

STATE ENVIRONMENTAL PLANNING POLICY NO.1 DEVELOPMENT STANDARD - OBJECTION TO THE RESIDENTIAL FLOOR SPACE DEVELOPMENT STANDARD

1.0 Introduction

This State Environmental Planning Policy No 1 - Development Standards (SEPP 1) Objection has been prepared in relation to a development application for the demolition of all existing buildings and erection of part 5 and part 6 storey mixed use development above two common basement levels with two retail tenancies, hotel accommodation with 76 rooms, and a residential flat building containing 19 apartments at 175-177 Cleveland Street and 1-5 Woodburn Street, Redfern.

The SEPP 1 objection is required as the floor space ratio proposed exceeds the maximum floor space ratio permitted for both the residential component of the development as well as the overall permitted floor space ratio in accordance with the provisions of State Environmental Planning Policy (Major Development) 2005.

2.0 The Provisions of SEPP 1

State Environmental Planning Policy No. 1 - Development Standards is a State Policy mechanism which allows for the variation of development standards contained within in environmental planning instruments.

3.0 Necessary Form and Detail Required in a SEPP No 1 Objection

In accordance with the provisions of SEPP 1 and decisions in *Hewitt v Hurstville Council* (2001) NSWLEC 294 (21 December 2001), *Winten Property Group Limited v North Sydney Council* (2001) NSWLEC 46 and *Hooker Corporation Pty Limited v Hornsby Shire Council* NSW LEC, 2 June 1986, unreported, an objection under SEPP No. 1 should respond to the following questions:

- Is the 'control' is a development standard rather than a prohibition on development?
- What is the underlying object or purpose of the standard?
- 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 Environmental Planning and Assessment Act 1979?
- Is compliance with the standard unreasonable or unnecessary in the circumstances of the case? and
- Is the objection well founded?

The remainder of this SEPP 1 objection responds to these questions in respect of the proposed variation.

4.0 Development Standard to which the Objection relates

This objection relates to the floor space ratio development standard at clause 21(2), Part 5 of Schedule 3 of State Environmental Planning Policy (Major Development) 2005.

The clause provides that the floor space ratio of a building on any land that is the subject of the Floor Space Ratio Map is not to exceed the floor space ratio shown for the land on that map. A total floor space of 3:1 applies to the site. A total maximum floor space ratio of 1:1 also applies to the residential component of the building.

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5.0 Extent of Non Compliance with Development Standard

The proposed development has a floor space ratio of 3.7:1 and exceeds the overall 3:1 control which applies to the site. In addition, the residential component has a floor space ratio of 1.35:1 and exceeds the 1:1 control which applies for residential use on the site. A comparison of the proposal against the control and recently approved development of the site is provided below:

Control	Permissible	Approved	Proposed
Commercial FSR	2:1 (66%)	1.71:1 (57%)	2.35:1 (64%)
Residential FSR	1:1 (33%)	1.27:1 (43%)	1.35:1 (36%)
TOTAL	3:1	2.98:1	3.7:1

6.0 Specific Objectives of the Standard

There are no stated objectives for the floor space ratio control in the Major Development SEPP. The objectives of the Business Zone—Mixed Use are as follows:

- (a) to support the development of sustainable communities with a mix of employment, educational, cultural and residential opportunities,
- (b) to encourage employment generating activities by providing a range of office, business, educational, cultural and community activities in the Zone,
- (c) to permit residential development that is compatible with non-residential development,
- (d) to maximise public transport patronage and encourage walking and cycling,
- (e) to ensure the vitality and safety of the community and public domain,
- (f) to ensure buildings achieve design excellence,
- (g) to promote landscaped areas with strong visual and aesthetic values to enhance the amenity of the area.

7.0 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 EP&A Act?

Clause 3 of SEPP 1 describes the aims and objectives of the Policy as follows:

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.

The objects specified in Section 5(a)(i) and (ii) of the EP&A Act are:

'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..'

Whebe V Pittwater Council (2007) NSW LEC 827 (21 December 2007) sets out ways of establishing that compliance with a development standard is unreasonable or unnecessary. It states that:

An objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding noncompliance with the standard.'

Accordingly, the following assessment considers the proposal against the objectives of the Business Zone-Mixed Use zone contained within Clause 10 of Division 1, Part 5, Schedule 3 of the Major Development SEPP:

- (a) to support the development of sustainable communities with a mix of employment, educational, cultural and residential opportunities,

The proposed development will support the mix of uses in the locality by providing visitor and tourist accommodation which is ideally located given the close proximity of the site to the Sydney CBD. The development will also support the vitality of the surrounding commercial uses by increasing the residential population in the locality.

- (b) to encourage employment generating activities by providing a range of office, business, educational, cultural and community activities in the Zone,

The proposal will provide employment associated with the hotel accommodation component of the development as well as the proposed retail shop. The increased residential population will also contribute to the economic success and employment opportunities of nearby businesses.

