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23 October 2013
Ref: 130168.2L

NSW Department of Planning and Infrastructure
GPO Box 39
Sydney NSW 2001

Attention: Jane Flanagan

Dear Madam,

Re: Submission on response from applicant – SSD 5249-2012, Mixed Use Development, 1 Lawson Square, Redfern

Introduction

As stated in our letter dated 29 April 2013, we act on behalf of our clients', the owners and occupiers of apartments 1802/157 and 1803/157 Redfern Street, Redfern who are located directly opposite the proposed development site across the Redfern Street laneway. Our clients' are located on level 18 of 157 Redfern Street and enjoy iconic views of the Sydney City CBD which are currently unimpeded both from respective living area and/ or balcony, bedroom of apartment 1803 and rooftop terraces. We have been retained to review the response from the applicant to our submission and if there are valid town planning grounds of concern, to raise those for consideration in the assessment of the application.

After reviewing the response from the applicant to the concerns we have previously raised in our letter dated 29 April 2013, it is considered that the proposal would still have a significant adverse impact on the amenity of our clients' property and surrounding area directly attributable to the non-compliance with the planning controls with respect to floor space ratio and building height resulting in bulk and scale issues and view loss as the proposal remains fundamentally unaltered at the upper levels due to the retention of the existing building and the proposed alterations and additions.

On the above basis we remain of the opinion that the application should be refused, especially as the case has not been made as to why the objection to the floor space ratio and building height non-compliance should be supported when there are obvious adverse impacts as a result. With respect to building height, the applicant has not put forward a case as to how a more skilful design could mitigate the impacts highlighted in our submission contrary to the principles espoused in the Tenacity Consulting case.

Context

As previously stated, our clients' apartments, as detailed above, are located on level 18 of 157 Redfern Street, Redfern. Apartment 1802 has a balcony and rooftop courtyard and apartment 1803 has a living/dining area, kitchen, balcony, bedroom and rooftop courtyard which enjoy panoramic Sydney CBD views. The private rooftop courtyards are accessed via an internal spiral stair. Photos taken from those areas of each respective apartment are attached.

The proposed development site sits to the north of our clients' apartments across the Redfern Street laneway. Apartment 1803 faces and is oriented to the north whilst apartment 1802 is oriented to the north-west.

Impact of the proposal on our clients' land

As previously stated, the areas of concern to our clients' and based on our review of the response from the applicant to the concerns we have previously raised are directly attributable to the non-compliance with the planning controls with respect to floor space ratio and building height resulting in bulk and scale issues and view loss.

We remain of the opinion that the documentation for the proposed development, in our opinion, has not demonstrated why the proposal should be supported. Most notably it fails to provide the necessary justification for the variation to the floor space standard and building heights, especially as there are severe impacts with respect to view loss of the existing panoramic views of the Sydney City CBD. These issues are dealt with below.

Compliance with Controls

A. Floor Space Ratio

As previously stated, the proposed development site has a maximum floor space ratio (FSR) of 7:1 under State Environmental Planning Policy (Major Development) 2005 Redfern-Waterloo Authority Sites-Height of Buildings Map. The application seeks a floor space ratio of 7.7:1 and therefore does not comply with the development standard of 7:1.

Non-compliance with a development standard can only be upheld upon the acceptance of an objection under State Environmental Planning Policy No.1 (SEPP 1). We have reviewed the SEPP 1 objection and note that it relies, inter alia, on the following assumption with respect to meeting the underlying purpose of the FSR development standard.

- No substantive adverse impacts arise from the non-compliant FSR proposed.

It is clearly not the case that no substantive adverse impacts arise from the non-compliant FSR proposed. Loss of existing panoramic Sydney City CBD views are substantive adverse impacts directly attributable to the non-compliance with the FSR standard of 7:1. This fact is reinforced through the assessment carried out for view loss for apartment 1803 which will be in a worse position with regard to that matter. On this basis alone the application must fail.

As we previously put to you, in determining whether compliance with the FSR development standard is unreasonable or unnecessary in the circumstances of the case, the SEPP 1 objection relies, inter alia, on the following assumption.

- The additional floor space does not result in excessive bulk and scale; and
- The additional floor space does not result in any significant detrimental impacts to surrounding development.

It is clearly not the case that the additional floor space does not result in excessive bulk and scale and any significant detrimental impacts to surrounding development. As detailed in this submission, loss of existing panoramic Sydney City CBD views to 1803 are substantive adverse impacts directly attributable to the non-compliance with the FSR standard of 7:1 as borne out of the analysis on view loss comparing a complying scheme with that proposed.

In determining whether or not a development which complies with the development standard is unreasonable or unnecessary in the circumstances of the case, the SEPP 1 objection relies, inter alia, on the following assumption.

- It is unnecessary to require the development to comply with the numerical development standard in this instance as no substantial adverse impacts arise.

As previously stated and to labour the point, it is clearly the case that the additional floor space does result in substantial adverse impacts. As detailed in this submission, loss of existing panoramic Sydney City CBD views for apartment 1803 are substantive adverse impacts directly attributable to the non-compliance with the with the FSR standard of 7:1.

In determining whether or not the SEPP 1 objection is well founded, the application relies, inter alia, on the following assumption.

- Compliance with the floor space ratio would not achieve a better planning outcome.

