

STATE ENVIRONMENTAL PLANNING POLICY NO.1 DEVELOPMENT STANDARD - OBJECTION TO THE HEIGHT DEVELOPMENT STANDARD

1.0 Introduction

This State Environmental Planning Policy No 1 - Development Standards (SEPP 1) Objection has been prepared in relation to a development application for the demolition of all existing buildings and erection of part 5 and part 6 storey mixed use development above two common basement levels with a retail tenancy, hotel accommodation with 78 rooms, and a residential flat building containing 29 apartments at 175-177 Cleveland Street and 1-5 Woodburn Street, Redfern.

The SEPP 1 objection is required as the proposed 6 storey height exceeds the maximum height of 5 storeys permitted for the site in accordance with the provisions of State Environmental Planning Policy (Major Development) 2005.

2.0 The Provisions of SEPP 1

State Environmental Planning Policy No. 1 - Development Standards is a State Policy mechanism which allows for the variation of development standards contained within in environmental planning instruments.

3.0 Necessary Form and Detail Required in a SEPP No 1 Objection

In accordance with the provisions of SEPP 1 and decisions in *Hewitt v Hurstville Council* (2001) NSWLEC 294 (21 December 2001), *Winten Property Group Limited v North Sydney Council* (2001) NSWLEC 46 and *Hooker Corporation Pty Limited v Hornsby Shire Council* NSW LEC, 2 June 1986, unreported, an objection under SEPP No. 1 should respond to the following questions:

- Is the 'control' is a development standard rather than a prohibition on development?
- What is the underlying object or purpose of the standard?
- Is compliance with the development standard consistent with the aims of the Policy, and in particular does compliance with the development standard tend to hinder the attainment of the objects specified in section 5(a)(i) and (ii) of the Environmental Planning and Assessment Act 1979?
- Is compliance with the standard unreasonable or unnecessary in the circumstances of the case? and
- Is the objection well founded?

The remainder of this SEPP 1 objection responds to these questions in respect of the proposed variation.

4.0 Development Standard to which the Objection relates

This objection relates to the height development standard at clause 21(1), Part 5 of Schedule 3 of State Environmental Planning Policy (Major Development) 2005.

The clause provides that the height of a building on any land that is the subject of the Height Map is not to exceed the height shown for the land on that map. A 5 storey height applies to the site.

5.0 Extent of Non Compliance with Development Standard

The proposed development has an overall height of 6 storeys which exceeds the 5 storey height control

by 1 storey.

6.0 Specific Objectives of the Standard

There are no stated objectives for the floor space ratio control in the Major Development SEPP. The objectives of the Business Zone—Mixed Use are as follows:

- (a) to support the development of sustainable communities with a mix of employment, educational, cultural and residential opportunities,
- (b) to encourage employment generating activities by providing a range of office, business, educational, cultural and community activities in the Zone,
- (c) to permit residential development that is compatible with non-residential development,
- (d) to maximise public transport patronage and encourage walking and cycling,
- (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.

7.0 Is compliance with the development standard consistent with the aims of the Policy, and in particular does compliance with the development standard tend to hinder the attainment of the objects specified in section 5(a)(i) and (ii) of the EP&A Act?

Clause 3 of SEPP 1 describes the aims and objectives of the Policy as follows:

This Policy provides flexibility in the application of planning controls operating by virtue 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.

The objects specified in Section 5(a)(i) and (ii) of the EP&A Act 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,

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- ii) the promotion and co-ordination of the orderly and economic use and development of land...'

Whebe V Pittwater Council (2007) NSW LEC 827 (21 December 2007) sets out ways of establishing that compliance with a development standard is unreasonable or unnecessary. It states that:

An objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding noncompliance with the standard.'

Accordingly, the following assessment considers the proposal against the objectives of the Business Zone-Mixed Use zone contained within Clause 10 of Division 1, Part 5, Schedule 3 of the Major Development SEPP:

- (a) to support the development of sustainable communities with a mix of employment, educational, cultural and residential opportunities,

The proposed development will support the mix of uses in the locality by providing visitor and tourist accommodation which is ideally located given the close proximity of the site to the Sydney CBD. The development will also support the vitality of the surrounding commercial uses by increasing the residential population in the locality.

