcomes. The clinical brief and extensive program requirements have resulted in a proposal that is not optimal in a number of important, non-clinical aspects.

Given this advice, it would seem reasonable to affirm that the proposal fails to exhibit design excellence. The provisions within Clause 7.18 – Design excellence are effectively a significant jurisdictional hurdle which have not been overcome.

Heritage

There are a number of locally listed Heritage Items in the immediate vicinity of the site. These include:

- Item 6243 – House – 366 Crown Street
- Item 6286 – Moreton Bay Fig – Beaton Park, Crown Street

370 Crown Street sits squarely between the abovementioned heritage items and immediately adjoins the heritage listed Moreton Bay Fig which Beaton Park (to the west) accommodates.

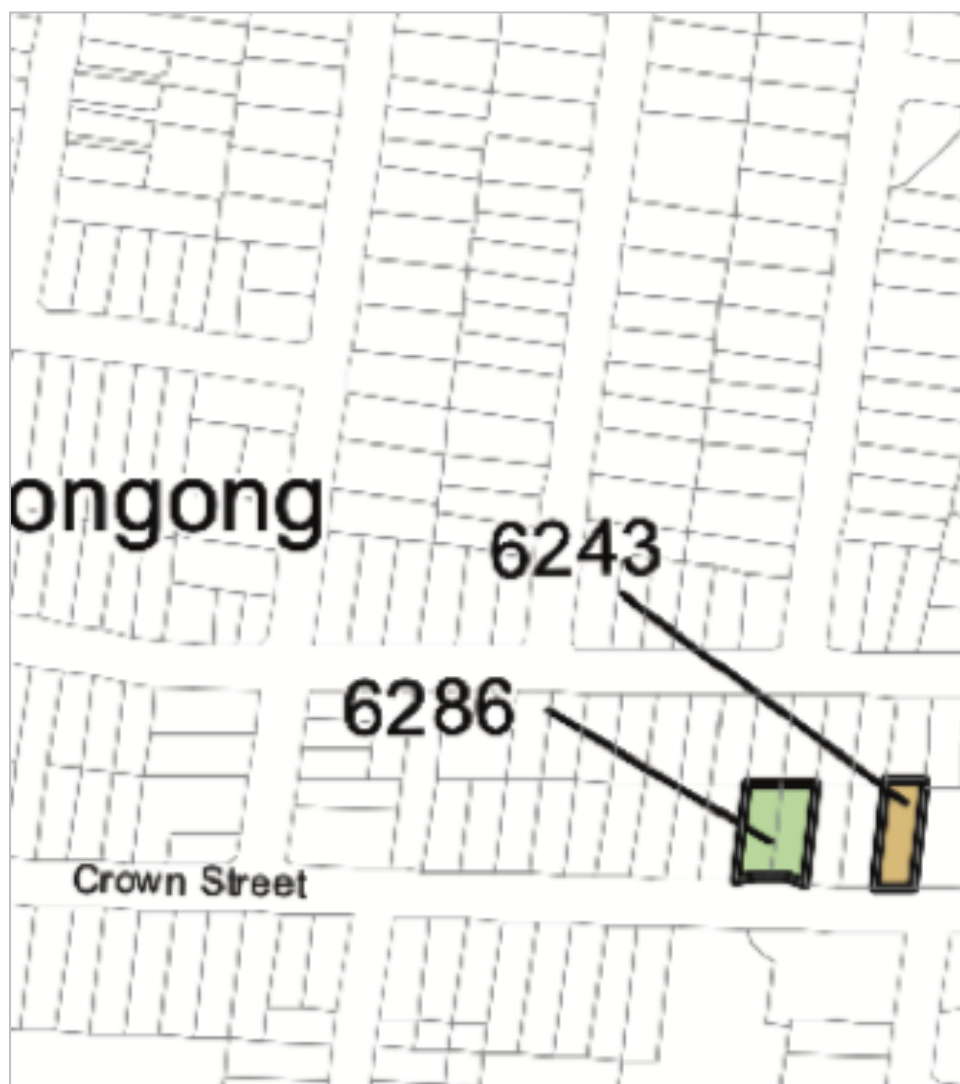


Figure 3: Extract from Wollongong LEP 2009 Heritage Map

The listing of the Moreton Bay Fig at Beaton Park, Crown (i.e. – immediately adjoining the subject site) is consequential for the re-development prospects for 370 Crown Street and further reaffirms the unreasonable site isolation impacts the proposed development presents.

