



Address: 80-88 Regent Street, Redfern

Proposal: A proposed mixed use development at 80-88 Regent Street, Redfern

State Environmental Planning Policy No. 1 Development Standards – Objection to Clause 21(1) of Schedule 3, Part 5 of SEPP (Major Development) 2005

1.0 Introduction

This is a SEPP No. 1 Objection to clause 21(1) of Schedule 3, Part 5 of SEPP (Major Development) 2005 that provides standards for the building height for sites within the former Redfern-Waterloo Authority area.

Clause 21(1) restricts development on the subject site to part two (2), part three (3) and part 18 storey building heights.

The wording of clause 21(1) states:

"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."

This application has been prepared in accordance with the NSW Department of Planning and Infrastructure (DP&I) guideline Varying development standards: A Guide, August 2011, and has incorporated as relevant principles identified in the following judgements:

1. *Winten Property Group Limited v North Sydney Council [2001] NSWLEC 46*
2. *Wehbe v Pittwater Council [2007] NSWLEC 827*

2.0 Description of the planning instrument, development standard and proposed variation

2.1 What is the name of the environmental planning instrument that applies to the land?

The relevant instrument for the purpose of this development is State Environmental Planning Policy (Major Development) 2005.

2.2 What is the zoning of the land?

The site is zoned E-Business Zone – Commercial Core under the provisions of SEPP (Major Development) 2005.

2.3 What are the Objectives of the zone?

The objectives of the E-Business Zone – Commercial Core are:

- (a) *to facilitate the development of a town centre,*
- (b) *to encourage employment generating activities by providing a wide range of retail, business, office, community and entertainment facilities,*

- (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.

2.4 What is the development standard being varied?

The height of buildings development standard is contained within Clause 21(1) of Schedule 3, Part 5 of SEPP (Major Development) 2005. The wording of clause 21(1) states:

"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."

Clause 21(1) restricts development on the subject site to part two (2), part three (3) and part 18 storey buildings.

2.5 Is the development standard a performance based control? Give details.

No.

2.6 Under what clause is the development standard listed in the environmental planning instrument?

The development standard is listed under subclause 21(1) of Schedule 3, Part 5 of SEPP (Major Development) 2005.

2.7 What is the numeric value of the development standard in the environmental planning instrument?

The numeric value of the standard is as follows:

- A maximum building height of 18 storeys;
- A two (2) storey height limit along the Regent Street frontage; and
- A three (3) storey height limit along the Marian Street frontage.

The two (2) storey height limit along Regent Street has a depth of 8m depth, which translates to an 8m setback to the 18 storey tower element. The three (3) storey height limit on Marian Street has a depth of 4m and translates to a 4m setback to the 18 storey tower element.

2.8 What is the proposed numeric value of the development standard in the development application?

The proposed development complies with the maximum overall 18 storey height limit. However, the residential tower component of the building encroaches into the two (2) and three (3) storey height limit areas applying to Regent Street and Marian Streets respectively. The proposed building heights are outlined in Table 1 in relation to the height standard.

Building Level	Regent St: setback to 18 storey tower	Compliance	Marian St: setback to 18 storey tower	Compliance
Ground – Level 1	0m	Yes	0m	Yes
Level 2 - 4	0m to 3m	No	0m to 4m	No
Level 5 -14	3m	No	0m to 4m	No
Level 15 - Roof	1.5m to 3m	No	0m to 4m	No

Table 1: Proposed Building Heights

3.0 Assessment of the Proposed Variation

3.1 Principles for SEPP 1 Objections

The decision of Justice Lloyd in *Winten v North Sydney Council* identifies the principles for which a SEPP 1 objection must be made and are outlined as follows:

- Is the planning control in question a development standard;
- 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 EP&A Act 1979;
- Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case;
- Is a development which complies with the development standard unreasonable or unnecessary; and
- Is the objection is well founded.

The decision of Justice Preston in *Wehbe V Pittwater [2007] NSW LEC 827*, expanded the considerations of a SEPP 1 objection and established the five (5) part test to determine whether compliance with a development standard is unreasonable or unnecessary based on the following:

- Would the proposal, despite numerical non-compliance is, be consistent with the relevant environmental or planning objectives;
- Is the underlying objective or purpose of the standard not relevant to the development thereby making compliance with any such development standard is unnecessary;
- Would the underlying objective or purpose would be defeated or thwarted were compliance required, making compliance with any such development standard unreasonable;
- Has Council by its own actions, abandoned or destroyed the development standard, by granting consent that depart from the standard, making compliance with the development standard by others both unnecessary and unreasonable; or
- Is the “zoning of particular land” unreasonable or inappropriate so that a development standard appropriate for that zoning was also unreasonable and unnecessary as it applied to that land. Consequently compliance with that development standard is unnecessary and unreasonable.

