

APPENDIX C STATE ENVIRONMENT PLANNING POLICY NO 1 – DEVELOPMENT STANDARDS OBJECTION: HEIGHT – ASSESSMENT

The following assessment of the State Environmental Planning Policy No.1 – Development Standards (SEPP 1) Objection applies the principles arising from *Hooker Corporation Pty Limited v Hornsby Shire Council* (NSWLEC, 2 June 1986, unreported) by using the questions established in *Winten Property Group Limited v North Sydney Council* (2001) NSW LEC 46 (6 April 2001) and as reiterated in *Wehbe v Pittwater Council* (2007) NSW LEC 827. In applying the principles set out in the Winten case, the SEPP 1 Objection has been considered by reference to the following tests:

1. Is the planning control in question a development standard?

The planning control in question is the height of building restriction in clause 21(1) of Part 5 of Schedule 3 of the State Significant Precincts SEPP (SSP SEPP). The EP&A Act defines a development standard as being a provision by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including requirements or standards in respect of (c) the height of a building. As the height of building restriction is a development standard, any variation of this standard requires a SEPP 1 Objection, as has been prepared in this case.

2. What is the underlying purpose of the standard?

The SSP SEPP does not include specific objectives for the GFA development standard. The Department has therefore considered the overall objectives of the Business Zone – Commercial Core zone, as set out in clause 9 of Part 5 of Schedule 3 of the SSP SEPP. The objectives of the zone are as follows:

- (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,*
- (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.*

3. Is compliance with the development standard consistent with the aims of the Policy, and in particular, does the development standard tend to hinder the attainment of the objects specified in s.5(a)(i) and (ii) of the Act?

The aim of the Policy in question is set out at clause 3 of SEPP 1, and seeks to provide flexibility in the planning controls operating by virtue of development standards in circumstances where strict compliance with those standards would be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the EP&A Act.

Wehbe 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:

‘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 non-compliance with the standard.’

Accordingly, the following assessment considers the objection made by the Applicant against objectives of the Business Zone – Commercial Centre zone contained under clause 10 of Part 5 of Schedule 3 of the SSP SEPP. The Department considers the proposal satisfies the zone objectives as it:

- provides a mix of residential (56 new residential dwellings) and employment generating land uses (commercial office space and child care centre). The land use mix is appropriate as it satisfactorily addresses demand for commercial and residential development in inner Sydney while providing a commercial to residential land use ratio consistent with that anticipated by the controls
- will directly generate employment on-site via the future child care use, retail and commercial uses and commercial and residential uses will indirectly generate employment through increasing demand for local retail and services
- co-locates compatible residential, future child care and commercial uses. The design of the building appropriately separates these functions and provides appropriate residential amenity (see **Sections 5.4** and **5.5**)
- is well located in relation to rail and bus transport and is within walking and cycling distance to key education and employment areas (see **Section 5.6**)
- contributes to the vitality and safety of the public domain through ground floor retail tenancies, ground level glazing, and passive surveillance opportunities from windows (see **Section 5.3**)
- subject to recommended conditions, is considered to achieve design excellence in accordance with the design excellence provisions in the SSP SEPP (see **Section 5.3**)
- comprises a development that provides residential uses while still being compatible with non-residential uses given the street-level interface provided by the retail tenancies located on the ground floor.

Further, despite the proposed variation, the Department considers the built form is largely consistent with the desired future character of the area as set out in the SPP SEPP. When viewed from the public domain, the proposal appears to comply with the height control in the SSP SEPP, except for the eastern portion; the Regent Street elevation. The Department considers the building height exceedance is acceptable (see **Section 5.3**) given:

- the building will not have an ominous presence from street level, and provides good human scale through the use of a podium with a stepped back tower element above
- the tower element is setback to be consistent with the Iglu development on Regent Street, contributing to a consistent streetscape and creating a strong architectural statement
- the development does not result in unreasonable overshadowing impacts to residential properties to the west or south of the site beyond that of a compliant scheme (**Section 5.4.2**).

Requiring compliance with the height/ setback development standard would hinder several objectives of the zone, and in particular the objective to encourage complementary employment and residential land uses.

As a result of this assessment the Department concludes, notwithstanding the non-compliance with the development standard, the proposed development meets the objectives of the zone, without additional adverse impacts beyond that of a compliant proposal.

The maximum height allowed for the site is 18-storeys, with a two-storey street wall height along Regent Street and a three-storey street wall height along Marian Street. The overall height of the development (18 storeys) complies with the regulation, but the street wall height along Regent Street and Marian Street exceeds the control.

The Department therefore considers it is both unreasonable and unnecessary for the proposal to comply with the maximum height standards for the zone, given the overall objectives continue to be met.

The Land and Environment Court has established it is insufficient merely to rely on absence of environmental harm to sustain an objection under SEPP 1. This position was confirmed in *Wehbe V*

Pittwater Council. The following assessment considers whether the objection demonstrates strict application of the development standard and would hinder the attainment of the objectives of the Act.

Under the Act, Section 5(a)(i) & (ii) the following is required:

- (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,*

The Department considers the proposal will provide for the proper management and development of land within the City of Sydney for the purpose of promoting the social and economic welfare of the community and a better environment. The proposal is consistent with the strategic framework for the site, as set out in *A Plan for Growing Sydney* and within the SSP SEPP. The Department further considers the proposal facilitates the orderly and economic redevelopment of the site, providing residential and employment opportunities, in an existing urban area in close proximity to public transport and the Sydney CBD.

The Department concludes, in the circumstances, strict application of the development standard would hinder the attainment of the objectives of the EP& A Act.

4. Is compliance with the standard unreasonable or unnecessary in the circumstances of the case?

The Department's analysis has found notwithstanding the non-compliance with the height development standard, the proposed development achieves the underlying objectives of the standard. Consequently, it is considered the SEPP 1 Objection has established that compliance with the development standard is unreasonable and unnecessary in the circumstances.

5. Is the objection well founded?

The Department considers the SEPP 1 objection provided by the Applicant is well founded on the basis that strict application would hinder the attainment of the objectives of the Act and the proposed development achieves the underlying objectives of the standards, notwithstanding the non-compliance.