

Ben Shepherd  
82/308 Pitt Street  
Sydney NSW 2000

30 June 2020

NSW Department of Planning and Environment  
320 Pitt Street,  
Sydney NSW 2000

Dear Sirs,

**RE: Sydney Metro City & Southwest – Pitts Street (South) Development application for Over Station Development – SSD 10376 and SSD 8876 MOD 2**

I write to express my significant concerns and objection to the proposed SSD 10376 and SSD8876 Modification 2.

I live in the adjacent Princeton building located at 304-308 Pitt Street. The proposal represents a gross over development that will impact my living amenity through the loss of solar light, privacy, sustainability and views with substantial overshadowing of my living area which will also be experienced by the majority of other owners in the building.

I was shocked and disappointed to see that no apparent effort has been made by the Applicant to address fundamental non-compliance issues and no attempt to comply with the requirements imposed by the SSD 8876 concept development approval ("Concept Approval").

Despite the Secretary's Environmental Assessment Requirements ("SEAR") clearly outlining that the Applicant was to address all Environmental Planning Instruments ("EPI") including, but not limited to SEPP 65 – Design Quality of Residential Flat Development, the Apartment Design Guide ("ADG") and Sydney LEP 2012 and demonstrate consistency with Concept Approval, the applicant has clearly decided not to address the aforementioned requirements or has concluded that they simply will not comply.

I would also like to note the numerous difficulties faced by myself and my neighbours in lodging submissions. Firstly it was extremely inconvenient to have the exhibition period take place during the busiest month of the year, being the end of financial year period. In addition to this I have experienced errors in the Planning Portal where accounts could not be verified to allow users to lodge submissions online. This issue was finally fixed midday on 30 June 2020 being the last day before the exhibition period ended. Prior to this I attempted to contact the Department of Planning via the contact form on the application website which also returned an error. Further on the Planning Portal the Submissions Close date suggests users have one extra day to lodge submissions online. I am greatly concerned that a number of people are unable to lodge submissions due to the failure of these systems, or that they will attempt to lodge submissions after the exhibition period has ended.

**Overshadowing and solar access**

As stated above it is a clear SEARS requirement that the Applicant must comply with SEPP 65 and the accompanying ADG. In addition part B3(e) of the Concept Approval conditions state "*the articulation of built forms be design to minimise solar impacts to the living rooms of Princeton Apartments*" and part B3(h) requires the development application shall "*achieve compliance with the requirements of State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development and the accompanying Apartment Design Guide.*"

The application does not comply with section 3B of the ADG and contemplates huge, unacceptable overshadowing effects on Princeton. According to the applicant's Shadow Analysis Report 6 out of 116 apartments (5.2%) in Princeton will receive the required access to sunlight as per the ADG if the development is approved. 48 people's homes will be hugely affected by loss of solar access which represents a 41.4% reduction. According to the ADG a proposed new building in these circumstances should not reduce solar access to more than 20% of neighbouring properties. The applicant's proposal has more than double the permitted reduction in solar access under the ADG.

Objective 3B-2 of the ADG states that "*if the proposal will significantly reduce the solar access of neighbours, building separation should be increased beyond minimums contained in section 3F Visual privacy*" and "*Overshadowing should be minimised to the south or downhill by increased upper level setbacks*". The Applicant has clearly ignored both these requirements. The mere fact that the proposed development steps down from east to west in response to the sun access plane does not excuse the Applicant from the upper level setback requirement.

The Applicant has made irrelevant assertions that the development would comply with the ADG if the metrics were changed to include measurements of all habitable rooms from 8am to 4pm demonstrating a complete lack of regard to design rules and SEARS requirements.

