



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

**13 GIBBONS STREET, REDFERN**

**CLAUSE 30 (1) (e) – MANAGERS RESIDENCE  
State Environmental Planning Policy (Affordable Rental Housing) 2009**

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 and ZONING

The Environmental Planning Instrument to which this objection relates is State Environmental Planning Policy (Affordable Rental Housing) 2009 (the ARH SEPP).

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

## 3. DEVELOPMENT STANDARD

Clause 30 (1) (e) of the ARH SEPP provides that:

- (e) if the boarding house has capacity to accommodate 20 or more lodgers, a boarding room or on site dwelling will be provided for a boarding house manager*

It is noted there is no requirement for a manger to live on the site, only that a room be provided to the manager.

#### **4. VARIATION TO THE STANDARD**

The proposal is a boarding house which would accommodate 488 lodgers and therefore a room for a boarding house manager is required. A room for a boarding house manager is not provided.

#### **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 ARH SEPP does not state the purpose of the development standard. It is assumed the purpose of the development standard is to:

- ensure the site is appropriately managed so that the needs of the boarders would be met, including appropriate security, safety, maintenance, and cleanliness,
- ensure the site is appropriately managed so as not to result in amenity impacts to surrounding premises,
- provide appropriate amenity / facilities for managers.

These objectives would be met by the proposal, despite no on-site managers residence being provided. The site would be run by a specialist student accommodation provider with extensive experience in operating similar sites. It will be run in accordance with an Operational Management Plan (see Appendix W of the EIS) and will employ sufficient staff to appropriately manage the site including:

- A General Manager / Property Manager,
- A Residential Life Manager to organise, coordinate and manage student activities and programmes,
- A Customer Service Manager to look after all reservation and front desk matters,
- 2 Customer Service Coordinators who will support the Manager,
- A Building Maintenance Manager to look after the maintenance of the facility,
- 1 Maintenance Technician to assist Maintenance Manager in attending to any facilities malfunction, repair or servicing matters.
- Live-in resident advisors elected to take care of other residents in the building and support after office hours operations.

Full-time staff will operate from 9.00am to 5.30pm on weekdays, and 10.00am to 2.00pm on Saturdays, with additional casual staff being on site from 5.00pm to 8.00pm weekdays. Beyond that, security guards and/or mobile patrols will be engaged to ensure resident safety. In addition, live in resident Advisors will be rostered on shift duty and act as points of contacts for residents who encounter problems after office hours.

As such there are appropriate staffing arrangements to ensure the site will be well managed.

Staff will have their own office, meeting space and amenities and will have use of communal kitchens, ensuring adequate facilities will be provided for staff.

Given there is no intention for a manager to live on the site full time (and there is no requirement in the controls for a full time live in manager) no benefit would be served by allocating one of the rooms to the manager.

**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. Non-compliance with the standard for a managers residence would not impact on the following objectives for the zone:

- (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*
- (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*

The only objective affected by the management arrangements is:

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

As described above in Section 5.1, the site will be well managed by numerous staff in accordance with an Operational Management Plan. This will ensure appropriate safety and security of the site and its surrounds. The allocation of one of the rooms to a manager would do little to improve safety or security.

**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 development standard and the relevant objective of the zone.

Accordingly, it is considered unreasonable and unnecessary for the proposed development to comply with the provisions of Clause 30(1)(e).

**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 30(1)(e) 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 orderly and economic use and development of the land in that:

- Strict compliance would result in one of the rooms that could otherwise be occupied by a student being allocated unnecessarily to a manager. As there is no intention or requirement for a manager to live at the premises the room would effectively remain empty and serve no economic or useful purpose. Allocation of the room to a student would result in a more orderly and economic use of the land and support social and economic objectives of housing provision.

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 development 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 30(1)(e) of the ARH 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 development standard and the objectives of the E - Business Zone – Commercial Core zone; and
3. Both unreasonable and unnecessary to strictly apply the standard in this case.