



Request for Variation to Development Standard (Height) State Environmental Planning Policy No.1



60-78 Regent Street, Redfern

Student Accommodation

Submitted to NSW Department of Planning & Environment
On Behalf of Iglu Pty Ltd

November 2014 ■ 14395

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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 Urban Planning Consultants Pty Ltd (JBA) on behalf of Iglu Pty Ltd.

It is submitted to the NSW Department of Planning & Environment in support of a State Significant Development Application (SSD DA) for student accommodation at 60-78 Regent Street, Redfern.

It relates only to the 2-storey building height control that applies to a strip of land within the site adjoining Regent Street. The proposed development complies with the maximum building height control of 18-storeys that applies to the majority of the site.

This SEPP 1 Objection should be read in conjunction with the Environmental Impact Statement dated November 2014. It relates to the two-storey maximum building height development standard (Clause 21(1), Division 3, Schedule 3) that applies to land facing Regent Street in the Redfern centre under State Environmental Planning Policy (Major Development) 2005.

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:

whether non-compliance with the development standard raises any matter of significance for State or regional environmental planning; and

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 State Environmental Planning Policy (Major Development) 2005 (the MD SEPP). The maximum building height development standard applicable to the site is found in clause 21(1) of Division 3 in Schedule 3, and is as follows:

1. *The height of a building on any land that is the subject of the Height of Buildings Map is not to exceed the maximum height shown for the land on that map.*

Under the Standard Instrument LEP, to which Division 3 of Schedule 2 of the MD SEPP refers,

storey means a space within a building that is situated between one floor level and the floor level next above, or if there is no floor above, the ceiling or roof above, but does not include:

- (a) *a space that contains only a lift shaft, stairway or meter room, or*
- (b) *a mezzanine, or*
- (c) *an attic.*

The LEP height map establishes a maximum building height control for the site of two storeys to a depth of 8 metres from the Regent Street boundary which then rises to 18 storeys over the remainder of the proposed site. An extract from the building height map is included in **Figure 1** below.

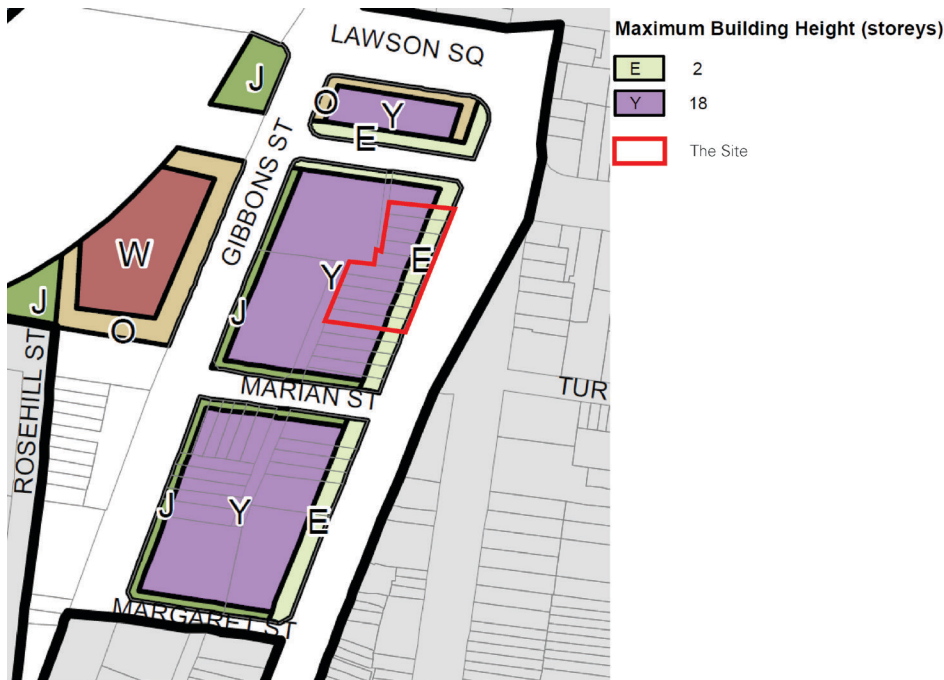


Figure 1 – Extract from MD SEPP maximum building height map
 Source: NSW Legislation website and JBA

The proposed development seeks approval for a development with a two storey podium with a 16 storey tower above (total 18 storeys). The tower is proposed to encroach on the 8m deep, two-storey height limit zone along Regent Street by a total of 5 metres. This will result in a setback of 3 metres to Regent Street, and a breach of the maximum building height control at this location under the MD SEPP.

