

APPENDIX D SEPP 1 OBJECTION: HEIGHT – ASSESSMENT

The following assessment of the 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 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 State Significant Precincts SEPP does not include specific objectives for the GFA development standard. The Department has therefore considered the overall objectives of the Business Zone – Mixed Use zone, as set out in Clause 10 of Part 5 of Schedule 3 of the SSP SEPP. The objectives of the zone are as follows:

- (i) to support the development of sustainable communities with a mix of employment, educational, cultural and residential opportunities,
- (ii) to encourage employment generating activities by providing a range of office, business, educational, cultural and community activities in the Zone,
- (iii) to permit residential development that is compatible with non-residential development,
- (iv) to maximise public transport patronage and encourage walking and cycling,
- (v) to ensure the vitality and safety of the community and public domain,
- (vi) to ensure buildings achieve design excellence
- (vii) 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 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 – Mixed Use zone contained under Clause 10 of Part 5 of Schedule 3 of the State Significant Precincts SEPP. The Department is satisfied the proposal satisfies the zone objectives as it:

- provides a mix of residential (19 new residential dwellings) and employment generating land uses (the hotel). 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 hotel use (approximately 20 jobs) and the hotel and residential uses will indirectly generate employment through increasing demand for local retail and services. More broadly, the proposed hotel use will contribute to employment in the tourism industry by providing additional tourist accommodation close to the Sydney CBD;
 - co-locates compatible hotel and residential uses that fulfil a similar function in providing accommodation. The design of the building appropriate separates these functions and provides appropriate residential amenity (see **Sections 5.3 and 5.4**);
 - 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 / commercial tenancies, ground level glazing, and passive surveillance opportunities from windows and the roof deck (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**); and
 - adequately provides landscaped areas at ground level and on the roof deck given the constraints of the small site and predominant building form.

Further, despite the proposed variation, the Department is satisfied 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 western portion of the Cleveland Street elevation. The Department considers the building height exceedance is acceptable (see **Section 5.3**) as it:

- is setback from the Woodburn and Eveleigh Street boundaries so it presents as a compliant five storey building from those streets;
- the partial six storey height at the Cleveland Street elevation is contained within the approved building envelope (in metres) and contributes to the streetscape as a strong architectural statement; and
- 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 5.3**).

Requiring compliance with the height development standard would hinder several objectives of the zone, and in particular 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 Department therefore considers it is both unreasonable and unnecessary for the proposal to comply with the maximum five storey height standard.

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 would hinder the attainment of the objectives of the Act.

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

- (iii) *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,*
- (iv) *The promotion and co-ordination of the orderly and economic use and development of land,*

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 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.

It is considered, in the circumstances, strict application of the development standard would hinder the attainment of the objectives of the Act.

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

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