



PLANNING AND INFRASTRUCTURE

Planning Unit

1 May 2025

Director Housing Delivery
Housing Supply and Infrastructure
Department of Planning, Housing and Infrastructure
Locked Bag 5022,
Parramatta NSW 2124
Att: Justin Keen

Dear Justin,

Re: State Significant Development Application Number SSD-74319707
Mixed-use development with in-fill affordable housing
849, 853, 859 Pacific Highway and 2-8 Wilson Street, Chatswood

I am writing to you regarding the State Significant Development Application Number SSD-SSD-74319707 at 849, 853, 859 Pacific Highway and 2-8 Wilson Street, Chatswood.

The project is a State Significant Development (SSD) pursuant to Section 26A of Schedule 1 of *State Environmental Planning Policy (Planning Systems) 2021* (Planning Systems SEPP). The SSDA seeks to use infill affordable housing incentives inserted into the *State Environmental Planning Policy (Housing) 2021* (Housing SEPP) in December 2023, enabling the maximum permissible floor space ratio and building height under *Willoughby Local Environmental Plan (WLEP 2012)* to be increased by 30% if the affordable housing component is at least 15% of the gross floor area (GFA) of the development.

The SSDA includes:

- Shop top development, comprising a podium and two towers (36 storeys, 120.05m, RL 223.8m) (involving a WLEP CI 4.6 variation)
- Floor space ratio of 8.46:1 (involving a WLEP CI 4.6 variation)
- A total Gross Floor Area of 36,323m² involving:
 - Residential: 31,881m²
 - Non-residential: 4,442m²
 - Retail 1,281m²
 - Childcare centre 483m²
 - Commercial component of live / work units 2,678m²
- 87.7% residential floor space, 12.3% non-residential floorspace (involving a WLEP CI 4.6 variation)
- 239 residential market apartments, plus 24 live / work studio apartments plus 59 in-fill affordable housing units.
Total residential apartments 332
- 390 car parking spaces in basement levels accessed via O'Brien Street.
- Loading within Basement accessed via O'Brien Street.

Council retains a number of reservations with respect to the infill affordable housing incentives inserted into the Housing SEPP in December 2023 and their applicability to the

Chatswood CBD, noting the significant housing provided in the *Chatswood CBD Planning and Urban Design Strategy 2036* (the CBD Strategy), which became part of WLEP 2012 Amendment 34 (30 June 2023); notwithstanding, the concerns provided in this letter and attachments respond to the SEPP that is now in force.

The Council submission is provided at **Attachment 1** and is summarised as follows:

1. Engagement prior to SSDA lodgement

This exhibition represents the first comprehensive review opportunity for Council regarding the subject SSDA. Notwithstanding this, Council has reviewed a separate development application that is the subject of Land and Environment Court proceedings.

2. SP2 Infrastructure (Classified Road) land

Part of the subject site, being a 457m² parcel of land along the western boundary of the site fronting the Pacific Highway, is zoned SP2 Infrastructure (Classified Road). Council is supportive of the SP2 land being used by TfNSW for the classified road purposes.

The proponent has suggested that TfNSW is reassessing its acquisition requirements regarding the SP2 land on-site. Until such point as the Transport for NSW (TfNSW) position is formally clarified, Council supports the progression of the SSDA on the basis that all the current SP2 zoned land fronting the Pacific Highway and located on the subject site is required for road widening and site design is based on the MU1 zoned land (including FSR and treatment of the Pacific Highway frontage).

In Council's view, any changes to this SSDA as a result of the TfNSW position on the SP2 Infrastructure (Classified Road) component of the site, requires re-exhibition and further consideration by Council and the community.

3. Consistency with Housing SEPP

Having regard to the *In-fill Affordable Housing Practice Note*, it is noted that in-fill affordable housing bonuses do not override any LEP height control. The Practice Note states that:

The in-fill affordable housing bonuses should not be treated as an entitlement. DAs that propose in-fill affordable housing will be subject to merit assessment by the consent authority.