*“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:*

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

As this SEPP 1 objection relates to a departure from the numerical standard for building height, it is considered that clause 21(1) of Division 3 in Schedule 3 of the MD SEPP is a development standard and not a ‘prohibition’ in respect of development.

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

No objectives are given for the maximum building height development standard as detailed in the MD SEPP.

Notwithstanding this, it is possible to understand the implicit objectives of the standard through an understanding of the history of the strategic planning that

has informed the State Significant Site listing and built form controls for the Redfern Waterloo Sites.

The Redfern-Waterloo Authority's 'Built Environment Plan 1' (BEP 1) was released on August 2006 and is a planning framework for a number of larger sites and blocks within the Redfern and Waterloo Areas. Relevantly, Section 4 of this document identifies the following relevant mechanisms by which it was proposed to "establish an identifiable character and appropriate urban scale for the [Redfern] Town Centre" by:

- *creating a consistent block edge along all streets to a height of five storeys and tower development towards the centre of the blocks*
- *retaining the two storey height of existing shopfronts along the length of Regent Street*
- *ensuring all new development is built to the street boundary and in alignment with the street*
- *creating a scale and architectural proportions that are consistent with existing shopfronts*

BEP 1 identifies the provision of a two-storey edge to Regent Street, beyond which would be a shallow 5-storey podium with a 18 storey tower above, as illustrated in **Figure 2** below.

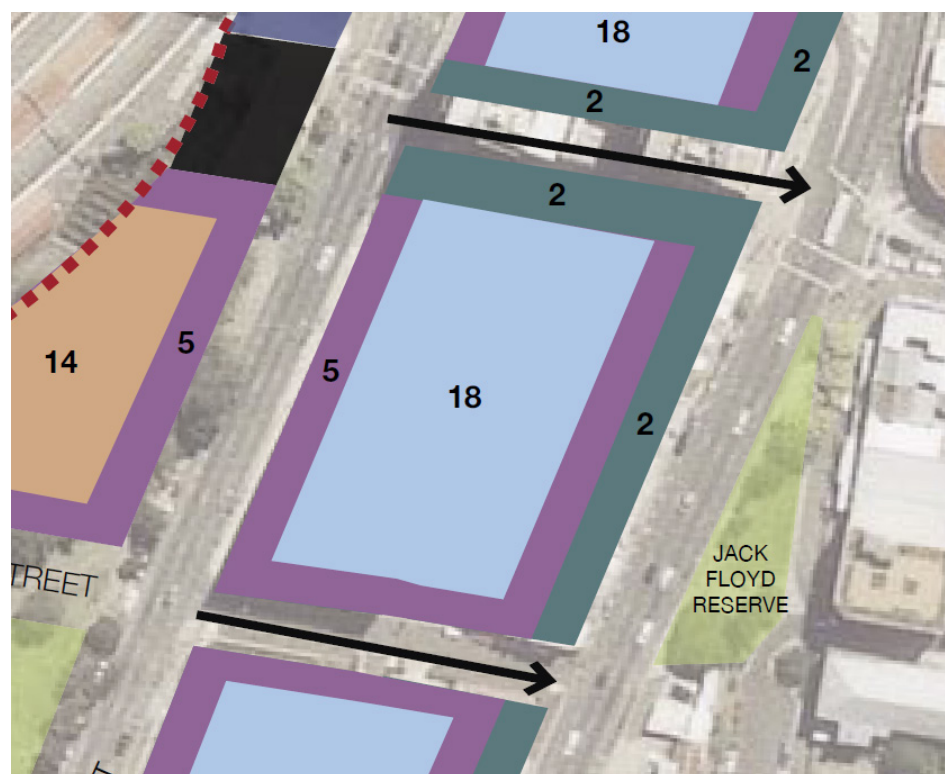


Figure 2 – Extract from BEP 1 showing building height envelope
Source: Redfern Waterloo Authority

In 2010, the Redfern Centre Draft Urban Design Guidelines were prepared, exhibited and endorsed by the (then) Minister for Planning and Infrastructure to provide guidance around the design excellence requirements for the Redfern Centre. These guidelines recommended the removal of the 5-storey block edge, with a direct transition from a two-storey podium along Regent Street to 18-storey towers above, as illustrated in **Figure 3** below. Whilst no specific objectives

are given for these height controls, the objectives for Redfern Centre in section 3 relevantly include the following:

- *Achieve a consistent block edge to reinforce the main street character of the centre*
- *Respond to the 2 storey height and grain of existing shopfronts*

