

28 April 2011

General Manager  
Ashfield Council  
PO Box 1145  
ASHFIELD NSW 1800

**ATTN: MR ATLAY BAS**



TOWN PLANNING  
AND URBAN DESIGN

**RE: DEVELOPMENT APPLICATION NO. 10.2010.301.1 – 2A BROWN STREET,  
ASHFIELD – PROPOSED MIXED USE DEVELOPMENT – FORMAL OBJECTION  
UNDER STATE ENVIRONMENTAL PLANNING POLICY NO. 1 – DEVELOPMENT  
STANDARDS**

Dear Sir,

## **1.0 INTRODUCTION**

To further assist with the consideration of the proposed development and the variation sought under the provisions of Clause 17B of the Ashfield Local Environmental Plan 1985 (ALEP), the following is a formal objection under the provisions of State Environmental Planning Policy No. 1 – Development Standards (SEPP 1).

This objection under SEPP 1 has been prepared in relation to a proposed mixed use development at 2A Brown Street, Ashfield. This SEPP 1 objection relates to a non-compliance with ALEP in regard to floor space ratio.

### **1.1 The Provisions of SEPP 1**

SEPP 1 – Development Standards is a State Policy mechanism available to applicants to seek variation of development standards contained within an environmental planning instrument.

Clause 3 of the Policy details the Aims and Objectives of the Policy and provides as follows:

#### *3 Aims, objectives etc*

*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 relevant objects of Clause 5 of the *Environmental Planning and Assessment Act, 1979 (EP&A Act)* are:

#### *5 Objects*

*The objects of this Act are:*

##### *(a) 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,

Clause 6 of SEPP 1 incorporates the mechanism for the making of a SEPP 1 objection and provides as follows:

#### 6 Making of applications

*Where development could, but for any development standard, be carried out under the Act (either with or without the necessity for consent under the Act being obtained therefore) the person intending to carry out that development may make a development application in respect of that development, supported by a written objection that compliance with that development standard is unreasonable or unnecessary in the circumstances of the case, and specifying the grounds of that objection.*

The SEPP 1 objection is made in accordance with the provisions of Clause 6. Clause 7 of SEPP 1 provides the discretion and power to the Consent Authority to support a SEPP 1 objection and grant development consent and provides:

#### 7 Consent may be granted

*Where the consent authority is satisfied that the objection is well founded and is also of the opinion that granting of consent to that development application is consistent with the aims of this Policy as set out in clause 3, it may, with the concurrence of the Director, grant consent to that development application notwithstanding the development standard the subject of the objection referred to in clause 6.*

### 1.2 Circular B1 from the Department of Planning

In accordance with the notification given under Clause 12 of Circular B1 from the Department of Planning, the consent authority may assume the Director-General's concurrence to an objection pursuant to the provisions of SEPP 1 in the circumstances of this objection.

## 2.0 LLOYD'S QUESTIONS IN WINTEN

In relation to the five questions which his Honour Justice Lloyd raised in *Winten Property Group Ltd v North Sydney Council* [2001] NSWLEC 24, I make the following comments:

### 2.1 Question 1: Is the planning control in question a development standard?

The provisions of SEPP 1 are applicable to development standards prescribed under an Environmental Planning Instrument pursuant to the EP & A Act.

#### 2.1.1 Definition of Development Standards

"Development Standards" has the following definition under Section 4(1) of the EP&A Act:

*development standards means 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:*

- (a) the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,*
- (b) the proportion or percentage of the area of a site which a building or work may occupy,*
- (c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,*
- (d) the cubic content or floor space of a building,*

- (e) the intensity or density of the use of any land, building or work,
- (f) the provision of public access, open space, landscaped space, tree planting or other treatment for the conservation, protection or enhancement of the environment,
- (g) the provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading or unloading of vehicles,
- (h) the volume, nature and type of traffic generated by the development,
- (i) road patterns,
- (j) drainage,
- (k) the carrying out of earthworks,
- (l) the effects of development on patterns of wind, sunlight, daylight or shadows,
- (m) the provision of services, facilities and amenities demanded by development,
- (n) the emission of pollution and means for its prevention or control or mitigation, and
- (o) such other matters as may be prescribed.

