

15 June 2018

File No: 2018/307230
Our Ref: R/2016/8/A
Your Ref: SSD 7539

Megan Fu
Department of Planning and Environment,
320 Pitt Street,
SYDNEY NSW 2000
Megan.fu@planning.nsw.gov.au

Dear Megan,

Re: Darlington Terraces Mixed Use Development, University of Sydney (SSD 7539)

Thank you for your correspondence dated 14 May 2018 which invites the City of Sydney ("the City") to review the Environmental Impact Statement ("EIS") provided by the University of Sydney in respect of SDD 7539 and to provide comments on the proposal.

The City has reviewed the proposal and **objects** to the application. This is not an education establishment.

The application is predominantly a residential project (student housing) within the City of Sydney LGA **and should therefore be assessed by the City.**

The City is certain that the proposed development should not be characterised as an educational establishment, but is residential accommodation. It is noted that the Request for SEARs refers to the project as contributing to a "holistic campus living experience environment" with various 'education establishment uses including teaching/learning/meeting/study facilities'. However, that is not considered to be adequate to establish that the proposal itself is for the purposes of the SEPP an educational establishment.

The application indicates that there are multi-purpose common areas within the development in the form of music rooms, informal meeting/study rooms, a reading library and a games room. These types of spaces are common within many residential developments and are not considered to contribute to the distinction of the proposal as 'educational' in nature. While it is noted that Building B includes spaces labelled 'learning hub' and 'maker space' and Building C has a room labelled 'lecture theatre', at 363.2sq.m those educational spaces account for 5.06% of the overall GFA created by the development. The dominant use is clearly residential in nature.

It is submitted that a proper consideration of the proposal reveals that it is not for the purposes of an educational establishment and should not be considered as a State

Significant Development. Rather the proposal should be the subject of a normal development application where the City is the assessing and consent authority.

Darlington Lane

In order to provide accessible entry to the new buildings and safe access for pedestrians, the development relies on works within Darlington Lane. These works include new landscaped traffic islands, new trees, new speed cushions, new surface treatment for the length of the lane, and continuous footpath treatments at the Codrington St and Golden Grove St junctions. It is understood that fire hydrant infrastructure are also proposed under Darlington Lane. It is also intended to change the two way lane into a one way shared zone (under the Roads Act) so as to provide safe pedestrian access. Without these laneway works and the change to a shared zone, there would need to be a substantial change to the building designs.

In noting that:

- Darlington Lane is owned by the City;
- Landowners consent from the City has not been provided for any works of this application;
- The laneway works and conversion into a shared zone requires separate approval under the Roads Act from the City's Local Pedestrian, Cycling and Traffic Calming Committee; and
- Further negotiations are required between the University and the City's Legal, Property and Public Domain teams;

It is submitted that the City is best placed to provide a timely and co-ordinated assessment of this application. It is recommended that the Minister for Planning and the Secretary, Department of Planning and Environment, delegate their respective consent authority and assessment functions to the City to streamline processes.

Notwithstanding the above, the city raises a number of issues that need to be addressed:

1. *Heritage*

a) Existing terraces (heritage listings include the interiors):

Terraces numbered 94, 102, 103, 124, and 125 appear to include significant demolition works to facilitate equitable access with some including widening of the front gateways and demolition of internal walls to the front rooms except for some nibs to create large lounge rooms. Voids are also proposed in the first floor rear wing of Nos.102 and 124. It is acknowledged that to facilitate equitable access to the terraces that some intervention to the original heritage fabric may be required however, this should be limited to only what is absolutely necessary.

Internal demolition to 17 sets of stairs within the terraces is proposed, which results in the loss of significant heritage fabric and is far outweighed by the proponent's desire to maximise accommodation within the original terraces. Demolition of the stairs is contrary to recommendations within the Conservation Management Plans (CMPs). Removal of the stairs has a knock-on effect such as the creation of new openings in between terraces and changes to original room layouts to accommodate new hallways.

Similarly, new bathrooms are proposed to 13 of the terraces within original bedrooms at ground and first floor level. The proposed bathrooms require new

partitioning and location of showers etc. which has the impact of screening off fireplaces and subdividing the original layout of rooms identified as being of high significance.

It is noted the interior of at No. 86 was entirely replaced when rebuilt behind the facade in 1993 so there is a greater scope for change in more altered terraces than in more intact terraces.

It is considered that the extent of change to significant fabric of the heritage items could be improved and, as drawn, will be contrary to the heritage conservation provisions of Clause 5.10(1) (b) of Sydney Local Environmental Plan 2012 as they diminish the heritage significance of the heritage items.

