

SEPP 1 Objection Maximum Building Height

80-88 Regent St, Redfern
Student Accommodation Facility

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

04 September 2018 | 218001



Contents

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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. It relates only to the 2-storey building height development standard (Clause 21 (1), Division 3, Schedule 3) within *State Environmental Planning Policy (State Significant Precincts) 2005* (State Significant Precincts 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 of Planning 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 height 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

- (1) *The height of a building on any land that is the subject of the Height of Buildings Map is not to exceed the maximum height shown for the land on that map.*

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

storey means a space within a building that is situated between one floor level and the floor level next above, or if there is no floor above, the ceiling or roof above, but does not include:

- (a) a space that contains only a lift shaft, stairway or meter room, or
- (b) a mezzanine, or
- (c) an attic.

The SEPP height map establishes the following maximum building height control for the site:

- two storeys to a depth of 8 metres from the Regent Street property boundary;
- three storeys to a depth of 4 metres from the Marian Street property boundary;
- 18 storeys for the remainder of the site.

An extract from the building height map is included in **Figure 1** below.

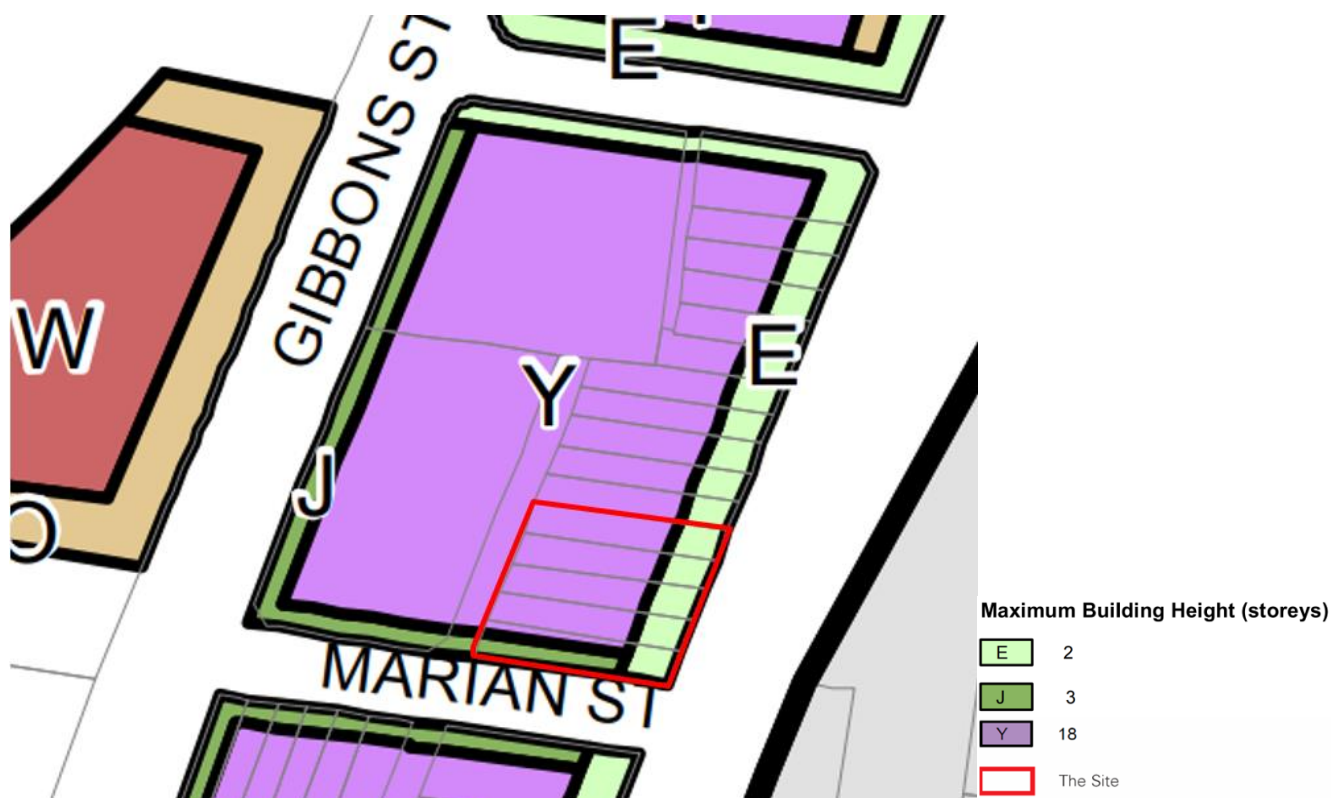


Figure 1 Extract from State Significant Precincts SEPP maximum building height map

Source: NSW Legislation website and Ethos Urban

“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:

...