Council seeks for any proposal on this site to have appropriate regard to the location within the northern extension of the Chatswood CBD, the site specific DCP in WDCP Part L: Placed Based Plans (refer to **Attachment 2**) and other relevant provisions of the WDCP with particular regard to car parking. A revised scheme is sought addressing the unacceptable height, FSR and parking non-compliances.

4. Site location in the northern extension of Chatswood CBD

Density on this site should reflect what has been planned for the northern CBD extension, noting the constrained surrounding road network and the surrounding site context.

The subject site has the Pacific Highway to the west, the North Shore Rail Line to the east, O'Brien Street as a cul-de-sac to the south and Wilson Street involving a bridge over the North Shore Rail Line to the north (acting as an access for vehicle movement from the Pacific Highway to the eastern side of the North Shore Rail Line, the Chatswood CBD and beyond).

The high visibility of the site to the west, noting the Pacific Highway is a ridge with land to the west beyond the Pacific Highway falling away, and the existing development at 11 Railway Street directly to the south, requires an appropriately sensitive redevelopment response.

5. Recent site history

Notwithstanding the previous demolition approval and the current Land and Environment Court proceedings, the subject SSDA is a new application on this site and requires a fresh and detailed assessment.

In Council's view, any changes to this SSDA as a result of the LEC proceedings, requires re-exhibition and further consideration by Council and the community.

6. Design excellence

The design excellence competition determined that the scheme is capable of achieving design excellence and the Design Integrity Panel (DIP) had no objection to the SSDA proceeding to assessment noting that additional design work was required. It is noted there may be further DIP review in regards changes to the scheme responding to the DIP required additional work.

The design excellence process does not comprise of a detailed assessment against the planning controls and does not presuppose that the application warrants approval. Noting the specific role of the design excellence process, Council officers request that appropriate regard be given by the consent authority (DPHI) to the planning issues raised in this submission.

Subsequent to the design excellence competition, a detailed assessment has been undertaken having regard to the CBD Strategy, WLEP, site specific DCP and other relevant sections of WDCP, covering issues including height on the CBD boundary, the proposed height and density variations above the Housing SEPP, non-residential floor space, car parking rates, setbacks and public domain embellishment, greening of the site, deep soil planting and loading / unloading. Additional information and amendments are requested, as discussed in the attached submission.

It is noted there may be further DIP review in regards changes to the scheme, either initiated by the proponent without Council support (such as the treatment of the eastern and northeastern elevation), or in response to Council requirements outlined in this submission.

7. Amendments required for development to be in the public interest

a) Height on CBD boundary

A height of 120.05 was not anticipated for this location and represents a departure from recent DPHI direction, where the height for the extended northern section of the Chatswood CBD was generally supported at 90m, transitioning down towards low density residential conservation areas. The establishment of the 90m height control on this site, under Amendment 34 dated 30 June 2023, represented a 375% increase above the previous WLEP 2012, 24m height maximum.

In accordance with the *In-fill Affordable Housing Practice Note*, December 2023 (P.13):

The full extent of the in-fill affordable housing bonuses may not be achieved on all sites, due to site constraints and local impacts. The in-fill affordable housing bonuses should not be treated as an entitlement.

The proposed additional 30.05m height in this location is considered inappropriate due to the location on the CBD boundary opposite (west) of R3 Medium density residential development in the form of two and three storey flat buildings. Concern is also raised in regards the relationship with 11 Railway Street to the south. The proposed increase in height undermines recent strategic planning and community faith in the NSW planning system. Council does not support any further increase in height above the existing height controls in this location above 90m.

b) Floor space ratio on CBD boundary

In the view of Council the appropriate FSR for this site 6:1. If FSR is to be permitted by DPHI, then 7.8:1 is permitted.

The proponent is seeking a further increase of 0.66:1 to 8.46:1, which is not anticipated for this site under WLEP 2012 and the Housing SEPP, or TfNSW *Transport Asset Standards Guide to Airspace and External Developments*.

In regards the 0.66:1 variation, rather than designing in response to site constraints, the proponent is seeking to embellish an existing design, resulting in what is therefore a larger building (by 2,829.8m²). It is unclear why wintergardens on the eastern and northeastern facades cannot be designed in a compliant form. A reasonable and appropriate contribution to housing supply can be made on this site without compromising design quality and within the relevant planning controls.

