

Amended State Environmental Planning Policy No. 1 Development Standards, Objection

FSR

1.0 Standard objected to

This State Environmental Planning Policy No. 1 - Development Standards (**SEPP 1**) Objection accompanies a Development Application (**DA**) Statement of Environmental Effects (**SEE**) for a mixed use development at 61 to 79 Hall Street, Bondi Beach (**the site**).

The objection relates to the floor space ratio (**FSR**) development standard at clause 27 of Waverley Local Environmental Plan 1996 (**WLEP 1996**) which states:

27 Floor space ratios

- (1) This clause applies to buildings used for non-residential purposes or for mixed development, but does not apply to buildings in the Bondi Beach Precinct.*
- (2) Except as provided by subclause (3), the floor space ratio of a building erected or to be erected on land within a zone specified in Column 1 of the Table to this clause must not exceed the ratio specified opposite that zone in Column 2 of that Table.*
- (3) If residential accommodation is or will be provided in a mixed development:*
 - (a) at a level above a ground floor shop or commercial premises, or*
 - (b) in a hotel or motel,*

the floor space ratio of a building erected or to be erected on land within a zone specified in Column 1 of the Table to this clause may exceed the floor space ratio specified in Column 2 by the amount specified in Column 3 of that Table. The additional floor space allowed by Column 3 of the Table may be used only for the purpose of residential accommodation forming part of a mixed development.

Table

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Zone</i>	<i>Maximum Floor Space Ratio</i>	<i>Additional Floor Space Ratio</i>
3 (a)	1:1	1:1
3 (b)	1:1	0.5:1
3 (c)	0.5:1	0.5:1

Our emphasis

Table 1 – Comparison of existing, approved and amended proposal (GFA (m²))

Use	Existing	Permitted (P) or Existing (E) on 71-79 Hall St + Approved 61-67 Hall St* (A)	Amended proposal
Residential	1,760	P 1,693 A 5,445 P + A = 7,138	4,983
Retail, restaurant/café	180	P 1,693	3,355
Serviced apartment	0		5,489
Club and/or recreation etc	5,707	A 2,935	678
Stairs and toilets			317
Non-residential subtotal	5,887	4,628	9,839
Total GFA	7,647	11,766	14,822

* The approved GFA and FSR on the Hakoah Club site only (61-67 Hall Street) is 8,380.25m² which equates to an FSR 4.421:1 based on a site area of 1,879m².

Table 2 – GFA/FSR entitlement, GFA/FSR proposed and additional/bonus GFA sought

	GFA (m ²)	FSR
GFA/FSR Entitlement		
Approved GFA (61-67 Hall Street) (1,8793m ² x site 4.421:1)	8,380	
Permissible GFA 71-79 Hall Street (1,693m ² site area x 2:1)	3,386	
Total entitlement	11,766	3.3:1
Proposed GFA/FSR (total site area of 3,572m ²)	14,822	4.15:1
Additional/bonus GFA/FSR (ie FSR above entitlement)	3,056	0.85:1

As the site is in Zone No 3(a), a non-residential FSR development standard of 1:1 applies with an additional FSR of 1:1 available for residential development. The total permissible FSR is 2:1. As set out in **Table 1** (which also shows the existing and approved FSR on the site), the proposal has the following residential and non-residential gross floor area¹ (GFA) and FSRs (based on a site area of 3,572m²):

- 9,839m² non-residential GFA which equates to a FSR of **2.75:1** (1:1 allowed)
- 4,983m² residential GFA FSR which equates to a FSR **1.4:1** (1:1 allowed)
- 14,822m² total GFA which equates to a FSR of **4.15:1** (2:1 allowed)

Given that the existing consent applies to the Hakoah Club site (61-67 Hall Street), and that this consent is still current, the site has an entitlement to an FSR equivalent to:

- The approved FSR on the Hakoah Club site (61-67 Hall Street) (4.421:1)
- The permissible FSR on the remainder of the site (2:1)

Using this approach, and as detailed in **Table 2**, the site's FSR entitlement overall is 3.3:1. With a proposed FSR of 4.15:1, the proposal is 0.851:1 over this entitlement.

Lloyd J, in *Winten Property Group Ltd v North Sydney Council* (2001) NSWLEC 46, posed five questions to be addressed in SEPP 1 objections. These questions are also stated in WDCP 2006 – Part F5 – Annexure F5-1. The extent of departure proposed and the Winten questions are addressed below for the development standard to be varied.

