



**OBJECTION PURSUANT TO SEPP 1
TO ACCOMPANY A STATE SIGNIFICANT DEVELOPMENT APPLICATION
SSD 9194**

13 GIBBONS STREET, REDFERN

**CLAUSE 21(1), PART 5, SCHEDULE 3 – HEIGHT OF BUILDINGS
State Environmental Planning Policy (State Significant Precincts) 2005**

January 2019

1. OBJECTION

This objection is made pursuant to State Environmental Planning Policy No. 1 (SEPP 1) – Development Standards as the applicable State Policy mechanism available to Applications to seek a variation to a development standard.

Clause 6 of SEPP 1 provides the mechanism for the making of a SEPP 1 Application and states:

- “6. Where development could, but for any development standard, be carried out under the Act (either with or without the necessity for consent under the Act being obtained therefor) the person intending to carry out the development may make a development application in respect of that development, supported by a written objection that compliance with that development standard is unreasonable or unnecessary in the circumstances of the case, and specifying the grounds of that objection.”*

This SEPP 1 Objection is made in accordance with the provisions of Clause 6.

Clause 7 of SEPP 1 provides the discretion and power to the consent authority to support a SEPP 1 objection and grant development consent and states:

- “7. Where the consent authority is satisfied that the objection is well founded and is also of the opinion that granting consent to that development application is consistent with the aims of this Policy as set out in Clause 3, it may, with the concurrence of the Director, grant consent to that development application notwithstanding the development standard the subject of the objection referred to in Clause 6.”*

In accordance with Section 4.13(2A) of the EP&A Act there is no requirement for the Secretary's concurrence with respect to SSD applications, despite the provisions of Clause 7 of SEPP 1 .

2. ENVIRONMENTAL PLANNING INSTRUMENT

The Environmental Planning Instrument to which this objection relates is State Environmental Planning Policy (State Significant Precincts) 2005 (the SSP SEPP). The subject site is zoned E - Business Zone – Commercial Core under Clause 7, Part 5 of Schedule 3 of the SSP SEPP.

3. DEVELOPMENT STANDARD

Clause 21 (1) of Part 5 of Schedule 3 of the SSP SEPP provides that 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.

As shown in Figure 1, the heights indicated on the Height of Buildings Map are 18 storeys, with the exception of the frontages to Gibbons and Margaret Street where a three storey height control applies.

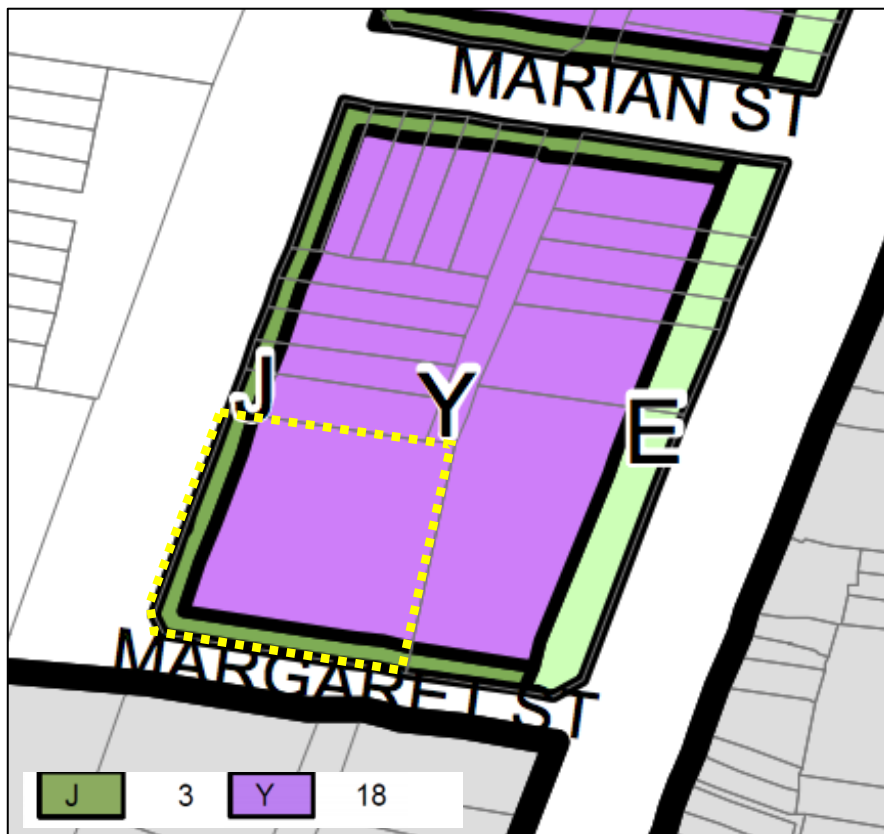


Figure 1: Extract from Height of Buildings Map in SSP SEPP

Storey is defined in clause 2 of Part 5 of Schedule 3 as being

a space within a building that is situated between one floor level and the floor level next above or, if there is no floor level 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, or*
- (d) a basement, or*
- (e) any space within a building with a floor level that is predominantly below a basement*

4. VARIATION TO THE STANDARD

Two variations are sought:

- The main tower complies with the 18 storey height limit, with the exception of an enclosed plant room located centrally on the roof. Part of this area includes a ceiling and is not part of the stairwell or lift overrun and therefore is technically defined as a storey. A 1 storey variation is therefore sought with respect to the plant room
- The tower has also been designed to incorporate a variable setback from Gibbons and Margaret Street, with some sections of the tower encroaching into the 3 storey height control area as shown in Figure 2. These parts of the building would be 18 storeys and therefore result in a variation of 15 storeys.



