



planning consultants

30 June 2020  
Our Ref: 20550B.2ER\_Submission

The Secretary  
NSW Department of Planning, Industry and Environment  
4 Parramatta Square,  
12 Darcy Street,  
Parramatta NSW 2150.

**Attention:** James Groundwater[james.groundwater@planning.nsw.gov.au]

Dear James

**Submission in relation to  
SSD 10376 Sydney Metro Pitt Street (South) Over Station Development – Stage 2 and  
SSD 8876 MOD 2**

### Introduction

DFP Planning (DFP) has been engaged by the Owners of SP51077, being the Princeton Apartments building which is located at 304 – 308 Pitt Street, Sydney.

The Princeton Apartments building is located to the immediate south of the site on which the Pitt Street South over station development (OSD) is proposed. The proposed development is located on Lot 1 DP62668, Lot 1 DP436359, Lot 1 DP60293 and Lot 1 DP59101. These four lots comprise the site of the proposed over station development. Lot 1 DP62668 is to the immediate north of the lot on which the Princeton Apartments building is located.

We lodged a submission in relation to the concept plan application (SSD-8876) on behalf of Princeton Apartments and the Owners of SP51077 (Our reference 20550A.2ER\_Submission dated 11 September 2018).

In that submission we identified that, notwithstanding that SSD-8876 was concept development application, it was crucial that the fundamentals relating to the building envelope, particularly in relation to height, building footprint and building separations/setbacks, were fully resolved so that:

- Adverse impacts on existing adjoining Princeton Apartment building are avoided; and
- The expectations of the developers are appropriately managed.

In this regard, we have reviewed the conditions of consent relating to SSD-8876 and in our opinion, the Stage 2 DA is inconsistent with those conditions.

In preparing this submission, we have reviewed the exhibition documentation available on the Department's Planning Portal website relating to both SSD-10376 and SSD-8876, including the current application to modify SSD-8876 (MOD 2).

Please accept this submission as an objection to both SSD-10376 and SSD-8876 MOD 2.

## 1.0 Conditions of Consent SSD-8876

SSD-8876 was approved by the Minister for Planning on 25 June 2019. The approved development is described as follows on the consent:

*Concept Development Application for Pitt Street South Over Station Development including:*

- *a maximum building envelope, including street wall and setbacks for the over station development*
- *a maximum building height of RL 171.6 metres*
- *podium level car parking for a maximum of 34 parking spaces*
- *conceptual land use for either one of a residential or a commercial scheme (not both).*

*Gross Floor Area does not form part of the application and is not approved by this consent.*

Conditions A24 and B10 were modified on 28 October 2019. The modifications related to an administrative error (Condition A24) and Condition B10 was modified to amend the environmental performance targets required if the future development comprised residential apartments.

The applicant initially sought to modify Condition B10 to comply with the minimum BASIX targets, however, the condition was amended to require a minimum BASIX 30 Energy rating to be achieved (in lieu of the original target of 35) if the entire site is a residential building.

Condition B3 of the consent is one of the conditions under the heading Built Form and Urban Design. Condition B3 requires the following. The provisions of Condition B3 of most relevance to Princeton Apartments and this submission are those in **bold text**:

- B3. The detailed development application shall address the following built form considerations:*
- (a) integration with the approved Metro station*
  - (b) identify the need for any necessary easement to maintain light and ventilation if windows are proposed on the common boundary with the Edinburgh Castle Hotel (294 – 294B Pitt Street, Sydney)*
  - (c) consider any potential amenity impacts to the rear facing residential apartments of Euro Tower (135-137 Bathurst Street)*
  - (d) the structure reservation zone is only to be used for non-gross floor area (including structural supports and plants/services relating to the integration with the approved station), alternative options should be considered before built form is proposed in the zone. Any structure or built forms within the structure reservation zone must be designed to minimise its impacts to the outlook and amenity of the adjoining Princeton Apartments*
  - (e) **a varied setback from the Pitt Street boundary of the site, with the articulation of built forms be designed to minimise solar impacts to the living rooms of Princeton Apartments***
  - (f) the selection of materials is to be complementary to the existing development context and respectful of heritage items in the site's vicinity*
  - (g) articulation of roof forms must consider opportunity to retain view to St Mary's Cathedral from Century Tower (343 - 357 Pitt Street, Sydney)*