The proposed additional 2.46:1 FSR above the 6:1 under WLEP 2012, and 0.66:1 FSR above the 7.8:1 under the Housing SEPP is considered inappropriate due to the location on the CBD boundary opposite (west) of R3 Medium density residential development in the form of two and three storey flat buildings. The opportunity exists through design to minimise the width of the two towers proposed, with particular regard to the presentation west and east, and increase tower setbacks north and south.

c) Non-residential floor space

The SSDA proposes 87.7% residential floor space and 12.3% non-residential floorspace over the whole proposed development. This is not consistent with the land use mix Council has planned for the MU1 zone within the Chatswood CBD. In Council's view it is consistency with the WLEP 2012 Clause 6.25, 17% non-residential minimum floor space requirement is entirely achievable, noting that Council planning controls permit non-residential land uses within the tower form, not just in the podium.

The SSDA is requested to be amended to comply with this requirement, which is critical to ensuring the precinct meets its employment targets and continues to function as a mixed use centre.

d) Live / work apartment amenity

The upper level of each live/work studio should be residential only, with additional commercial floor space provided elsewhere within the development in order to achieve a minimum of 17% non-residential GFA.

While Council is highly supportive of mixed use floor plates, the application as proposed does not adequately address the amenity needs of the various users and greater consideration should be given to the layout and configuration of the floors containing residential and non-residential uses.

e) Car parking rates, loading / unloading and vehicle access

Council's approach to car parking in the Chatswood CBD, which has resulted in reduced WDCP car parking rates, is based on encouraging the use of active and public transport and minimising the adverse effects of car use in an increasingly dense urban environment.

The SSDA does not adequately assess consistency with the TfNSW Guide to Transport Impact Assessment (2024) intent and direction. In particular the impacts on the surrounding road network of proposed car parking significantly above Council's WDCP rates (reduced WDCP car parking rates being expected in the CBD Strategy and supporting traffic analysis).

The SSDA is contrary to the land use and car parking strategic context (CBD Strategy and WDCP) which anticipated that the uplift in the Chatswood CBD would be accompanied by lower car parking rates as expressed in the WDCP. In regards impacts on the surrounding road network, the site must not be taken in isolation and the approach to car parking in the SSDA should be considered in the wider context.

The SSDA (being 390) exceeds Council's WDCP maximum car parking requirement (being 230) by 160 car spaces.

The SSDA (being 390) exceeds Council's WDCP minimum car parking requirement (being 113.1) by 276.9 car spaces.

Car parking has also been determined if non-affordable housing is based on WDCP, and affordable housing based on the Housing SEPP

- The SDA (390) exceeds non-affordable housing based on WDCP (maximum rate), and affordable housing based on the SEPP (combined total 219.5), by 170.5 car spaces.
- The SDA (390) exceeds non-affordable housing based on WDCP (minimum rate), and affordable housing based on the SEPP (combined total 138.05), by 251.95 car spaces.

All of the above comparisons show that the SSDA is providing substantially more car parking than if:

- Council WDCP Chatswood CBD precinct car parking rates are used (both maximum and minimum), or
- If non-affordable housing is based on WDCP Chatswood CBD precinct car parking rates (both maximum and minimum), and affordable housing based on the SEPP.

Council seeks an approach to car parking in the Chatswood CBD consistent with the significant and highly successful investment in Metro, rather than the approach that applies across NSW and outside metropolitan Sydney railway / transport precincts.

It is requested that in considering this SSDA, emphasis be placed on the applicable planning document providing the lowest rate for car parking in the Chatswood CBD railway precinct (which would be the WDCP). Strategic planning and traffic modelling for the Chatswood CBD relies on the enforcement of low parking rates to ensure model shift and to maximise state government investment in the Chatswood Metro and other transport infrastructure.

The SSDA is requested to be amended to have car parking consistent with WDCP railway precinct car parking rates.