In addition, when considering granting concurrence to a variation, the requirements of clause 8 (a) and 8(b) of SEPP No. 1 should also be considered.

The above principles and the expanded five (5) part test are addressed in detail below.

3.2 Is the planning control in question a development standard?

The planning control in question is a development standard for the building height.

Clause 21(1) requires development to not exceed the height, in storeys, nominated on the Height of Buildings map.

The control is a numerical development standard and therefore is capable of being varied under the provisions of State Environmental Planning Policy No.1 – Development Standards.

3.3 What is the underlying objective or purpose of the standard? Is the proposal consistent with the objective despite the variation?

The purpose of the building height standard is not explicitly stated in the SEPP Major Development (2005). However, the assumed objectives are to maintain a two (2) storey scale to Regent Street and a three (3) storey scale to Marian Street. Further details of the objective and intent of the control can be found in the Draft Urban Design Principles - Redfern Centre (Draft UDPRC). This document identifies the intent of the setbacks to the towers and street frontage height as follows:

- to mitigate potential wind downwash impacts; and
- to ensure the presentation of a consistent street character with a human scale.

The proposal is consistent with the underlying objectives of the standard, despite the non-compliance as:

- It achieves a human scale with the provision of a continuous two storey street front along Regent Street. The proposal responds to the scale of the traditional shopfronts that have historically characterised the street. This is reinforced by the glazed arches on Regent Street, which mimic the scale and proportions of the existing shopfronts; and
- It does not result in unacceptable winds impacts as outlined in Section 5.4.7 of the EIS and the Pedestrian Wind Environment Study (Attachment 20 of the EIS).

3.4 Consistency with Zone Objectives

The proposal is consistent with the relevant objectives of the zone without the need to strictly comply with the standard.

The proposal is consistent with the objectives of the E -Business Zone – Commercial Core outlined in 2.3 above, as demonstrated by the following:

- The proposal will contribute to the development of the Redfern town centre with new retail and commercial premises, a child care use, along with quality residential apartments, within close proximity to Redfern Railway station, buses and the shopping and business strips along Regent and Redfern Streets.
- The proposal will provide new commercial/retail premises at the ground level as well as a child care centre on ground and first floor, thereby maintaining and enhancing the offering of retail, business and community facilities.
- The proposal provides residential apartments above the commercial/retail and child care uses. This constitutes shop-top housing and is consistent with the proposed and nearby non-residential uses.
- The proposal reduces the dependency upon privately owned cars given the site is provided with excellent access to public transport and cycling infrastructure. The site is also within walking distance to a vast range of services and facilities, including major employment nodes such as Australian Technology Park, as well as the University of Sydney. In addition car parking provision has been constrained in accordance with the car parking rates of the Sydney Local Environmental Plan 2012 (SLEP 2012). Further details of how the proposal will maximise trips made by modes other than

private vehicle, are contained in the Transport Assessment Prepared by GTA Consultants included at Attachment 5 to the EIS.

- The proposal maintains retail /commercial uses at ground level and incorporates a child care centre at level 1 to maximise activation and passive surveillance of the public domain around the site.
- The design of the building has been under the instruction of highly skilled architects. It is a considered design that responds to the site conditions, the surrounding development and the planning framework, in particular the SEPP MD and SEPP 65 ADG. The building exhibits design excellence in form, materiality and its layout and will make a positive contribution to what is the remaining development site within this block of the Redfern Waterloo area lands.
- The proposal will incorporate a high quality landscape as detailed in the Landscape Plans prepared by Black Beetle included at Attachment 4 to the EIS. The landscape enhances the overall design quality of the proposal and will contribute to enhancing the amenity of the area.

3.5 Is compliance with the development standard consistent with the aims of the Policy, and in particular, does the development standard tend to hinder the attainment of the objects specified in section 5(a)(i) and (ii) of the EP&A Act 1979?

The aims and objectives of State Environmental Planning Policy No.1 – Development Standards are 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 objectives set down in Section 5(a)(i) and (ii) are as follows:

- (a) “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...”

Compliance with the Policy would render the project unviable and would therefore tend to hinder the attainment of the objects of section 5(a)(i) and (ii) of the Act, which are to encourage development that promotes the social and economic welfare of the community and a better environment, and to promote and coordinate orderly and economic use and development of land.

Strict compliance with the development standard would not result in any discernible benefits to the community given that no material disadvantage arises and no hindrance to the development potential of adjoining sites results.