(h) **for a residential scheme, achieve compliance with the requirements of State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development and the accompanying Apartment Design Guide**

(i) *wind mitigation measures arising from compliance with Condition B11 below.*

Condition B3(e) requires the Pitt Street setback to be varied to *minimise solar impacts to the living rooms of Princeton Apartments*. As discussed below, the proposed development has not been designed to minimise solar access impacts to the living rooms of Princeton Apartments and therefore is contrary to Condition B3(e) of SSD-8876.

In relation to Condition B3, we note that the Stage 2 SSDA relates to a residential development for the over station development (OSD) and therefore Condition B3(h) is a relevant consideration with respect to SSD-10376.

The issues associated with the proposed development and compliance with the conditions of the approval issued in relation to SSD-8876 are discussed below. Insufficient information has been provided in the SSDA documentation to confirm if the development satisfies condition B3(d) in relation to the structure reservation zone.

## 2.0 Building Separation

Part 2F of the ADG specifies the following minimum separation distances for residential apartment developments:

*Minimum separation distances for buildings are:*

*Up to four storeys (approximately 12m):*

- *12m between habitable rooms/balconies*
- *9m between habitable and non-habitable rooms*
- *6m between non-habitable rooms*

*Five to eight storeys (approximately 25m):*

- *18m between habitable rooms/balconies*
- *12m between habitable and non-habitable rooms*
- *9m between non-habitable rooms*

*Nine storeys and above (over 25m):*

- *24m between habitable rooms/balconies*
- *18m between habitable and non-habitable rooms*
- *12m between non-habitable rooms*

The proposed OSD includes a new residential tower with a maximum building height of RL 165.15 or 141m (39 levels) including ground and plant levels.

Part 2F of the ADG also notes the following with respect to building separation:

*Building separation is the distance measured between building envelopes or buildings. Separation between buildings contributes to the urban form of an area and the amenity within apartments and open space areas.*

The distances set out in Part 2F of the ADG are a **minimum separation** requirement, not a **setback** requirement. Therefore, where there is an existing approved building on an adjoining site, it is incumbent on the new development to provide the required building separation.

Princeton Apartments is an approved development which is built to the northern boundary of the lot on which Princeton Apartments is located. Therefore, the separation required to be provided between the existing Princeton Apartments tower and the proposed residential tower is 24m.

The plans submitted in relation to the Stage 2 DA propose a setback of less than 12m (11.5m<sup>1</sup>) from the southern property boundary above RL 58.75. Below RL 58.75, a 0m setback is proposed.

In this regard, the statement in the Architectural Design Statement (Appendix E to the EIS) that “*The SSDA envelope proposes a 12m setback to Princeton Apartments to the south, measured to the glazing line, which is complying with minimums required under the ADG and consistent with the approved building envelope*” is incorrect as a minimum setback of **24m** is required to be provided to the southern site boundary in order to achieve a compliant building separation between the proposed OSD and Princeton Apartments.

In its current form, the proposed development is inconsistent with the ADG and therefore, is non-compliant with Condition B3(h). Therefore SSD-10376 cannot be approved in its current form.

Section 4.24 of the Environmental Planning and Assessment Act 1979 (EP&A Act) relates to concept approvals and subsequent DAs. Relevantly, section 4.24 requires the following [**bold text is our emphasis**]:

*4.24 Status of concept development applications and consents*

- (1) The provisions of or made under this or any other Act relating to development applications and development consents apply, except as otherwise provided by or under this or any other Act, to a concept development application and a development consent granted on the determination of any such application.*
- (2) While any consent granted on the determination of a concept development application for a site remains in force, the determination of any further development application in respect of the site **cannot be inconsistent with the consent for the concept proposals for the development of the site.***
- (3) Subsection (2) does not prevent the modification in accordance with this Act of a consent granted on the determination of a concept development application.*

Pursuant to section 4.24(2), SSDA -10376 cannot be inconsistent with the concept approval, including the conditions of the consent issued in relation to the concept. Given the proposed development does not comply with conditions B3(e) and B3(h) of the concept approval, DPIE is not able to determine the current application.

