



27 March 2019

NSW Department of Planning and Environment
320 Pitt Street
SYDNEY NSW 2000

RE: SUBMISSION RELATING TO PROPOSED STAGED REDEVELOPMENT OF GREENWICH HOSPITAL - SSD 17_8699

A. PREFACE AND INTRODUCTION

The following is nominally a submission made to the NSW Department of Planning and Environment on a development concept lodged by Hammondcare proposing the staged redevelopment of the Greenwich Hospital, which is located at 97-115 River Road Greenwich. The submission argues that the concept is not only seriously deficient in terms of its environmental acceptability, but also that, contrary to the claims of the applicant, it is not legitimately State Significant Development. The application is arguably not what it purports to be, either legally or in terms of its environmental performance and merits.

This submission also contends that while the statement of environmental effects accompanying the application is without doubt a substantial advocacy statement, it is arguably not a report that recognises and applies all of the applicable environmental performance criteria in a balanced and credible way such that a dispassionate and informed reader can make a fair, on-balance judgment of the overall merits of the application. It is therefore an additional objective of this submission to put those environmental performance benchmarks into clearer light.

However, the concept submitted to the Department also raises much broader issues relating to the probity of the scheme, the adequacy of the applicable regulatory regime and just how a fair, balanced and reasonable judgement of merits can be made in what are clearly most unusual regulatory circumstances.

Therefore, this submission has not been written in the conventional format normally expected of objections to development. It has been written to be read by a far broader community of interests than just the assigned assessing officers within the Department.

B. BRIEF DESCRIPTION OF THE APPLICATION AND THE ISSUES RAISED

Hammondcare, the owners and present operators of the Greenwich Private Hospital, are evidently faced with a growing realisation that the existing Greenwich Private Hospital facilities are fast reaching the end of their current effective life cycle and that their substantial upgrading is needed and will be unavoidable within the foreseeable future.

Almost certainly, Hammondcare has also recognised that not only is there a growing demand for the type of private health services it provides within the immediate community, it has also recognised that there is apparently spare capacity on its site for substantial enlargement of its facilities. Hammondcare has therefore understandably and perhaps even commendably embarked on a plan to do just that: substantially upgrade and enlarge the hospital facilities from its present, relatively modest capacity to a new multi-storey complex with 150 beds providing far more comprehensive and sophisticated services that reflect modern expectations and needs.

However, it would appear that Hammondcare has also been informed that because of a number of regulatory anomalies and what are effectively regulatory loopholes in the circumstances that it is legally available to it to also build on the site an equally large private housing development that will obviously lift the profitability of the exercise substantially, if not dramatically. As a result, the "concept" application now before the Department also includes two multi-storey apartment complexes containing 80 relatively large, up-market apartments and 9 spacious "villas" that will be restricted to ownership and occupancy by aged people or people with disabilities. This has been facilitated by virtue of the fact that while dwellings are nominally a prohibited use under the site's local zoning, this prohibition is effectively set aside by the applicability of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004, which nominally permits certain types of separate accommodation and independent housing on the site, subject to merit considerations.

Overall, the scheme is projected to cost in excess of \$141 M, with the housing component costing over \$69 M. Notably and perhaps most revealingly, however, the Gross Floor Area of the private housing component of the project (some 14,400 m²) will actually exceed that of the enlarged hospital (some 13,900 m²).

Arguably, therefore, the project is not simply a proposal to significantly upgrade an existing private hospital; it is in fact a far more complex and consolidated project that includes a substantial private apartment complex and relatively exclusive private "villas" that will be discrete from the operations of the hospital and will in effect fill out what is at present a relatively modest private hospital in what is in effect a bushland setting of some considerable significance and value to the local community. The applicants describe this consolidation of separate and distinct uses as a "campus".