5. JUSTIFICATION FOR VARIATION OF THE STANDARD & MATTERS FOR CONSIDERATION

In accordance with previous measures of validity of a SEPP 1 Objection by the Land and Environment Court this objection addresses the following pertinent questions as justification for the variation.

5.1 Notwithstanding the non-compliance with the development standard, will the proposal achieve the objectives of the development standard?

The SSP SEPP does not state the purpose of the development standard for height. However, review of the Redfern-Waterloo Built Environment Plan (Stage One), from which the controls were derived, assists in understanding the purpose of the height controls. The Built Environment Plan seeks to establish an identifiable character and appropriate urban scale for the Town Centre by creating a consistent block edge along all streets to reinforce the main street character of the centre, provide a human scale and to achieve a transition in in urban scale to residential areas.

The minor variations from the control at the roof level would achieve the objectives of the height control, as they would result in a building that is consistent with the height of all other emerging development in the Redfern Centre, all of which is 18 storeys in height plus rooftop plant. The roof level plant, being setback from the building façade line and also partially obscured by the building parapet would result in no adverse visual impacts and would not affect the character of the area or overall urban scale. Further it would result in no greater impact than a screened plant area without a ceiling, which technically complies with the control.

Incursions into the three storey podium height result from design improvements (as recommended by the State Design Review Panel) including providing a built form that is stepped in plan to provide visual interest and to highlight and bookend the street corner and the zoning boundary and aligning the Margaret Street façade to be perpendicular with the primary frontage to Gibbons Street. In this way the proposal achieves the objectives of the control as it adds to the identifiable character of the Town Centre and reinforces the main street character. As the extent of variations are minor and as areas of reduced setback are offset by other areas of increased setback, no adverse impacts arise from the proposal.

5.2 Will non-compliance with the development standard be inconsistent with any planning objectives for the locality?

The proposed development is consistent with the objectives of the E - Business Zone – Commercial Core set out under Clause 7, Part 5 of Schedule 3:

- (a) *to facilitate the development of a Town Centre,*
Despite the minor technical variations from the height control, the proposal results in a built form that is consistent with the height and scale of all other built forms emerging within the centre and therefore facilitates the development of a coherent Town Centre.
- (b) *to encourage employment generating activities by providing a wide range of retail, business, office, community and entertainment facilities,*
Non-compliance with the height control does not affect this objective
- (c) *to permit residential development that is compatible with non-residential development,*
Although the proposal includes residential development that is compatible with non-residential development, achievement of this aim is not affected by variations from the height control
- (d) *to maximise public transport patronage and encourage walking and cycling*
The development achieves these aims due to the site's proximity to public transport, excellent bicycle storage on the site and the absence of any motor vehicle parking on the site. However, the variations from the height control do not affect achievement of this objective.
- (e) *to ensure the vitality and safety of the community and public domain*
As the proposed variations relate only to the tower levels, there is no impact to the public domain or associated safety and vitality.
- (e) *to ensure buildings achieve design excellence*
Non-compliance with the height control assists with achieving design excellence. Incursions into the three storey podium height result from design improvements (as recommended by the State Design Review Panel) including aligning the Margaret Street façade to be perpendicular with the primary frontage to Gibbons Street; providing a built form that is stepped in plan to provide visual interest; and to highlight and bookend the street corner and the zoning boundary.
- (e) *to promote landscaped areas with strong visual and aesthetic values to enhance the amenity of the area*
Non-compliance with the height control at the tower levels also bears no relationship with ground level landscaping or landscape quality. .

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

As held by the court in *Wehbe v Pittwater Council [2007] NSWLEC827*, development standards are not an end in themselves but a means of achieving environmental and planning objectives. Where the objectives of the building height standard are achieved, strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served).

The arguments detailed above in sections 5.1 and 5.2, demonstrate that the development proposal satisfies the objectives of the building height control and the relevant objectives of the zone.

Further, the non-compliance with the building height control would not result in any material adverse impact on the amenity of the proposed development or the adjoining premises in terms of shadows, privacy or visual impacts, overall appearance of the building, or the character of the area and is therefore considered unreasonable and unnecessary.

Accordingly, it is considered unreasonable and unnecessary for the proposed development to comply with the provisions of Clause 21(1).

5.4 Is the granting of consent to the development consistent with the aims of SEPP 1 as set out in Clause 3 of the Policy?

The aims of SEPP 1 as set out in clause 3 are to provide flexibility in the application 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.

It has been demonstrated above in section 5.3 that strict compliance with Clause 21(1) is unreasonable and unnecessary in the circumstances of the case.

The objects of the Act as specified previously in Section 5(a) (i) and (ii) (Now Section 1.3) 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,*

Strict compliance with the development standards may also hinder the objects of act, particularly the promotion of a better environment and the promotion of orderly and economic use and development of the land in that:

- Strict compliance would result in a building that did not provide the same level of architectural design and interest, would not highlight the corner or bookend the zoning and would not make the same contribution to the character of the Redfern Centre.

The granting of consent in this case would therefore be consistent with the aims of SEPP 1 in that it would allow for flexibility in circumstances where strict compliance with the building height standard would be both unreasonable, unnecessary and contrary to the attainment of the objects of the act.

6. CONCLUSION

The variation sought to the standard imposed by Clause 21(2) of Part 5, Schedule 3 to the SSP SEPP has been demonstrated to be justified as it is:

1. Consistent with the aims and objectives of SEPP 1 and the Act;
2. Consistent with the objectives of the FSR control and the objectives of the E - Business Zone – Commercial Core) zone; and
3. Both unreasonable and unnecessary to be applied to the numerical standards in this case.

The non-compliances in this case are of no material effect to surrounding premises, but allow for the provision of an improved urban design outcome.