Notwithstanding, even if the OSD development was proposed to be used for commercial purposes, it is considered that the **maximum** building separation requirements of the ADG should be applied as the impacts on the amenity of residents in the Princeton Apartments would be similar if the separation between the Princeton Apartments building and a commercial tower was less than 24m.

Whilst it is appreciated that in a ‘greenfield’ situation the building separation controls in Part 2F of the ADG would be shared between developments (i.e. – in the case where a 12m building separation is required, each new building would be setback 6m from the common boundary for the first 4 storeys, with the separation increasing as the buildings increase in height) given that the Princeton Apartments building cannot provide a setback from its northern boundary it is incumbent on the proposed development to provide the required building separation as a minimum.

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<sup>1</sup> The documentation submitted with the modification application (SSD-8876 MOD 2) indicates that the separation will be 11.5m to the outer face of the proposed façade treatments along the southern elevation and 12m to the glazing.

As result of the non-compliant building separation, the amenity of residents of Princeton Apartments will be adversely impacted.

The amenity issues associated with the reduced building separations is discussed below.

### **3.0 Loss of Solar Access – Princeton Apartments**

For the purposes of considering impacts on solar access to apartments within Princeton Apartments as a result of proposed development, we have reviewed Appendix E.2 of the Environmental Impact Statement (EIS) prepared for SSD -10376 – *Shadow analysis Report* prepared by Walsh<sup>2</sup> Analysis.

Part 4A of the ADG relates to solar and daylight access.

Design Criteria 1 requires:

*Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter in the Sydney Metropolitan Area and in the Newcastle and Wollongong local government areas.*

Table 2 in this report details that 54 of the 116 (46.5%) apartments within Princeton Apartments currently receive 2 hours of solar access in mid-winter.

Relevantly, Objective 3B - 2 of the ADG requires that the overshadowing of adjoining properties is minimised. The design guidance criteria of Objective 3B-2 states the following:

*Where an adjoining property does not currently receive the required hours of solar access, the proposed building ensures solar access to neighbouring properties is not reduced by more than 20%.*

Table 2 also notes that only 6 of the 116 Princeton Apartments (or 5%) will receive 2 hours of solar access in mid-winter between 9am and 3pm once the OSD development is constructed.

Therefore, in relation to solar access, the proposed OSD is contrary to Condition B3(h) as the percentage of Princeton Apartments that will receive the required amount of solar access does not comply with the design guidance criteria as set out in Objective 3B – 2 of the ADG.

The following is also included as a design guidance criterion under Objective 3B-2 in the ADG:

*If the proposal will significantly reduce the solar access of neighbours, building separation should be increased beyond minimums contained in section 3F Visual privacy.*

The Walsh<sup>2</sup> Analysis report acknowledges that *the overshadowing impact of the proposal reduces this proportion [being the proportion of Princeton Apartments dwellings receiving the required 2 hours of solar access in mid-winter] to 6/116 (5.2%), which clearly cannot be said to simply conform with the ADG Design guidance.*

This is an unambiguous admission that the development does not satisfy condition B3(h) of the concept plan approval.

The Walsh<sup>2</sup> Analysis report endeavours to justify the impacts on solar access to Princeton Apartments dwellings however in response to the rationale as set out in the Walsh<sup>2</sup> Analysis report, the following comments are provided (Walsh<sup>2</sup> Analysis (W<sup>2</sup>A) report justification in italicised text):

*W<sup>2</sup>A: The proposed building envelope is a relatively slim tower form.*

Comment:

The slimness of the tower form is a matter of opinion and the proponent has not identified the benchmark against which its relative 'slimness' has been measured.



For example, southern elevation of the tower at Level 08 is approximately 29.4m in length which is approximately 78% of the site width at the same point. It is difficult the fathom how this could be described as 'slim'.

