

Objection to Motorcycle Parking Development Standard



Sydney International Convention, Exhibition and
Entertainment Precinct (SICEEP)

The Haymarket, Residential Building (Student Accommodation)

Submitted to Department of Planning and Infrastructure
On Behalf of Lend Lease (Haymarket) Pty Ltd

January 2013 ■ 13175

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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 on behalf of Lend Lease (Haymarket) Pty Ltd.

It is submitted to the Department of Planning and Infrastructure (the Department) in support of a State Significant Development (SSD DA) for a residential building (student accommodation) within the Western (Darling Drive) Plot of The Haymarket – a new mixed used neighbourhood within the overall Sydney International Convention, Exhibition and Entertainment Precinct (SICEEP).

This SEPP 1 Objection should be read in conjunction with the Environmental Impact Statement (EIS) dated May 2013. It relates to the provision of motorcycle parking, being clause 30(1)(h) of *State Environmental Planning Policy (Affordable Housing) 2009* (Affordable Housing SEPP). Whilst the Affordable Housing SEPP does not strictly apply to the subject SSDA, this SEPP 1 Objection has nonetheless been completed.

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:

...

- (g) *the provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading or unloading of vehicles,*
- ...

(**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 occupants 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.

The following section demonstrates that the proposed development will: 'achieve the objectives of the standard notwithstanding the non-compliance with the standard '.

2.1 Achievement of Objectives

As outlined in **Section 1.3** above, there are no stated objectives for the development standard. The overall purpose of Clause 30 of the Affordable Housing SEPP has described as an aim 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 occupants and does not result in any adverse parking, traffic and amenity impacts on the surrounding area.

Comment

A detailed Transport and Traffic Impact Report was prepared by Hyder for the proposed development and accompanies the SSDA. It is expected that most students do not own a private vehicle, with the vast majority travelling by public transport, cycling or walking. The Transport and Traffic Impact Report detailed the vast amount of public transport located within the vicinity of the site. The design of the surrounding public domain delivered through this SSDA and other applications are further thought to encourage use of the surrounding public transport network by creating more legible and attractive connections.

The site is located within a short distance to nearby educational facilities, allowing future occupants to walk or cycle. The redevelopment of 'The Haymarket' will also result in a significant array of new services and facilities provided in excess of those already existing around the site.

Future occupants of the proposed development will be able to walk or cycle to undertake shopping, entertainment, dining and fulfill other everyday tasks.

In light of the above it is considered that the underlying objective of the standard is achieved notwithstanding the non-compliance with the numerical requirement set by the development standard. The absence of motorcycle parking is suitable for the local area, given the sites locational advantage close to public transport, services and facilities.

The 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 Transport and Traffic Impact Report has confirmed that there is ample access to public transport. There has been an underlying intent in the design of the development that future occupants use alternative sustainable methods of travel such as public transport, walking or cycling to ameliorate any potential traffic impacts. As such, no demand is expected to be generated for motorcycle parking.

In addition to this, the provision of bicycle parking and upgraded cycleway facilities along Darling Drive 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 of the development standard.

It must be acknowledged that Clause 30(h) of the Affordable Housing SEPP references both bicycles and motorcycles. It has been the intent of the design team and Lend Lease to enhance the cyclist facilities and linkages in the vicinity of the site, encouraging the more sustainable use of cycles over other forms of transport such as motorcycle use.

Summary

Given that the non-compliance will still result in a development that achieves the objectives of the development standard in the Affordable Housing SEPP, the development standard is unreasonable and unnecessary in this case and, therefore, the objection to the development standard is 'well founded'.

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 98 motorcycle spaces. Provision of 98 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. Furthermore, motorcycles will add to the vehicle congestion and noise levels in the surrounding area, conflicting with one of the key objectives of the development specified in Section 1.3.3 of the EIS:

Encourage more sustainable methods of transport through the provision of a shared pedestrian/cycle path improving pedestrian and cycle connectivity;

A conscious absence 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 Other Matters for Consideration

Item 3 of the LEC SEPP 1 Matters for Consideration states that 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.

The matters are addressed in detail below.

4.1 Matters of State or Regional Planning Significance

The proposed development and variation from the development standard does not raise any matters of significance for State or regional environmental planning, nor does it conflict with any State planning policies or Ministerial directives.

Further, the proposed variation is being made to support the subject state significant development (SSDA3).

4.2 Public Benefit

It is considered that the proposed development will benefit the public for the following reasons:

- The absence of motorcycle parking will ameliorate any traffic impacts on the local road network with no trip generation encouraged for motorcycles.
- The use of more alternative modes of transport such as use of public transport, cycling and walking will be encouraged.
- The objective to encourage public activity and activate the public domain throughout 'the Haymarket' will be achieved by encouraging people to use the new pedestrian connections provided as part of the overall SICEEP Project.
- The proposal will contribute to achieving the City of Sydney's goals for Sydney to become a leading environmental performer through encouraging more sustainable methods of transport.
- The City of Sydney objective to create city of pedestrians and cyclists will be better realised through reduced motorcycle trips.

5.0 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.