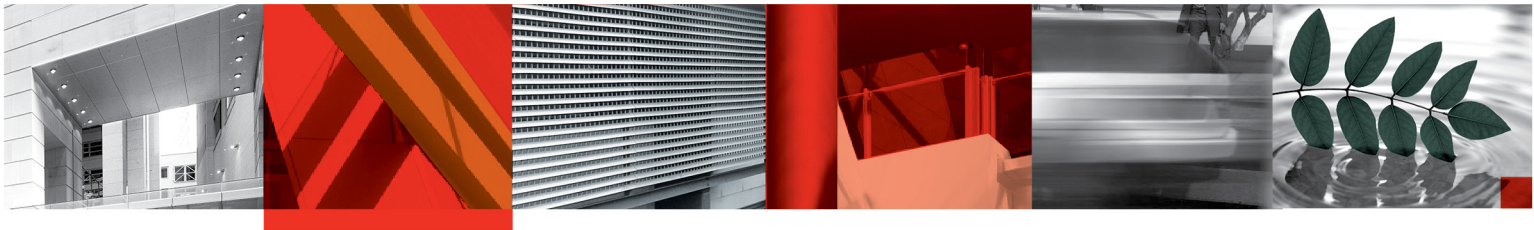


Objection to Motorcycle Parking Development Standard



Block 4S, Central Park

Student Accommodation

Submitted to Department of Planning and Infrastructure
On Behalf of Frasers Broadway Pty Ltd

December 2012 ■ 12373

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1.0 Introduction

This objection under State Environmental Planning Policy No.1 - Development Standards (SEPP 1) has been prepared by JBA Planning (JBA) on behalf of Frasers Broadway Pty Ltd.

It is submitted to the Department of Planning and Infrastructure (the Department) in support of a State Significant Development for student accommodation and ground floor retail uses to Black 4S of Central Park (previous known as the Carlton United Brewery).

This SEPP 1 Objection should be read in conjunction with the Environmental Impact Statement (EIS) dated December 2012. It relates to the provision of motorcycle parking, being clause 30(1)(h) of State Environmental Planning Policy (Affordable Housing) 2009.

1.1 SEPP 1 Framework

The objective of SEPP 1 is to allow flexibility in the application of numeric development standards. It enables a consent authority to vary a development standard within an environmental planning instrument (EPI) where strict compliance with that standard is shown to be unreasonable or unnecessary, or would hinder the attainment of the objectives specified in Section 5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979 (EP&A Act).

The objectives of Section 5(a) are to encourage:

- (i) *the proper management, development and conservation of natural and man-made 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 of and development of land;*

Clause 6 of SEPP 1 provides that a person may make a written objection demonstrating that compliance with a development standard is unreasonable or unnecessary in relation to the proposed development.

Clause 8 of the Policy sets out matters to be considered by the Department of Planning or consent authority under delegation in assessing SEPP 1 objections where it states:

the matters that shall be taken into consideration in deciding whether concurrence should be granted are:

- (a) *whether non-compliance with the development application raises any matter of significance for State or regional environmental planning; and*
- (b) *the public benefit of maintaining the planning controls adopted by the environmental planning instrument.*

The NSW Land and Environment Court (LEC) established five questions to be addressed in SEPP 1 objections through the judgment of Justice Lloyd, in *Winten Property Group Ltd v North Sydney Council* [2001] 130 LGERA 79 at 89. The test was later rephrased by Chief Justice Preston, in the decision of *Wehbe v Pittwater Council* [2007] NSW LEC 827. The test is now as follows:

1. *The applicant must satisfy the consent authority that “the objection is well founded” and compliance with the development standard is unreasonable and unnecessary in the circumstances of the case;*
2. *The consent authority must be of the opinion that granting consent to the development application would be consistent with the policy’s aim of providing flexibility in the application of planning controls where strict compliance with those controls 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 Environmental Planning and Assessment Act 1979; and*
3. *It is also important to consider:*
 - (a) *whether non-compliance with the development standard raises any matter of significance for State or regional planning; and*
 - (b) *the public benefit of maintaining the planning controls adopted by the environmental planning instrument.*

Accordingly, the following SEPP 1 Objection is set out using the current LEC considerations for SEPP 1.