### 2.1.2 Environmental Planning Instrument

The Environmental Planning Instrument to which this objection relates is the Ashfield Local Environmental Plan 1985 (ALEP).

### 2.1.3 Development Standard to be Varied

The development standard to which this objection relates is Clause 17B under the ALEP, which contains provisions relating to the maximum floor space ratio.

Clause 17 of the ALEP relates to "floor space ratios" for certain zoned land and states:

#### 17 Floor space ratios

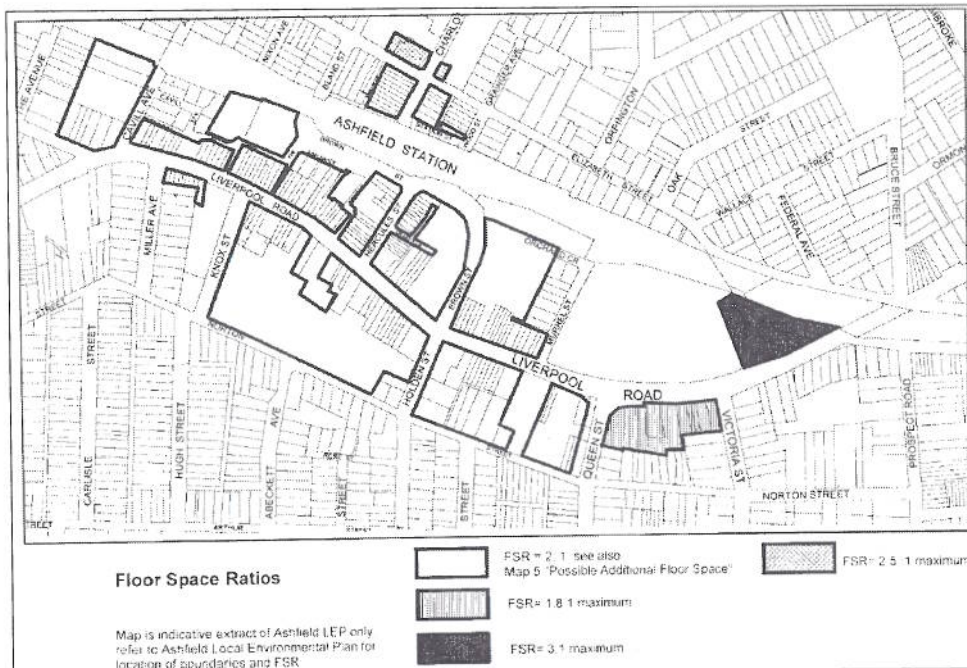
- (1) *In this clause, **building** does not include a building used exclusively as a dwelling-house or residential flat building, but includes a building or buildings comprising 2 dwellings only on the same allotment.*
- (2) *A person shall not, upon an allotment of land within a zone specified in Column 1 of the Table to this clause, erect a building with a floor space ratio that exceeds the ratio set out opposite the zone in Column 2 of that Table.*

#### Table

Column 1	Column 2
Zone	Floor space ratio
3 (a) if the land is shown edged with an unbroken (or, if fronting Elizabeth Avenue, a broken) heavy black line on Sheet 2 of the map marked "Ashfield Local Environmental Plan 1985 (Amendment No 72)"	As provided by clause 17B.

The subject site is land zoned 3(a) under the ALEP map and is shown edged with an unbroken heavy black line in Sheet 2 as created via Ashfield Local Environmental Plan 1985 (Amendment No. 72) and an extract of Sheet 2 is as follows:





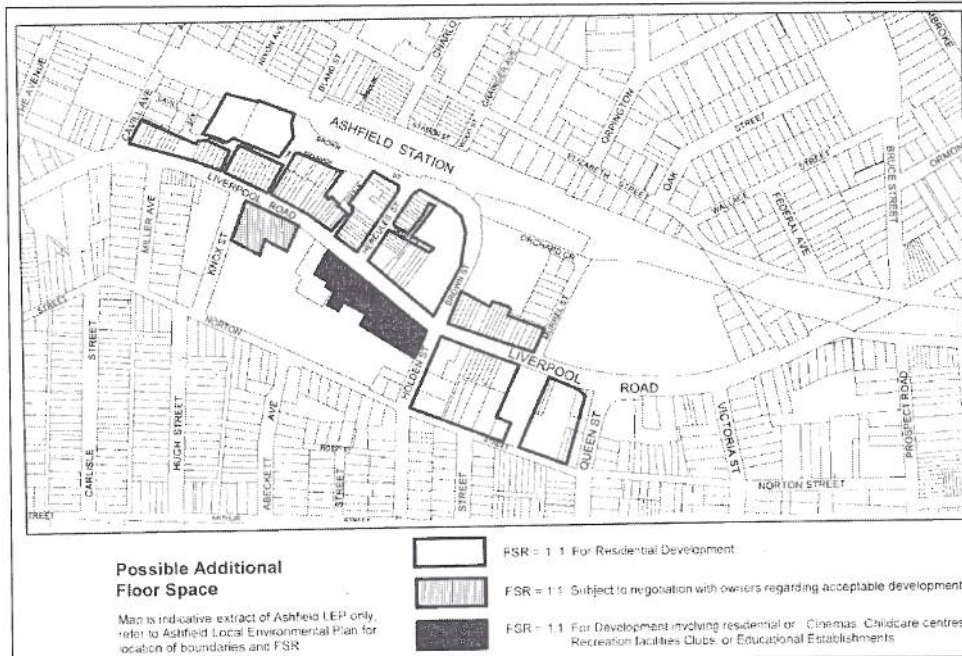
Based on the information shown in Sheet 2 of Amendment No. 72 the Floor Space Ratio for the site is 2:1.

The provisions of Clause 17B of ALEP apply, which states:

**17B Development of Ashfield Business Centre—Zone No 3 (a) floor space ratio**

- (1) This clause applies to land within Zone No 3 (a) that is shown edged with an unbroken (or, if fronting Elizabeth Avenue, a broken) heavy black line on Sheet 2 of the map marked "Ashfield Local Environmental Plan 1985 (Amendment No 72)".
- (2) The Council must not grant consent for buildings on land to which this clause applies if the floor space ratio of the buildings would exceed the base floor space ratio shown for the land on Sheet 2 of the map marked "Ashfield Local Environmental Plan 1985 (Amendment No 72)", except as provided by subclause (3).
- (3) The Council may consent to a building on a site of land to which this clause applies which is also land shown edged with a broken or unbroken heavy black line on Sheet 2 of the map marked "Ashfield Local Environmental Plan 1985 (Amendment No 72)" that will result in the gross floor area of the buildings on the site being greater than that allowed by that base floor space ratio by no more than an amount equivalent to the site area, subject to subclause (4).
- (4) The Council may grant a consent pursuant to subclause (3) only if it is satisfied that the additional floor area will be developed as referred to on Sheet 3 of that map in relation to the land concerned and only if the Council is satisfied that the additional development allowed will not result in an adverse impact on any of the following:
  - (a) the scale and character of the streetscape,
  - (b) the amenity of any existing or potential residential units on neighbouring land,
  - (c) sunlight access to surrounding streets, open space and nearby properties,
  - (d) wind flow patterns to surrounding streets, open space and nearby properties.

The subject site is identified edged with an unbroken heavy black line on Sheet 3 as follows:



Based on the information contained in Sheet 3 the "Possible Additional Floor Space" is "1:1 for Residential Development".

The ALEP includes under clause 6 the following definition:

**floor space ratio**, in relation to a building, means the ratio of the gross floor area of the building to the site area of the land on which that building is or is proposed to be erected.

Clause 6 does not include a definition for "gross floor area" or "site area".

However, Clause 8 of the ALEP calls up the *Environmental Planning and Assessment Model Provisions 1980*, and as a result the definitions of "gross floor area" and "site area" are as follows:

**gross floor area** means the sum of the areas of each floor of a building where the area of each floor is taken to be the area within the outer face of the external enclosing walls as measured at a height of 1 400 millimetres above each floor level excluding:

- (i) columns, fin walls, sun control devices and any elements, projections or works outside the general line of the outer face of the external wall,
- (ii) lift towers, cooling towers, machinery and plant rooms and ancillary storage space and vertical air-conditioning ducts,
- (iii) car-parking needed to meet any requirements of the council and any internal access thereto,
- (iv) space for the loading and unloading of goods.

and

**site area** means the area of land to which an application for consent under the Act relates, excluding therefrom any land upon which the development to which the application relates is not permitted by or under the local environmental plan.

