



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

**13 GIBBONS STREET, REDFERN**

**CLAUSE 30 (1) (h) – MOTORCYCLE PARKING  
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) (h) of the ARH SEPP provides that:

- (h) at least one parking space will be provided for a bicycle, and one will be provided for a motorcycle, for every 5 boarding rooms*

The relevant development standard in this case relates to motorcycle parking (noting the development complies with the standard for bicycle parking).

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

The required rate of one motorcycle parking space for every 5 boarding rooms equates to a minimum requirement for 98 motorcycle spaces on the site.

The proposal includes no on-site motorcycle parking and therefore a variation of 98 spaces is sought.

#### **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 development provides sufficient parking facilities to meet occupant demand.
- Ensure the development does not result in any adverse on street parking, traffic or amenity impacts on the surrounding area.

A detailed Transport Impact Assessment (TIA) accompanies the application and demonstrates that on-site parking is not required in order to satisfy student transport needs in this case, noting:

- The site's accessible location including Redfern Station (3-minute walk), bus stops in the immediate vicinity of the site, future new Waterloo Metro Station (6-minute walk), and nearby university campuses, all of which are within walking distance from the site.
- The ARH SEPP applies across the entire state and does not account for reduced needs for private vehicles in Central Sydney locations, while the City of Sydney DCP (which better accounts for the unique transport needs of the locality) does not require on-site motorcycle parking for boarding houses.
- The accommodation is targeted at students who typically do not own a private motor vehicle (car or motorbike).
- The reduction in motorbike parking is offset by additional on-site bicycle parking to better meet the transport needs of students (163 spaces are proposed, exceeding the 98 required by the ARH SEPP).
- The site is within close proximity to various car share spaces, so that students could still access cars when needed.

In addition, the proposal will not result in on-street parking impacts as a result of motorcycle parking not being provided on the site. Tenancy agreements are to be imposed to ensure students do not bring private vehicles to the site and are unable to apply for an on-street resident parking permit

##### **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 motorcycle parking 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,*
- (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*

The only objective affected by the non-compliance is:

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

Non-compliance with the control would support achievement of this objective, as the absence of private vehicle parking would ensure alternate forms of transport are maximised.

### **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)(h).

### **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 a better environment in that:

- Strict compliance with the control would result in the potential for significantly more private vehicle trips to and from the site, with resulting impacts for local traffic and environmental impacts associated with increased traffic movements, contrary to key strategic planning

objectives to reduce reliance on private vehicles in favour of more sustainable transport options.

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)(h) 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.