It is noted that whilst two Conservation Management Plans (CMP) were included in the EIS documentation, the following two additional CMPs are referred to in the EIS but were not included with the package of information submitted with the application.

- i. CMP for 104 -119 Darlington Road and 121-123 Darlington Road by Tanners Architects dated December 2008; and
- ii. CMP for 124-131 Darlington Road Darlington by Tanners Architects dated December 2008.

Upon request, the University provided the documentation directly to the City and informed the issues raised above.

The Department should ensure that it also obtains a copy of the additional CMP and fully considers these in their assessment.

b) Conservation Works and submitted documentation:

Even though the design approach with the proposal is to treat the terraces as one group, they comprise several different terrace groups, the treatment of which from a heritage aspect which should be dealt per group, particularly conservation works. Apart from the four CMPs there is no fabric analysis, description, photos or detailed heritage assessment of the terraces in the Heritage Impact Statement not covered by them, without which it is difficult to assess the heritage impact of the proposed changes to them.

The Heritage Impact Statement is very broad and general, and the assessment is assessed against the superseded 1997 Alteration and Additions to Terraces guidelines, and not the current DCP. Whilst the report refers to the refurbishment of the terraces, very little detail is given on what that entails, apart from the limited information shown on the drawings, which is inadequate for heritage items.

No conservation works are shown on the drawings. With the new buildings proposed at the rear of the terraces on the heritage sites it is reasonable to expect that conservation works will be carried out. This is recommended in the four CMPS that have been prepared for the site and would be in accordance with clause 3.9.5(2) of DCP 2012 that *development should enhance heritage items by removing unsympathetic alterations and additions and reinstating missing details, building and landscape elements, where physical and documentary evidence is available.*

The conservation works recommended in the Conservation Management Plans should be included in this application. The architectural drawings should be updated accordingly.

c) New buildings to Darlington Lane:

While the proposed new buildings to Darlington Lane comply with the overly generous building envelopes approved under the Campus Improvement Programme for the site, the scale of the proposed development within the rear yards of the original terraces will have an adverse impact on the setting of the heritage items and the historic character of Darlington Lane, and in particular those heritage items within the row that do not form part of this application.

Of particular concern is the three storey buildings that straddle 97 and 120 Darlington Road. They have an overbearing impact on these dwellings and their private open spaces, given their height and separation from the terraces, and noting the additional shadow impacts to their private open spaces discussed under Item 6 c) below.

It is noted that the CIP envelopes are indicative *maximums* and each building impact needs to be assessed in their context as a detailed design.

2. Section 7.11 Contributions

The City of Sydney Development Contributions Plan 2015 applies to the proposed development. Notwithstanding the City's position on the status of the SSD application referred to at the start of this letter, the Redfern-Waterloo Contributions Plan (refer to Part 1(6)) applies to development for which the Minister is the consent authority under Part 4 of the Environmental Planning and Assessment Act 1979 by operation of Clause 9A (1) of the State Environmental Planning Policy (Major Projects) 2005, now known as State Environmental Planning Policy (State Significant Precincts) 2005. State Environmental Planning Policy (State Significant Precincts) 2005 does not apply to the proposed development as per the Land Application Map and Schedule 6 of the SEPP (as referenced in Clause 9A (1)).

The proposal will more than double the existing student population on site. It is therefore considered both necessary and reasonable to impose Section 7.11 contributions for the demand that the proposed development will generate. This is consistent for all development that generates an increase in the resident and worker population.

In addition the following is noted:

a) Public benefit arising from the proposal.

The proposal includes the delivery of student accommodation, which include upgrades to the University-owned Codrington Street pocket park. These will be delivered as an integral part of the development that primarily serves the interest of the proposal. The proposed upgrade of a council-owned lane to a shared zone will also primarily serve the interest of the proposed development to enable entry points off Darlington Lane. These components of the proposal are not for the purpose of an inherent material public benefit that would provide full or partial satisfaction of the appropriate contribution under the City's contributions plan. The works are not identified in the City's contributions plan's works list and do not satisfy the intent of the Plan to provide local infrastructure such as local open space, local community facility/multi-purpose facility/ child care, traffic and transport, and stormwater works that are primarily for the interest of the public.

- b) Public benefit arising from the facilities/infrastructure investments within the University campus.

While facilities such as open space, childcare centres and footpaths provided by the University as part of its past, current and planned future developments can be accessed by the broader public, the facilities are clearly part of the University's campus rather than the public domain and perform a very different role to local infrastructure provided by the City. In providing infrastructure, the University's primary objective is to attract students and funding rather than provide facilities for the City's residents to enjoy. The University's facilities are set within the University's grounds, generally surrounded by a fence, and patrolled by security guards. Additionally, the University's facilities are overwhelmingly used by University staff and students. The City's residents commonly use the City's open spaces such as Victoria Park for picnics, kids' parties and to throw Frisbees, however they do not typically use the University's open spaces for similar purposes.