Residents will provide a range of community and economic benefits through financial contributions to local businesses.

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- (c) to permit residential development that is compatible with non-residential development,

The proposed hotel use is considered to be compatible with the proposed residential accommodation in this it is similar in nature with a shorter stay than traditional residential occupation. The hotel use is unlikely to generate any significant source of amenity impact to the proposed residential apartments.

The development will assist in relieving pressure on existing market rental housing.

- (d) to maximise public transport patronage and encourage walking and cycling,

The proposal seeks to accommodate an appropriate quantum of residential and visitor accommodation in a location which is a short distance from the Sydney CBD as well as Redfern train station and nearby universities. The proposal also provides a generous and convenient provision of bicycle parking. Accordingly, the proposal will maximise walking, cycling and public transport patronage.

- (e) to ensure the vitality and safety of the community and public domain,

A legible pedestrian entry to the hotel accommodation and residential apartments from both Cleveland Street and Woodburn Street will be provided and surveillance of the surrounding streets will be improved as a consequence of the proposed works.

- (f) to ensure buildings achieve design excellence,

The building is a high quality design with a contemporary aesthetic achieved through a considered design which incorporates quality materials and finishes. An active frontage along the ground floor has been provided, to provide visual interest and encourage interaction. The variation to the FSR control does not result in an excessive building height, visual bulk or scale as the proposal will appear as a 5 storey development from the surrounding public domain.

The development will provide a high level of amenity for residents with the residential apartments exceeding the minimum size, solar access and cross-flow ventilation requirements under the Apartment Design Guide. Notwithstanding the proposed variation to the floor space ratio control, the development performs satisfactorily with respect to solar access and privacy.

- (g) to promote landscaped areas with strong visual and aesthetic values to enhance the amenity of the area.

The proposed variation does not create any adverse impacts on the adjoining properties, the streetscape or the character of the locality generally. The proposal is compatible with the existing mix of surrounding residential, commercial and light industrial uses.

8.0 Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case in that:

- The existing building on the site represents an under utilisation of a site which is well served by public transport and is well located in relation to tertiary institutions, a range of large scale hospitals and health services, public recreation spaces, employment and retail facilities. The proposed development represents a more efficient and economic use of the site;
- The proposal will include a public benefit offer associated with the additional floor space;
- The proposed development has been designed by award winning architectural practice JPRA and represents a high quality development for the site which exhibits design excellence;
- The proposed street wall heights and parapet levels to Cleveland Street and Eveleigh Street are lower than the parapet levels of the recently approved development on the site and therefore the perceived scale of the proposal is essentially the same as that which has been previously approved notwithstanding the variation to FSR. The additional storey above the parapets to both Woodburn Street and Eveleigh Street have been further set back from the street facades such that they will not be visible from the public domain and therefore the proposal will appear as a 5 storey development which is consistent with the anticipated height for the site under the planning controls;
- The density proposed does not give rise to any significant impacts on the adjoining properties in terms of overshadowing, loss of privacy or visual impact beyond those which result from a complying scheme and therefore strict compliance with the control is unnecessary because it would not achieve a better outcome;
- The proposed apartments are afforded with a high level of amenity consistent with the design criteria in the Apartment Design Guide in that they all benefit from natural cross ventilation, there is a complying amount of solar access and the internal sizes all exceed that which is required;
- The availability and capacity of local infrastructure, public transport and recreational opportunities supports the additional floor space proposed in this location;
- The proposed density assists in meeting the demand for housing in the local government area in a highly appropriate location;
- The ratio of residential to non-residential floor space is generally consistent with that which is anticipated by the FSR controls (and is weighted more towards non-residential when compared to the recent approval of the same site) and therefore the proposed variation to the residential FSR of 1:1 does not compromise the capacity of the proposal to deliver a quantum of non-residential floor space as anticipated by the controls. Finally, the proposed variation to the residential FSR of 1.35:1 is similar to the recently approved residential FSR of 1.27:1 on the site and in the absence of any detrimental impacts or difference in perceptible scale when compared to a complying FSR and strict compliance would only serve to unnecessarily restrict housing supply in an ideal location.
- The proposed density assists in meeting the demand for hotel accommodation as recently identified by the City of Sydney; and
- Within the context of the scale of development approved to the south along Eveleigh Street and also around Redfern train station, the proposed density is appropriate.

9.0 Conclusion

The proposed variation to the floor space ratio development standard has been shown to be:

- Consistent with the underlying objectives of the development standard; and
- Consistent with the aims of SEPP 1 and the objects of s5(a)(i) and (ii) of the EP&A Act;

Strict adherence to the standard is unreasonable and unnecessary in the circumstances of the case because the perceptible scale of the development is consistent with that which is anticipated by the height control, the variation does not result in any significant impacts beyond a complying scheme, and accordingly strict compliance would only serve to reduce the provision of housing and hotel accommodation on a site in an ideal location with no benefit. In this regard it is reasonable and appropriate to vary the floor space ratio development standard to the extent proposed.