



**AMENDED OBJECTION PURSUANT TO SEPP 1
TO ACCOMPANY A STATE SIGNIFICANT DEVELOPMENT APPLICATION
SSD 9194**

13 GIBBONS STREET, REDFERN

**CLAUSE 21(2), PART 5, SCHEDULE 3 – FLOOR SPACE RATIO
State Environmental Planning Policy (State Significant Precincts) 2005**

November 2019

1 INTRODUCTION

For the reasons set out in the EIS and RTS accompanying this application, the proposal complies with the floor space ratio (FSR) controls which apply to the site, inclusive of a 20% floor space bonus applicable to the site under State Environmental Planning Policy (Affordable Rental Housing) 2009 (ARH SEPP), resulting in a permissible FSR of 8.4:1. It is our opinion that any reasonable interpretation of the ARH SEPP would result in the application of the provisions of that SEPP to the development.

A SEPP 1 objection is therefore not required with respect to FSR.

This SEPP 1 objection has therefore only been prepared in case the relevant consent authority determining the application forms the alternative view that the provisions of the ARH SEPP do not apply.

2 OBJECTION

This objection is made pursuant to State Environmental Planning Policy No. 1 (SEPP 1) – Development Standards as the applicable State Policy mechanism available to Applications to seek a variation to a development standard.

Clause 6 of SEPP 1 provides the mechanism for the making of a SEPP 1 Application and states:

- “6. Where development could, but for any development standard, be carried out under the Act (either with or without the necessity for consent under the Act being obtained therefor) the person intending to carry out the development may make a development application in respect of that development, supported by a written objection that compliance with that development standard is unreasonable or unnecessary in the circumstances of the case, and specifying the grounds of that objection.”*

This SEPP 1 Objection is made in accordance with the provisions of Clause 6.

Clause 7 of SEPP 1 provides the discretion and power to the consent authority to support a SEPP 1 objection and grant development consent and states:

- “7. Where the consent authority is satisfied that the objection is well founded and is also of the opinion that granting consent to that development application is consistent with the aims of this Policy as set out in Clause 3, it may, with the concurrence of the Director, grant consent to that development application notwithstanding the development standard the subject of the objection referred to in Clause 6.”*

In accordance with Section 4.13(2A) of the EP&A Act there is no requirement for the Secretary's concurrence with respect to SSD applications, despite the provisions of Clause 7.

3. ENVIRONMENTAL PLANNING INSTRUMENT

The Environmental Planning Instrument to which this objection relates is State Environmental Planning Policy (State Significant Precincts) 2005 (the SSP SEPP). The subject site is zoned E - Business Zone – Commercial Core under Clause 7, Part 5 of Schedule 3 of the SSP SEPP.

4. DEVELOPMENT STANDARD

Clause 21 (2) of Part 5 of Schedule 3 of the SSP SEPP provides that the floor space ratio of a building on any land that is the subject of the Floor Space Ratio Map is not to exceed the floor space ratio shown for the land on that map.

The floor space ratio maps indicates a 7:1 FSR applies to the site.

Floor space ratio and gross floor area (GFA) are not defined in the SSP SEPP, but calculations of FSR and GRF have been based on the standard instrument definitions.

5. VARIATION TO THE STANDARD

The proposal has a gross floor area of 10,713m², equivalent to an FSR of 7.85:1. The variation to the FSR standard of 7:1 is 1,911.5 m² or 12%.

6. JUSTIFICATION FOR VARIATION OF THE STANDARD & MATTERS FOR CONSIDERATION

In accordance with previous measures of validity of a SEPP 1 Objection by the Land and Environment Court this objection addresses the following pertinent questions as justification for the variation.

6.1 Notwithstanding the non-compliance with the development standard, will the proposal achieve the objectives of the development standard?

The SSP SEPP does not state the purpose of the FSR development standard. However, review of the Redfern-Waterloo Built Environment Plan (Stage One), from which the controls were derived, assists in understanding the purpose of the FSR controls. Implied objectives of the FSR controls are likely to be:

- To permit sufficient floor space to encourage the development and revitalization of the Redfern Town Centre.
- To establish an identifiable character and appropriate urban scale for the Town Centre and ensure future buildings are compatible with this desired future character.
- To limit the scale of buildings to ensure adverse amenity impacts do not arise to adjoining development.
- To limit the scale of buildings to ensure there are no adverse impacts for capacity of infrastructure and services.