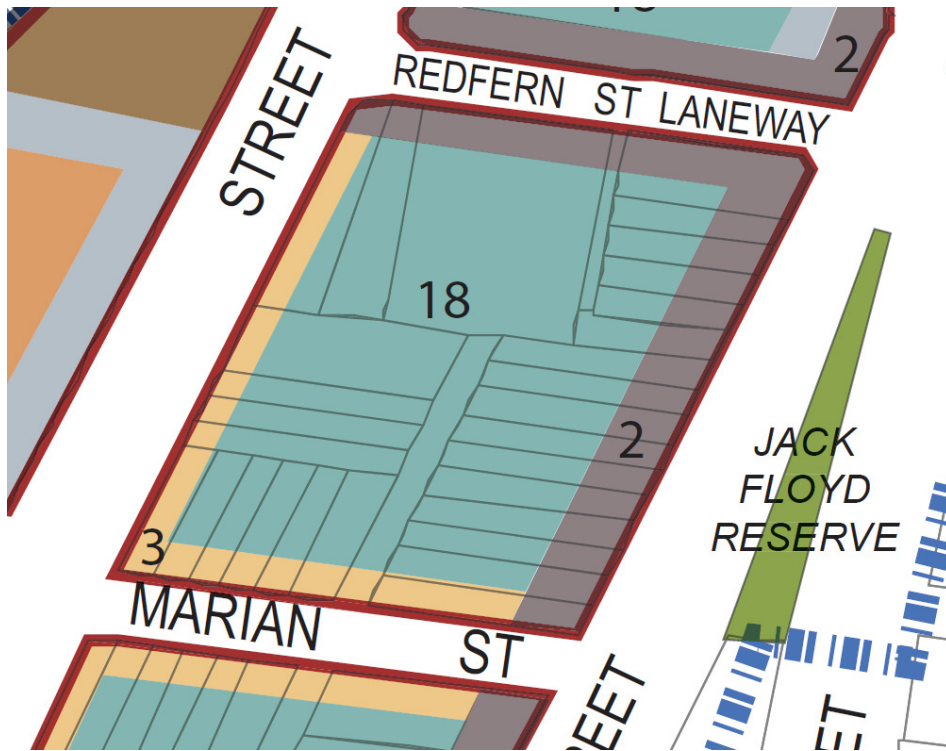


Figure 3 – Extract from Redfern Centre Draft Urban Design Guidelines
 Source: Redfern Waterloo Authority

The MD SEPP maximum building height map was amended at around this time to reflect the removal of the 5-storey podium requirement.

In light of the above, it can be surmised that the objectives of the building height controls for the site under the MD SEPP are, generally speaking, as follows:

- ensure all new development is built to the street edge at the ground plane;
- achieve a consistent block edge to reinforce the character along main streets; and
- provide a 2-storey street presentation that is consistent with the scale and architectural proportions of existing shopfronts in new development.

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" as 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 of 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 way 1, although way 4 is also relevant. The following section demonstrates that the proposed development will 'achieve the objectives of the standard notwithstanding the non-compliance with the standard'.

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

The planning controls for the Redfern centre envisage a complete knock-down/re-build for new development within the block, as has occurred on the 7-9 Gibbons Street and Redfern RSL site. However, the quality of the existing facades on the Iglu site was recognised in the design process as an opportunity to better achieve the continuance of the desired street form. By retaining the façades, Bates Smart's design preserves some of the centre's history and presents a recognisable and attractive frontage for the podium to Regent Street. In preserving some of the history of the streetscape, the design both preserves and reinforces the traditional two-storey base and human scale at street level.

Aesthetically, this design response is considered to be substantially superior to the construction of a modern two-storey podium for the tower. Further, this scheme provides a stronger architectural distinction between the podium and the tower above, lending itself to greater flexibility in the physical separation required above the podium level to visually separate the tower.

The photomontage provided in **Figure 4** below shows how an appropriate visual distinction can be achieved between the preserved two-storey street frontage and the new tower form. The clear juxtaposition of old and new fabric reinforces the integrity of the street frontage, and allows the podium to remain predominant in close views at the street level. In the immediate vicinity of the proposal, the

human scale will be retained through the visual continuance of the existing fabric.

The digital renderings of the proposed built form in **Figures 5** and **6** shows that although the physical separation between the podium and tower in the proposed scheme will not be as apparent as a scheme with an 8 metre setback, the visual distinction is nonetheless strong (if not stronger) due to the retention of the existing historic facades.

We note that there would potentially be opportunities to preserve the facades of the buildings to the south of the Iglu site as part of any future redevelopment of these sites in a similar manner to that proposed by Bates Smart, thereby providing for further enhancements to the continuity and scale of development addressing Regent Street.

In light of this, it is considered that the proposed development will continue to achieve the objectives of the tower setback control despite reducing the setback from 8 metres to 3 metres for the following reasons:

- the existing street edge and retail terrace facades, which have character within the Redfern Centre, will be retained and maintain the consistency of the street edge at the ground plane;
- the presentation of the existing facades will maintain the scale and architectural proportions of these shopfronts to Regent Street.