Unfortunately, the resulting mass and bulk of the proposal is substantially at odds with the character of the relatively low-scale and low-density residential streets around it. Just as significantly, if not more so, the inclusion of such a substantial private housing component will necessitate the removal of over 130 mature and arguably significant trees, a number that perhaps represents something approaching half of the existing trees on the site. Arguably these trees would not have to be cut down and the site's unique character would not have to be lost to such a significant degree if the proposal was limited to just the hospital upgrade, or at least to a far more modest and tolerable private housing component. Furthermore, it would appear to be the case that the inclusion of such a significant private housing component will deny the hospital any opportunities for further upgrading and expansion in the future.

C. SPECIFIC POINTS OF OBJECTION

1. INELIGIBILITY OF THE PROPOSAL AS STATE SIGNIFICANT DEVELOPMENT

The applicant has submitted that the proposal qualifies as legitimate State Significant Development (SSD) under State Environmental Planning Policy (State and Regional Development) 2011 because the estimated cost of the development exceeds the qualifying threshold of \$30 M. In this regard, I note that the Department appears to have accepted that without question.

I do not dispute that the estimated cost of the proposal exceeds \$30 M, however I would point out that the legitimacy of the proposal as a qualifying SSD is also constrained by Clause 14 of State Environmental Planning Policy (State and Regional Development) 2011, which states in effect that the proposal can only be accepted as a legitimate and qualifying SSD if it is predominantly a “hospital” as further defined.

Unfortunately, this is not the case in the circumstances. Notably, over 50% of the development’s gross floor area and almost 50% of its estimated cost is for the 80 private apartments and 9 “villas” that are not integral to the upgraded hospital facilities. In addition, such housing is not included in the list of permissible uses under the relevant definition of “hospital”. Even more revealingly, the proposed private housing is physically discrete from the legitimate hospital operations proposed, while there is little if any doubt that the housing will not have any operational or administrative relationship with the hospital. In contrast, the applicant has argued in its SEE that “the aged care facilities and seniors living units are proposed as uses associated to [sic] the main use of the site as a hospital.” In my opinion, this is blatantly and unarguably wrong and misleading.

In this regard, I would point out that “predominantly” in these circumstances means “in the ascendancy” and that the legitimate hospital operations proposed should be overwhelmingly the primary, major and relatively unrivalled use of the site. That is most definitely not the case here, and the proposal clearly contravenes these qualifying definitional restrictions, and to some considerable degree.

The applicant could argue that it is alternatively available to the Department to receive two separate SSD’s, one for a hospital redevelopment and one for a seniors housing component on the basis that the cost of both are individually over the \$30 M qualifying threshold. However, in this instance both proposals are on the same allotment, thereby creating a fundamental eligibility barrier to accepting the current consolidated proposal as one SSD. In any event, the threshold “predominance” eligibility prerequisite would still preclude a housing-only proposal under the auspices of the SEPP for Housing for Seniors and People with a Disability from being accepted as a compliant SSD in exactly the same way that it does for the current consolidated application.

I would also point out to the Department that the determination required in this instance, that is, whether the proposal is or is not legitimately an SSD, is not a merit judgement. It is unarguably a legal one that should correctly require a formal legal determination before it can be maintained and then accepted and assessed as an SSD. In this regard, I maintain my position that, as matters stand, the Department is not legally entitled to accept the proposal as a qualifying SSD, and it is most certainly not entitled to proceed with its assessment on that basis. To do so would place the Department in severe conflict with its responsibilities under the NSW Environmental Planning and Assessment Act, 1979 and its related regulations, an issue and matter that may end up being tested before the Land and Environment Court of NSW.

2. EXCESSIVE DENSITY OF DEVELOPMENT AND RESULTING DEGRADATION OF NEIGHBOURHOOD CHARACTER

With a site area of 33,763 m² and a total Gross Floor Area (GFA) of 28,300 m², the proposal has a Floor Space Ratio (FSR) of 0.84:1. Because of the need to maintain some landscape character, plus conserve Pallister House and its curtilage, this means the overwhelming bulk of the development has been concentrated into three relatively large multi-storey buildings: a 9 storey hospital building and two nearby apartment complexes of between 6 and 7 storeys. Notably, the setbacks and intervening landscape buffers for these buildings are relatively limited, and therefore these buildings will be quite prominent elements in the immediate landscape and streetscapes.