Concerns are raised in regards the location of the loading dock immediately after entering Basement 1. In Council's view the location of the loading dock is not appropriate but rather forced, and leads to a number of issues, including:

- At the bottom of the ramp, from O'Brien Street to Basement 1, all vehicle movement into and from the site, including all residential and non-residential cars, is blocked while vehicles manoeuvre into the dock.
- All waste for the main loading dock is required to be moved from waste rooms across the main basement vehicle aisle where the O'Brien Street ramp enters Basement 1 (which all vehicles use), to the rear of the waste vehicle in the loading dock which is located towards a wall, as vehicles are required to reverse in.

In Council's view, car parking should be reduced, with a more logical loading dock identified on the western side of the internal Basement 1 vehicle movement aisle, closer to bins rooms. The correct location of the loading dock serving 10.5m vehicles, including Council waste vehicle, is critical to the successful functioning of vehicle movement on-site and within basement levels.

f) Greening of the site at ground level

Concern is raised with the lack of ground level greening to Pacific Highway, O'Brien Street, and the minimal deep soil planting. It is also considered that increased greening to Wilson Street and the setback to the North Shore Rail Line is possible.

The greening of the site is addressed below in SP2 land implications for SSDA Pacific Highway frontage, Ground level setbacks, Nature of ground level setbacks, Public domain and public benefit, Deep soil planting and in Open space comments.

g) SP2 land implications for SSDA Pacific Highway frontage

In Council's view, the treatment of the Pacific Highway frontage is of major importance to the redevelopment of this site, noting the high visibility to the Pacific Highway, Railway Street as well as Wilson Street – and the future overall vision for the Pacific Highway. There remains uncertainty over where the boundary will be and the subsequent design. Any clarification provided by TfNSW and subsequent redesign responding to this submission, requires further consideration by Council.

If TfNSW does not require the identified SP2 land, or only part of it, Council is supportive of this space contributing to soft landscaping, tree canopy tree planting, a pocket park and the shared pedestrian and bicycle path.

h) Ground level setbacks

Numerically ground level setbacks are provided consistent with WDCP Part L: Placed Based Plans, Section 13.1.15 requirements.

However, the treatment of these setback areas is not consistent – and is addressed below. Importantly, Council is not just concerned about meeting numerical requirements but rather the location of soft landscaping in locations that make a difference and provide amenity (e.g. providing tree canopy, being visible and available for users of publicly accessible ground level setbacks for the purposes of providing passive rest areas or relief from a dense urban environment the subject of significant uplift).

i) Nature of ground level setbacks and other open space issues

The SSDA is requested to be amended to show:

- All ground level soft landscaping is to be consistent with this submission and dimensioned (including areas).
- In regards the Pacific Highway setback, increased soft landscaping / greening is required on the 4m setback on MU1 zoned land. Canopy trees are to be provided in this setback, facilitated by deep soil planting (addressed below).
- The pocket park (achieved via WDCP setback as outlined above) is located on the O'Brien Street and Pacific Highway corner, within the SP2 future road widening area, and therefore would be removed by TfNSW road widening.
 - Council seeks for a pocket park to be located on the MU1 zoned part of the site, consistent with the intention of achieving a green gateway to Railway Street and the western side of the CBD.

- Unobstructed access to the south from the rear external through site link (in the setback to the North Shore Rail Line) is to be improved.
- The proponent is requested to reduce hard paved areas in the setback to the North Shore Rail Line, while maintaining the through site link, and increase soft landscaping to create passive rest areas and facilitate provision of tree canopy.
- The proponent is requested to create a more meaningful green landscape presence on the Wilson Street frontage, as a minimal presence is currently proposed.
- A commitment from the proponent that street tree planting, which is in addition to on-site planting, will be provided to the Pacific Highway, O'Brien Street and Wilson Street. In addition, Council seeks a street tree planting plan that would be conditioned in any approval.
- A commitment from the proponent that the undergrounding of cables serving the site will be fully realised. In addition, Council seeks for this outcome to be reinforced by condition in any approval.

i) Public domain and public benefit

The SSDA is requested to be amended to show:

- Confirmation of the ground level areas to be subject to public rights of way.
- Areas subject to public rights of way are to be free of obstruction, with the only exceptions being green planting and reasonable / minimised paved areas or steps to access the site.

j) Deep soil planting

The SSDA is requested to be amended to show deep soil planting as follows:

- Basements setback from the Pacific Highway front boundary after TfNSW land acquisition – being where the Pacific Highway meets the on-site MU1 zone land.
- Basements set back from O'Brien Street.
- Further basement setback is requested for at last part of the rear setback to the North Shore Rail Line to facilitate significant canopy tree planting.