The proposal complies with these objectives as:

- Non-compliance with the control would enable development of the site as a high quality purpose built student accommodation building which would make a positive contribution to the revitalization of the Town Centre, through delivery of a well-designed building, significant injection of student population into the area, improved active ground floor plane and a new through site link.
- The proposed scale of the development would be consistent with the emerging character of the Town Centre envisaged by the controls, given
 - building height complies with expectations under the controls and is consistent with the height of emerging surrounding development.
 - building setbacks are either consistent with or greater than setbacks expected by the controls and the setbacks of all other emerging built forms in the Town Centre (refer to detailed discussion of setbacks in the EIS and RtS).
- At 7.85:1, building bulk would be consistent with the range of scales of adjoining development, noting other developments in the northern part of the centre have an FSR

of 7:1, but 11 Gibbons Street adjoining the site is approved with an FSR of 8.4:1 and 80-88 Regent Street is approved at 8.97:1.

- Despite the variation, the proposed building massing does not result in any unacceptable amenity impacts to the surrounding area, compared to a building designed to strictly comply with the 7:1 FSR control, noting:
 - the proposed development would result in no greater impact in terms of overshadowing than a modelled 7:1 compliant scheme, and in fact the proposal would result in improved outcomes for the most affected premises, being dwellings at 1 Margaret Street, compared to an alternative compliant built form: refer to detailed assessment in **Section 3.7** of RtS report and solar studies in **Appendix D**).
 - the proposed development would result in similar and slightly improved impacts overall in terms of wind than a modelled 7:1 compliant scheme: refer to detailed assessment in **Section 3.8** and wind impact assessment at **Appendix V**).
 - the proposed development would result in no greater heritage impacts to St Luke's Church than a modelled 7:1 compliant scheme and in fact results in a better outcome than a development built strictly in accordance with the controls which would be located closer to the Church: refer to detailed assessment in **Section 3.11** of RtS Report.
 - the proposed development results in a building separation with 11 Gibbons Street that is entirely consistent with the emerging visual character of the Redfern Centre: and therefore a greater tower setback of a 7:1 compliant scheme would do nothing to improve visual consistency with the character of the area, but rather may render the site incapable of being developed in a manner consistent with the envisaged character for the area: refer to detailed assessment in **Section 3.1.4** of RtS Report.
 - the proposed development results in a building separation that is also entirely consistent with other residential developments in the Redfern Centre that have been assessed as acceptable in terms of privacy. Due to privacy measures proposed on both sites, there will be no direct overlooking between the towers on the two sites and therefore providing a greater tower setback, such as that anticipated by a 7:1 compliant scheme is not required to improve privacy between the two sites.
 - due to orientation of units and privacy screening required at 11 Gibbons Street (under approval SSD 7749), the proposed development, will have no material impact on views and outlook from future dwellings at 11 Gibbons Street as compared to a 7:1 compliant scheme: refer to the Supplementary Design Report and **Appendix D**.
- The site is ideally situated to provide increased density, particularly for student accommodation. Being adjacent to the public transport hub of Redfern Station and within walking distance to a number of universities, the additional density would make use of existing excellent public transport infrastructure and can be provided without any additional pressure on traffic and road infrastructure, noting the proposal does not accommodate any onsite parking. Being located within the Town Centre and also within close proximity to the Sydney CBD, the site also has excellent access to other services.

6.2 Will non-compliance with the development standard be inconsistent with any planning objectives for the locality?

The proposed development is consistent with the objectives of the E - Business Zone – Commercial Core set out under Clause 7, Part 5 of Schedule 3:

- (a) *to facilitate the development of a Town Centre,*
Non-compliance with the control would facilitate the proposed development as part of the Town Centre. As described above, non-compliance with the control enables provision of a high quality purpose built student accommodation building which would

make a positive contribution to the revitalization of the Town Centre and a built form that is consistent with the height and scale of all other built forms emerging within the centre.