By comparison and in contrast, the surrounding neighbourhood is generally, if not overwhelmingly characterised by 1-and-2 storey detached bungalows located on relatively 'leafy' sites that typically have FSRs of less than 0.5:1, which is in general accordance with the density of a comfortable 'middle-ring' residential area in Sydney.

The difficulty posed by the application in terms of density is that on first glance there appears to be no applicable numerical density standard. And certainly the applicant has reinforced this perception by arguing the only applicable density standard is a most unusual one found at Clause 50 (b) of State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004 (hereafter referred to as "the SEPP"), which states that consent for the proposal cannot be refused if the density of development is less than 0.5:1. As a result, the applicant is arguing that there is no specific numerical development standard relating to density applicable in the circumstances.

The question that immediately follows is whether this is legally correct. In my opinion the answer is no; it is not reasonably available to the applicant to simply set aside that stated and applicable density standard as though it has no relevance whatsoever. In fact, it is a highly relevant standard, and that is because it establishes a comparative numerical benchmark against which to judge the proposal's environmental performance in terms of the impacts of its density of development, which is quite substantially above 0.5:1. In this regard, I believe the Land and Environment Court has confirmed that previously as a legal principle.

While it is perhaps arguable that the proposal achieves an acceptable degree of environmental performance in terms of a number of the major "Design Principles" mandated by the SEPP, such as visual and acoustic privacy, solar access and design-for-climate, stormwater, crime prevention, accessibility and waste management, the same cannot be said for what is one of the most important, if not the most important design principles applicable under the SEPP, that being compatibility with the immediate neighbourhood amenity and streetscape.

In this regard the applicant's own photomontages of the proposal's streetscape presentations are telling. They show three relatively massive, closely-spaced multi-storey buildings of between 6 and 9 storeys with relatively minimal setbacks to the street that will have by comparison limited landscape buffers. And notably two of these three multi-storey buildings - the two closest to the immediate street frontage - are intended for uses not directly associated with the core operations of the hospital, while they are also not consistent with the site's zoning.

Contrary to the applicant's claims that "significant and large trees to the perimeter of the site will be retained to maintain the leafy outlook and create a visual buffer that improves the amenity of the streetscape...", the visual impact on the character and amenity of the immediate streetscapes and low density residential neighbourhoods will be in truth severe and destructive. As a consequence, the proposal fails the density of development performance test mandated by the SEPP, and substantially so. The proposal represents gross and unjustified overdevelopment, and to such an extent that the proposal is rendered fatally flawed on these grounds alone.

3. EXCESSIVE HEIGHT OF DEVELOPMENT AND RESULTING DEGRADATION OF NEIGHBOURHOOD CHARACTER

The applicant also argues that there is no prescriptive height limit applicable to redevelopment of the site, and in this regard it has found apparent comfort in two facts: (i) the local LEP mandates no numerical height limit for the applicable "SP2" (designated infrastructure – health services) zoning; and (ii) the SEPP's only reference to applicable height limits is Clause 50 (a) which states that consent for the proposal cannot be refused if the height of the proposed residential buildings is 8 metres or less. As a result, the applicant is again arguing that this means there is no applicable numerical development standard for height and therefore the applicant is essentially free to build as high as is practicably and economically possible and feasible in the circumstances.

However, as with the density standard, the mandated 8 metre height limit is unarguably applicable as a benchmark of environmental performance. While it may not act as a permissibility barrier per se, the 8 metre height standard is nevertheless still important as a threshold guide to what is and what is not acceptable in the circumstances. In other words, it is incumbent on the applicant to provide irrefutable evidence that the proposed height of development is environmentally acceptable and also to show why heights in excess of 8 metres should be permitted in the circumstances using the same principles and methodology as those previously mandated under State Environmental Planning Policy No.1 – Development Standards and those now enshrined in most LEPs as provisions for dealing with "exceptions to development standards". Unfortunately, the applicant's Statement of Environmental Effects contains no such evidenced argument – at least not a plausible or comprehensive one.