Part A24(c) of the Concept Approval conditions provides that the Sydney Metro Pitt Street South Over Station Development Design Guidelines shall be revised so articulation of the built forms "*should be designed to maximise solar access to living rooms of Princeton Apartments between 9am - 3pm at winter solstice.*" A 41.4% reduction clearly does not equate to maximising solar access. What it does equate to is 48 families suffering from their sunlight being forcefully removed and the associated physical and mental health issues as a direct effect of this development. I have no doubt that residents will hold the Applicant and Department of Planning liable for these issues if the application is approved in its current form and I will be the first to support such actions.

The application also fails to take into account the impact of light scatter, which has resulted in a gross underestimation of the negative impacts on Princeton.

Solar access has clearly not been enhanced as required by clause 4.2.3 of the City of Sydney DCP 2012. It should also be noted again, as was originally noted in our objections to stage 1 of SSD 8876, that this development will negate the opportunity for Princeton to install solar panels as an alternative source of power generation which was being considered prior to the receipt of the development applications. Our building was actively considering ways to be more environmentally responsible which will not be possible if the development proceeds in its current form.

The application must be amended to ensure neighbours do not lose their valuable winter sun.

### Separation

The application does not comply with part 2F of the ADG which is a requirement of SEAR and Concept Approval conditions. Part 2F states that the minimum separation distances for buildings is as follows:

1. Up to 4 storeys:
  - a. 12m between habitable rooms; or
  - b. 9m between habitable and non-habitable rooms; or
  - c. 6m between non-habitable rooms.
2. 5 to 8 storeys:
  - a. 18m between habitable rooms; or
  - b. 12m between habitable and non-habitable rooms; or
  - c. 9m between non-habitable rooms.
3. 9 storeys and above:

- a. 24m between habitable rooms; or
- b. 18m between habitable and non-habitable rooms; or
- c. 12m between non-habitable rooms.

The proposed separation distance up to level 6 of the development is zero which is non-compliant with above. The maximum proposed separation of 12m is also non-compliant. In accordance with the above the development should be required to be separated by 24m at 9 storeys and above as there are habitable rooms on the northern boundary of Princeton and on the southern boundary of the development. Non-compliance here also extends to part B3(h) of the Concept Approval conditions.

Where there are existing, approved buildings in place any new development must comply with minimum separation requirements which the Applicant has failed to do. The ADG state that separation between buildings contributes to the urban form of an area and the amenity within apartments and open space areas. Furthermore it states this is a separation requirement not a setback provision therefore full minimum separation distances must be enforced. Inadequate separation will lead to a range of undesirable issues including overshadowing, loss of privacy, loss of views, increased acoustic impacts, reduced access to airflow increasing reliance on artificial cooling, reduced sustainability and the risk of fires spreading.

I was surprised to learn that the Applicant has made a separate application to modify the Concept Approval to further reduce separation distances to 11.55m between the development and Princeton, along with allowances to build outside the Concept Approval envelope on every side of the development. This is despite the Applicant stating at multiple occasions throughout the SSD 10376 that they would be maintaining 12m separation distances. They have clearly contradicted themselves here and are guilty of making false claims in SSD 10376. It is evident that the Applicant has little regard for separation requirements and will build as close to Princeton as possible. I doubt if approved the architectural embellishments the Applicant mentions will be maintained at 45cm outside the concept envelope at every level.

SSD8876 Modification 2 is also in clear breach of part A17 of the Concept Approval conditions which states that *“minimum setback to the east/rear of the site for the OSD is to be a minimum of 3 metres above podium (RL71) to provide additional solar access to Princeton Apartments.”*

The application must be amended to 24m at 9 storeys and above and from 12-18m up to 9 storeys in accordance with ADG.

### Sustainability

The practical effects of the loss of solar access include increased reliance on artificial heating and lighting which will increase Princeton's carbon footprint and reduce sustainability. Reduced separation will also lead to an increase in artificial cooling in the summer months as north-easterly breezes are blocked. Sustainability is consistently championed throughout the proposal but the Applicant evidently lacks the ability to give it any proper consideration.