The height of the proposed buildings does not result in adverse impacts on adjoining sites and therefore strict compliance with the Policy is not necessary to attain the objectives of the EP&A Act.

Further, the proposal satisfies the zone objectives, and is consistent with the maximum heights for the locality and delivers a building of a scale consistent with surrounding development. Therefore strict compliance with the standard is not required in order to achieve compliance with the intent of the Height of Buildings control.

Strict compliance would result in an inflexible application of policy. It does not serve any purpose that is outweighed by the positive outcomes of the development.

The development as proposed is consistent with the provisions of orderly and economic development.

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

Yes. In the circumstances of the case, the provision of strict numerical compliance would be unnecessary and unreasonable on the basis that:

- The non-compliance relates to the podium/street level heights only as the proposal is compliant with the maximum 18 storey height contemplated for the area;
- The proposal achieves the intent of the controls relating to the provision of a human scale as it provides a continuous two (2) storey street front along Regent Street. The proposal responds to the scale of the traditional shopfronts that have characterised the street. This is reinforced by the glazed arches on Regent Street, which mimic the scale and proportions of the existing shopfronts.
- The proposal also achieves the intent of the control in that it does not result in unacceptable wind impacts as outlined in Section 5.4.7 of the EIS and the Pedestrian Wind Environment Study (Attachment 20);
- The setbacks of the tower from Regent Street are consistent with the siting of the tower in the development approved on the adjoining site to the north at 60-78 Regent Street (Reference SSD 6723). In this regard, it will ensure a consistent built form as viewed from Regent Street;
- The approval of SSD 6723 with reduced setbacks indicates that the standard has, to some extent, been abandoned;
- Compliance with the 8m and 4m setbacks significantly constrains the opportunity to accommodate a viable tower floor plate on the site. This is further compounded by the need to maximise separation distances to the adjoining apartments at 7-9 Gibbons Street, which contain windows and balconies within 3m of their boundary;
- It does not result in unacceptable overshadowing impacts on the adjoining development or public domain as outlined in Section 5.4.6 of the EIS and shadow diagrams included at Attachment 3 to the EIS;
- Strict numerical compliance with the controls would not reduce the potential view impacts from adjacent properties, as outlined in Section 5.4.4 of the EIS;
- It does not result in unacceptable privacy impacts on the existing or approved adjoining developments as demonstrated in the consideration of the setback and separation requirements of the ADG as outlined in Section 5.2.6 of the EIS;
- Compliance with the street setback controls will effectively prevent the redevelopment of the site as envisaged under the BEP and SEPP MD; and
- The proposal complies with the 18 storey height limit and provides a building mass and configuration that is consistent with the adjoining buildings, both existing and approved.

Further to the above, as detailed in the Urban Design and Built Form Analysis Report prepared by SJB Architects (Attachment 2) a range of design options were explored and analysed for the site, including an option that complied with the building height controls. These options are represented in Figures 1 below and broadly included:

- (1) Option 1 fully compliant - height/setback controls in SEPP MD and
- (2) Option 2 compliant with the height/setback controls in SEPP MD, non-compliant with the setbacks in the ADG
- (3) Option 3 (current option): non-compliant with the height/setback controls in SEPP MD and non-compliant ADG setbacks/separation. In developing this option, achievement of the intent of the

height/setback and separation controls was identified as critical, along with ensuring a built form that was consistent with setbacks of approved adjoining development to the north at 60-78 Regent Street.