¹ Pursuant to Clause 7 of WLEP 1996 (which adopts the NSW Model Provisions):

GFA means the sum of the areas of each floor of a building where the area of each floor is taken to be the area within the outer face of the external enclosing walls as measured at a height of 1400 millimetres above each floor level excluding:

- (i) columns, fin walls, sun control devices and any elements, projections or works outside the general line of the outer face of the external wall,
- (ii) lift towers, cooling towers, machinery and plant rooms and ancillary storage space and vertical air-conditioning ducts,
- (iii) car-parking needed to meet any requirements of the council and any internal access thereto,
- (iv) space for the loading and unloading of goods.

2.0 SEPP 1 considerations

1) Is the planning control in question a development standard²?

The FSR control at clause 27 of WLEP 1996 is not framed as a prohibition.

The FSR control is therefore a “development standard” as defined at clause 4 of the *Environmental Planning and Assessment Act, 1979 (the Act)* (part (d) of the definition refers to the floor space of a building).

2) What is the underlying object or purpose of the standard?

The objectives of the FSR development standard are not stated in WLEP 1996.

WDCP 2006 – Part F5, Annexure F5-1 states the following in relation to the objectives of the FSR and height development standards:

The underlying objectives of the floor space ratio and height controls are to control the bulk, scale, appearance and impacts on amenity of a development.

In considering whether to vary the relevant standard(s), Council will also need to be satisfied that the proposed development will:

- i) be consistent with the objectives of the zone of the land under WLEP 1996, and,*
- ii) be consistent with the Desired Future Character Objectives as contained in Part F5 of Waverley DCP 2006, for the particular local village centre in which the land is located, and*
- iii) comply with all other planning controls applicable to the land, as contained in Part F5 of Waverley DCP 2006, and*
- iv) improve or contribute positively to the public domain and would achieve design excellence, and*
- v) not unacceptably impact on the amenity of residential dwellings on any adjoining land, including compliance with provisions relating to minimum solar access and visual privacy to residential properties, as contained in Waverley DCP 2006.*

The proposal's satisfaction of these objectives follows.

² Pursuant to clause 4 of the Act:

development standards means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:

...

(d) the cubic content or floor space of a building, (our emphasis)

Objective (i)**i) *be consistent with the objectives of the zone of the land under WLEP 1996***

Pursuant to the zoning and permissible land use table at Clause 10 of WLEP 1996, the objectives of Zone No 3(a) Business General are to:

*Zone No 3 (a) Business General**1 Objectives of zone*

The objectives of this zone are:

- (a) to allow for retail, entertainment, tourist and commercial uses,*
- (b) to allow for residential development mixed with other permissible uses so as to encourage urban consolidation and increase the vitality of localities within this zone, and*
- (c) to control the physical and functional characteristics of business centres so as to minimise their impact on neighbouring residential areas.*

Notwithstanding the departure from the FSR development standard in WLEP 1996; the proposal is consistent with the objectives of Zone No 3(a) as it:

- Includes retail, tourist and recreation uses (satisfying **objective (a)**).
- Includes residential apartments mixed with other permissible uses to maintain residential densities and increase the vitality of this part of Hall Street (and Bondi generally) (satisfying **objective (b)**).
- Has a physical and functional form that minimises the impact on neighbouring and nearby residential areas (refer Section 7.2.2 of the SEE) and will have a reasonable traffic impact as detailed in the Traffic Reports (refer Appendix F of the SEE and Attachment 4 of the Addendum Report) (satisfying **objective (c)**).

Objective (ii)**ii) *be consistent with the Desired Future Character Objectives as contained in Part F5 of Waverley DCP 2006, for the particular local village centre in which the land is located***

Pursuant to WDCP 1996 – Part F5, clause 10.2, the Desired Future Character Objectives for Hall Street are:

- (a) To maintain Hall Street and the southern end of Glenayr Avenue as a separate and discrete precinct within the wider Bondi Beach town centre, with the role and character of providing local shops, services and residential accommodation for the local community;*

- (b) To ensure that development complements the heights, scale and street rhythm of identified buildings of historic character in Hall Street;*
- (c) To maintain the built form arising from the historical subdivision pattern and the small shop character at street level;*
- (d) To maintain the mixed-use character of the centre by locating the shops and services at ground level and residential units above;*
- (e) To support, maintain and expand upon the diverse mix of local shops and services that provide the daily needs of the local residential community;*
- (f) To effectively manage the retail/commercial and residential interface in the centre;*
- (g) To limit and manage the proliferation of cafes and restaurants, including areas of outdoor dining, in order that these uses do not dominate the character of the centre or undermine the current and future role and function of local shops that provide the daily needs of the local resident community; and*
- (h) To maintain and enhance accessibility to public open space.*