It is quite baffling that the Applicant's own development fails to meet basic sustainability measures and ADG requirements. Only 50% of new apartments in the proposed development will achieve the required 2 hours of mid-winter solar access to living rooms between 9am - 3pm under the ADG. Over 15% of new apartments will receive no solar access at mid-winter. How this can be described as a sustainable development is beyond comprehension and is largely due to the inherent unsuitability of the site to a high rise residential development with small, tightly-packed apartments. I cannot imagine any person would willingly live in a 58 square meter apartment with no access to natural light.

### Loss of views and amenity

The development in its current form would cause significant loss of views and amenity to Princeton and other neighbouring apartment blocks. At Princeton a large proportion of apartments would lose all views

to the northern aspect which include Sydney Harbour water views from both the bedrooms and living rooms.

There does not appear to be any consideration given to the numerous lower apartment floors in Princeton having no separation between the plant and equipment floors in the development. Also no consideration is given to the Princeton communal areas which include the outdoor bbq area, landscaped area and gym proposed to being put immediately adjacent to multiple floors of plant and equipment with no separation. The amenity of residents trying to enjoy the only outdoor communal space in Princeton will be devastated by an adjacent sheer wall blocking out all light and housing plant machinery and equipment supporting 234 apartments. The Applicant has completely failed again to even acknowledge the amenity of residents in this regard as required by SEARS and the Concept Approval conditions of consent.

Part A24(d) of the Concept Approval conditions provides that the Sydney Metro Pitt Street South Over Station Development Design Guidelines shall be revised so “*design and articulation of roof forms must consider retention of view to St Mary’s Cathedral from Century Tower*”. The Applicant’s Visual and View Impact Assessment shows that this requirement has been ignored as Century Tower’s current views of St Mary’s Cathedral will be removed entirely. Again this represents a complete failure by the Applicant.

The development should be set back appropriately in accordance with planning requirements and the amenity of Princeton and Century Tower properly respected.

#### Overshadowing of Hyde Park

It is quite shocking that a new state significant development would propose to add considerable additional overshadowing to Hyde Park. The Shadow Analysis report provided by the Applicant clearly shows additional overshadowing over Hyde Park as a direct result of the proposed development. In no circumstances should this be allowed and an independent study should be conducted to verify the extent of this overshadowing, especially given the obvious bias demonstrated in the Applicant’s report which concludes that overshadowing is foreseeable and reasonable in the circumstances. Hyde Park is an extremely precious inner city open space that is used greatly by residents and visitors.

This park must be protected, as it is increasingly common for inner city residential buildings to have no private open space. Remaining access to sunlight must be protected especially in the vicinity of the ANZAC memorial where the proposed development casts all of the additional shadowing. To allow incidental overshadowing would set a dangerous precedent whereby the whole park could eventually be covered in shadow. This represents additional non-compliance with Sydney Local Environmental Plan 2012 and will have a considerable detrimental impact on public amenity. We have the chance to do the right thing and protect this landmark site. There can be reasonable development that casts no additional shadowing onto Hyde Park affecting the roughly 500,000 usual daily visitors and local residents.

#### Privacy

Princeton is a major residential development therefore privacy is a very important factor. Due to the proposed development not observing adequate separation distances this issue is amplified further.

The Applicant proposes to install louvres along the southern façade of the development however they do not extend to cover the windows of living or dining rooms which will have direct visual line of sight into living rooms of apartments at Princeton. Further as the windows are operable I question the effectiveness of protecting privacy and this will inevitably lead to reduced separation between the development and Princeton in respect of the operable portion of the window coverings.

The Applicant should know that privacy concerns are extremely important in living areas and liveable space when compared to bedrooms. The failure to adequately address privacy concerns is a major oversight.