But again, as with density of development, the proposed height of development may on balance pass muster in terms of a number of the SEPP's overarching and predominating design principles, including visual and acoustic privacy, solar access and design-for-climate, stormwater, crime prevention, accessibility and waste management. However, the proposed building heights are manifestly at odds with the established surrounding streetscape and neighbourhood character, which is overwhelmingly relatively low scale 1-and-2 storey residential development. Ironically, perhaps, this is highlighted by the applicant's own statement that "the proposed development is of an appropriate height and massing to achieve maximum service potential, whilst protecting and enhancing the amenity of the area...the proposal has been designed to step back from River Road to reduce scale of the development for the streetscape." However, I see no credible evidence of that in the proposal.

It must be conceded, of course, that this does not mean that redevelopment of the hospital site must be restricted to a building height limit of 8 metres. That would be a manifestly unjustified conclusion. Quite evidently, the site circumstances indicate that heights somewhat in excess of 8 metres are in principle potentially acceptable on environmental performance grounds. However, what is also obvious is that heights in excess of 8 metres will only be achieved in an acceptable fashion if they are accompanied by substantially reduced density of development and substantially increased and intensified landscape buffers between the buildings and the immediate streetscapes and boundaries with adjoining residential development. In this regard it is suggested that building heights of no greater than 3-4 storeys towards boundaries is in the circumstances a far more appropriate and legitimate height limit, with the possibility of increased heights more centrally on site.

As a consequence, the proposal also fails the building height performance test mandated by the SEPP, and again substantially so. The proposal is unjustifiably excessive in building height and to such an extent that the proposal is again rendered fatally flawed on these grounds alone. At its edges the proposal is manifestly too high by up to 2-4 storeys, and as a consequence the proposed building heights are not even close to achieving any reasonable degree of environmental performance acceptability.

4. INADEQUATE STREET SETBACKS AND RESULTING DEGRADATION OF NEIGHBOURHOOD CHARACTER

As appears to be the case with density and height, there are no apparent numerical setback standards applicable in the circumstances, not in relation to street setbacks or setbacks with adjoining residences. Determination of the merits of the application in terms of its setbacks must be made on a purely qualitative or 'performance' basis.

With regard to this test, it should be conceded that the scheme's setbacks to side and rear boundaries that adjoin neighbouring residential development may be acceptable. There is no indication of any detrimental visual or aural privacy impacts, there is no indication of any unreasonable overshadowing impacts and there is no indication of any unreasonable physical overbearing. To that extent, the scheme may be in principle acceptable.

Unfortunately the same cannot be said for the street setbacks, and in particular the setbacks to River Road. Here, the proposal is characterised by two quite marked, if not startling features: (i) the close proximity of three multi-storey buildings ranging between 6 and 9 storeys to a streetscape that is otherwise characterised overwhelmingly by 1-2 storey bungalows and an equally low density public school, all of which are located within relatively 'leafy' and spacious settings; and (ii) the relative absence of dense and deep landscape buffers needed to visually offset such a marked difference in relative mass and scale.

While the applicant claims in its Statement of Environmental Effects that "significant and large trees to the perimeter of the site will be retained to maintain the leafy outlook and create a visual buffer that improves the amenity of the streetscape...", this contention is in my opinion not the case. While it is certainly true that some mature trees will be retained on site for the benefit of the development itself, it is far more relevant to point out that the relatively high density of development being sought will require the removal of a disproportionately high proportion of existing mature trees (see below for further details).