- c) **the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,**

As this SEPP 1 objection relates to a departure from the numerical standard for building height 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 proposed development seeks approval for a development with a two-storey podium with a 16 storey tower above (total 18 storeys). The tower is proposed to encroach on the street frontage height development standards for Regent Street and Marian Street as outlined in **Table 1**.

Table 1 Summary of proposed variation to development standard

Control	Development Standard	Proposed Development	Extent of Variation
Regent Street	2 storeys to depth of 8 metres	2 storeys to depth of 3 metres, 18 storeys beyond	18 storey tower encroaches by 5 metres
Marian Street	3 storeys to depth of 4 metres	2 storeys to depth of 3 metres, 18 storeys beyond	18 storey tower encroaches by 1 metre

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

No objectives are given for the maximum building height development standard in the State Significant Precincts 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.

The Redfern-Waterloo Authority’s ‘Built Environment Plan 1’ (BEP 1) was released on August 2006 and is a planning framework for a number of larger sites and blocks within the Redfern and Waterloo Areas. Relevantly, Section 4 of this document identifies the following relevant mechanisms by which it was proposed to “*establish an identifiable character and appropriate urban scale for the [Redfern] Town Centre*” by:

- *creating a consistent block edge along all streets to a height of five storeys and tower development towards the centre of the blocks*
- *retaining the two-storey height of existing shopfronts along the length of Regent Street*
- *ensuring all new development is built to the street boundary and in alignment with the street*
- *creating a scale and architectural proportions that are consistent with existing shopfronts*

BEP 1 identifies the provision of a two-storey edge to Regent Street, beyond which would be a shallow 5-storey podium with an 18 storey tower above, as illustrated in **Figure 2**.

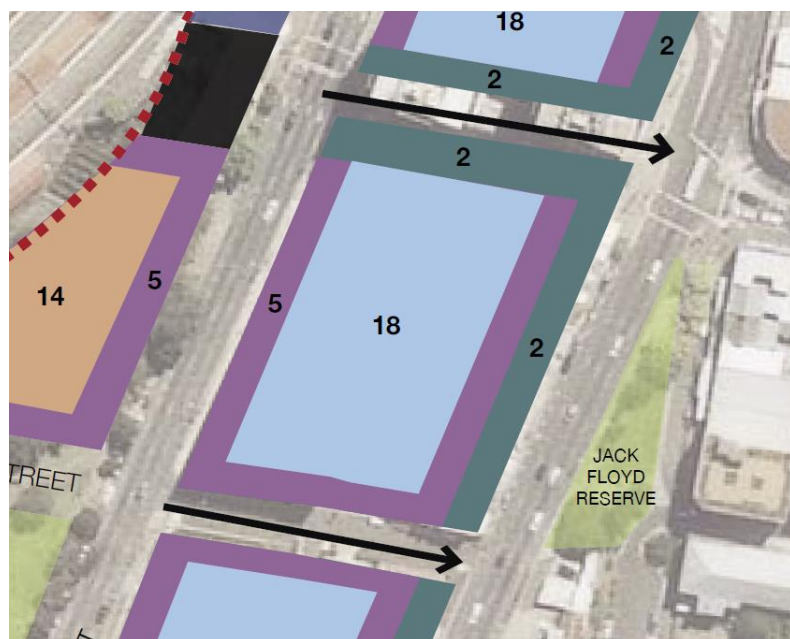


Figure 2 Extract from BEP 1 showing building height envelope

Source: Redfern Waterloo Authority

In 2010, the Redfern Centre Draft Urban Design Guidelines were prepared, exhibited and endorsed by the (then) Minister for Planning and Infrastructure to provide guidance around the design excellence requirements for the Redfern Centre. These guidelines recommended the removal of the 5-storey block edge, with a direct transition from a two-storey podium along Regent Street to 18-storey towers above, as illustrated in **Figure 3**. Whilst no specific objectives are given for these height controls, the objectives for Redfern Centre in section 3 relevantly include the following:

- Achieve a consistent block edge to reinforce the main street character of the centre;
- Respond to the 2-storey height and grain of existing shopfronts

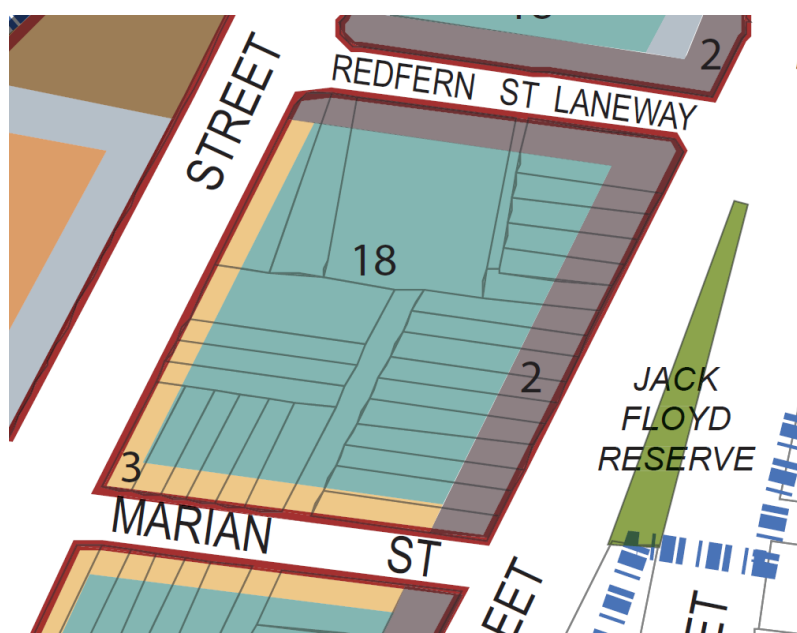


Figure 3 Extract from Redfern Centre Draft Urban Design Guidelines

Source: Redfern Waterloo Authority

The State Significant Precincts SEPP maximum building height map was amended at around this time to reflect the removal of the 5-storey podium requirement.

In light of the above, it can be surmised that the objectives of the building height controls for the site under the State Significant Precincts SEPP are, generally speaking, as follows:

- ensure all new development is built to the street edge at the ground plane;
- achieve a consistent block edge to reinforce the character along main streets;
- provide a 2-storey street presentation to Regent Street that is consistent with the scale and architectural proportions of existing shopfronts in new development and a 3-storey street presentation to Marian Street; and
- define and delineate a separate podium and tower form for new development.

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 are ways one and three. The following section demonstrates that 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.

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 2**.

Table 2 Achievement of 'implied' objectives of building height development standard

Objective	Comment	Achieved?
Ensure all new development is built to the street edge at the ground plane	The proposal is built to the street edge at the ground plane.	✓
Achieve a consistent block edge to reinforce the character along main streets	The proposed podium height is entirely consistent with the block edge along Regent Street. The proposed tower setback to Regent Street is consistent with the setback of the existing Iglu building located immediately to the north of the site, whilst the former TNT Tower apartment building would have no street setback (refer to Section 2.2 below). By aligning with the existing Iglu building's tower setback, the proposal ensures that a consistent block edge is provided to this street frontage. This height datum is continued around the corner of the building through to Marian Street, providing continuity and consistency at the block corner. This results in a podium height that is slightly lower than that of the adjoining 7-9 Gibbons Street, providing for an appropriate transition in height towards the desired two-storey street frontage at Regent Street.	✓
Provide a 2-storey street presentation that is consistent with the scale and architectural proportions of existing shopfronts in new development and a 3-storey street presentation to Marian Street	The proposal provides a clearly perceptible two storey street presentation to Regent Street, which is consistent with the height datum of shopfronts at 60-78 Regent Street which were retained as part of the previous Iglu development. The rhythm of these shopfronts is continued through vertical articulation of the proposed shopfronts on the subject site, the brick materiality as well as the gradual stepping down of the podium height to match the fall in levels on Regent Street from north to south as illustrated in Figures 4 and 5 . Street presentation to Marian Street is slightly lower than a full three storeys, with a 2-3 storey presentation that provides for an improved transition in scale between Gibbons Street and Regent Street.	✓