The site has a total area of some 3,687 square metres.



Based on the drawings prepared by Olsson & Associates Architects the gross floor area of the proposed development is some 12,801 square metres, inclusive of approximately 11,757 square metres of residential gross floor area and 1,044 square metres of non-residential gross floor area.

This represents a Floor Space Ratio (FSR) of 3.47:1.

If strictly applying the provisions of Clause 17B and Sheet 2 the site could be afforded some 7,374 square metres of gross floor area.

If strictly applying the provisions of Clause 17B and Sheet 3 the site could be afforded an additional 3,687 square metres of gross floor area for residential development, where that development is in accordance with the provisions of Clause 17B(4). The additional 1:1 FSR is available where a development is consistent with the criteria contained in Clause 17B(4)(a) to (d).

With respect to the criteria in Clause 17B(4) these have been addressed in this SEPP 1 objection under 4.1.

The Ashfield Development Control Plan 2007 – Part C3 Ashfield Town Centre (ADCP 2007) includes provisions under “Building Heights” which outline the circumstances where consideration will be given to a “Two storey height bonus and community benefit”, as follows:

Two storey height bonus and community benefit	
4	<p>Optional Building Height Bonus – Provision of Community Facilities/Affordable Housing</p> <p>Council will consider a bonus of two additional storeys above ground within the core area (with the exception of the area between Knox and Miller Avenue) area identified on <b>Map 3</b> where the following occurs -</p> <ul style="list-style-type: none"><li>a) Public benefits such as community rooms, public open space and/or other community facilities are proposed as part of a development outcome to be negotiated to Council's satisfaction; and/or</li><li>b) An affordable housing component in the development is transferred to Council equal to not less than 5% of the gross floor area of all dwellings developed on the site or an equivalent market value cash contribution is made to Council in order to provide affordable housing in the Ashfield locality.</li></ul> <p><b>Note:</b> The provision of affordable housing units is preferred to an equivalent financial contribution.</p>

*(Extract Ashfield DCP 2007- Ashfield Town Centre Part C3)*

The applicant has included as part of the design a public benefit in the form of two levels of basement public parking spaces being a total of 96 spaces which have been identified within a stratum allotment which will be capable of transfer to Council upon completion of the development at no cost. In addition, the development has been designed to accommodate a pedestrian thoroughfare to connect to Drakes Lane along the southern boundary which will also be provided to Council at no cost.



The additional residential storeys of the proposed development have been included in the design to off-set the cost associated with the provision of the public benefits and in proposing the additional storeys so too the gross floor area of the development has exceeded the maximum FSR.

When combined the gross floor area available for the site is approximately 11,061 square metres.

The proposed development is some 1,740 square metres of gross floor area or 0.47:1 in excess of the FSR standard.

This SEPP 1 objection relates to a departure from a numerical standard prescribed under Clause 17B of the ALEP and is a development standard as it specifies a floor space ratio which fits within the definition as outlined above.

**2.2 Question 2: What is the underlying objective or purpose of the standard?**

As stated in "DOP Circular B1" above, numerical requirements may be departed from if the purpose behind the control is achieved and the locality objectives of the relevant planning instruments are satisfied.

There are no stated objectives to Clause 17B of the ALEP, I therefore consider that the underlying objectives of the standard are:

- (i) to control the bulk, scale and intensity of the development including its traffic movements,
- (ii) to ensure the scale and character of development is compatible with the streetscape,
- (iii) to minimise the impacts of a development on the amenity of any existing or potential residential units on neighbouring land, and
- (iv) to ensure sunlight access to surrounding streets, open space and nearby properties can be adequately maintained.

**2.3 Question 3: 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 obtainment of the objects specified in s5(a)(i) and (ii) of the EP&A Act?**

The proposed development is consistent with the aims of the Policy which promotes flexibility in the application of planning controls.

The development is consistent with the objects of Sections 5(A)(i) and (ii) of the EP&A Act, which provides as follows:

- (a) *promote the orderly and economic development of the local government area of Ashfield in a manner consistent with the need to protect the environment, and*
- (b) *retain and enhance the identity of the Ashfield area derived from its role as an early residential suburb with local service industries and retail centres; and containing the first garden suburb of Haberfield (now listed as part of the National Estate).*

This development represents an orderly and economic use of the land. The natural environmental qualities of the land are not jeopardised.