Further to the above, it is noted that the proposed development complies fully with the 18-storey building height limit that relates to the majority of the site.

In light of the above, we therefore consider the proposed variation to the setback to satisfy the objectives of this control and is an acceptable design outcome.



Figure 4 – Photomontage of proposal viewed from Regent Street/ Redfern Street intersection
Source: Bates Smart



Figure 5 – View along Regent Street from the north (left) and from Redfern Street to the east (right)
Source: Bates Smart



Figure 6 – View from Regent Street to the south
Source: Bates Smart

Development standard has been virtually abandoned or destroyed

The Department of Planning & Environment has recently recommended that the setback be entirely waived for the redevelopment of the former TNT Tower site under its assessment report for SSD 5249-2012.

The envelope of the existing eastern tower is visible in northern views toward the Iglu site as illustrated in **Figure 6** above. Given that new development on the site will not reduce this setback, as envisaged in the Major Development SEPP and Redfern Centre Urban Design Guidelines that also require the setback in question on the Iglu site, it is not considered that setting the Iglu building further back would make any additional contribution to the streetscape.

Underlying purpose would be defeated if compliance is required

Figure 7 below illustrates the impact of the 8 metre tower setback in conjunction to the other (non-statutory) setbacks that apply to the subject site. Strict compliance with this 8 metre setback requirement would render the site undevelopable, or would require a design that gives rise to significant additional impacts on adjoining land including residents of the Redfern RSL site and opposite William Lane.

Given that the overarching objective of the Major Development SEPP is to facilitate the urban renewal through the redevelopment of existing land within the Redfern centre, the strict enforcement of this setback would defeat the overarching purpose of these planning controls.



Figure 7 – Diagrams illustrating setbacks required under the Draft Urban Design Guidelines for Redfern
 Source: Bates Smart

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 maximum building height development standard is both unreasonable and unnecessary in the circumstances of the case.

In addition to this, strict compliance with the maximum building height 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,

The strict enforcement of the building height limit and tower setback control will hinder the orderly and efficient development of the Redfern town centre. The development as proposed will enhance the mix of uses within the centre, inject additional street-level activity and provide benefits to the public through the provision of new retail facilities and a through-site link. The enforcement of the current building height control (at the lower levels) would hinder these objectives and significantly reduce the ability of new development on the site to contribute positively to the social and economic welfare of the community.

(ii) the promotion and co-ordination of the orderly and economic use and development of land,

As illustrated in **Figure 7**, the strict enforcement of the podium building height control would, in conjunction with other non-statutory building separation and setback requirements, hinder the orderly and economic development of the land.

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

As noted in **Section 2.0** above, the urban renewal of this site as part of the Redfern centre has been identified as a matter of state significance under the Major Development SEPP and the State and Regional Development SEPP. Strict compliance with the development standard would significantly impede the redevelopment of the site for this purpose, thereby hindering the urban renewal of the Redfern centre generally. Strict adherence to the development standard would therefore undermine the attainment of the underlying, state-significant objective of the Redfern-Waterloo urban renewal process.

4.2 Public Benefit

As discussed in **Section 2.0** above, the proposed development will achieve the objectives of the building height control notwithstanding the non-compliance, and as such there is no benefit to the public achieved by strict adherence to this control. Further, strict adherence to the 8 metre tower setback control, combined with the other setback provisions that apply to the site, would significantly impede the redevelopment of the site. As identified above, the NSW State Government has identified the urban renewal of the Redfern centre as necessary to improve the urban amenity of the area and improve utilisation of public transport.

The proposed development will result in public benefits that cannot be delivered if strict adherence to the development standard is required, including:

- retention and restoration of the Regent Street building facades, and their incorporation into an architecturally designed building which achieves design excellence and will set a new benchmark for architecture within Redfern;
- re-activation of retail frontages along Regent Street in order to inject new life into this public domain interface
- delivery of a through-site link that will facilitate improved pedestrian connectivity between the Redfern Street Laneway, Regent Street and William Lane; and
- provision of student housing to support the operations of Sydney's major education providers and contribute to their growth as part of Australia's major education services industry.

5.0 Conclusion

This SEPP 1 Objection demonstrates the Minister for Planning (or her delegate) 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 objectives of the development standard will be achieved notwithstanding the non-compliance;
- the strict application of the standard would be both unreasonable and unnecessary in the circumstances of the case;
- 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 fully maintaining the building height adopted by the environmental planning instrument for this site.

It is therefore requested that, the Minister for Planning (or her delegate) grant development consent for the proposed development.