*W<sup>2</sup>A: We observe that the ADG is a guidance document, not a statutory standard, and is to be applied with discretion.*

Comment:

Condition B3(h) of the consent issued in relation to SSD-8876 requires compliance with State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development (SEPP 65) and the accompanying Apartment Design Guide (ADG) for a residential scheme.

The proposed development does not comply with the ADG criteria with respect to solar access to the Princeton Apartments (nor does it comply with the solar access criteria for the proposed development) and therefore SSD-10376 cannot be approved based on the current design.

*W<sup>2</sup>A: The overshadowing impact on Princeton Apartments is effectively insensitive to the height of the proposal.*

Comment:

It is not possible to confirm if this statement is correct as a scheme for the OSD with reduced height (that would maintain a minimum of 48% of Princeton Apartments receiving the required 2 hours of solar access between 9am and 3pm in mid-winter) has not been provided.

*W<sup>2</sup>A: It was determined that Princeton Apartments compliance is only marginally sensitive to the size of the setback on the eastern boundary, and insensitive to the setback on the western boundary.*

Comment:

There has been no sensitivity testing to ascertain whether there would be any improvement in terms of solar access to Princeton Apartments if the building separation was increased to 24m and whether the increased separation combined with some modulation to the south eastern corner of the proposed building would result in a further increase in apartments receiving solar access.

*W<sup>2</sup>A: If we are to include habitable rooms in the figures, Princeton Apartments would drop from 48.3% compliance from 8am – 4pm down to 33.6% which is only a change of 14.7%.*

Comment:

The solar access provisions of the ADG (Part 4A) explicitly require solar access to be assessed based on apartments in a building receiving a minimum of 2 hours of direct sunlight between 9 am and 3 pm at mid-winter in the Sydney Metropolitan Area. Therefore, assessing the amount of solar access from 8am to 4pm is irrelevant.

Furthermore, Objective 4A-1 of the ADG requires the solar access to be to the living rooms and private open spaces not 'habitable rooms' (which could include rooms other than living rooms).

The EIS also notes that if the ADG allowed for all habitable rooms affected by the development (rather than just living rooms) to be included in the solar access calculation, and the time during which solar access could be calculated was extended to be from 8am to 4pm in mid-winter in CBD environments, the reduction in solar access to Princeton Apartments would be only 14.7%.

However, given that the ADG does not make a distinction between a development within a CBD environment and a development within another metropolitan location, the contingency argument as set out in the EIS is irrelevant.

And the development's compliance with the approved building envelope (being the envelope approved under SSD-8876) must also be considered in the context of the conditions of consent issued for SSD-8876 and in particular Conditions B3(e) and B3(h).

It is a meaningless argument to suggest that due to lack of setback of Princeton Apartments from its northern boundary and the permissible density at the city location, achieving strict compliance with ADG solar access provisions is not a reasonable expectation. This statement fails to acknowledge that the Princeton Apartments building is an approved development that has been constructed in accordance with the approved plans.

The ADG provisions are in place to protect existing approved development and the amenity of residents in those existing approved developments. It is nonsense to suggest that the amenity of residents of Princeton Apartments should be compromised on the basis that their approved building does not have a setback to its northern boundary.

Based on the fact that the number of apartments within Princeton Apartments that currently receive a minimum of 2 hours of solar access in mid-winter does not meet the 70% benchmark as required by the ADG, **any** development on the adjoining property that reduces the number of apartments in the Princeton that receive at least 2 hours of solar access is not compliant with the ADG and should not (and cannot) proceed.

The architectural design statement (Appendix E1 to the EIS) identifies that northern facing windows in Princeton Apartments are typically secondary windows. This statement is incorrect as a number of north facing apartments in the Princeton building have north facing windows in the main living areas and bedrooms, and therefore solar access to these windows is a critical consideration.

As it is currently designed the proposed development is inconsistent with Condition B3(e) of the consent issued in relation to SSD-8876 as it has not been designed to *minimise solar impacts to the living rooms of Princeton Apartments*. It must also be emphasised that changing the development from a residential development to a commercial development would still fail to achieve compliance with Condition B3(e), due to the significant impacts on the solar access to Princeton Apartments.