## Heritage and history

In my opinion the proposed development spectacularly fails to respect the heritage of the site and surrounds. The development site is surrounded by heritage buildings such as the Edinburgh Castle Hotel, Castlereagh Street Fire Station and the Sydney Water Board. The design represents a basic, uninspired high rise tower with the only apparent effort made to compliment heritage items being the unsightly colour scheme which appears dated in comparison to modern developments. The tall vertical columns, minimal glass frontage and vertical balustrades blocking the windows make it look like a prison block. I understand why the build to rent model is being marketed to international students but this is a major mistake in a prestige corner location. We have modern, aesthetically pleasing developments in The Castle and Greenland nearby. This important heritage site should not be used to experiment with a new build to rent model in the Australian market.

The Edinburgh Castle Hotel has operated from the site from 1885. The development surrounds the corner site of the hotel and does not propose adequate setback from the boundaries of this heritage building. At a proposed 39 storeys the development dwarfs the 3-storey Edinburgh Castle Hotel, which will remove any visual historical impact the hotel currently offers. The proposed envelope is an unusual, ugly shape due to the poor selection of the subject site, which wraps around two sides of the Edinburgh Castle Hotel.

In addition The Princeton building has considerable architectural merit. A large building mass in such close proximity would substantially detract from its quality and impact.

The impacts on the heritage significance of the surrounding buildings would be adverse and entirely unnecessary in the circumstances. We should resist the development of high rise slums full of tiny rental apartments crammed full of occupants causing all manner of overcrowding related problems which are evident even in city buildings where there are owners present to monitor breaches of apartment occupation limits.

## Response to assertions in development application

The application clearly does not comply with the SEAR, EPI, State Environmental Planning Policy No 65, Sydney LEP 2012 and the ADG. It also does not comply with the Sydney Metro Pitt Street South Over Station Development Design Guidelines.

At various points the Applicant states that the development falls within the approved concept envelope as rationale for its non-compliant position, despite the fact it has applied to modify the Concept Approval to allow the Applicant to build outside the envelope by 25cm on the eastern and western sides, 50cm on the northern side and 45cm on the southern side. This is a clear contradiction and negligence on the part of the Applicant.

SSD8876 Modification 2 states the *“2500mm projection to the eastern and western facades is unlikely to be perceptible from the public domain or adjacent properties.”* When there is a 39 storey building blocking out natural light a further 50cm protrusion makes a considerable difference.

The Scoping Report for SEARS states that *“Princeton Apartments do however have bedroom windows facing north towards the site”* when in fact there are both bedroom and living room windows facing north in Princeton. It does however correctly state that EIS should *“assess the proposed residential accommodation against the requirements of SEPP 65 and the ADG”* - reference to SEPP 65 and the ADG being a requirement which by definition must be complied with, but then precedes to treat compliance as optional.

The Applicant's Shadow Analysis Report describes the overshadowing impact as *“effectively insensitive to the height of the proposal”* - this is clearly both incorrect and incompetent. It goes on to describe the proposal as a *“relatively slim tower form”* - at an approximate 1009 square metre footprint I would argue that it is far from a slim form. Even more worryingly it states the *“ADG is a guideline document, not a statutory standard, and is to be applied with discrimination”* despite the statement made in the Scoping

Report for SEARS referred to above. The Applicant appears to not appreciate the ADG is a SEAR and Concept Approval requirement and the use of the word “*discrimination*” is perhaps a Freudian slip.

The Environmental Impact Statements is littered with inaccuracies and questionable assertions. It states that “*Additional overshadowing is acceptable in the circumstances of the site...given the inherent vulnerability to shadowing*” which demonstrates the Applicant’s belief that disregarding planning controls is acceptable. The Applicant asserts that it “*minimises impacts on neighbouring residential development, in particular through minimising overshadowing to 48 apartments*” and “*while the proposal does not comply with the ADG...overshadowing has been minimised where possible*” - there is no evidence of overshadowing being minimised in any way and in fact the effect is entirely to the contrary.

