

SEPP 1 Objection Floor Space Ratio

80-88 Regent St, Redfern
Student Accommodation Facility

Submitted to NSW Department of Planning and Environment
On behalf of Iglu Pty Ltd

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Contents

CONTACT

Michael Oliver Associate Director, Planning moliver@ethosurban.com 02 9409 4961

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This document has been prepared by:



Chris McGillick
5 September 2018

This document has been reviewed by:



Michael Oliver
5 September 2018

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Ethos Urban Pty Ltd
ABN 13 615 087 931.
www.ethosurban.com
173 Sussex Street, Sydney
NSW 2000 t 61 2 9956 6952

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1.0 Introduction

This objection under *State Environmental Planning Policy No.1 - Development Standards* (SEPP 1) has been prepared by Ethos Urban on behalf of Iglu Pty Ltd.

It is submitted to the Department of Planning and Environment (the Department) in support of a State Significant Development Application (DA) for development of a mixed-use student accommodation facility at 80-88 Regent Street, Redfern.

This SEPP 1 Objection should be read in conjunction with the Environmental Impact Statement (EIS) prepared by Ethos Urban dated September 2018 and the Response to Submissions documentation prepared by Ethos Urban dated January 2019. It relates to the Floor Space Ratio (FSR) development standard set out in clause 21 (2) in Division 3 of Schedule 3 within *State Environmental Planning Policy (State Significant Precincts) 2005* (the SSP SEPP).

1.1 SEPP 1 Framework

The objective of SEPP 1 is to allow flexibility in the application of numeric development standards. It enables a consent authority to vary a development standard within an environmental planning instrument (EPI) where strict compliance with that standard is shown to be unreasonable or unnecessary or would hinder the attainment of the objectives specified in section 1.3 of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

The objectives of section 1.3 are to encourage:

- (a) *to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) *to promote the orderly and economic use and development of land,*
- (c) *to promote good design and amenity of the built environment,*

Clause 6 of SEPP 1 provides that a person may make a written objection demonstrating that compliance with a development standard is unreasonable or unnecessary in relation to the proposed development.

Clause 8 of the Policy sets out matters to be considered by the Department in assessing SEPP 1 objections where it states:

- *the matters that shall be taken into consideration in deciding whether concurrence should be granted are:*
 - a) *whether non-compliance with the development standard raises any matter of significance for State or regional environmental planning; and*
 - b) *the public benefit of maintaining the planning controls adopted by the environmental planning instrument.*

The NSW Land and Environment Court (LEC) established five questions to be addressed in SEPP 1 objections through the judgment of Justice Lloyd, in *Winten Property Group Ltd v North Sydney Council* [2001] 130 LGERA 79 at 89. The test was later rephrased by Chief Justice Preston, in the decision of *Wehbe v Pittwater Council* [2007] NSW LEC 827.

The test is as follows:

1. The applicant must satisfy the consent authority that “the objection is well founded” and compliance with the development standard is unreasonable and unnecessary in the circumstances of the case;
2. The consent authority must be of the opinion that granting consent to the development application would be consistent with the policy’s aim of providing flexibility in the application of planning controls where strict compliance with those controls would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in Section 1.3 of the EP&A Act; and
3. It is also important to consider:

- a) whether non-compliance with the development standard raises any matter of significance for State or regional planning; and
- b) the public benefit of maintaining the planning controls adopted by the environmental planning instrument.

Accordingly, the following SEPP 1 Objection is set out using the current LEC considerations for SEPP 1.

1.2 Is the Planning Control in Question a Development Standard?

The Environmental Planning Instrument to which this objection relates is *State Environmental Planning Policy (State Significant Precincts) 2005*. The FSR development standard applicable to the site is found in Clause 21(2), and is as follows:

21 Height, floor space ratio and gross floor area restrictions

- (2) *The floor space ratio of a building on any land that is the subject of the Floor Space Ratio Map is not to exceed the floor space ratio shown for the land on that map.*

Under the Standard Instrument LEP, to which Division 3 of Schedule 2 of the SEPP refers,

*The **floor space ratio** of buildings on a site is the ratio of the gross floor area of all buildings within the site to the site area.*

“Development Standards” has the following definition under Section 1.4(1) of the EP&A Act:

*“**development standards** mean provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:*

...

(d) the cubic content or floor space of a building,”

As this SEPP 1 objection relates to a departure from the numerical standard for floor space ratio it is considered that clause 21 (2) of Division 3 in Schedule 3 of the State Significant Precincts SEPP is a development standard and not a ‘prohibition’ in respect of development.

1.3 What is the extent of the variation to the development standard?

The SSP SEPP FSR map establishes an FSR control of 7:1 over the proposed site, which has an area of 821.7m². Therefore, a total Gross Floor Area (GFA) of 5,751.9m² would comply with the development standard.

The proposed development seeks approval for a development with a GFA of 7,188m² which represents an additional 1,436.9m² or a 24.96% variation to the development standard under the State Significant Precincts SEPP.