- (b) *to encourage employment generating activities by providing a wide range of retail, business, office, community and entertainment facilities,*
Non-compliance with the FSR control does not affect this objective
- (c) *to permit residential development that is compatible with non-residential development,*
The proposal includes residential development that is compatible with non-residential development and this objective is not affected by a variation from the FSR control.
- (d) *to maximise public transport patronage and encourage walking and cycling*
The site is ideally situated to provide increased density to maximise public transport patronage and encourage walking and cycling. The development achieves these aims due to the site's proximity to public transport, universities and retail services, excellent bicycle storage on the site and the absence of any motor vehicle parking on the site. The additional density on the site as a result of the variation from the FSR control maximises achievement of this objective.
- (e) *to ensure the vitality and safety of the community and public domain*
Additional floor space / density with associated increased injection of student population into the area adds to the vitality of the area. Additional students patronising nearby retail outlets and utilising the ground floor common areas overlooking the public domain adds to vitality and safety of the area. The proposal also adds to the vitality and safety of the public domain through the provision of the through site link, with associated landscaping, public art and improved flooding outcomes. The variation from the FSR control does not affect these outcomes.
- (e) *to ensure buildings achieve design excellence*
The proposal is considered to demonstrate design excellence as it:
- Exhibits a high standard of architectural design with materials and detailing which are appropriate to both the proposed use as a student accommodation building as well as complementary to the materials of surrounding development and heritage values in the vicinity of the site.
 - Has been designed having regard to the provisions of the Urban Design Principles, Redfern Centre (UDPRC) which set out the relevant matters for design excellence under the SSP SEPP, and improves on the expectations for built form under the UDPRC, providing greater setbacks than envisaged by the controls to deliver the through site link.
 - Will improve the quality and amenity of the public domain by providing a high quality landscaped through site link, incorporating artwork to celebrate cultural values, significantly improving street activation, improving pedestrian comfort with the provision of awnings, and improved footpaths and street trees adjoining the site.
 - Incorporates sustainable design principles to maximise access to sunlight and natural ventilation, mitigate against wind, visual and acoustic privacy impacts, reflectivity, safety and security impacts and incorporates energy and water efficiency measures.
 - Has been designed taking into account feedback from the SDRP.
 - Has been designed based on a Design Excellence Strategy developed for the site.
- (e) *to promote landscaped areas with strong visual and aesthetic values to enhance the amenity of the area*
The proposal incorporates well designed landscape areas in accordance with this requirement. Non-compliance with the FSR would be unlikely to materially affect the landscape areas.

6.3 Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

As held by the court in *Wehbe v Pittwater Council* [2007] NSWLEC827, development standards are not an end in themselves but a means of achieving environmental and planning objectives. Where the objectives of the building height standard are achieved, strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served).

The arguments detailed above in sections 6.1 and 6.2, demonstrate that the development proposal satisfies the objectives of the FSR control and the relevant objectives of the zone.

Accordingly, it is considered unreasonable and unnecessary for the proposed development to comply with the provisions of Clause 21(2).

6.4 Is the granting of consent to the development consistent with the aims of SEPP 1 as set out in Clause 3 of the Policy?

The aims of SEPP 1 as set out in clause 3 are to provide flexibility in the application of development standards in circumstances where strict compliance with those standards would, in any particular case

- be unreasonable or unnecessary or
- tend to hinder the attainment of the objects specified in section 5 (a) (i) and (ii) of the Act.

It has been demonstrated above in section 6.3 that strict compliance with Clause 21(2) is unreasonable and unnecessary in the circumstances of the case.

The objects of the Act as specified previously in Section 5(a) (i) and (ii) (Now Section 1.3) are to encourage

- (i) *the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,*
- (ii) *the promotion and co-ordination of the orderly and economic use and development of land,*

Strict compliance with the development standards may also hinder the objects of act, particularly the promotion of a better environment, social and economic welfare of the community and the promotion of orderly and economic use and development of the land in that:

- It could result in development of a smaller building that would be out of scale with all other development recently approved within the centre, adversely affecting the provision of a consistent and distinctive urban built form for the centre.
- The proposed development is a result of the bonus floor space provisions that would otherwise apply under the ARH SEPP. These provisions are specifically aimed to incentivise the development of boarding houses as a form of affordable rental accommodation, consistent with strategic policy objectives and noting there is a shortfall of affordable accommodation in proximity to the inner city university campuses.
- Strict compliance with the 7:1 FSR control would remove this incentive for development of the site for student accommodation with the associated loss of social and economic benefits associated with the provision of purpose-built student housing in close proximity to universities, transport nodes and service centres, consistent with strategic planning policies.

- Strict compliance would also result in flow on economic impacts related to growth of the tertiary education precincts and Innovation Corridor, as the ability to grow university places is affected by the availability of accommodation for students in the area.

The granting of consent in this case would therefore be consistent with the aims of SEPP 1 in that it would allow for flexibility in circumstances where strict compliance with the floor space ratio standard would be both unreasonable, unnecessary and contrary to the attainment of the objects of the act.

7. CONCLUSION

The variation sought to the standard imposed by Clause 21(2) of Part 5, Schedule 3 to the SSP SEPP has been demonstrated to be justified as it is:

1. Consistent with the aims and objectives of SEPP 1 and the Act;
2. Consistent with the implied objectives of the FSR control and the objectives of the E - Business Zone – Commercial Core) zone; and
3. Both unreasonable and unnecessary for strict compliance to be required in this case.