It would not be orderly or economic development for the mixed development to provide for absolute compliance given the significant public benefits which will flow from the development.

**2.4 Question 4: Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?**

Justice Preston in the decision of *Wehbe v Pittwater Council* [2007] NSWLEC 827 at 43 stated:





*“...development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served).”*



Strict application of the standard is considered to be unreasonable and unnecessary in the current circumstance for the following reasons:

- The proposed development will be consistent with the stated aims and objectives of the ALEP;
- The proposed development is consistent with the criteria under Clause 17B of the ALEP;
- The proposed development is consistent with the underlying objectives of the control; and
- The control has been varied in the past for the subject site and another variation of the same Clause in the ALEP will not undermine the application of the control. The subject site was once considered and approved by Council to be development as a mixed use building under what was known as the Allen Jack & Cottier Masterplan which varied the FSR control under the ALEP and ADCP 2007 to a similar extent as a result of the provision of the same public benefits, where in that case there were less public parking spaces proposed.

Strict compliance of the development standard is unnecessary as the development will still achieve the environmental and planning objectives.

Strict compliance is unreasonable as no environmental or planning purpose would be served by enforcing strict compliance and would not bring about a good planning outcome.

a) In regard to controlling the bulk, scale and intensity of the development:

- The subject site is located within close proximity of the Ashfield Railway Station which will facilitate walking to transport infrastructure by future residents and therefore the provision of the more apartments contained within the additional floor space will assist in the promotion of transit orientated development, as such while proposing a greater floor space this will not result in a development which is excessively intense,
- The height, bulk and scale of the proposed development is consistent with surrounding development,
- The proposed development will not create any unreasonable overshadowing, loss of privacy of views, or adverse visual impact upon the streetscape or the environment, and
- The development will not generate any adverse traffic impacts.

b) In regard to ensuring the proposed development is compatible with the scale and character of development in the streetscape along Brown Street:

- Firstly the scale of the surrounding development has been considered and the proposed development is considered to be compatible in the streetscape along Brown Street given the following:
- The site is adjacent to a seven (7) storey commercial building which fronts Liverpool Road to the south of the site,





- The property to the east of the site opposite in Brown Street has been developed to the scale of an eight (8) storey mixed use building with ground floor non-residential uses which include street activating development such as cafes and upper level residential development,
  - The site is opposite Ashfield Railway Station (to the immediate north) which has undergone works to enable disabled access with provision of lifts and based on a visual inspection and the survey information in Brown Street Street is considered to be equivalent in scale to a 4 storey development at the Brown Street frontage.
  - The overall scale of the proposed development when viewed from Brown Street will read as 8 level building due to the gradient of Brown Street declining from Liverpool Road to the Railway Station frontage. As such, it is considered that the scale of the proposed development is compatible with the streetscape of Brown Street
  - Secondly, with respect to character, it is noted the building opposite in Brown Street has been developed for the purposes of a mixed use building with ground floor non-residential and upper levels having residential usage. This is similar to the design of the proposed development such that the ground floor design will be capable of accommodating uses which provide for street activating developments along the Brown Street frontage under a colonnade which will provide all weather access along the northern façade. It is considered that these elements of the design are compatible with the character of development in the streetscape of Brown Street.
  - In addition, it is considered that the design of the proposed development provides for visual interest along its façades to Brown Street with the inclusion of a combination of sliding louvers to loggia/balcony areas in a "box" feature to provide three breaks, and glass balustrades with recessed balconies to the residential levels, so as to provide for both horizontal and vertical relief of the buildings associated with ground floor colonnade at the shop fronts to create a "podium base" on which the buildings site. These design features in combination provide for a scale and character which is compatible with the streetscape. The mixed use development opposite in Brown Street pre-dates the controls associated with State Environmental Planning Policy No. 65 – Design of Residential Flat Buildings (SEPP 65) and thus the façade design opposite is less focussed on passive solar access and ventilation whereas the proposed development is required to make these inclusions.
- c) In response to minimising the impacts of the proposed development on the amenity of any existing or potential residential units on neighbouring land or amenity of existing and future residential development
- The subject site does not adjoin any land which has been developed for a residential purpose, despite this the design of the development given its scale has accommodated the required building separate distances outlined in the NSW Residential Flat Design Code (RFDC) so as to afford adjoining properties a level of amenity suitable for the scale of the development proposed, where the RFDC advises the building separation distance seeks:
    - *To ensure that new development is scaled to support the desired area character with appropriate massing and scapes between buildings;*
    - *To provide visual and acoustic privacy for existing and new residents.*
    - *To control overshadowing of adjacent properties and private or shared open space.*

