

THE PLANNINGHUB

by Hawes & Swan

22 April 2020

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Office of the Independent Planning Commission NSW
Level 3, 201 Elizabeth Street
SYDNEY NSW 2001

Dear Sir/Madam,

Written Submission (Objection) to Independent Planning Commission NSW - SSD-8993– SCEGGS Darlinghurst Concept and Stage 1 - On behalf of The Horizon, SP 58068, 184 Forbes Street, Darlinghurst

1.0 Executive Summary

I refer to written public notice received from the Office of the Independent Planning Commission NSW dated 2 April 2020 regarding the state significant development application for the development of SCEGGS Darlinghurst (SSD-8993). Located at 215 Forbes Street, Darlinghurst (**the Subject Site**).

This objection is written on behalf of The Owners Corporation of The Horizon, SP 58068, 184 Forbes St Darlinghurst (**our Client**), and should be read in conjunction with our original objection dated 3 April 2019 and our further objection issued in response to submissions (RtS) dated 13 December 2019. It is noted that our Client is located directly opposite the subject site to the east.

In our professional opinion the Department's Assessment Report is markedly incorrect and does not fully consider the implications of approving the proposed development.

We are of the opinion that IPC should **refuse** the application for the following reasons.

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- The assessment does not consider the significant heritage impacts resulting from the demolition of Wilkinson House and should not be supported.
- The Department has not appropriately considered the merits in the adaptive reuse of Wilkinson House. Given the school is prepared to spend \$62 Million with no increase in student numbers we believe that it remains feasible for the building to be further converted or facades retained.
- Refurbishment of Wilkinson House can create employment and as such there are additional economic benefits arising from retention of this heritage item which have been undervalued in the assessment.
- The assessment has not adequately addressed the benefits which would flow from the opening up St Peters Street. Therefore, the assessment should requirement revisited negotiations with Council in relation to the opening up of St Peters Street, which is a public and not a private road.
- The Department has not appropriately considered the Capital Investment Value of the proposed development.
- The Department has not had sufficient information to determine the appropriateness of traffic management operations as is required by the planning principle established in *Anglican Church Property Trust v Sydney City Council* [2003] NSWLEC 353 at 59.
- In the event that the application is approved, further conditions are required for on the ground activity and routine for use of traffic wardens and school staff as a mechanism for addressing traffic impacts, particularly if future projections reflect worsening traffic conditions.
- No conditions have been imposed to prevent avoidable delays in construction.
- In order to achieve a proper assessment of the application, the applicant should have specified what the roof space will comprise of from the outset, ensuring that materials are appropriate and that optimal levels of green infrastructure are incorporated into the proposal to assist with view impacts and also generate other positive benefits. At the very least, this should be conditioned at Stage 1.

2.0 Background

The Horizon is a significant stakeholder (Special Interest Group) in respect of this DA. The Horizon is a 43 storey tower comprising 243 residential apartments with a high (66%) owner occupier mix and approximately 400 residents calling the building home. Vehicular and pedestrian access is provided from Forbes Street, directly opposite the Subject Site. Apartments within the low rise of the building look onto Wilkinson House and Centenary Sports Hall. All apartments on the north, west and south side of the building look over the subject site with views towards the CBD.

It is noted that the proposal seeks approval for a Concept DA for the demolition of existing buildings, three new building envelopes for use as an education establishment and early education and care facility, on-site vehicular drop-off, and a concurrent first stage component for detailed works, being the demolition of Wilkinson House and detailed design and construction of one building within the Concept DA for an education establishment.

Whilst the assessment report provided by the Department of Planning, Industry and the Environment (**the Department**), states that the Department is satisfied that that the key issues have been appropriately addressed by the applicant, we believe that there are still a number of significant issues with the application which result in unacceptable impacts on our client. These issues should be considered by the Independent Planning Commission and include:

- The Demolition of Wilkinson House;
- Traffic Management;
- Design Excellence;
- Impact of Construction & Staging; and
- Green Roofs.