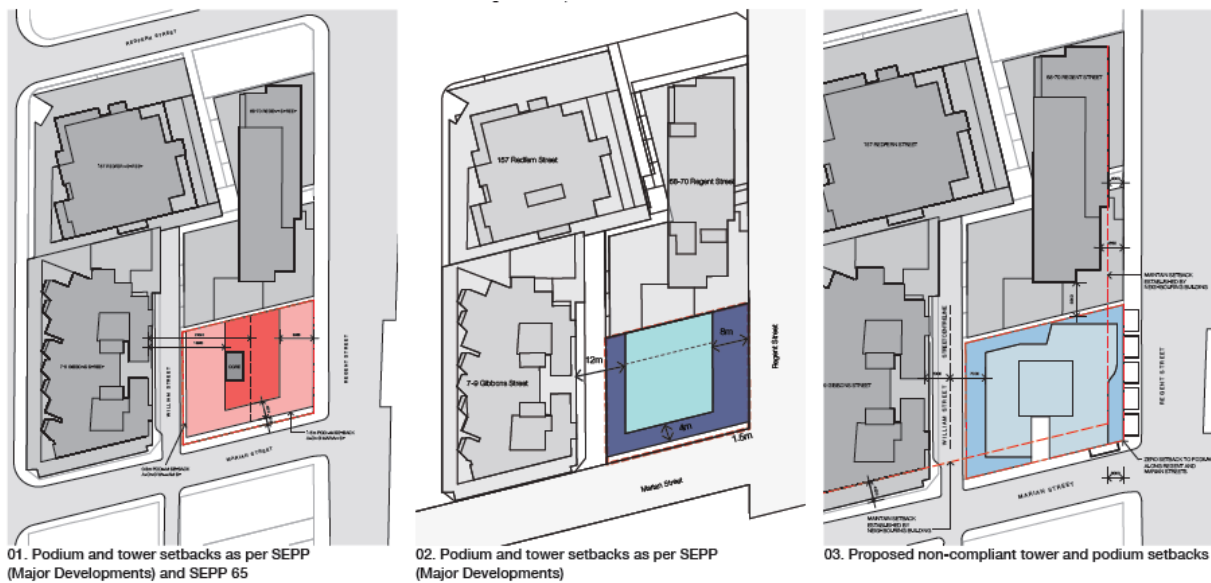


Figure 1: Built Form Options

Option 1 and 2 resulted in tower footprints of between 300m² and 440m² which were not viable and prevented the realisation of the redevelopment of the site as envisaged under the BEP and SEPP MD. Furthermore, the setbacks and siting of the tower in Option 1 and 2 were inconsistent with the approved development to the north.

Having regard to the above, the proposed variation to the controls is considered reasonable as it provides a building of an approximate height, scale and mass anticipated by the applicable planning controls.

3.7 Is a development which complies with the development standard unreasonable or unnecessary in the circumstance of the case?

A development that complies with the development standard is unreasonable or unnecessary for the following reasons:

- As illustrated within the options analysis prepared by SJB Architects, full compliance with the front setback to Regent Street would unreasonably compromise achievement of a tower footprint that is economically viable. Consequently, a development which complies with the standard is unreasonable and would be inconsistent with the scale and density of development that is envisaged under the planning controls and the objectives of the 'Business Zone – Local Centre' zone.
- A development that complied with the controls would most likely have a lesser separation distance to the existing residential apartments at 7-9 Gibbons Street. This in turn would result in greater privacy impacts to the apartments, as well as additional view impacts.
- A development which complied with the standard would provide an inappropriate built form outcome and it would be inconsistent with the approved development to the north, at 60-78 Regent Street (SSD 6723). SSD 6723 provides a variable setback to Regent Street of 3m to 4m. The proposal aligns with this approved setback to ensure a consistent built form along Regent Street.

3.8 Is the objection well founded?

For the reasons outlined in previous sections, it is considered that the objection is well founded in this instance and that granting an exception to the development can be supported in the circumstances of the case.

A development that strictly complied would result in a lesser development form that would not be compatible with the context and scale of surrounding development. A development that strictly complies with the standard would unreasonably compromise development potential of the site and would be at odds with the intent and objectives of the 'Business Zone – Local Centre' zone.

The development does not hinder the attainment of the objects specified with 5(a)(i) and (ii) of the Act.

3.9 Would non-compliance raise any matter of significance for state or regional planning?

The contravention of the development standard in this case does not raise an issue of State or regional planning significance as it relates to local and contextual conditions. The variation sought is responding to the broad brush nature of a control that is applied across many different and varied areas that support a variety of built forms in a range of different contexts. In this case, the standard is not considered to allow the most appropriate outcomes.

3.10 Is there a public benefit of maintaining the planning standard?

Generally speaking, there is public benefit in maintaining standards. However, there is public interest in questioning the veracity of the controls in any particular case and in maintaining a degree of flexibility in specific circumstances.

It has been clearly demonstrated that the height of the proposed development will not be out of character with surrounding development in terms of bulk and scale and will not have adverse amenity impacts on adjoining properties and does not hinder the development potential of acknowledging sites.

There is, in the specific circumstances of this case, no public benefit in maintaining the development standard.

4.0 Conclusion

The proposed variation to the standard is based on the reasons contained within this formal request for an exception to the standard. The development will not result in unacceptable impacts with regard to the amenity of any adjoining properties.

A development strictly complying with the numerical standard would not be utilising the site to its highest and best use and therefore it would not be attaining the objects of the *EP&A Act 1979*. It would not significantly improve the amenity of surrounding land uses and would not result in an appropriate urban design response to the site. In the context of the locality it would be unreasonable for strict compliance to be enforced.

The non-compliance is not considered to result in any precedents for future development within the LGA given the particular site circumstances and surrounding pattern of development. It is concluded that the objection is well founded as compliance with the standard is both unnecessary and unreasonable.