The reduction in basement size is consistent with Council's request for reduced car parking provision.

k) Tower setbacks

Encroachments into tower setbacks at significant heights are not supported by Council, with the impact of the encroachments magnified at the height proposed. A 6m tower setback is required for a total height of 120.5m.

The setbacks provided in WDCP, Part L: Placed Based Plans, Section 13.1.4, 15 represent the desired future built form on-site, responding to the significant uplift under WLEP 2012 – with slender towers contributing to spatial separation and the envisioned liveability of the CBD.

8. Affordable housing

In providing 4% affordable housing contribution in accordance with WLEP 2012 Clause 6.8, it is noted that a monetary contribution is proposed.

Built affordable housing contributions required under WLEP 2012 are provided to Council in perpetuity. The proponent is requested to provide affordable housing in this manner. Any temporary Affordable Housing provided for the purposes of the SEPP bonus provisions, should be in addition to the Affordable Housing contributions required under Council's LEP.

The infill affordable housing bonuses were not intended to replace existing affordable housing requirements and this was clearly communicated throughout the exhibition and finalisation of the SEPP.

The SSDA should satisfactorily address s 7.32 (3) (a) of the *Environmental Planning and Assessment Act 1979* and s 15 of the SEPP (Housing) 2021, and s 7.32 (1) and (3) (c) of the *Environmental Planning and Assessment Act 1979*, in regards the affordable housing proposed (both in regards WLEP 2012 and the SEPP).

Having regard to any final decision on this matter, affordable housing conditions are provided at **Attachment 3**.

9. Infrastructure provision

This site was rezoned with an associated voluntary planning agreement put in place to ensure that the local infrastructure required to support the future residents of the site can be adequately serviced. It is critical that this approval retains the agreed infrastructure contributions under the voluntary planning agreement.

Having regard to any final decision on this matter, standard VPA, s7.11 and s7.12 conditions are provided at **Attachment 3**.

10. Public art

In Council's view, what is proposed in the SSDA is uncertain, with the proponent seemingly adopting a public art approach focused on the building / site with the details to be determined in the future. On this basis it is concluded that the SSDA does not provide any certainty for public art provision, particularly in a manner consistent with Council's Public Art Policy.

No public art contribution is proposed.

Council is seeking a public art component consistent with the Willoughby Public Art Policy, noting that it would be Council's decision whether any public art contribution would be appropriate on-site or whether a contribution towards another location would be of greater public benefit. This decision would be made having regard to the details of any offer made.

11. Building Sustainability

The proposed SSDA has not provided certainty, making reference to targeting, rather than committing to the expected minimum 5 star GBCA rating or the equivalent as the minimum sustainable building outcome for this site.

The site specific DCP for 849, 853, 859 Pacific Highway and 2-8 Wilson Street, Chatswood states:

A minimum of 5 stars GBCA building rating is expected. A higher rating is encouraged.

Council considers a 5 star GBCA rating or the equivalent the minimum sustainable building outcome on this site. If any approval is to be given regarding this SSDA, a condition should be included requiring a 5 star GBCA rating or the equivalent for the development.

12. Requested further amendments or information

The attached submission includes comments requesting amendments and or/further information pertaining to open space, engineering and waste matters. In particular amendments are required related to engineering comments. Conditions are provided at **Attachment 3**.

Should you have any question in regards this letter and **Attachment 1**, or any of the other attachments, please contact Craig O'Brien – Acting Team Leader Strategic Planning on (02) 9777 7647.

Yours sincerely,



Dyalan Govender
Acting Head of Planning