1.4 What is the Underlying Object or Purpose of the Standard?

No objectives are given for the FSR development standard as detailed in the SSP SEPP.

Notwithstanding this, it is possible to understand the implicit objectives of the standard through an understanding of the history of the strategic planning that has informed the State Significant Site listing and built form controls for the Redfern Waterloo Sites. These include the Draft Urban Design Principles - Redfern Centre prepared by the Redfern Waterloo Authority and endorsed by the (then) Minister for Planning and Infrastructure.

The implied objectives of the FSR of the site are to:

- provide sufficient floor space to meet anticipated development needs within the Redfern town centre;

- ensure that future buildings are compatible with the desired future character of the area in terms of massing, streetscape, visual privacy, solar access, outlook and design excellence; and
- limit the intensity of new development and land uses to be commensurate with the capacity of existing and planned infrastructure in the locality.

2.0 The Objection is "Well Founded"?

Item 1 of the LEC SEPP 1 Matters for Consideration states that the applicant must satisfy the consent authority that "the objection is well founded" as compliance with the development standard is unreasonable and unnecessary in the circumstances of the case.

In the decision of *Wehbe v Pittwater Council* [2007] NSW LEC 827, Chief Justice Preston expressed the view that there are five different ways in which an objection to a development standard might be shown as unreasonable or unnecessary and is therefore well founded. The five ways include:

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard.
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.
3. The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.
4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.
5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

Of particular relevance in this instance is way one. The following section demonstrates that the proposed development will achieve the objectives of the standard notwithstanding the non-compliance with the standard.

2.1 The objectives of the standard are achieved notwithstanding noncompliance with the standard.

The proposal achieves the implied objectives of the development standard set out in **Section 1.4** of this report for the reasons set out in **Table 1**.

Table 1 Achievement of 'implied' objectives of building height development standard

Objective	Comment	Achieved?
Provide sufficient floor space to meet anticipated development needs within the Redfern town centre	Since the controls for the Redfern-Waterloo precinct were gazetted, the social significance of the tertiary education sector to Sydney, NSW and Australia's economy has increased greatly. The 2015 Austrade report 'Growth and opportunity in Australian international education' states that Australia's onshore international education sector is forecast to grow from 650,000 enrolments today to 940,000 by 2025 and the international education sector's contribution to export earnings is expected to almost double to in excess of \$33 billion by 2025. The subject site is uniquely located in close proximity to major tertiary education institutions such as the University of Sydney and University of Technology Sydney whilst also benefiting from near-direct access to the Sydney Trains network which provides connections to other major education establishments. Accordingly, there is significant demand for student accommodation beyond that anticipated during the establishment of the original planning controls.	✓
Ensure that future buildings are compatible with the desired future character of the area in terms of massing, streetscape, visual privacy,	The proposed building is generally consistent with the building envelope that was assessed and determined to be acceptable with regards to building massing, streetscape, visual privacy, solar access, outlook and design excellence as part of State Significant Development Consent SSD	✓

Objective	Comment	Achieved?
solar access, outlook and design excellence	17_7080. This consistency is achieved notwithstanding the variation to the FSR development standard due to the spatial planning efficiencies of a student accommodation floorplate in comparison to a residential apartment floorplate. These efficiencies are internal, and do not give rise to any adverse environmental impacts beyond those which would be considered acceptable for a residential apartment of lesser GFA but greater building volume. Accordingly, this objective is considered to be achieved as the proposed development will result in an appropriate built form outcome.	
Limit the intensity of new development and land uses to be commensurate with the capacity of existing and planned infrastructure in the locality.	The subject site is uniquely positioned adjacent to an existing student accommodation facility under the ownership of the same operator, providing an opportunity for shared facilities, entrances, back-of-house and loading dock. This synergy of uses allows for a significantly reduced intensity of use and impacts of new development in comparison to a new stand-alone development of the subject site such that the intensity of new development is within the capacity of existing and planned infrastructure. It is also noted that by nature of the proposed development, which provides for substantive and varied internal and outdoor communal recreation areas, and the nature of the occupants as students who would have access to nearby leisure, study and recreational facilities at their tertiary education institution, the development is not likely to result in any significant increase in demand for existing or planned social infrastructure within the locality. No car parking is proposed or required for the student accommodation facility, due to the location of the site within walking distance of major tertiary education institutions and near-direct access to Redfern Station, which means that the development would not contribute to local traffic congestion and would result in a less intense traffic outcome in comparison to the residential apartment building approved on the site under SSD 17_7080. Having regard to the above, the proposed development is considered to achieve the	✓

In light of the above, the proposed variation to the FSR development standard satisfies the implied objectives of the control and compliance is therefore unreasonable and unnecessary.

3.0 Consistency with the Aim of the Policy

Item 2 of the LEC SEPP 1 Matters for Consideration states that the consent authority must be of the opinion that granting consent to the development application would be consistent with the Policy's aim of providing flexibility in the application of planning controls where strict compliance with those controls would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in Section 1.3 of the EP&A Act.