- To allow for the provision of open space with appropriate size and proportion for recreational activities for building occupants.
  - To provide deep soil zones for stormwater management and tree planting, where contextual and site conditions allow.
- The proposed development complies with the building separation distances and as such it is considered that each of the amenity considerations outlined in the objectives have been met.
  - It is considered that the design due to the unusual frontage being curved and the fall of the land along Brown Street has created a design which seeks to minimise any view loss from nearby properties
  - As such, the design of the proposed development inclusive of the breach of the FSR is consistent with this objective.
- d) In response to ensuring the proposed development has been designed to enable sunlight access to surrounding streets, open space and nearby properties can be adequately maintained the RFDC rule of thumb has been considered where solar access should achieve the following:

*Living rooms and private open spaces for at least 70 percent of apartments in a development should receive a minimum of three hours direct sunlight between 9 am and 3 pm in mid winter. In dense urban areas a minimum of two hours may be acceptable.*

The amended shadow diagrams prepared show the removed mezzanine level from Building A of the development, and demonstrate the development can achieve a minimum of 2 hours direct solar access between 9am and 3pm in mid winter for at least 70 percent of apartments within the development and external of the development. As such, the design of the proposed development inclusive of the breach of the FSR is consistent with this objective in that the development has been designed to ensure sunlight access to surrounding streets, open space and nearby properties to be adequately maintained.

The design has considered the impact of wind flow patterns on surrounding streets, open space and nearby properties, with the provision of the colonnade at the ground level along the Brown Street façade so as to provide for pedestrian comfort by blocking any wind sheer from north-easterly winds during warmer months, and the location of existing buildings in the locality will prevent prevailing south-easterly winds during cooler months becoming a nuisance for the proposed development. As such, the design of the proposed development inclusive of the breach of the FSR is consistent with this objective.

Further The Department of Planning's "Guidelines for the Use of State Environmental Planning Policy No.1" (refer DOP Circular No.B1) state that:

*As numerical standards are often a crude reflection of intent, a development which departs from the standard may in some circumstances achieve the underlying purpose of the standard as much as one which complies. In many cases the variation will be numerically small and in other cases it may be numerically large, but nevertheless be consistent with the purpose of the standard...*

*In deciding whether to consent to a development application the Council should test whether the proposed development is consistent with the State, regional or local planning objectives for the locality; and in particular the underlying objective of the standard. If the development is not only consistent with the underlying purposes of the standard, but also with the broader planning objectives of the locality, strict compliance with the standard would be unnecessary and unreasonable.*





The variation of the development standard will not undermine the application of this development standard in the future as other sites may not afford the public benefits proposed in this development and will not be in such close proximity of the railway station.

The variation of the development standard will promote the principles outlined in the Sydney Metropolitan Strategy by promoting higher residential densities in close proximity to a public transport node. In this regard, the development is consistent with the state and regional objectives for development within the Sydney Metropolitan Area.

Having regard to all of the above, it is requested that the FSR control pursuant to Clause 17B of the ALEP, be varied in this instance to permit the proposed development. It is acknowledged that the proposed development seeks a variation to the FSR applying to the site. Notwithstanding the non-compliance, it is considered that the proposal satisfies the underlying objectives of the control.

For these reasons it is considered that strict application of this standard is unreasonable and unnecessary in this circumstance.

## **2.5 Question 5: Is the objection well founded?**

In the decision of *Wehbe v Pittwater Council* [2007] NSW LEC 827, Chief Justice Preston rephrased the questions 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 5(a)(i) and (ii) 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.