1.2 Is the Planning Control in Question a Development Standard?

The Environmental Planning Instrument to which this objection relates is the State Environmental Planning Policy (Affordable Housing) 2009. The motorcycle parking development standard applicable to the site is found in clause 30(1)(h), which states:

- h) At least one parking space will be provided for a bicycle, and one will be provided for a motorcycle, for every 5 boarding rooms.*

“Development Standards” has the following definition under Section 4(1) of the *Environmental Planning and Assessment Act (EP&A 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:

- (a) the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,*
- (b) the proportion or percentage of the area of a site which a building or work may occupy,*
- (c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,*
- (d) the cubic content or floor space of a building,*
- (e) the intensity or density of the use of any land, building or work,*
- (f) the provision of public access, open space, landscaped space, tree planting or other treatment for the conservation, protection or enhancement of the environment,*

- (g) **the provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading or unloading of vehicles,***
- (h) the volume, nature and type of traffic generated by the development,*
- (i) road patterns,*
- (j) drainage,*
- (k) the carrying out of earthworks,*
- (l) the effects of development on patterns of wind, sunlight, daylight or shadows,*
- (m) the provision of services, facilities and amenities demanded by development,*
- (n) the emission of pollution and means for its prevention or control or mitigation, and*
- (o) such other matters as may be prescribed.”*

(bold is our emphasis)

As this SEPP 1 objection relates to a departure from the numerical standard for motorcycle parking on the site, it is considered that clause 30(1)(h) of State Environmental Planning Policy (Affordable Housing) 2009 is a development standard and not a 'prohibition' in respect of development.

1.3 What is the Underlying Object or Purpose of the Standard?

There are no stated objectives or purpose associated with the control or Clause 30 in general. Whilst this is the case it is considered that the overall purpose of Clause 30 of the Affordable Housing SEPP is to ensure that development for boarding houses is compatible with the local area within which it is proposed, provides sufficient parking facilities for its future residents and does not result in any adverse parking, traffic and amenity impacts on the surrounding area.

2.0 The Objection is "Well Founded"?

Item 1 of the LEC SEPP 1 Matters for Consideration states that the applicant must satisfy the consent authority that "the objection is well founded" and compliance with the development standard is unreasonable and unnecessary in the circumstances of the case.

In the decision of *Wehbe v Pittwater Council* [2007] NSW LEC 827, Chief Justice Preston expressed the view that there are five different ways in which an objection to a development standard might be shown as unreasonable or unnecessary and is therefore well founded. The five ways include:

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard.
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.
3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.
4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.
5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

Of particular relevance in this instance is ways one (1), two (2) and (3). The following section discusses and demonstrates that the proposed development will achieve the objectives of the standard.

The objectives of the standard are achieved notwithstanding noncompliance with the standard.

A detailed Traffic Assessment was prepared for the proposed development and accompanies the development application. The Traffic Assessment notes that feedback from existing operators of student accommodation indicate that most students do not own a car, with the vast majority travelling by public transport. In support of this the Traffic Assessment makes reference to a questionnaire survey undertaken by Cardno for the proposed student accommodation at 157-163 Cleveland Street, Redfern. Key outcomes of this survey were as follows:

- *"For trips with a study purpose, 0% of the respondents travelled by car, 34% used public transport, 65% walked, and 1% travelled via motorbike/scooter;*
- *For trips with a work purpose, 0% of the respondents travelled by car, 23% used public transport, 59% walked, 2% travelled via motorbike/scooter, and 2% took a taxi;*
- *For trips with a social purpose 0% of the respondents travelled by car, 2% travelled as a passenger, 33% used public transport, 61% walked, 0% travelled via motorbike/scooter, and 4% took a taxi;*
- *Bicycles are the vehicle of choice for respondents; 14% said they owned or planned to own a bicycle during their time at the boarding house. This compared to 10% with car and 6% for a motorbike/scooter."*

Overall the questionnaire survey results identified that up to 99% of respondents stated that their preferred and most regular form of travel was by either public transport or walking.