The following sets out a detailed assessment of the proposed development based on a review of the Department's Final Assessment Report, the Department's Recommended Conditions of Consent, the DA documentation, a view of the site and adjoining properties and a detailed review of applicable planning controls.

3.0 The Demolition of Wilkinson House

The Department has supported the applicant's preferred option, the demolition of Wilkinson House. In supporting this position, the Department is of the opinion that the demolition of Wilkinson House is warranted to provide an educational facility with learning spaces for the continued delivery of contemporary education, and to ensure the current and future education demands of the local community are met.

It should be noted that the applicant is wholly opposed to refurbishment or retaining the principle facades. Their reasoning for this is that the building is not suitable to retain as an education facility given the school's need for larger, flexible and contemporary learning spaces. Similarly, partial retention is considered not suitable due to poor thermal control and other structural issues and risks. This view has been supported by the Department, which concluded that the total demolition of Wilkinson House provides the most beneficial outcomes for the site and addresses the Education SEPP design quality principles.

It is our opinion that the Department has not fully considered the importance of the heritage item to the East Sydney Conservation Area and the community more broadly. As detailed below, the decision to approve demolition rather than adaptive re-use of Wilkinson House is a bad planning outcome and results

in a situation where private interests driven by operational requirements trump the value which heritage items provide to the community.

Comment

- Given the rich historical context of the site, and its importance in terms of safeguarding and enriching the past and future as well as contributing to the cultural identity of the community, we are not in support of the proposal to demolish Wilkinson House.
- In the assessment report, the Department has considered Wilkinson House in isolation. The Department has relied on the applicant's contention that the demolition of Wilkinson House is necessary to ensure the continued delivery of contemporary education. However, the Department has not adequately addressed the fact that the applicant has failed to demonstrate that the demolition of Wilkinson House is the only viable option to enable the continued delivery of contemporary education. As conditioned by the Department, there is to be no increase in roll numbers. Subsequently, this does not justify the need for larger rooms. In the assessment report, the Department recognises that façade retention is possible and achieves better compliance, than currently exists, with BCA and Department of Education requirements. This is the preferred option for our client.
- The Department has not properly applied the State Government's Statement of Heritage Impact Guidelines. Where the demolition of a heritage building is proposed the heritage document is required by the guidelines to answer the following question:
 - Have all options for retention and adaptive re-use been explored?
 - Can all of the significant elements of the heritage item be kept, and any new development be located elsewhere on the site?

The department has not considered these questions and the applicant has not adequately applied the guidelines in the heritage impact statement. Of note, neither the Department nor the applicant has properly explored all options for adaptive reuse nor the option to locate additional classrooms elsewhere within the school.

- The current Gross Floor Area (GFA) of Wilkinson House is 1,161.9m². The GFA of the proposed administration building is 821m². A refurbished Wilkinson House has the clear potential to meet the future administration requirements of the school, whilst a reconfigured administration building could provide contemporary and flexible learning spaces, in line with the SCEGGS Master Plan, albeit on a slightly smaller scale than currently achieved at Wilkinson House. The use of 821m² for contemporary learning could deliver significantly enhanced outcomes over the demolition of Wilkinson House. The viability of this option has not been explored by the Department nor the applicant. As discussed above, this is required by the State Government's Heritage Guidelines.
- In consideration of sustainability and the principles of Ecologically Sustainable Development, the Department does not consider the extensive environmental and ecological benefits associated with

the adaptive reuse of Wilkinson House. There is an inherent lack of sustainability surrounding the option to demolish a building and construct of a new building in terms of resources used and waste generated which creates an unacceptable impact on the environment and burden on the planet. Adaptive reuse and refurbishment can offer advantages in responding to the challenge of a low carbon economy and resource depletion.