The proposed development is also inconsistent with Condition B3(h) as it does not achieve compliance with the ADG and, accordingly, cannot be approved in its current form.

#### **4.0 Solar Access – Proposed Development**

According to the Walsh<sup>2</sup> Analysis report, only 50.9% of the dwellings within the proposed development will achieve the required 2 hours of solar access between 9am and 3pm in mid-winter. And even if the time for calculating solar access is extended from 8am – 4pm (notwithstanding that this is contrary to the ADG), the proposed development still fails to comply with the ADG benchmark of 70% of apartments receiving a minimum of 2 hours of solar access in mid-winter.

The Walsh<sup>2</sup> Analysis report acknowledges that the proposal does not meet the ADG criteria but suggests that the aim of Objective 4A-1 is satisfied, in that the number of apartments receiving solar access is optimised.

The provisions of Condition B3(h), however, are very explicit, in that the proposed development must achieve compliance with the ADG criteria, not just satisfy the objectives. The EIS also acknowledges that the proposed development does not comply with the solar access provisions of the ADG.

On this basis, the proposed development cannot be approved in its current form.

## **5.0 Privacy Impacts**

Due to non-compliant building separation, dwellings in Princeton Apartments will suffer from a loss of both visual and acoustic privacy.

A series of louvres are proposed to be installed along parts of the southern elevation of the proposed development. However it is noted that it is not proposed to provide louvres to the windows of the living rooms/dining rooms or the balconies that have an interface with the southern elevation and therefore there will be a significant loss of privacy for residents of Princeton Apartments.

Furthermore, the so-called 'architectural embellishments', being the proposed 450mm articulation zone of the southern façade, will result in a reduction in the building separation (to 11.5m). The louvres are proposed to be provided within this articulation zone. However, rather than providing these features within the approved building envelope, the proponent is seeking to modify the approved concept proposal to further expand the building envelope to provide the 'architectural embellishments' and privacy louvres – refer SSD-8876 MOD 2.

The proponent claims that this modification to the building envelope will *have a negligible built form impact compared to the approved building envelope as it will have limited visibility from the public domain. A 12m building separation, designed in compliance with the apartment design guidelines is maintained to the glazing line on the southern façade.*

Any architectural embellishments to address the built form outcomes of the building (and the conditions of the concept approval) should be wholly contained within the approved envelope. When considered in isolation, the individual embellishments are reasonably small but when combined with the overall height of the building, they will make a significant contribution towards the overall gross floor area of the development. For these reasons, we submit that no modification to increase the approved building envelope should be permitted. There is also the potential for envelope 'creep' to occur if the concept approval is modified to allow for a larger building envelope.

As previously noted however, it is contested that the proposed building separation (which, as a result of these architectural features, will be less than 12m) does not comply with the ADG criteria and therefore the proposal is contrary to Condition B3(h).

The proposal provides for operable window openings along the southern elevation (presumably to achieve the cross-ventilation requirements of the ADG). The provision of these windows will, as a result of the reduced building separation, impact on the acoustic amenity of residents of Princeton Apartments.

The reduced separation between the proposed OSD and Princeton Apartments is a major contributor to the potential loss of privacy. The reduced separation will also result in a sense of oppression which is associated with a sensation of reduced privacy for residents of Princeton Apartments.

## **6.0 Level 6 Communal Open Space Area**

The proposal includes a communal open space area on Level 6. This is proposed to be setback less than 1m from the southern boundary of the site (i.e. – the common boundary between the site and Princeton Apartments). This communal open space area contributes approximately 200sqm to the minimum 427sqm of communal open space required to be provided on the site.

Not only is the proposed setback contrary to the building setback/separation criteria in the ADG, the provision of a communal open space area immediately adjacent to the Princeton Apartments building will result in significant acoustic impacts on Princeton Apartment residents.



## 7.0 Sustainability

As noted in **Section 3.0** of this submission, the proposed development will result in a significant reduction in solar access and daylight lux levels to dwellings in Princeton Apartments to the extent that residents will likely be required to rely on artificial lighting and heating.

