

Objection to Clause 22(2)(g) of State Environmental Planning Policy No. 64 - Advertising and Signage



Sydney International Convention, Exhibition and Entertainment Precinct (SICEEP)

SICEEP - Interactive Display System

Submitted to Department of Planning and Environment
On Behalf of Darling Harbour Live

October 2015 ■ 15048

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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 Darling Harbour Live.

It is submitted to the Department of Planning and Environment (the Department) in support of a State Significant Development Development Application (SSD DA) for an 'Interactive Display System' (IDS) of building identification signage and digital LED signage within the overall Sydney International Convention, Exhibition and Entertainment Precinct (SICEEP) area.

This SEPP 1 Objection should be read in conjunction with the Environmental Impact Statement (EIS) dated October 2015. It relates to the development standard (clause 22(2)(g)) within State Environmental Planning Policy No. 64 – Advertising and Signage (SEPP 64).

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 SEPP 1 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 standard 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 matters for considerations for SEPP 1 (LEC SEPP 1 matters for consideration).

1.2 Is the Planning Control in Question a Development Standard?

The EPI to which this objection relates is SEPP 64. The development standard applicable to the site is found at clause 22(2)(g) of SEPP 64, and is as follows:

22 Wall advertisements

- (1) *Only one wall advertisement may be displayed per building elevation*
- (2) *The consent authority may grant consent to a wall advertisement only if:*
 - a. *The consent authority is satisfied that the advertisement is integrated with the design of the building on which it is to be displayed, and*
 - b. *For a building having:*
 - i. *An above ground elevation of 200 square metres or more – the advertisement does not exceed 10% of the above ground elevation, and*
 - ii. *An above ground elevation of more than 100 square metres but less than 200 square metres – the advertisement does not exceed 20 square metres, and*
 - iii. *An above ground elevation of 100 square metres or less – the advertisement does not exceed 20% of the above ground elevation, and*
 - c. *The advertisement does not protrude more than 300 mm from the wall, unless occupational health and safety standards require a greater protrusion, and*
 - d. *The advertisement does not protrude above the parapet or eaves, and*
 - e. *The advertisement does not extend over a window or other opening, and*
 - f. *The advertisement does not obscure significant architectural elements of the building, and*

g. A building identification sign or business identification sign is not displayed on the building elevation. (our emphasis)

Approval is sought for a suite of building identification and digital LED signs, which will be located on and throughout approved ICC Conference Centre, ICC Exhibition Centre, ICC Theatre, and SICEEP Public Domain.

Within the proposed suite of signs, two building identification signs (T-09 and T-18) are proposed on the ICC Theatre on the same elevation as two digital LED signs (wall advertisements). It is noted that a separate SEPP 1 Objection is prepared in relation to Clause 22 (1).

“Development Standards” has the following definition under section 4(1) of the 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 clause 22 of SEPP 64 is only prohibitory in so far as it precludes wall advertising and building or business signage on the same building elevation and relates to an aspect of the development (i.e. the external appearance of a building), it meets the definition of a development standard rather than a ‘prohibition’ in respect of development, and accordingly, can be varied by a SEPP 1 objection.

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

The objectives of the development standard controlling the number of signs on a single elevation as detailed in clause 22(2)(g) of SEPP 64 are determined by the relevant objectives of the Policy (clause 3) as follows:

- a. to ensure that signage (including advertising):*
 - i. is compatible with the desired amenity and visual character of an area, and*
 - ii. provides effective communication in suitable locations, and*
 - iii. is of high quality design and finish*

In summary, the underlying purpose of the development standard is to ensure that the design quality and appearance of advertising and signage which is visible from any public place or public reserve is appropriate within the context of its particular location.

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.