Objective	Comment	Achieved?
Define and delineate a separate podium and tower form for new development.	As illustrated in Figures 4 and 5 , the delineation of a separate podium and tower form is clearly articulated in the proposed design through the massing, form and materiality of the podium and tower levels. The reduction in the setback of the tower from the podium edge do not preclude the development from achieving this objective. The design report and architectural drawings demonstrate that the proposed building is able to be clearly delineated from the podium without the need for an increased distance.	✓

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

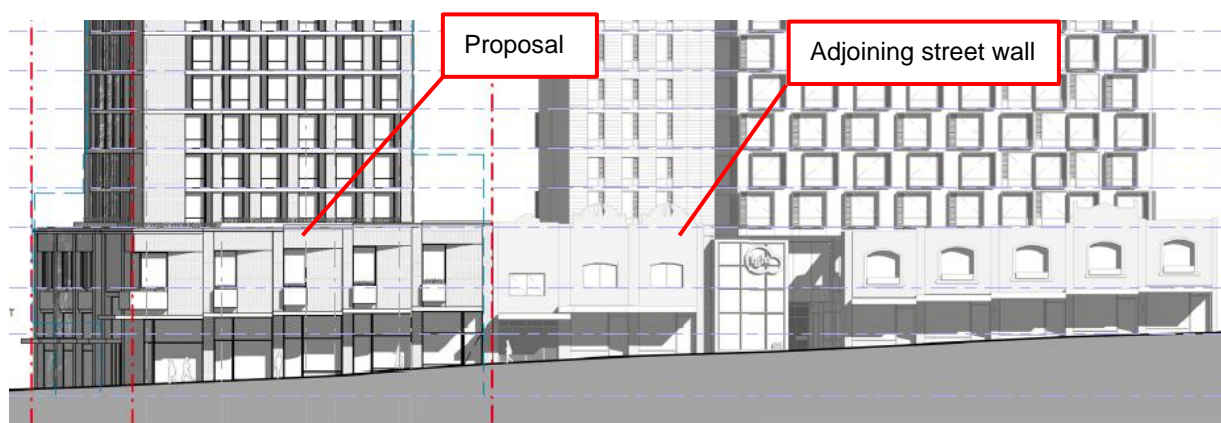


Figure 4 Podium relationship to the adjoining Iglu development to the north

Source: Bates Smart, with additions by Ethos Urban

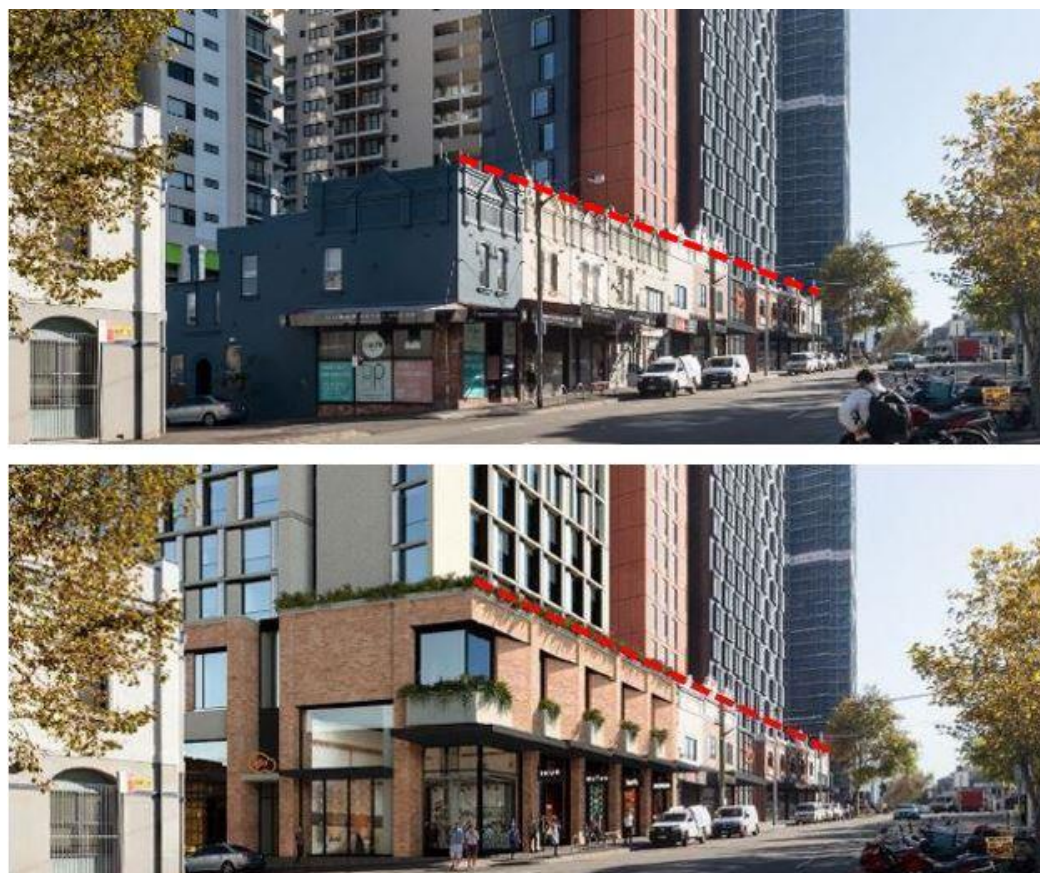


Figure 5 Rendering of proposed development illustrating continuation of street presentation to the north

Source: Bates Smart, with annotation by Ethos Urban

2.2 Development standard has been virtually abandoned or destroyed

The Minister for Planning (or his delegate) has previously approved development in the Redfern Centre that varies the setbacks required in accordance with the development standard, to the extent that the standard has been abandoned in planning assessment practice and precluded from being achieved through the construction of the Iglu Redfern and TNT Tower developments immediately to the north of the subject site. In particular, the following decisions demonstrate that the standard has been abandoned:

- SSD 5249-2012 - The former TNT Tower which waived the setback requirement entirely, allowing the residential apartment building to be built to the property boundary for the full height of the building;
- SSD 14_6724 - 60-78 Regent Street, being the recently completed Iglu student accommodation facility immediately to the north of the site, which provides a 3m setback; and
- SSD 15_7080 – The existing development for the subject site at 80-88 Regent Street, which provides for a 3m setback on the site to Regent Street and a 3 metre setback to Marian Street for the development of a mixed-use residential apartment building. The consent is valid and does not lapse until 2022.