The proposal results in significant adverse impacts to our clients' as a result of the exceedance of the FSR control. We do not understand how the application can be said to be a better planning outcome, especially when there is clearly a dis-benefit to our clients' as reinforced through the response to the concerns we have raised from the applicant. The view loss is directly attributable to the non-compliance with the FSR standard.

In determining whether or not there is a public benefit of maintaining the FSR standard the SEPP 1 objection relies on the following assumption.

- There is no desirable public benefit in seeking to strictly apply the standard in this instance.

As previously stated, we disagree with the above assumption. We are of the view that there is significant public benefit to be gained from maintaining the FSR standard on the basis that it would ensure compliance with the accepted Planning Principle with respect to view loss being *Tenacity Consulting v Warringah*. An analysis of the proposal against the principles of *Tenacity* is provided under the heading "C. Assessment against the Planning Principle for View Loss" in this submission.

B. Building Height

As previously stated, whilst the proposal complies with the overall statutory height limit of eighteen (18) storeys it does not comply with the part two (2) storey height control to the Redfern Street laneway and the part five (5) storey control to Gibbons Street and Lawson Square so that a podium can be constructed and enable the building to have a base, middle and top in line with the urban design controls for the site and surrounding area.

Non-compliance with a development standard can only be upheld upon the acceptance of an objection under State Environmental Planning Policy No.1 (SEPP 1). We have reviewed the SEPP 1 objection to building height and make the following assessment for consideration.

The reason the proposal does not comply is because the additional massing has been distributed evenly to the entire building which results in additional bulk at the upper levels which then manifests itself in adverse impacts to our clients' as detailed in this submission.

On the above basis the SEPP 1 objection to building height should be refused.

C. Assessment against the Planning Principle for View Loss

As previously stated and with the addition of the information provided by the applicant in response to the concern we have raised regarding view loss, adopting the four-step assessment as outlined in the planning principle of Tenacity, we make the following assessment.

1. Assessment of views

The most valuable part of the existing views would be the panoramic Sydney City CBD views. They are classified as iconic views and are highly valued.

2. From what part of the property are the views obtained.

The views are obtained from the balcony and private rooftop courtyard of apartment 1802 and living room/dining/kitchen, bedrooms, balcony and private rooftop courtyard of apartment 1803 both in standing and sitting positions.

3. Extent of Impact

The proposed development would result in the following impact for each part of each affected apartment as follows.

Apartment 1803

- Virtually all of the existing CBD views would be lost from all affected areas.
- The detail of those impacts, based on a review of the applicant's further submission are as follows.
 - View 8 - should be considered devastating, not severe.
 - View 11 - the view loss from the second bedroom is devastating.

- View 12 - kitchen view - the photo point is not accurately placed on apartment layout, as is obvious when the 2 are compared. The kitchen view is more like view 8. The view from the kitchen has been held to be very important in case law.
- View 15 - view loss is severe to devastating, not moderate.

Apartment 1802

- 70% of views of the existing CBD from the private rooftop courtyard.
- 60% of views from the balcony.
- The detail of those impacts, based on a review of the applicant's further submission are as follows.
 - View 5 – question the overall impact as "minor", particularly given that iconic Sydney CBD views are lost when compared to west-facing views. The impact is even more significant given the comparison to the control envelope (which is the standard) – and reveals the true impact of exceeding the FSR.
 - Views 9 and 10 – disagree with the comment that the Gibbons St frontage being the primary frontage with respect to the roof top terrace. The importance of the iconic Sydney CBD views is even more so from the terrace of unit 1802, given the lack of view of the CBD otherwise.

We would assess the loss of views as devastating for apartment 1803 and severe for apartment 1802 on the basis of the quantum impact as well as the fact that the view of the Sydney City CBD really only has any meaning when considered as a whole. A partial view without Centrepont Tower and other major buildings would lose the context as to the appeal of the existing view.

4. Reasonableness of the proposal

As previously stated, the proposal does not comply with the built form controls with respect to FSR. As has been noted in this submission, it is as a result of the non-compliance with the FSR standard and building height that the impact on views arises. The objection to the FSR development standard cannot be upheld in circumstances where its reliance is upon no adverse impacts resulting from the non-compliance. As noted in the judgement for Tenacity, even a moderate impact may be considered unreasonable. In this case the proposal has a devastating impact on apartment 1803 and severe for apartment 1802.

In addition to the above, the applicant also seeks to avail themselves of the maximum building height control which also leads to view loss. There has been no examination of the proposal meeting the maximum building height and view loss. That area needs to be examined with respect to the question of a more skilful design in accordance with the Planning Principles as espoused in Tenacity.

On the above basis, it is clear that the proposal does not comply with the planning controls or the principles as espoused in Tenacity because of the breaches identified in the FSR and building height standards and their direct impact on our clients' with respect to view loss.

Conclusion

As previously stated, based on the above, we have concluded that the subject application should be refused. We have formed the view that the proposed development will have significant adverse impacts on our clients' existing views of the Sydney City CBD directly attributable to the non-compliance with the floor space ratio controls and height controls as detailed in this submission.

We would be pleased to discuss the above matters further if required. In the meantime, we look forward to being kept informed of progress on the processing of this application.

Should you have any enquiries with respect to the above please do not hesitate to contact us to discuss.

Yours faithfully,
DESIGN COLLABORATIVE PTY LTD

A handwritten signature in dark ink, appearing to read 'J. Lidis', with a long horizontal stroke extending to the right.

James Lidis
Director