- There exists obligations under international, Commonwealth, State, Territory and local government heritage listings and legislation in respect of heritage retention and conservation. A range of community registers and listings also exist in support of heritage conservation. It is our opinion that the heritage assessment carried out lacks a sound understanding of heritage issues and appropriate knowledge and experience of construction and compliance issues, and that this does not reflect best practice with regard to conservation of Australian architecture.
- The Department's decision to support the demolition of Wilkinson House undermines the architectural contribution which the building provides to Sydney as a whole. Wilkinson House is an important architectural feature of interwar Sydney and was the first building designed by Emil Sodersten who also designed some of Sydney's most significant interwar residential and office use buildings including the *Werrington* and *Cheddington* in Potts Point and *Birtley Towers* and *Marlborough Hall* in Elizabeth Bay, the City Mutual Life Building located on the corner of Hunter and Bligh Streets and the QBE building located at 80 Pitt Street in the Sydney CBD. The loss of Wilkinson House would therefore mark the loss of the formative contributions to the Art Deco, Functionalist & Modern styles employed by Sodersten, which make a significant contribution to Sydney's built form and architectural history. From a planning perspective, this would abrogate the heritage values espoused by the *EP&A Act*.
- In relation to strategic context, the Department states that the proposal is appropriate '*as it is consistent with The Greater Sydney Plan: A Metropolis of Three Cities, as it proposes improved school facilities within a central mixed-use walkable location*'. However, Objective 13 of the Greater Sydney Plan aims to ensure that Environmental heritage is identified, conserved and enhanced and explicitly cites adaptive reuse as a means for achieving this objective. Again, the Department has considered the development in isolation and has not taken a holistic approach, which would better recognise the unacceptable heritage impacts of the proposed demolition of Wilkinson House.
- The demolition of Wilkinson House establishes a bad precedent, which may pave the way for the demolition of heritage significant items based on entirely operational purposes. In our opinion, this does not help to promote the sustainable management of built and cultural heritage, which is set out as objective f of section 1.3 of the *Environmental Planning and Assessment Act 1979 (EP&A Act)*.
- Given the significance of the site, the retention of the building's existing form is essential. The option to upgrade in order to achieve compliance with current standards or to be adapted for new use would ensure survival of the building and would achieve greater compliance with the relevant statutory and strategic planning instruments.

- The options analysis as assessed in the Department’s assessment report, lacks a cost analysis of the possibility for a more extensive refurbishment. There also lacks an assessment of the value of the current building in terms of its economic, social, cultural and intergenerational long-term benefits. Therefore, we believe that it remains feasible for the building to be further converted or facades retained. This is also in light of the fact the school has an available budget of at least \$50 million that could be put towards refurbishment as opposed to demolition of the existing structure and construction of a new building. Additionally, refurbishment of the building can create employment and as such there are additional economic benefits arising from retention of this heritage item which have been undervalued in the assessment.
- It is our opinion that the Department’s assessment relies too heavily on The NSW Department of Education (DoE) standards and Building Code of Australia Standards as a mechanism to by-pass the heritage significance of Wilkinson House. This constitutes a bad precedent for assessing the heritage value in contributory buildings and results in a situation whereby heritage significance can be disregarded through the application of unconnected guidelines and policies.
- It has not been stated nor conditioned by the Department that all works will be carried out over the holiday period meaning that during school time, classes will be indefinitely relocated. As such, it logically follows that there are acceptable options for alternative spaces to meet educational needs, albeit on a temporary basis.
- In our opinion, the Department has not properly considered the application of the two caselaw examples used by the applicant to support demolition of the heritage item. As discussed in our previous submission dated 13 December 2019, the cases provided are not relevant to the proposed development. In the first instance, of *Bunnings Properties Pty Ltd v Ku-ring-gai Council (No.2)* [2018] NSWLEC 19 the main contributing factor to support demolition related to financial burden for landowner in finding an appropriate tenant. This is completely unrelated to the proposed development, for which the main reasons that support demolition relate to a building that is not fit for contemporary educational purposes, where it is also asserted it is not structurally viable for adaptive reuse of the building.
- More notably, *Helou v Strathfield Municipal Council* [2006] NSWLEC 66 (*‘Helou’*) was incorrectly applied by the applicant. *Helou* has limited applicability to the current proposal in light of the reference to the unacceptable burden relating to cost resulting from structural safety issues, which in our opinion has not been adequately considered by the applicant.
- Additionally, given the applicant is willing to pay over \$50 million for construction of a new building, it can be assumed there are funds available for the adaptive reuse option if a more extensive costing for this was carried out.