The proposed setback remains consistent with the varied setback that has been approved for development adjoining the site to the north and is generally consistent with the setback approved for the current development consent that relates to the subject site. Accordingly, whilst the development standard has been virtually abandoned by previous approvals an appropriate development outcome is still achieved that is compatible with the desired character of the streetscape. The requirement to strictly comply with the development is therefore considered to be unreasonable and unnecessary, as a compliant scheme would not better achieve the objectives of the development standard or result in any better urban design or planning outcome.

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 building height 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 required to be relocated to the north-western edge of the site, resulting in a sub-optimal interface and integration with existing residential apartment buildings on surrounding sites. 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.

(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. Requiring strict compliance with the development standard would result in a tower form that was set back from the street by a greater distance than surrounding buildings to the north, resulting in an incoherent urban design outcome for the streetscape. Requiring strict compliance with the building height development standard would also require building massing to be pushed away from the street and closer to the adjoining Urba (7-9 Gibbons Street) and Deicota (157 Redfern Street) buildings which would have an adverse impact on visual privacy, outlook and wind impacts that would hinder the attainment of good design and amenity of the built environment. 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 through the identification of the Redfern-Waterloo Precinct in the State Significant Precincts 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 building height (setback) 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 housing. As identified above, the NSW Government has identified the urban renewal of the Redfern centre as necessary to improve the urban amenity of the area and improve utilisation of public transport.

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 education providers and contribute to their growth as part of Australia's major education services industry; and
- activation of retail frontages along Regent Street in order to inject new life into the public domain interface.

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 building height control adopted by the environmental planning instrument for this site.

It is therefore requested that the Independent Planning Commission grant development consent for the proposed development.