The proposal is consistent with these Desired Future Character Objectives as:

- (a) The identity and character of this section of Hall Street will be enhanced by the design quality and mix of uses in the proposal (satisfying objective (a)).
- (b) The proposal the heights, scale and street rhythm of Hall Street (and satisfies objective (b)) as:
 - It has a total FSR of 4.15:1 which is commensurate with that already approved for the site (4.421:1 on the Hakoah Club site).
 - Compared with the existing consent, the proposal reduces the number of apartments on the site (52 apartments approved on the Hakoah Club site at 61-67 Hall Street, 34 apartments proposed on the site the subject of the current DA (being 61-79 Hall Street)).
 - This comparison is even more pronounced if the existing apartments on the remainder of the site (69-79 Hall Street) are included (42 existing apartments + 52 approved = 94 apartments on the site).
 - The extent of departure from the residential FSR development standard is reasonable (1:1 allowed, 1.4:1 proposed) and much smaller than the residential FSR that would result from acting on the existing consent (which would result in residential FSR of 2:1 on the site being total approved + existing residential GFA of 7,138m² on a site area of 3,572m²).

- (c) The built form of the proposal repairs the historical subdivision pattern and the small shop character Hall Street by introducing a 12m division along the Hall Street frontage, reinforced through building articulation and colour (satisfying objective (c)).
- (d) The proposal has shops at the Lower Ground and Ground Levels, with serviced apartment hotel rooms in the podium and residential above (satisfying objective (d)).
- (e) The proposed retail strategy is focused on high quality food retailers that will provide services to meet the daily needs of Bondi residents, workers and visitors (as detailed in the Retail Definition Report, SEE Appendix E) (satisfying objective (e)).
- (f) The retail/commercial and residential interface is sensitively managed by locating apartments at the higher levels where they do not coincide with other nearby residential buildings. Privacy protection measures are also proposed as detailed in Section 7.2. of the SEE (satisfying objective (f)).
- (g) Cafes/restaurant uses will occupy 20% of retail GFA and just 6% of total non-residential GFA. Tenants that provide high quality fresh food will be targeted for a large part of the remaining space (satisfying Future Character objective (g)).
- (h) The proposal will not adversely affect any existing open spaces. The provision of a 21m x 7m pool and adjoining landscaped deck (accessible to the community) and through site link will enhance the public domain (satisfying Future Character objective (h)).

Objective (iii)

iii) comply with all other planning controls applicable to the land, as contained in Part F5 of Waverley DCP 2006

The proposed podium has been amended to comply with the envelope controls set out in Part F5 of Waverley DCP 2006 (four storeys with a 3m setback at the top level). As detailed in Section 7.1.6, Table 9 and Appendix Q of the SEE, the proposal is generally consistent with other applicable controls (satisfying objective (iv)). Where departures are proposed they are reasonable in the circumstances of the case.



EXISTING – 61 – 79 Hall Street



APPROVED - 61-67 Hall Street

EXISTING – 71-79 Hall Street



APPROVED - 61-67 Hall Street

WDCP 2006 ENVELOPE – 71-79 Hall Street



AMENDED PROPOSAL

Figure 1 – Comparisons of built forms (existing, existing + approved, approved + WDCP 2006 envelope and amended proposal)

Objective (iv)***iv) improve or contribute positively to the public domain and would achieve design excellence***

The proposal satisfies assumed objective (iv) for the following reasons:

- Area Comparison Studies by Bates Smart that compare the envelope of the approved development and the proposal (refer separate volume) show that most of the proposed additional bulk is located at the O'Brien Street frontage of 61-67 Hall Street (that is the Hakoah Club site). This additional bulk is offset by the introduction of a new setback to Hall Street (see later).
- The Area Comparison Studies by Bates Smart (refer separate volume) show that compared with the approved development, the GFA increase at proposed Levels 03 to 06 ranges from 160.8m² (17%) to 277.9m² (29%). As most of this additional bulk is located on the western side and rear of the building, it will not appreciably increase the apparent bulk.
- When viewed from the most populated vantage points in Hall Street, the proposal will have a much reduced bulk when compared with both the existing building and approved development, as demonstrated by the comparison images at **Figure 1**.
- Proposed Level 07 is setback from Level 06 below to minimise sightlines to this part of the building.
- The Lower Ground (which has a GFA of 2,466m²) is largely below natural ground level and adds little (if anything) to the bulk of the mixed development. It this area is excluded from the proposed GFA/FSR, the proposed total FSR is **3.5:1**. This figure is only just above the FSR of 3.3:1 that could be achieved on the site by acting on the existing consent for 61-67 Hall Street and constructing a new complying building on 71-79 Hall Street (at an FSR of 2:1). There is no guarantee that such a development would achieve the numerous and material public benefits offered by the proposal (see Point 3 below).
- The scale and bulk of the building on the Hakoah Club site (61-67 Hall Street) will be reduced by the introduction of a 3.397m to 5.6m setback above a four storey podium. In comparison, the approved development reduced the bulk of the building on the Hakoah Club site by deleting volume internal to the site, making little difference to the perceived bulk and scale of the building. This is demonstrated by the existing, approved and proposed montages at **Figure 3** which show the significant reduction in apparent bulk achieved by introducing a setback above the street frontage height).
- In designing the proposal, Bates Smart completed extensive site analysis and design studies which demonstrate the site responsive nature and quality of the proposal (refer Design Reports).

- The proposed retail uses (in design and character) will make a significant contribution to the future character of the Hall Street locality.
- On the Hakoah Club Site (61-67 Hall Street), the proposal reaches RL 46.075 which is comparable with the existing Hakoah Club building (RL 42.95 existing) and the development approved by the existing consent (RL 47.215 to the Hakoah signage, RL 45.85 to the cooling tower and RL 42.95 to the roof). As a consequence, the perceived height of the proposal when viewed from the streetscape, beach and other places will be comparable with that existing on and approved for the site.
- On the remainder of the site (69-79 Hall Street), the built form above a height of 12m will not be visible from the beach and will have a minimal visual impact on the streetscape of Hall Street due to the provision of a 3.397m to 5.6m setback at Level 04.
- Distant views of the proposal will be limited to the higher residential levels that generally sit within the envelope of the existing Hakoah Club building. This part of the development has a bulk and scale comparable with the existing and approved Hakoah Club building, but the improved articulation will dramatically improve the appearance of the site and its contribution to the skyline.
- The existing character of Hall Street will be improved by:
 - Removing the existing Hakoah Club building which presents blank concrete walls to its front and side boundaries.
 - Aligning the proposed retail floor levels with the Hall Street footpath to improve streetscape/pedestrian amenity (in comparison, the existing Hakoah Club building presents stairs and ramps to connect the footpath with the raised club entry).
 - Introducing a 3.397m to 5.6m setback above a four storey podium (whereas the existing and approved Hakoah Club building is built to the Hall Street boundary for its full height).
 - Reinforcing the 12m wide subdivision pattern through building articulation and colour.
 - Providing active ground floor uses addressing Hall Street.
 - Providing a very high standard of design and finish (as detailed in the Design Report by Bates Smart).
 - Footpath widening, streetscape upgrades and street tree planting.
- The existing character of O'Brien Street will be improved by:
 - Providing a low rise form along O'Brien Street (two to four storeys) that has a height below the 13m building height recommended by Council's urban design and planning review (as set out in WDCP 2006, Part F5 – Annexure F5-1).

- Providing some activity to provide interest and surveillance (being the through site link and one retail frontage), but a reduced intensity of activity when compared with Hall Street (and no direct access to shops).
- Replacing the existing blank façade of the Hakoah Club and rear parking/service areas on the remainder of the site with a cohesive well designed built form.
- Minimising the width and visual impact of the proposed loading dock and car park entry.
- Siting the proposed substation below street level.
- Streetscape upgrades and street tree planting

Objective (v)

- v) ***not unacceptably impact on the amenity of residential dwellings on any adjoining land, including compliance with provisions relating to minimum solar access and visual privacy to residential properties, as contained in Waverley DCP 2006***

The proposal satisfies assumed **objective (v)** as the adjoining development:

- Will not experience any significant reduction in solar access (see Section 7.2.2 of the SEE)
- Will not experience any significant loss of view/outlook (see Section 7.2.2 of the SEE).
- Will not experience any significant loss of privacy due to the proposed privacy protection measures (see Section 7.2.2 of the SEE).

3) Is compliance with the development standard consistent with the aims of the Policy, and in particular does compliance with the development standard tend to hinder the attainment of the objects specified in section 5(a)(i) and (ii) of the Act?