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 the Objectives of SEPP 64

As outlined in Section 1.3 above, the relevant objectives for the development standard prescribed by SEPP 64 include:

(a) *to ensure that signage (including advertising):*

(i) *is compatible with the desired amenity and visual character of an area,*

Comment

The character of the area is that of a dynamic and vibrant tourist and visitor destination in the heart of the CBD. Signage within this area has been contemplated within the following documents:

- *Infrastructure NSW Permanent Signage and Advertising Guidelines* (2014); and
- *SHFA Signage Policy, Darling Harbour Commercial Signage* (2013).

The intended future character of the area will be facilitated by the location and operation of the proposed signage. Further, the proposed development will not create any nuisance for future or existing users to the extent that it impacts adversely on the quality of life for residents in the area. The signage does not generate any loss of privacy, vehicular or pedestrian traffic, loss of views or sunlight or otherwise detract from residential amenity generally.

Due to the location of the proposed IDS elements within the larger building façades, the sign will not have any visual impact, illumination impact, and it will not obscure or obstruct any existing views, dominate the skyline or reduce the quality of existing buildings.

(ii) provides effective communication in suitable locations,

Comment

It is considered that the proposed signage will provide effective communication in this location for the following reasons:

- The proposed signs will serve two distinct purposes (providing building identification and interactive communication, information and advertising for SICEEP visitors) and will be designed and spatially separated.
- Both the building identification signs and the digital LED signs (wall advertisements) have been considered as part of the overall architecture of the new buildings and public domain and have been designed to integrate with the building's façades. The signs will be located within the buildings' structure in a seamless manner, so that it reads as an integrated part of the façade, not a standalone element.

(iii) is of high quality design and finish,

Comment

The proposed development is considered to achieve the design objectives of the development standard prescribed by SEPP 64 as follows:

- The proposed LED signs will use the latest LED technology, which will allow for the highest quality of messaging in terms of both legibility and clarity, and is of the highest quality available in terms of materials and design detailing.
- The LED signs will utilise the best current LED technology to provide an energy efficient scheme.
- The LED signs and business identification signs have been considered as part of the overall architecture of the new building and have been designed to integrate with the buildings' façades. The LED signs will be located within the building structure in a seamless manner, so that it reads as an integrated part of the façade, rather than a standalone element.
- The 'static' building identification sign will be small in size and incorporate high quality materials (constituted of metal lettering - fixed to the façade)

Summary

Therefore, given that the non-compliance will still result in a development that achieves the objectives of the development standard in SEPP 64, 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 SEPP 1'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 EP&A Act.

Section 2.0 demonstrates that strict compliance with the development prescribed by clause 22(2)(g) of SEPP 64 is both unreasonable and unnecessary in the circumstances of the case.

In addition to this, strict compliance with the SEPP 64 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 proposed LED signs and building identification signs, whether considered together or in isolation, will not impact the proper management, development and conservation of natural and man-made resources, nor the provision of a "better environment".

The use of a modern LED display is more sustainable than the current signage within the Darling Harbour area because it will eliminate any landfill and energy consumed in the production of disposable vinyl displays that are traditionally used for outdoor signage.

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

The proposed signage includes the latest LED technology, allowing for the highest quality of messaging in terms of both legibility and clarity, and being of the highest quality available in terms of materials and design detailing. In conjunction with the static building identification sign, it represents the orderly and economic use and development of 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

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 (SSDA11).

4.2 Public Benefit

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

- The proposed signs will aid in the creation of a vibrant and connected public space and provide a modern, integrated design.
- The IDS suite of signs will allow for public messaging, wayfinding and precinct information to be passed to visitors.
- The IDS suite will facilitate a revenue stream for the NSW government by allowing limited third party advertising.
- The proposed signs will serve two distinct purposes, and will be physically separated so as not to create visual clutter.

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 objectives of the standard are achieved notwithstanding non-compliance with the standard.
- 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 objectives 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.
- There is no public benefit in maintaining the development standard adopted by the environmental planning instrument for this site.

It is therefore requested that the Department accept this SEPP 1 objection, and grant development consent for the wall advertisement.