- c) The University as a not-for-profit public authority.

Universities are distinguished from government schools in particular due to their ability to charge students fees. The University's financial resources and capacity are significantly greater than that of other entities/development types exempted from the payment of contributions under the Plan, including churches, non-profit childcare centres and government schools. It should also be noted that previous merit exemptions were made under the broad definition of not-for-profit under the previous plan (City of Sydney Development Contributions Plan 2006 – Section 2.14), which no longer exist under the current plan.

- d) Financial impact of imposing development contribution for the proposed development.

The University's 2015 Annual Report indicates its total annual income in 2015 was almost \$2 billion. This includes about \$0.9 billion in fees from students and almost \$0.5 billion in fees from full fee paying overseas students. The financial impact of excluding the University from paying development contributions to serve the demand of the net increase in resident/student and worker population is about three times greater on the City than it is on the University.

- e) The University as a Crown Applicant.

Under Crown development provisions of the Environmental Planning and Assessment Act 1979, a council cannot impose a condition on a consent requiring a development contribution except with the written approval of the applicant. In 1995 the Department issued Circular D6 relating to 'Crown development applications and conditions of consent.' It indicates it is provided as a 'guide' and 'encourages' councils to consider it. It also indicates councils can levy development contributions on Crown development 'if justified in the development contributions plan'. Imposing development contribution on the proposed student housing development is considered reasonable and justified under the City of Sydney Development Contributions Plan 2015.

Note: The Circular is no longer available on the Department's website. A 2004 government review of local infrastructure contributions recommended amending the 1995 Circular to make it easier for councils to require development contributions from Crown development.

3. *Public Domain*

While the pocket park is privately owned, it will be publicly accessible and therefore the interface between the public domain and private land requires more carefully consideration, in particular, the Darlington Road and Codrington Street corner, which is a well utilised meeting space. It is suggested that the design of the park takes into consideration the use of this northern area and looks at more durable finishes as well as appropriate edge treatments at the public domain interface.

4. *Transport*

The traffic report submitted with the application states that an existing on street parking space located on the southern side of Darlington Lane towards Golden Grove Street will be converted to a “loading zone” bay to accommodate maintenance and delivery vehicles to the site. This will require a separate submission to RMS and Council and will be subject to traffic committee approval.

5. *Landscaping and trees*

The Arboricultural Impact Assessment (AIA) prepared by ArborSafe, dated 19 November 2016 identifies Tree 25 (Evergreen Oak) as making a significant contribution to the landscape character of the area with a life expectancy of 30-50 years. It is also noted that it was identified for retention on the approved CIP plans. Regardless, the applicant has argued its removal on account of the disconnected boundary with the privately owned terraces not subject to the application, project feasibility and potential overall financial loss. The City strongly opposes removal of significant trees on the site and considers that a variation to the Tree Protection Zone could be applied should a detailed investigation by the Arborist be undertaken.

With respect to the Pocket Park, the level of detail submitted in relation to the proposed new tree planting is inadequate to properly ascertain if appropriate tree protection zones (TPZ) and structural root zones (SRZ) can be achieved based on the extensive works proposed around the trees. It is unclear if adequate deep soil can be provided for the proposed ‘semi-mature’ trees to be planted in that area. The landscape Design Report and AIA show inconsistencies with respect to the number of proposed new trees to be planted in this area.

There is a Eucalyptus tree (Tree 11 in AIA) between Buildings B and C, which is identified as having a high retention value and is proposed to be retained with protection zones to meet Australian Standards. However, the proposal disregards those protection zones and creates an encroachment with significant works likely to affect the structural roots of the tree. The current extent of decking (outdoor study area), concrete walls and footings for two disabled access ramps within the TPZ and SRZ of the tree need to be revised to ensure the longevity of the tree.

In general, the level of detail provided in relation to tree planting within the courtyard areas between the original terraces and the new buildings is an illustrative concept only and does not provide sufficient level of detail for the complex levels, engineered storm water devices, pits and walls proposed. The design includes a long narrow central paved courtyard that ranges from 3-4 metres wide with various planters on slab, raised bench seats on walls, nooks with table and bench seats, tables and chairs and desks for students. However this is at odds with the key purpose of the

central courtyard, which is to provide a circulation path across the site, as well as secure outdoor spaces.

