

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

BUILDING HEIGHT

1.0 Standard objected to

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

The objection relates to the building height development standard at clause 28 of Waverley Local Environmental Plan 1996 (**WLEP 1996**) which states:

28 Height in business zones

- (1) The Council must not grant consent to the erection of a building in Zone No 3 (a) or 3 (b) if the height of the building will be greater than **12 metres**.*
- (2) The Council must not grant consent to the erection of a building in Zone No 3 (c) if the height of the building will be greater than 9 metres.*

(Our emphasis)

As the site is in Zone No 3(a), a building height development standard of 12 metres applies. As set out in **Table 1**, the proposal has a **maximum** height¹ of up to:

- 26 metres above the natural ground level to the lift overrun (lift overrun is at RL 47.85, natural ground level at Hall Street is at RL 21.80)
- 25 metres above the natural ground level to the parapet (parapet is at RL 46.85, natural ground level at Hall Street is at RL 21.80)

The elevations attached to this SEPP 1 objection (prepared by Bates Smart) compare the existing, approved and proposed building envelopes.

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

¹ WLEP 1996 (Schedule 2) *height* and *natural ground level* are defined as :

***height** of a building in a business zone means the greatest distance in metres measured vertically from any point on the building to the natural ground level below that point.*

***natural ground level** is the ground surface level prior to any development, including any cutting, filling and grading, and, where the existing ground level differs from the natural ground level, the natural ground level shall be as determined by the Council after taking into account any information available to it concerning the location.*

Table 3 – Existing, approved, original proposal and amended proposal maximum building heights

	Existing		Existing Consent		Original Proposed		Amended Proposal	
	RL	metres	RL	metres	RL	metres	RL	metres
Hall Street Frontage								
61-67 Hall St (Hakoah Club)	RL 42.92	21.07m	<u>Street wall</u>	N/A	<u>Street wall</u>	11.83m	<u>Street wall</u>	9.7m
			<u>Parapet</u>		<u>Parapet</u>		<u>Parapet</u>	
			RL 42.95	21.45m	RL 46.815	25m	RL 46.815	25m
			<u>Cooling tower</u>		<u>Lift overrun</u>		<u>Lift overrun</u>	
			RL 45.850	24.35m			RL 47.875	26m
69-79 Hall St	RL30.92 to RL31.77	9.14m - 9.97m	N/A		<u>Level 04</u>		<u>Level 03</u>	
					RL 34.225	12.65m	RL 31.275	9.7m
					<u>Level 05</u>		<u>Level 04</u>	
					RL 37.175	15.57m	RL 34.225	12.63m
O'Brien Street frontage								
61-67 Hall St (Hakoah Club)	RL 29.19	10.85m	RL 31.25	12.91m	<u>Level 03</u>		<u>Level 03</u>	
					RL 31.375	12.91m	RL 31.275	12.81m
					<u>Level 04</u>			
					RL 34.225	15.68m		
69-79 Hall St	N/A		N/A		<u>Level 01</u>		<u>Level 01</u>	
					RL 25.675	6.22m	RL 25.575	6.12m

2.0 SEPP 1 considerations

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

The building height control at clause 28 of WLEP 1996 is not framed as a prohibition.

The building height control is therefore a “development standard” as defined at clause 4 of the *Environmental Planning and Assessment Act, 1979 (EP&A Act)* (part (c) of the definition refers to the height of a building).

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

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

WDCP 2006 – Part F5, Annexure F5-1 notes that for Hall Street, the urban design and planning review for the neighbourhood centres **recommended an increase in height from 12m to 13m**. It also states the following objectives for 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*

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:

...

*(c) the character, location, siting, bulk, scale, shape, size, **height**, density, design or external appearance of a building or work,..... (our emphasis)*

solar access and visual privacy to residential properties, as contained in Waverley DCP 2006.

The proposal's satisfaction of these objectives follows.

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 height of buildings development standard in WLEP 1996; the proposal is consistent with the objectives of Zone No 3(a) as it:

- Includes retail, visitor and recreation uses (satisfying zone 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 zone objective (b)).
- Has a physical and functional form that minimises the impact on neighbouring and nearby residential areas as detailed in Section 7.2.2 of the SEE (satisfying zone 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 Future Character objective (a))
- (b) The proposal complements the height, scale and street rhythm of Hall Street (and satisfies Future Character objective (b)). In relation to height:
 - Given the topography of the area and the existing built form of the Hakoah Club building (61-67 Hall Street), there are no significant views over the site.

- On the Hakoah Club site (61-67 Hall Street), the proposal reaches RL 46.815 to the parapet 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 45.850 to the cooling tower and RL 42.950 to the roof). As a consequence, the view impacts of the proposal will be comparable with those existing on and approved for the site.
- On the remainder of the site (69-79 Hall Street), the amended proposal reduces provides has four storeys, consistent with the controls in Waverley Development Control Plan 2006 – Part F5 – Local Villages. It will not affect any existing views of Bondi Beach, ridgelines or public and private open spaces.
- In designing the proposal, Bates Smart completed extensive site analysis work and design studies which demonstrate the benefits of providing a setback from the Hall Street frontage on the Hakoah Club site (61-67 Hall Street).
- 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 three/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, original proposal and amended proposal montages at **Figure 1a** and **1b** of the Addendum Report.
- Proposed Levels 04 to 07 which exceed the height development standard on Hakoah Club site (61-67 Hall Street), are much more compatible with the adjoining properties when compared with the existing and approved built form on this part of the site (as demonstrated by the montages at **Figure 1a** and **1b** of the Addendum Report).
- The proposed podium on 69-79 Hall Street, having four storeys and a 3m setback to the fourth level, complies with the primary envelope control in Waverley Development Control Plan 2006 – Part F5 – Local Villages.
- At its highest point, the proposal is only 660mm metre higher than the approved building (refer attached elevations). The top level, being Level 07, is setback from Level 06 below to minimise sightlines. As a consequence, the additional height does not create any adverse bulk, streetscape, privacy or overshadowing issues.



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)

- (c) The built form of the proposal repairs the historical subdivision pattern and the small shop character of Hall Street by introducing a 12m division along the Hall Street frontage, reinforced through building articulation and colour (satisfying Future Character 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 Future Character 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 Future Character 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 7.2.2 of the SEE (satisfying Future Character objective (f)).
- (g) Cafes/restaurant/bar 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

As detailed in Section 7.1.6, Table 10 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.

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:

- The non-compliance from the height standard is located on Hakoah Club site (61-67 Hall Street) which accommodates an existing and approved non-complying building. 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. 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 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.

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 building height 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 building height development standard would tend to hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the Act 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 building height development standard is **unreasonable** as:

- On 61-67 Hall Street, the existing Hakoah Club building and the existing consent depart from the building height development standard to a similar extent to the proposal.
- On 71-79 Hall Street (the remainder of the site), the proposed height above the 12m building height development standard represents the transfer of bulk from the Hakoah Club site (61-67 Hall Street) to provide a 3.397m to 5.6m setback above a four storey podium.

In this instance, compliance with the building height development standard is also **unnecessary** as the proposed height above the 12m height development standard does not result in any new adverse effects in terms of view loss, loss of privacy, reduction in solar access or visual impact.

5) Is the objection well founded?

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

4.0 Conclusion

Whilst the proposal does not comply with the building height development standard (clause 28) in 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.