- Furthermore, the planning principle established in *Helou* requires consideration of a six part test. The third question in *Helou* requires consideration as to whether the building is structurally unsafe. Neither the applicant or the Department made representation or determination that Wilkinson House is structurally unsafe. It stands to reason that the building in its current form is fit for use, as the applicant has not specified the building is unusable from a safety, functionality and construction point of view. Therefore, there still exists lifespan in the building. On these grounds, there is potential for refurbishment. It is our opinion that this option was not thoroughly enough explored on assessment. Therefore, correct application of the planning principle established in *Helou* would actually result in the retention of Wilkinson House.
- The Department’s position that the recommended conditions to manage the heritage impacts resulting from demolition will ‘ensure that the historical development of the site is identifiable in addition to persevering the existing character of the heritage buildings located on the subject site’ is untenable. The mere conditioning of heritage impacts does not fully acknowledge the loss of character impacts resulting from the demolition of Wilkinson House. Essentially the removal of Wilkinson House and replacement, as proposed, will have an adverse effect on the East Sydney Heritage Conservation Area which aims to maintain East Sydney’s inter-war period fabric.
- Condition C20 ‘Archival Photographic Documentation – Wilkinson House building’ does little to address the significant heritage loss resulting from the demolition of Wilkinson House.
- Condition E10 ‘Heritage Interpretation Plan’ and the requirement to incorporate interpretive information into the new Wilkinson House building does not offset the loss of the heritage item.
- It should be noted that we encourage the renovation of the 1833 Building Barham house which is proposed under the SCEGG’s 2040 Masterplan. We believe that the same the same outcome should be achieved for Wilkinson House.

Therefore, in our opinion there is no rationale, that can logically support the demolition of Wilkinson House. The Department’s decision to uphold the proposal in its current form will create an undesirable precedent for development in the locality, thereby endangering the long-term preservation of other heritage items to the expense of the community.



Figure 1: Photo taken from Horizon looking at Wilkinson House

Recommendation

It is recommended that Wilkinson House is adaptively re-used to ensure that the heritage fabric of the item is retained.

4.0 Traffic Management

The Department notes that traffic management is a major issue that needs to be addressed in the application.

In the assessment, the Department acknowledged that on-site car parking supply has a direct link to the amount of traffic generated by the development and its impact on surrounding roads.

The Department considered the key assessment issues to be:

- Car Parking
- Traffic generation and management
- Bicycle Parking

The Department considers that the proposal would have minimal impact on the surrounding road network and the performance of nearby intersections and concluded that the following conditions should be required:

- future detailed DA(s) include a detailed Traffic Impact Assessment (TIA), which considers the traffic generation and operational traffic impacts resulting from the detailed design of the development.
- future detailed DA(s) include a Green Travel Plan (GTP).
- the preparation and implement of a GTP prior to the occupation of the new Wilkinson House building.