These questions are addressed below:

### ***QUESTION 1 Is the objection well founded?***

For the reasons set out in the following responses to questions 2A, 2B and 3, the proposed departure from the development standard is well founded.

As outlined above, the stated objectives of the development standard can be achieved despite non-compliance with the standards. As such, this SEPP 1 objection is consistent with the first of the alternative methods outlined by Preston CJ in *Wehbe* to demonstrate that a SEPP 1 objection is well founded.

### ***QUESTION 2(A) Is the granting of consistent with the policy's aim of providing flexibility in the application of the planning control where strict compliance with the control would be unreasonable and unnecessary?***

Clause 3 of SEPP 1 provides for flexibility in the application of a planning control where it can be demonstrated that strict compliance is unreasonable and unnecessary. Clause 3 states:

- 3 Aims, objectives etc



*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.*

Compliance with the development standard is unreasonable and unnecessary as:

- The cause of the non-compliance with the development standard is as a result of providing for a public benefit.
- The development does not adversely impact on the amenity of adjoining properties.
- The matters raised in Section 5 of this SEPP 1 establish the reasons why compliance is unreasonable and unnecessary

A development which complies with the development standard is unreasonable and unnecessary in the circumstances of this case, in particular, given the topography of the land. Even if it were possible to comply, it would be unfeasible to do so, particularly given that the proponent has undertaken a number of public domain improvements, provided for a public benefit in the reconfiguration of a public car parking and additional parking on-site and has sought to provide for appropriate streetscapes/road reserves for pedestrian friendly usage.

**QUESTION 2(B) Or hinder the attainment of the objects in Section 5(a)(i) and (ii) of the Environmental Planning and Assessment Act 1979?**

*5 Objects*

*The objects of this Act are:*

*(a) 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,*

Compliance with the development standard the subject of this objection would hinder attainment of the EP&A Act's object to promote orderly and economic use and development of the Land.

**QUESTION 2(C) Are the objectives of the standard achieved notwithstanding non-compliance with the standard?**

The provisions of Clause 17B of the ALEP do not include specific objectives. However, each of the underlying objectives have been addressed previously in this SEPP 1. Each of the underlying objectives of the control will be achieved by the proposed development.

**QUESTION 3(A) Whether non-compliance with the development standard raises any matter of significance for State or regional planning?**

The non-compliance with the development standard as proposed is not considered likely to raise any matters of significance for State or regional planning.





**QUESTION 3(B)      *Whether non-compliance with the development standard will undermine the public benefit of maintaining the planning controls adopted by the environmental planning instrument?***

The direct public benefits proposed to be provided to Council arising from the development are considered to outweigh the strict compliance with the standard and as such will not undermine the application of the planning control for future development.

Preston CJ then expressed the view that there are 5 different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy:

- A.      the objectives of the standard are achieved notwithstanding non-compliance with the standard; **[relevant for the reasons outlined above and below]**
- B.      the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary; **[not applicable]**
- C.      the underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable; **[relevant for the reasons set out above and below]**
- D.      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; **[relevant for the reasons set out above and below in that Council has previously departed from the standard]**
- E.      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. **[not applicable]**

It is considered that the strict application of the development standard in this instance has been demonstrated to be both unreasonable and unnecessary given that:

- The height, bulk and scale of the proposed development is consistent with surrounding development;
- The proposed development will not create any unreasonable overshadowing, unreasonable loss of privacy or views, or adverse visual impact upon the streetscape or the environment;
- The development will not generate any adverse traffic impacts;
- The development inclusive of the variation sought is consistent with the underlying objectives of the development standard;
- The development is generally consistent with the scale and character for this portion of streetscape in the Ashfield Town Centre;
- The development will result in economic and social benefits to the community of Ashfield; and
- The development satisfies the Land and Environment Court's requirements for a well-founded departure from the relevant standard.



For the reasons set out above, refusal of the development application on the basis that the development does not comply with the development standard in question is not warranted and this SEPP 1 Objection should be supported.

We trust this information will assist Council in finalising the assessment report for the DA so as the amendments can be considered by the JRPP.

Should you have any queries or require clarification on any matters please do not hesitate to contact the undersigned on 0488 221082.

Yours sincerely

THE PLANNING GROUP NSW PTY LTD



Marian Higgins  
(Director)