This outcome is not only poor from a sustainability perspective, it is also contrary to the intent of the solar access provisions of the ADG. In this regard, in relation to solar access the ADG notes the following:

*Solar and daylight access are important for apartment buildings, reducing the reliance on artificial lighting and heating, improving energy efficiency and residential amenity through pleasant conditions to live and work.*

Again, and as previously noted, this is a further example of the proposed development's non-compliance with the ADG and, as a consequence, non-compliance with Condition B3(h) of SSD-8876.

In our previous submission (in relation to SSD-8876) we advised that Princeton Apartments was investigating options for alternative, renewable power sources, including solar panels. If the OSD proceeds in its current form, it will negate the opportunity for the Princeton to install solar panels as an alternative source of power generation, further impacting on sustainability.

## 8.0 Ventilation

The reduced separation between the proposed OSD and Princeton Apartments will reduce opportunities for Princeton Apartments to access north-easterly breezes. This will result in greater reliance on artificial cooling, resulting in reduced sustainability.

The aims of the building separation provisions of Part 2F of the ADG note that building separation assists with visual and acoustic privacy, outlook, natural ventilation and daylight access.

## 9.0 Shadow Impacts on Hyde Park

Based on the information provided in the application, it appears that the building envelope of the proposed OSD complies with the sun access plane controls contained in clause 6.17 of Sydney LEP 2012. Notwithstanding, one of the objectives of Clause 6.17 is *to ensure that buildings maximise sunlight access to the public places set out in this clause*.

A review of the overshadowing plans included with the architectural plan set at Appendix D to the EIS submitted with the DA indicates that there will be additional overshadowing of Hyde Park at 2.30pm until 3pm in mid-winter.

Given that the building envelope will result in additional overshadowing within Hyde Park, it is not consistent with the outcomes envisaged in Clause 6.17.

## 10.0 View loss

The positioning of the tower of the proposed OSD results in a significant narrowing of the view corridor from dwellings in Princeton Apartments to the north east and a complete loss of view from north facing apartments. The built form of the proposed OSD is significantly larger than the maximum 18m depth recommended in Part 2E of the ADG.

Views from Princeton Apartments could be less affected if the footprint of the tower was modified and the position of the tower was amended to comply with the ADG minimum building separation requirements.

## 11.0 Wind Impacts

The wind assessment (Appendix O to the EIS) does not appear to have assessed the impacts of the proposed development on the Princeton Apartments, including the impacts on the useability of balconies and the impacts resulting from the reduced building separation.

## Conclusion

On behalf of the Owners of SP51077, we appreciate the opportunity to review the development application for the OSD for the Pitt Street south Sydney Metro. As noted in the introduction, this submission relates to both SSD-10376 and MOD 2 to SSD-8876. We understand that individual owners of apartments within the Princeton building will also be making their own submissions in relation to these applications.

The fundamental issue with the proposed development is centred on the non-compliance with the ADG, and in particular, those provisions relating to solar access and building separation.

The aims of the building separation provisions of Part 2F of the ADG note that building separation assists with visual and acoustic privacy, outlook, natural ventilation and daylight access.

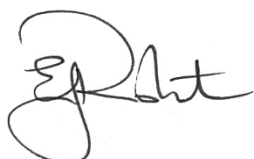
The ADG provisions relating to solar access require a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter.

In its current form, the proposed development cannot be approved due to the non-compliance of the proposal with the conditions of consent of the concept plan approval, specifically Condition B3(e) which requires the development to be designed to minimise solar access to the living rooms of Princeton Apartments and B3(h) which required the development to achieve compliance with the ADG.

We look forward to the opportunity to review an amended development proposal that is compliant with the conditions of the concept plan approval and specifically a proposal that complies with Conditions B3(e) and B3(h) of the concept plan approval.


Should you have any questions regarding the matters raised in this submission, please do not hesitate to contact Ellen Robertshaw of DFP on 9980 6933.

Yours faithfully



**ELLEN ROBERTSHAW**  
**DIRECTOR**

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Reviewed:  \_\_\_\_\_