Comment

- Traffic management is of critical concern to the determination. Of note, residents advise that SCEGGS staff provide minimal overview of traffic movements associated with student drop off and collection. Buses routinely double park and wait for extended periods with engines idling, all with no SCEGGS presence to effectively manage the activity. The conditions listed as B11-B15 do not require proper traffic management policies to be established.
- As the department has stated that traffic management is a major issue for consideration, the applicant should have been required to provide additional traffic management measures at this stage of the development in accordance with the relevant planning principle established in *Anglican Church Property Trust v Sydney City Council* [2003] NSWLEC 353 at 59 (*'Anglican Church*). In *Anglican Church* the Court held that in multi-stage applications, the information provided in Stage 1 should respond to all those matters that are critical to the assessment of the proposal. In our opinion, this warrants clear information on how the proposed development will manage traffic. In the absence of this, the Department did not have sufficient information to make an informed judgement in relation to proposed traffic management measures. Furthermore, conditions should be imposed at this stage of the development rather than at later stages in accordance with the planning principle established in *Anglican Church*.
- Whilst the preparation of a Green Traffic Plan has been conditioned, prior to the commencement of operation, the Green Traffic Plan should form a part of the application. The consent authority does not have access to sufficient information relating to how the school intends to act on the GTP. Given the current traffic oversight operations, this should be a requirement prior to approval. Based on current operations, conditions should be imposed that restrict the use of Forbes Street as a bus bay throughout school hours. Stronger conditions need to be imposed to ensure that arrangements for parking in Forbes Street are acceptable to our client.
- Given that the applicant has not submitted information relating to traffic impacts associated with after-hours uses, the Department has not had the chance to consider these issues and have therefore not been included in the assessment nor appropriately conditioned.

- The assessment only provides a superficial response to our client’s concern that existing arrangements create a propensity for parents to use our client’s porte-cochere for vehicle movements. As previously submitted, this remains a concern. In the absence of a detailed action plan for the Green Travel Plan to manage vehicular traffic, the Department has not appropriately considered the extent of traffic movement impacts on our client’s property.
- In previous submissions we raised concerns regarding the need to open St Peters Street permanently to better manage traffic that occurs outside of normal school hours. Whilst the Department does not consider it necessary to reopen St Peter’s street, we believe it is the responsibility of the applicant to proceed with negotiations with Council on this issue. It is our opinion that public assets should be in public hands, and not ceded to private interest for their private benefit.
- In previous submissions we raised concern regarding the use of traffic wardens and school staff to assist with pick-up and drop-off as we do not believe this process is consistently being implemented as a contributing mechanism to address traffic impacts. This again has not been adequately addressed nor conditioned by the Department in the assessment report.



Figure 2: Photo of Horizon’s Porte Cochere directly opposite SCEGGS (Source – Google)

Recommendation

The application should be refused on the basis that traffic management measurements, which are critical to the proposed development, have not been provided by the applicant nor considered by the Department.

5.0 Design Excellence

In response to public and Council submissions that raised concerns that the Capital Investment Value (CIV) calculations were underestimated so as to avoid the requirement for the applicant to undertake a competitive design excellence process as triggered by the State Environmental Planning Policy (Education Establishments and Childcare Facilities) 2017 (Education SEPP), the Department engaged an independent quantity surveyor (independent QS). The Independent QS estimated the CIV could be calculated to \$62,110,065 million (being \$12,735,865 more than the QS Report).

The applicant argued that the key variance between the CIV estimates is explained by different typical construction rates per m² being used and the amount of fit-out and detailed design specifications assumed by each report. Following review, the Applicant provided a minor update to CIV, increasing it by \$190,822 (to a total of \$49,565,022).

The Department accepted the Applicant's justification for the variances between the QS Report and Independent QS CIV calculations and concluded that the EIS QS Report CIV (\$49,565,022) is reasonable.

Comment

It is our opinion that the Department's assessment report does not give full weight to the discrepancy between the CIV provided by the independent QS and that provided by the applicant. As the independent QS reached a figure that is \$12,735,865 higher than the applicant's CIV the department should have considered the reasons for these variations in greater depth.

Recommendation

The IPC should reevaluate the CIV and make a final determination as to whether the creative design excellence requirements are triggered by the Education SEPP.

6.0 Impact of Construction & Staging

In previous submissions we identified rock breaking as a concern throughout the proposed excavation, specifically that it should be carried out over short periods with respite periods.