Section 2.0 demonstrates that strict compliance with the FSR development standard is both unreasonable and unnecessary in the circumstances of the case.

In addition to this, strict compliance with the building height development standard will hinder the attainment of the objects Section 1.3 of the EP&A Act that are relevant to the proposed development, as outlined below.

(b) to promote the orderly and economic use and development of land,

Previous planning assessment for State Significant Development Consent SSD 17_7080 has demonstrated that the site is capable of accommodating a building of generally the same size and massing as the current proposed development whilst delivering a positive development outcome for the land. The site is well-located for student housing, being in close proximity to a number of major tertiary education institutions and with near-direct access to the public transport network. Requiring strict compliance with the development standard would result in a less orderly development outcome for the site because building massing would be reduced below that which would otherwise be considered acceptable if the development was for a different land use, such as residential apartments. Strict compliance with the development standard would also result in a less economic use of the site by restricting development to a level that is less than that which was previously assessed and determined as being appropriate for the site under SSD 17_7080. Further uneconomic outcomes would arise through the likely future development of the subject site either in accordance with SSD 17_7080 or another development consent for a stand-alone development, rather than for the current proposal for an efficient and integrated student accommodation facility that delivers synergies in use and management with the existing Iglu facility immediately to the north of the site.

(g) to promote good design and amenity of the built environment,

The proposed development represents a positive architectural and urban design outcome for the site. The proposal provides for a reduction in total building volume compared to the residential apartment building approved on the site under SSD 17_7080, notwithstanding the variation to the maximum floor space ratio that is proposed. This results in an improved outcome in terms of the amenity of the local built environment by increasing the building separation to the west and north-west, allowing improved outlook, visual privacy and solar access for nearby residential dwellings. In addition, the synergies achieved by developing a facility that is integrated with the adjacent Iglu building provides for improved urban design outcomes such as the sharing of the loading dock and primary student entrance facilities which frees up additional space within the ground plane for other retail and office land uses that activate the street and add diversity to the local area. Requiring strict compliance with the development standard would impact on the capacity to develop an integrated facility and would result in a building that was substantially smaller than other sites in the immediate vicinity, creating an incoherent streetscape. Accordingly, the current proposal is considered to be the most appropriate way by which to attain this object of the Act.

4.0 Other Matters for Consideration

Item 3 of the LEC SEPP 1 Matters for Consideration states that It is also important to consider:

- a) whether non-compliance with the development standard raises any matter of significance for State or regional planning; and
- b) the public benefit of maintaining the planning controls adopted by the environmental planning instrument.

The matters are addressed in detail below.

4.1 Matters of State or Regional Planning Significance

As noted in **Section 2.0** above, the urban renewal of this site as part of the Redfern centre has been identified as a matter of state significance under the SSP SEPP. Strict compliance with the development standard would significantly impede the redevelopment of the site for this purpose, thereby hindering the urban renewal of the Redfern centre generally. Strict adherence to the development standard would therefore undermine the attainment of the underlying, state-significant objective of the Redfern-Waterloo urban renewal process.

4.2 Public Benefit

As discussed in **Section 2.0** above, the proposed development will achieve the objectives of the floor space ratio control notwithstanding the non-compliance, and as such there is no benefit to the public achieved by strict adherence to this control. Further, strict adherence to the control, would significantly impede the redevelopment of the site for student accommodation, which is essential to the continued growth and development of the international education sector which delivers significant economic and social benefits to the Sydney, NSW and Australian community. Further to this, the NSW Government has identified the urban renewal of the Redfern centre as a priority to improve the urban amenity of the area and improve utilisation of public transport through identification of the site in the State Significant Precincts SEPP, and the proposal is aligned with these objectives which contribute to the public benefit.

The proposed development will result in public benefits that cannot be delivered if strict adherence to the development standard is required, including:

- provision of student housing to support the operations of Sydney's major tertiary education institutions and contribute to the growth of the international education sector; and
- revitalisation of the Redfern centre through the delivery of a building that achieves design excellence and contributes to the amenity of the locality through the activation of retail frontages along Regent and Marian Streets.

5.0 Conclusion

This SEPP 1 Objection demonstrates that the Independent Planning Commission can be satisfied that the proposed variation to the development standard is justified and satisfies the tests established by the LEC for SEPP 1 Objections, in that:

- the SEPP 1 objection is ‘well founded’ because the proposed development will achieve the objectives of the standard notwithstanding the non-compliance with the standard and that the underlying object of purpose would be defeated or thwarted if compliance was required;
- the strict application of the standard would be both unreasonable and unnecessary in the circumstances of the case;
- the strict application of the standard would hinder the attainment of the objects specified in Section 1.4 of the EP&A Act;
- the non-compliance with the development standard does not raise any matters of State and regional planning significance and will assist with the attainment of policies; and
- there is no public benefit in maintaining the FSR adopted by the environmental planning instrument for this site.

It is therefore requested that the consent authority grant development consent for the proposed development.