

This and the following 7 page(s) comprise the
Annexure marked "D" referred to in the Affidavit of

Matt Sarter
sworn/affirmed before me on 21/11/2017

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Solicitor/Justice of the Peace _____

175-177 Cleveland Street and 1-5 Woodburn Street,
Redfern

SEPP No. 1 Objection - Height

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175-177 CLEVELAND STREET AND 1-5
WOODBURN STREET, REDFERN

November 2017

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1.0 SEPP NO. 1 OBJECTION - HEIGHT DEVELOPMENT STANDARD

1.1 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 with two retail tenancies, a wine bar, hotel accommodation with 45 rooms, and a residential flat building containing 20 apartments at 175-177 Cleveland Street and 1-5 Woodburn Street, Redfern.

The SEPP 1 objection is required as the proposed 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.

1.2 The Provisions of SEPP No. 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.

1.3 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.

1.4 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.

1.5 Extent of Variation to the Development Standard

Whilst the majority of the development has a height of 3 to 5 storeys, the central apartment on the top floor is a 6 storey component due the fall of the site, and a portion of the top floor along the eastern side of the development become 6 storeys due to the fall of the site south along Woodburn Street.

1.6 Specific Objectives of the Standard

There are no stated objectives for the height 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 nonresidential 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.

1.7 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,
- 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, retail uses, a wine bar, visitor and tourist accommodation, as well as residential 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 retail tenancies, wine bar, and hotel accommodation components of the development. 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 nonresidential development,

The proposed hotel, retail and wine bar uses are typical of those found in true mixed use buildings and are considered to be compatible with the proposed residential accommodation due the design of the building which protects the amenity of the residential apartments. 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, retail uses and residential apartments from both Cleveland Street, Eveleigh Street and Woodburn Street will be provided and surveillance of the surrounding streets will be significantly 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 which achieved through a considered design which incorporates quality materials and finishes including glazed brick façade and a green wall. An active

frontage along the ground floor has been provided, to provide visual interest and encourage interaction. The variation to the height control does not result in an excessive building height, visual bulk or scale as the proposal will appear as a 3 to 5 storey development from the surrounding public domain.

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 adverse impacts on the adjoining properties, the streetscape or the character of the locality generally. The proposed Cleveland Street façade incorporates a green wall and the roof top includes various soft landscaping components. Having regard to the urban context of the site, the proposal is considered to be compatible with the existing mix of surrounding residential, commercial and light industrial uses.

1.8 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 less than that which has been previously approved for the site;
- The proposed variation to the number of storeys only occurs in two areas (above the eastern half of the lower retail tenancy and also above the wine bar) as a result of the steep fall of the site to the south and the west where the building technically becomes 6 storeys once the floor level of lowest level protrudes more than 1 metres above existing ground level. In these areas the development still reads as five and a half storeys and once the lower level rises to be completely at ground level, the extent of the top floor ceases, such that the development becomes 5 storeys again at that point;
- The street wall height is predominantly 4 storeys to match the character of surrounding buildings with a 3 storey portion at the south-western corner of the site. The appearance and perception of the development is 4 storeys with a setback fifth storeys;
- Due to the minor nature of the variation to the height in storeys control, the variation does not result in any additional shadow impact beyond a complying height and in fact the proposal has been reduced to 3 storeys at the southern boundary on the western side of the development and also 4 storeys at the southern boundary on the eastern side of the development;
- Due to the presentation of the development as 4 storeys with a setback top floor the scale 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 is appropriate.

1.9 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 because the perceptible scale of the development is consistent with that which is anticipated by the height control, the variation does not result in any significant impacts beyond a complying scheme, and accordingly strict compliance would only serve to reduce the provision of housing and hotel accommodation on a site in an ideal location with no benefit. In this regard it is reasonable and appropriate to vary the height development standard to the extent proposed.