In its assessment of construction noise impacts, the Department noted that the Noise Report predicts the Stage 1 works have the potential to exceed the NMLs at Forbes and St Peters Streets by up to 12 dB(A) during demolition and up to 8 dB(A) during construction.

Furthermore, in response to submissions the Department recommended the following noise attenuation measures:

- a requirement to comply with the ICNG NMLs where feasible and reasonable.

- implementation of respite periods for demolition and construction works where works generate particularly annoying or intrusive noise.
- all construction vehicles only to arrive to the work site within the permitted hours of construction.
- all construction activities comply with best practice vibration management criteria to ensure no adverse impact to existing buildings or structures.
- any noise generated during construction should not be 'offensive noise' within the meaning of the Protection of the Environment Operations Act 1997.

It should be noted that the Department, provided no response regarding the issue of the staging timeline with construction potentially being ongoing for 20 years.

Comment

- Whilst condition D8 imposes restrictions on when rock breaking, rock hammering, sheet piling, pile driving and similar activities may be carried out, in our opinion, these should be limited to weekdays in order to safeguard residential amenity.
- The development and construction timeline needs to be conditioned to prevent avoidable delays in construction. Of note, conditions are not imposed to prevent avoidable delays.

Recommendation

Given the proximity of our client's site to the proposed development, more stringent conditions are to be imposed in relation to construction and noise vibration management.

7.0 Green Roofs

In previous submissions we identified that that the use of green roofs should be encouraged and specified on future buildings.

In response to these concerns, in table 20 of the Assessment Report, the Department determined that there is an opportunity to include green roofs as part of future detailed DAs and that there is no sufficient space to include a green roof due to the small roof area of Wilkinson House.

In relation to the use of reflective materials, the department has considered that this needs to be addressed in future DAs.

Comment

- In our opinion, the Departments assessment has not adequately considered the roof space of the proposed development. This is a critical issue in the context of maintaining acceptable views from the Horizon building toward the city, and this corresponds with the aesthetic impact of the roof which has

the ability to either add to or detract from the view. As such, these details for roof tops should be considered and conditioned from the outset.

- In the event that the demolition of Wilkinson House is approved further conditions should be included to ensure the use of non-reflective materials and the provision of green roofing in order to safeguard residential amenity of the Horizon Building and other nearby high-rise residential developments overlooking the subject site.
- It is important that that optimal levels of green infrastructure and plantings are appropriately conditioned. This would assist not only with aesthetic value from the Horizon's perspective, but also create additional opportunities for the school involving food growing, ecological education, biodiversity enhancement and conservation, and connection with nature. Such greenspaces would provide additional linkage to other greenspaces and create habitats for a range of species. This will add to the health and wellbeing of the community.

Recommendation

The IPC should condition the use of green roofing and non-reflective design materials to safeguard the existing amenity enjoyed by our client's property.

8.0 Conclusion

In our professional opinion the Department's Assessment Report is incorrect and does not fully consider the grave implications of approving the proposed development.

In summary, we are of the opinion that IPC should **refuse** the application.

In the event that the application is not refused the IPC should:

- Ensure the retention and adaptive re-use of Wilkinson House;
- Condition the development to ensure that traffic is appropriately managed;
- Reassess the Capital Investment Value of the proposed development;
- Impose more stringent construction and noise management conditions; and
- Condition the use of green roofs and non-reflective material to safeguard residential amenity.

We thank you for the opportunity to outline our client's real and genuine concerns and the significant issues raised with the Department's Assessment. Should you wish to discuss any of the details of this response please do not hesitate to contact **Jeremy** on 9690 0279 or jeremy@theplanninghub.com.au.

Yours sincerely,

A handwritten signature in black ink that reads "JD Swan" followed by a long horizontal flourish.

Jeremy Swan

DIRECTOR | **THE PLANNINGHUB**