To make matters worse, recent mapping of the trees proposed for removal highlights how the overwhelming majority of them will be removed from areas that justifiably should be heavily planted buffers between the multi-storey buildings and the street boundaries. The street setbacks that will remain will be in the circumstances grossly inadequate to provide the visual and landscape buffering required. This is a most unfortunate consequence, given the fact that it is readily avoidable. As a result, the only reasonable conclusion to draw in the circumstances is that the proposal also fails on grounds of setbacks.

5. UNJUSTIFIABLE LOSS OF SIGNIFICANT NUMBERS OF MATURE TREES AND LANDSCAPED AREAS

In its SEE the applicant claims that "significant and large trees to the perimeter of the site will be retained to maintain the leafy outlook and create a visual buffer that improves the amenity of the streetscape...the retention on site will exceed the required tree removal." However, this claim is severely at odds with the reality of the proposal. Notably, over 130 existing mature trees - perhaps approaching 50% of the existing site vegetation - will be removed in order to make way for the proposed buildings of the scheme. Even more significantly, the proposed tree removal is required overwhelmingly to make way for the private housing and not to any substantial degree for the upgrading of the hospital. Of even greater concern is the fact that a significant proportion of the tree removal will be from the all-important set back areas that could and arguably should provide crucially needed landscape buffering.

6. FUNDAMENTAL CONFLICT BETWEEN NEED FOR FUTURE EXPANSION AND INCLUSION OF PRIVATE HOUSING

Another crucially significant feature of the proposal is that the inclusion of so much private housing – both to the east and west of the upgraded hospital – will in effect build out the site. That is unarguably read from the plans.

What this will mean, of course, is that the hospital will lose all further opportunities for additional growth in the future. This in my opinion places the proposed private housing severely at odds with the central and overwhelming purpose of the land: to provide for legitimate hospital uses, including for future growth.

In this regard, it must be remembered that the local zoning of the property specifically prohibits private housing, partly to ensure that important hospital land remains available for the future. While State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004 may act to nominally permit some private housing on the property, it is submitted that the extent to which the applicant is now seeking to exploit that permissibility provision represents a severe undermining of both the zonal objectives and the broader objectives of the SEPP.

7. SIGNIFICANT CONFLICT WITH ZONING OBJECTIVES

The property is currently zoned “SP2 – health services facility” under Lane Cove LEP 2009. The two key objectives associated with this zoning are:

1. To provide for infrastructure and related uses; and
2. To prevent development that is not compatible with or that may detract from the provision of infrastructure.

In my opinion, there is no doubt the inclusion of so much private housing – to the extent that it exceeds the GFA of the hospital upgrade and will cost almost as much – represents a severe contravention of those objectives.

As stated previously, however, it may be feasible and environmentally acceptable for some limited amounts of private housing to be included in the proposed upgrading of the hospital, and especially if can be shown through a credible business plan that this is needed to make the hospital upgrade financially viable. However, it is also considered that the amount of private housing proposed would have to be very substantially less before the zonal objectives could be shown not to be compromised.

8. INADEQUACY OF SITE ANALYSIS

Another substantial concern to me is the plausibility of the applicant’s submitted “site analysis”. While it clearly describes the site and locational attributes that will assist the development for its own sake, this purported and claimed “site analysis” is in my opinion severely lacking in that it does not in any credible way identify or account for potential impacts on either the immediate public realm or on adjoining properties, both private and public. This is unarguably one of the most important, if not crucial requirements of a site analysis, as is the development of specific design principles to account for those potential impacts. However, the applicant’s submission fails to meet its fundamental responsibilities to do this and ensure that the results of the site analysis then in turn ‘inform’ the resulting design. For this reason, it is a fatally flawed component of the application.

9. INCOMPLETE AND INADEQUATE STATEMENT OF ENVIRONMENTAL EFFECTS

The first point I would make about the applicant's Statement of Environmental Effects (SEE) is that it is overwhelmingly an advocacy statement, but arguably little more. In this regard, I do not disagree that the applicant is entitled to highlight what it sees as the proposal's positive attributes. However, the responsibility of an SEE is to also identify all possible and relevant environmental factors and criteria, and then dispassionately and convincingly assess the proposal against those factors and criteria. Arguably, the SEE does not do that, at least not to the extent I consider necessary under the circumstances.