- (b) to encourage employment generating activities by providing a range of office, business, educational, cultural and community activities in the Zone,

The proposal will provide employment associated with the hotel accommodation component of the development as well as the proposed retail shop. The increased residential population will also contribute to the economic success and employment opportunities of nearby businesses.

Residents will provide a range of community and economic benefits through financial contributions to local businesses.

- (c) to permit residential development that is compatible with non-residential development,

The proposed hotel use is considered to be compatible with the proposed residential accommodation in this it is similar in nature with a shorter stay than traditional residential occupation. The hotel use is unlikely to generate any significant source of amenity impact to the proposed residential apartments.

The development will assist in relieving pressure on existing market rental housing.

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

The proposal seeks to accommodate an appropriate quantum of residential and visitor accommodation in a location which is a short distance from the Sydney CBD as well as Redfern train station and

nearby universities. The proposal also provides a generous and convenient provision of bicycle parking. Accordingly, the proposal will maximise walking, cycling and public transport patronage.

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

A legible pedestrian entry to the hotel accommodation and residential apartments from both Cleveland Street and Woodburn Street will be provided and surveillance of the surrounding streets will be improved as a consequence of the proposed works.

- (f) to ensure buildings achieve design excellence,

The building is a high quality design with a contemporary aesthetic and materials and finishes. An active frontage along the ground floor has been provided, to provide visual interest and encourage interaction. The variation to the height control is relatively minor and does not result in an excessive building height, visual bulk or scale as the proposed parapet height is lower than the recently approved development on the site and the additional storeys is setback behind the parapet and is recessive.

The development will provide a high level of amenity for residents with the residential apartments exceeding the minimum size, solar access and cross-flow ventilation requirements under the Apartment Design Guide. Notwithstanding the proposed variation to the height control, the development performs satisfactorily with respect to solar access and privacy.

- (g) to promote landscaped areas with strong visual and aesthetic values to enhance the amenity of the area.

The proposed variation does not create any significant adverse impacts on the adjoining properties, the streetscape or the character of the locality generally. The proposal is compatible with the existing mix of surrounding residential, commercial and light industrial uses.

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

Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case in that:

- the proposed street wall heights and parapet levels to Cleveland Street and Eveleigh Street are less than the parapet levels of the recently approved 5 storey development on the site. Accordingly, the perceived scale of the proposal is essentially the same or less than that which has been previously approved;
- the additional storey above the parapets to both Woodburn Street and Eveleigh Street are set back from the street facades such that they are recessive and not readily perceptible from the public domain;
- the proposal does not unreasonably overshadow 165-173 Cleveland Street which enjoys a high level of solar access from late morning and through into the late afternoon due to the eastern, northern and western aspect and so it is likely that well over 70% of the apartments in 165-173 Cleveland Street will continue to enjoy more than 2 hours solar access at the winter solstice;
- the proposal does not unreasonably overshadow 6-8 Woodburn Street because those apartments gain their solar access from the windows which face Eveleigh Street and Woodburn Street and

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the proposed development does not generate any additional overshadowing of the Eveleigh or Woodburn Street facades beyond that which currently exists;

- the scale of the proposal presents as 5 storeys in accordance with the control and is compatible with the built form within the visual catchment of the site; and
- Within the context of the scale of development approved to the south along Eveleigh Street and also around Redfern train station, the proposed height density is appropriate.

9.0 Conclusion

The proposed variation to the 5 storey height development standard has been shown to be:

- Consistent with the underlying objectives of the development standard; and
- Consistent with the aims of SEPP 1 and the objects of s5(a)(i) and (ii) of the EP&A Act;

Strict adherence to the standard is unreasonable and unnecessary in the circumstances of the case. In this regard it is reasonable and appropriate to vary the height development standard to the extent proposed.