The central planting areas will be heavily overshadowed and given the tree species indicated in the Landscape Report, will struggle to survive. Further, the extent of stormwater devices located in the central courtyard will also potentially impact on the success of the landscaping, which is intended to soften and provide privacy between public areas and private areas to adjacent student bedrooms. It does not appear that a co-ordinated approach to the courtyard design has been achieved between the architect, engineer and landscape architect.

A green wall is proposed on the elevations between Building B and C south elevation) however, the landscape package contains no information about the green wall.

Building B and D both include a series of 1:10 ramps and landings in communal courtyard spaces for access between the terraces and new buildings. In order to meet minimum Australian Standards, it is recommended that a maximum grade of 1:14 is achieved to provide an equitable access path.

6. Residential amenity

a) Bedroom sizes

State Environmental Planning Policy (Affordable Rental Housing) 2009 and Sydney DCP 2012 set the appropriate amenity guidelines for student accommodation. These require a minimum room size of 12sq.m for a single lodger and 16sq.m in any other case.

It is understood that pre-DA discussions took place in early 2017 between University representatives and staff at the City in relation to the University's Regiment Mixed-Use development and a proposal at that time to provide 10sq.m for single lodger bedroom sizes. At that time, the City generally supported the proposed reduced bedroom size. It is noted that the University's Regiment Mixed-Use development has been approved (SSD 7417) and includes student accommodation with bedrooms of approximately 10sq.m for single lodgers.

Similarly, the subject proposal seeks consent for smaller bedroom sizes of 10sq.m for single occupants. However, a review of the proposed plans indicates that there are 28 bedrooms within the terraces (17% of terrace bedrooms) that are between 7.8sq.m and 9.8sq.m, which is less than the 10sq.m indicated and creates unacceptable internal amenity for those occupants. In addition, there are 25 twin loft rooms that are under 15sq.m, with the smallest being 14.1sq.m, which is less than the 16sq.m required by the SEPP for more than one occupant. This is insufficient space for two people sharing a room. No acknowledgement of the non-compliance or justification has been provided.

When considering the heritage concerns outlined earlier, and that too many small rooms are being provided in the terraces, it is clear that the terraces are being over developed in an effort to maximise accommodation at the expense of the loss of significant heritage fabric and internal residential amenity. The terrace layouts should be revised with no bedrooms for single occupants less than 10sq.m in size and no twin rooms less than 16sq.m for more than 1 occupant.

b) Solar access

The Affordable Housing SEPP requires at least one communal living room to receive a minimum of 3 hours direct sunlight between 9am and 3pm in mid-winter. Shadow analysis in elevation is required to conclude whether the communal living areas can achieve the required 3 hours.

c) Overshadowing

97 and 120 Darlington Road are single, private terrace houses surrounded by the proposed student housing development. The shadow diagrams demonstrate that the private open spaces to 97 and 120 Darlington Road currently receive solar access to their rear yards at 9am and 12pm. The diagrams for the proposed development fail to demonstrate if these dwellings will maintain a minimum of 2 hours solar access to 50% of their minimum open space (that is 2 hours sun to 8sm² of open space) in midwinter, as per the requirements of Sydney DCP 2012. The shadow diagrams for the proposal show the rear yards to 97 and 120 Darlington Road in full shadow at 9am and 3pm, with some sun at only 12pm. Hourly shadow analysis is required to demonstrate if the minimum requirements of the DCP are met with respect to those private terraces.

d) Laundries

At a rate of 1 washing machine/dryer/tub per 35 students, the proposal provides one third of the laundry facilities required by Sydney DCP 2012 for the number of students proposed to be accommodated by the development (29 required). This grossly underestimates the basic amenities required by the students and contradicts the proponent's argument for providing smaller bedrooms for single occupants, which are purported to be compensated by the increased provision of communal amenities and facilities.

e) Privacy

Adverse privacy impacts occur between primary and secondary windows of bedrooms and kitchen/living areas of the buildings, and in particular across narrow recesses between the rear extensions of opposite facing terraces. Detailed elevations should be illustrated and/or annotated by what means impacts will be addressed.

f) Plan of Management

A Plan of Management for the student accommodation has been submitted with the application however, it is insufficiently detailed for a development of this scale. It is acknowledged that management operations are likely to become clearer closely to occupation. At that stage a more specific document should be prepared with named contacts in the event of any noise complaints, floor plans to highlight emergency routes, individual building specific house rules with tenancy agreements and the residential handbook to be incorporated.

7. Public Art

A Public Art Strategy has not been discussed or submitted with the proposal.

Should you wish to speak with a Council officer about the above, please contact Maria O'Donnell, Specialist Planner, on 9265 9333 or at modonnell@cityofsydney.nsw.gov.au.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'GJahn', with a large loop at the end.

Graham Jahn AM

Director

City Planning | Development | Transport