Clause 3 of SEPP 1 states the following aim, objective etc:

*This Policy provides flexibility in the application of planning controls operating by virtue 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.***

(Our emphasis)

As detailed at point 4 below, compliance with the FSR standard is unreasonable and unnecessary. Compliance with the standard would also tend to hinder attainment of the objects of the Act which state (at Clause 5(a) (i) and (ii)):

The objects of the Act are:

(a) 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,*

Compliance with the FSR development standard would tend to hinder the attainment of these objects as it would:

- Prevent construction of a new building within the existing and approved building envelope on the Hakoah Club site (61-67 Hall Street).
- Preclude the construction of a serviced apartment hotel which implements numerous local and State planning objectives.
- Frustrate the development of an exciting mixed use development which offers the following numerous and significant community benefits:

Quality visitor accommodation

- Construction of 131 Medina serviced apartment hotel rooms offering quality, self-contained visitor accommodation to offset the recent and future reduction in Bondi Beach hotel rooms

Promotion of Council's and the State government's tourism strategies

- Employment opportunities
- Economic benefits for local business
- Recognition of Bondi's role as a tourist destination

Design

- Design excellence based on comprehensive analysis of the site and its locality, respecting the typology of buildings in Bondi Beach

Sustainability

- Energy efficiency through passive design measures (solar access and cross ventilation)
- Beyond BASIX energy efficiency (refer ESD Options Report, Appendix H)
- Promotion of walkable neighbourhoods (eg. a mixed use development that includes local convenience retailing minimising the need to travel to Bondi Junction)
- A 10% reduction in on-site car parking provision when compared with the approved situation (182 spaces proposed, 177 spaces approved on the Hakoah Club site + 24 existing spaces on the remainder of the site = 201 spaces approved + existing)).
- Generous provision of bicycle parking for residents, guests and visitors (100 spaces in total)

21m x 7m swimming pool accessible to the community

- High quality covered swimming pool (21m x 7m) that will be accessible to the community

Other community benefits

- Through site link improving connectivity between Hall and O'Brien Streets designed to promote Safer by Design principles
- Meeting room that will be available to the community
- Monetary contribution towards affordable housing
- Relocation assistance for existing residential tenants

The right kind of retailing

- Retail design and mix of tenants focused on fresh food and tailored to respond to the spirit of Bondi (refer Retail Definition Document, Appendix E)

Support for the creative sector of Bondi

- Commitment to installing locally produced art in public and private spaces (refer Cultural Strategy Appendix V)

Long term commitment to project

- Toga will retain the retail uses and serviced apartment hotel, ensuring a commitment to construction of a high quality, low maintenance building

- Toga will manage the serviced apartments (with a 24 hour security presence on the site)
- Toga will manage the retail uses ensuring maintenance and security of communal spaces and a complementary mix of high quality tenants

Streetscape

- Vibrant streetscape to Hall and O'Brien Streets
- Removal of existing Hakoah Club building (61-67 Hall Street), which is built to the front Hall Street boundary for its full height and has large blank facades on all sides
- Removal of existing walk-up flats (on 71-79 Hall Street) which are in a poor state of repair (particularly when viewed from O'Brien Street)

Reduced number of apartments

- The existing consent approved 52 apartments on the Hakoah Club site (61-67 Hall Street) and additional 42 apartments exist on the remainder of the site (71-79 Hall Street) (total of 93 apartments approved + existing), whereas the proposal has just 34 apartments

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

In this instance, compliance with the FSR development standard is **unreasonable** as the existing consent departs from the FSR development standard and the proposed FSR of **0.85:1** above the site's FSR entitlement (see **Table 2**) is offset by the significant material public benefits and monetary contribution towards affordable housing (as set out in the Voluntary Planning Agreement that accompanies the Addendum Report).

In this instance, compliance with the FSR development standard is also **unnecessary** as the proposed FSR above 2:1 does not result in any new adverse effects in terms of view loss, loss of privacy, reduction in solar access, visual impact or traffic impacts.

5) Is the objection well founded?

For the reasons set out above, the proposed departure from the FSR development standard is well founded.

4.0 Conclusion

Whilst the proposal does not comply with the FSR development standard at clause 27 of WLEP 1996; it nevertheless satisfies the five SEPP 1 tests established by the Court.

Compliance with the development standard is therefore unnecessary and unreasonable in the circumstances of the case, and refusal of the DA on this ground is not warranted.