According to the Applicant the “*proposal achieves design excellence outlined through the Sydney metro design review and design excellence process*” despite the fact it is entirely non-compliant. Interestingly the Applicant later admits that “*achieving strict compliance with ADG solar access provisions is not a reasonable expectation*” - these are not expectations but requirements of SEARS and Concept Approval conditions of consent. The risk assessment of overshadowing is defined as “*Significance*” 3/5 and “*Manageability - Substantial*” with the Risk Level assessed as “*Medium*” which is a clear under-assessment of the devastating overshadowing effects on Princeton. The Applicant’s belief that the “*proposal will not have any unacceptable environmental impacts*” is demonstrably incorrect as discussed above.

The Architectural Design Report alleges that “*all apartments in Princeton also have a primary orientation of east/west, resulting in impact to solar access being negligible*” - a 41.4% reduction of solar access is not negligible.

The Applicant raises the view sharing principle in Tenacity Consulting v Warringah in its Visual and View Impact Assessment but then disregards them as it concludes that view loss is reasonable. Interestingly the first step in Tenacity is an assessment of neighbouring views being affected, with water views and iconic views to be valued more highly. 100% of Princeton’s Sydney Harbour water views directly to the north will be blocked by the development as there are northerly facing windows with water views in the bedrooms and living rooms in the apartments on the north side of the building. The development will also entirely block out the view of St. Mary’s Cathedral for residents in Century Tower. On both counts this is completely unacceptable.

In the Response to Design Guidelines document it states that the “*development will have a minimal overshadowing impact on Hyde Park from 2:30pm onwards. The impact on the Park is considered negligible as the main hours of active Park use by the public is between 12pm to 2pm.*” Is the Applicant seriously suggesting that Hyde Park is hardly used out with these hours and that overshadowing should be permitted any other times? Also “*setbacks...have been complied with...to ensure the privacy of the surrounding residential apartments...will not be reduced or impacted*” - firstly, setbacks are not the only issue affecting privacy and secondly they state they have ensured privacy will not be reduced or impacted which has not been achieved by the minimal measures taken to address privacy issues and failure to place louvres in living areas that will have a direct view into Princeton apartments.

The “*built form has been designed to allow for adequate sunlight and views for adjoining and surrounding properties*” by not complying with ADG and reducing 41.4% of apartments’ access to sunlight? By removing Century Towers’ views to St. Mary’s Cathedral which was a specific requirement of the Concept Approval conditions of consent?

“*Articulation of the building will continue to encourage solar access and visual privacy to adjacent buildings*” - encourage solar access by blocking all light?

“*The proposed OSD generally complies with the SEPP 65 and ADG requirements*” - I don’t think non-compliance can be described as “*generally complies*” by any stretch of language.

## Conclusion

As illustrated above the Applicant has failed to meet SEARS requirements and the Concept Approval conditions of consent in relation to solar access to Princeton, loss of residential views, loss of residential privacy, ADG building separation, overshadowing to Hyde Park and heritage impacts.

There are significant impacts on the amenity of Princeton residences and the general public as a direct result of the applicant's non-compliance with planning requirements.

I strongly object to the proposed Over Station development at Pitt Street South Metro Station and recommend that certain elements of the proposed development be reduced including an increase in building separation and a reduction in height. All requirements should be followed including separation limits, protection of solar access, privacy and amenity to be properly respected and no overshadowing of Hyde Park. I would expect to see a suitable development application in accordance with the ADG and all other applicable planning requirements. The Sydney Metro Pitt Street South Over Station Development Design Guidelines and Sydney Metro Design Excellence Strategy should also be followed.

At a minimum the development application should be determined by an independent body to ensure it is considered on its objective merits and in accordance with applicable planning controls. These requirements should not have to be the subject of objections but the uniformly applied approach to all state significant developments.

We need a sensible approach to inner city planning to protect our beautiful city, take resident's amenity into account and preserve rare public open spaces.

I trust that the above will be taken into consideration when determining the current development application.