The Traffic Assessment goes on to state that *“it is expected that similar travel patterns will arise from the proposed development on Block 4S given that the subject site is relatively better located than the Quay Street site in terms of proximity and accessibility to a good quality public transport system, amenities and services.”*

Further to this discussions with a potential operator of the proposed student accommodation on Block 4S indicate that based on their experience a car parking facility would not be required to be provided for the development. This is considered to be particularly the case for the proposed development as Block 4S will provide accommodation solely for students who will be residing within 1 block from UTS and a 10 minute walk from Sydney University. As a result it is expected that nearly all the students will be walking to and from the site. It is also noted that they are part of a mixed use precinct where services and facilities (retail, open space, bars/restaurants etc) is located in close proximity to their place of residence.

In light of the above it is considered that the underlying objective of the standard is achieved notwithstanding non-compliance with the numerical requirement set by the development standard. Furthermore it is considered that given the sites proximity to Sydney University, UTS and other services and facilities then the underlying objective or purpose of the standard is not relevant to the development and therefore in this instance and therefore compliance is unnecessary.

The underlying objective of the control seeks to ensure that development has adequate and appropriate parking facilities and does not result in any adverse parking, traffic and amenity impacts on the surrounding area. The traffic assessment has confirmed that the vast majority of future users do not own a motor vehicle and therefore the proposed development will not generate any need for motorcycle spaces. In addition to this the extra provision of bicycle parking will ensure that sufficient facilities are provided that meet the needs and preferences of students, encourage a healthy and sustainable lifestyle, and meet the underlying objective.

3.0 Consistency with the Policy's Aim

Item 2 of the LEC SEPP 1 Matters for Consideration states that the consent authority must be of the opinion that granting consent to the development application would be consistent with the Policy's aim of providing flexibility in the application of planning controls where strict compliance with those controls 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 Environmental Planning and Assessment Act 1979.

Section 2.0 demonstrates that strict compliance with the motorcycle parking development standard is both unreasonable and unnecessary in the circumstances of the case.

In addition to this, strict compliance with the motor cycle parking development standard will hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the EP&A Act, as detailed below.

(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,

The development standard seeks the provision of motorcycle parking at a rate of 1 motorcycle space for every 5 boarding rooms, equating to a requirement of 165 motorcycle spaces. Provision of 165 motorcycle parking spaces is considered excessive and unnecessary for the development, furthermore it is noted that motor cycles require the use of unsustainable fuels that will result in emissions that are harmful to the environment. In addition they will also add to the vehicle congestion and noise levels in the surrounding area. The lack of motorcycle spaces will encourage more sustainable modes of transport including walking, cycling and the use of public transport to get to and from the site, and will therefore encourage people to lead more active and healthy lifestyles and improve overall amenity in the area.

The development as proposed is therefore considered to promote the orderly and economic use of the land whilst resulting in a more environmentally friendly development outcome that better supports the social and economic welfare of the community.

4.0 Conclusion

This SEPP 1 Objection demonstrates that the Department can be satisfied that the proposed variation to the development standard is justified and satisfies the tests established by the LEC for SEPP 1 Objections, in that:

- the SEPP 1 objection is 'well founded' because the proposed development achieves the objectives of the standard notwithstanding its non-compliance with the motorcycle parking standard,
- the SEPP 1 objection is 'well founded' because the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.
- the strict application of the standard would hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the EP&A Act;
- the non-compliance with the development standard does not raise any matters of State and regional planning significance and will assist with the attainment of policies; and
- there is no public benefit in maintaining the motorcycle parking development standard adopted by the environmental planning instrument for this site, and non compliance with the development standard will facilitate a development that delivers greater public benefits.

In light of the above it is therefore requested that, the Council grant development consent for the proposed development.