Clause 5.10 of Wollongong Local Environmental Plan 2009 dictates that due consideration of the heritage impacts upon Item 6286 (Moreton Bay Fig) must be had in the event of the re-development of 370 Crown Street.

There would be the reasonable expectation for any additions/new building to afford the heritage listed tree some curtilage so as to not unduly impact upon its significance or prominence. Indeed, the justification within the Heritage Impact Statement (prepared by *Architectural Projects*, dated April 2022) is of this very nature where it deems the heritage impacts to be reasonable on the basis of physical separation. Refer to extract below:

5.2. MITIGATION MEASURES		
The proposed extension is separated from the following heritage items by the existing hospital building and does not impact on the setting for the building:		
5939	Group of Fig Trees	348-352 Crown Street (grounds of Wollongong Hospital)
6243	House	366 Crown Street
6286	Moreton Bay Fig	Beaton Park, Crown Street
6362	"Audleigh"	9 Brownlee Street
6461	Hoop pines	Woodlawn Avenue (near corner Payne Street)

Figure 3: Extract from Heritage Impact Statement prepared by Architectural Projects



Figure 4: Relationship between the existing building at 370 Crown Street and adjoining heritage listed tree

Clause 4.6 variation: Floor Space Ratio

The environmental planning grounds offered in the clause 4.6 variation for floor space ratio are not considered to be proper environmental planning grounds. The principles established by the Chief Judge in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 are relevant where it was observed that:

- In order for there to be ‘sufficient’ environmental planning grounds to justify a written request under clause 4.6, the focus must be on the aspect or element of the development that contravenes the development standard and the environmental planning grounds advanced in the written request must justify contravening the development, not simply promote the benefits of carrying out the development as a whole; and
- There is no basis in clause 4.6 to establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development.

A response to some of the environmental planning grounds offered in the applicant’s clause 4.6 exception for floor space ratio is provided below:

The proposed development would provide net community benefit for Wollongong and the wider locale through the provision of additional health services facilities

Comment: This environmental planning ground seems to simply promote the benefits of the development as a whole. The decision in *Initial Action* precludes relying upon such grounds. An FSR compliant development would also result in the provision of additional health services.

The proposed development would be compatible with the surrounding uses

Comment: Any proposed development would be required to be compatible with the surrounding uses. This is not an environmental planning ground to justify a contravention to the FSR development standard.

The proposed development exhibits design excellence through a consultation process with SDRP

Comment: Any proposed development on the subject site involving the construction of a new building or external alterations to an existing building is subject to clause 7.18 of Wollongong LEP 2009 and is required to exhibit design excellence before it can be approved. In other words, the design excellence test is not reserved for proposals exceeding the maximum allowable FSR. This is not an environmental planning ground to justify a contravention to the FSR development standard. In any case, the SDRP correspondence, dated 22 April 2022, squarely puts that the proposal is *not optimal in a number of important, non-clinical aspects*.

The proposed development would give rise to an employment-generating land use for future built form that is considered adaptable and responds accordingly to shifting economic conditions.

Comment: An FSR compliant scheme would also give rise to an employment land use. This justification again seems to simply promote the benefits of the development.

The proposed development will not exhibit any adverse visual impact and will not adversely impact on the amenity of adjoining sites in relation to solar access, privacy or views.

Comment: An absence of environmental impact alone is not considered to be a sufficient environmental planning ground to justify a contravention to the FSR development standard.

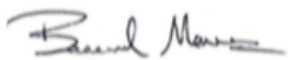
In view of the above, there are insufficient environmental planning grounds established by the applicant to justify the contravention to the FSR development standard. As a result, the proposal fails to satisfy clause 4.6(3)(B) of Wollongong LEP 2009 and must be refused.

Concluding remarks

The proposed development presents various unreasonable impacts upon the neighbouring property at 370 Crown Street, Wollongong and would not satisfy the relevant planning controls. Of most concern is the matter of site isolation. Consequently, on the basis of the proposal in its current form, we do not consider it to be an approvable form of development.

Should you wish to discuss any aspect of this planning advice, please do not hesitate to contact me directly.

Yours faithfully,



Bernard Moroz
Managing Director