The second important point I would make is that the Statement of Environmental Effects is incomplete. Firstly, as I have stated above, the SEE does not fundamentally identify or address the true impacts of the proposal. Secondly, I see nowhere in the SEE where the all-important provisions of Section 4.15 of the Environmental Planning and Assessment Act have been adequately considered, or indeed considered at all. Thirdly, I suggest strongly that in order to justify such a marked and substantial level of private housing within the proposal, it is incumbent on the applicant to provide irrefutable evidence that the amount of private housing proposed is essential to make the core objective of upgrading the hospital economically viable. Unfortunately, the SEE provides no such evidence.

D. CONCLUSIONS AND COMMENTARY

The first and central point made by this statement of objection is that the proposal is not legitimately State Significant Development as required by the relevant SEPP. While it nominally passes the minimum \$30 M cost test to qualify, it fails seriously on the grounds that it is not "predominantly" consistent with its zoning as a health service facility. While some genuinely ancillary private housing may be acceptable while still satisfying this threshold "predominance" test, the simple fact is that what is proposed substantially undermines the predominance of the legitimate hospital uses of the site, and does so to some considerable and counterproductive extent.

In any event, the proposal exhibits quite major environmental performance failures and inadequacies, and in particular in terms of the density of development proposed, the proposed massing and height of buildings, as well as its setbacks and the significant loss of important vegetation that will occur as a result of the development. And in this regard it is considered that each of these individual failures is of such significance that they each render the scheme fatally flawed in their own right. Cumulatively, therefore, the proposal is severely inadequate.

Furthermore, while the applicant has sought to exploit certain permissibility provisions that make otherwise prohibited private housing permissible on the site, this does not negate or set aside the fact that the proposal is substantially at odds with the zonal objectives.

Finally, the proposal's own SEE is fundamentally inadequate in a number of ways needed to achieve its core objective of dispassionately informing the community of interests about the proposal's true merits in a reasonably balanced and convincing way.

Having said that, however, it also has to be said that the core objective of the proposal, that is, to upgrade the hospital facilities, has clear social merit and considerable worth to the immediate community. That in my opinion should not be forgotten.

Furthermore, I see no reason in principle why the proposed upgrading of the hospital could not include some limited amount of private housing for seniors and people with disabilities. Unarguably, the provision of such housing by private and not-for-profit organisations serves a very important role in our society, and therefore it should be encouraged where reasonably possible.

As a result, I would reinforce my strong support for a well-designed and more thoughtful and responsive proposal by the applicant to achieve its fundamental operational and economic objectives while at the same time realising a physical scheme that is far more attuned to its circumstances and the rights of the local community to reasonably protect its amenity.

I would also add that what has occurred in this instance is the effect of the grossly inadequate planning regime that applies to the property. The confluence of substantially inadequate zoning provisions and the effective absence of applicable local development standards together with the arguably misguided and poorly-framed provisions of a SEPP that facilitates the nominal permissibility of essentially unrestricted amounts of private housing on the site has in effect generated a ticking development time bomb- a time bomb that is only now emerging through the current concept plan.

I support the applicant's core objective of substantially upgrading the Greewich Hospital. I also support the applicant's desire to achieve better economic outcomes by including some private housing with the proposal, and most certainly if the resulting housing is reasonably affordable and earmarked for seniors and people with disabilities.

However, I can only conclude that the manner and form in which the applicant is seeking to do that through the current proposal is severely at odds with a reasonable interpretation of the applicable planning regime and the legitimate interests and rights of the local community. It is manifestly far too dense and far too massive, and it will result in far too much loss of valuable vegetation and open space. In my opinion, the proposal is not even close to being reasonably acceptable in terms of its environmental impacts and performance. It is on balance a fatally flawed proposal.



GREG VICKAS