

SEPP 1 OBJECTION TO COMPLIANCE WITH AMENITY CONTROLS

156 – 158 PACIFIC HWY,
NORTH SYDNEY

JULY 2011

Prepared by:



LJB Urban Planning Pty Limited

1.0 INTRODUCTION

- 1.1 This State Environmental Planning Policy No.1 - Development Standards (SEPP 1) objection has been prepared by LJB Urban Planning Pty Ltd on behalf of Luxcon Developments Pty Ltd.
- 1.2 It is submitted to North Sydney Council in support of a Development Application for demolition of the existing building and erection of a 10 storey mixed use building containing 404m² of retail floor space, 40 residential apartments and three levels of basement carparking for 31 vehicles.
- 1.3 This submission provides justification to the proposed variation to Clause 28D(2)(d) of North Sydney LEP 2001 which specifies the minimum site area within the North Sydney Town Centre.
- 1.4 This SEPP 1 Objection should be read in conjunction with the Statement of Environmental Effects prepared by LJB Urban Planning Pty Ltd dated July 2011 accompanying the DA.



2.0 SEPP 1 FRAMEWORK

- 2.1 SEPP 1 was introduced in 1980 to allow flexibility in the application of numeric development standards. It enables Councils to vary a statutory development standard where strict compliance with that standard is shown to be unreasonable or unnecessary.
- 2.2 Clause 8 of the Policy sets out other criteria for assessing SEPP 1 objections where it states:
- "the matters that shall be taken into consideration in deciding whether concurrence should be granted are –
- Whether non-compliance with the development application raises any matter of significance for State or regional environmental planning; and
 - the public benefit of maintaining the planning controls adopted by the environmental planning instrument."
- 2.3 The Department of Planning's 'Guidelines For the Use of State Environmental Planning Policy No. 1' states 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 purpose of the standard, but also with the broader planning objectives of the locality, strict compliance with the standard would be unnecessary and unreasonable."
- 2.4 In considering whether to grant its discretion under SEPP 1 to vary a development standard, the consent authority must give consideration to whether compliance with the development standards would be unreasonable or unnecessary in the circumstances of the particular case.
- 2.5 The objective of the zoning and the purpose of the relevant development standard, are relevant considerations in determining whether compliance with that standard would be unreasonable or unnecessary.
- 2.6 A SEPP 1 objection will be well founded if it has shown that the underlying purpose of the development standard is satisfied by the proposed development.

3.0 DRAFT STATE ENVIRONMENTAL PLANNING POLICY (APPLICATION OF DEVELOPMENT STANDARDS 2004)

- 3.1 Draft State Environmental Planning Policy (Application of Development Standards) 2004 was exhibited from May to June 2004. The SEPP is not gazetted; however it is a matter for consideration in the application of SEPP 1 and thus the determination of the DA.
- 3.2 The Draft SEPP encourages Council's to adopt a strategic approach to flexible planning and to recognise that better planning outcomes can sometimes be obtained when a development standard is departed from for a particular proposal.
- 3.3 The Draft SEPP also requires applicants to demonstrate how their proposals will result in a better planning outcome than would be the case if the development standard were strictly adhered to. As part of the process of demonstrating better planning outcomes, consideration is required as to the impact of development on the broader community.
- 3.4 Clause 7 of the Draft SEPP requires a written statement to be prepared and submitted with a DA that identifies the development standard and justifies the departure.
- 3.5 The written statement must demonstrate how each of the following requirements is satisfied:
- That the departure from the development standard will result in a better environmental planning outcome than that which could have been achieved on the site had the standard been complied with; and
 - That the proposed development will be in the public interest by being consistent with any aims and objectives expressed in, or implied from the:
 - zone in which the objectives is proposed to be carried out; or
 - development standard.
- 3.6 The Draft SEPP provides that a better environmental planning outcome will not be demonstrated unless the element of the proposed development that is inconsistent with the relevant development standard:
- a) is necessary because of unusual site characteristics, or
 - b) comprises any one or more of the following:
 - a. exceptional design quality,
 - b. social benefit to the community,
 - c. economic benefit to the community,which is above and beyond that which could have been achieved had the development standard been complied with (or both).



4.0 STANDARD THIS SUBMISSION OBJECTS TO

4.1 This submission objects to the following standard:

28D Building Heights and massing

- (2) Consent must not be granted to the erection of a building within the North Sydney Centre, unless:
 - (d) there will be no increase in overshadowing that would reduce the amenity of any dwelling that is outside the North Sydney Centre and falls within the composite shadow area referred to in paragraph (b)

5.0 PURPOSE OF THE STANDARD

5.1 Subclause 28D(1) provides the objectives to controlling building height and massing of developments in the North Sydney Town Centre. The objectives are:

- a) to achieve a transition of building heights generally from 100 Miller Street (Northpoint) and 79-81 Berry Street (being the location of the tallest buildings) stepping down towards the boundaries of the North Sydney Centre,
- b) to promote a height and massing that has no adverse impact on land in the public open space zone or land identified as a special area on Sheet 5 of the map marked "North Sydney Local Environmental Plan 2001 (Amendment No 9)- North Sydney Centre" or on heritage items,
- c) to minimise overshadowing of land in the residential and public open space zones or identified as a special area on Sheet 5 of the map marked "North Sydney Local Environmental Plan 2001 (Amendment No 9)-North Sydney Centre"
- d) to protect the privacy of residents within and around the North Sydney Centre,
- e) to promote scale and massing that provides for pedestrian comfort, in terms of weather protection, solar access and visual dominance,
- f) to encourage consolidation of sites for provision of high grade commercial space and provision of public benefits



6.0 PROPOSED VARIATION TO THE STANDARD

- 6.1 It is requested that North Sydney Council vary clause 28D(2)(d) of North Sydney LEP 2001 to enable a minor increased shadow to 1 Doohat Avenue.
- 6.2 The proposed development will not overshadow residential premises outside the North Sydney Centre between the accepted hours of 9.00am and 3.00pm.
- 6.3 The proposal does cast shadow on the residential building at 1 Doohat Avenue, in the morning hours during Autumn (March). No additional impact results during winter or summer.

7.0 JUSTIFICATION FOR THE DEPARTURE

- 7.1 In the circumstances of this development application, strict compliance with Clause 28D(2)(d) of North Sydney LEP 2001 is unreasonable and unnecessary for the following reasons:

The extent of the non-compliance is minor

- 7.1.1 The primary open space of No. 1 Doohat Avenue is to the north of that dwelling and its northern living room windows will not be further impacted in midwinter. These areas will receive the requisite 3 hours of solar access mid winter.
- 7.1.2 The proposal will result in a minor reduction of solar access of the eastern dining room window, which already receives less than 3 hours of solar access during Autumn due to its orientation and proximity to the boundary. The retention of the existing level of solar access to this window is unreasonable as the additional shadow results from the podium element. No impact results in winter or summer.
- 7.1.3 Therefore, retention of existing levels of solar access to this window would preclude development on the site.
- 7.1.4 It is considered that the amenity to 1 Doohat is marginally affected albeit minor / negligible additional shadowing. Due to the position of the dining room window retention of sunlight would be difficult to protect especially given the urban environment.
- 7.1.5 Furthermore it is noted that this window is to a secondary living area within the dwelling (and not the primary living room space utilised by residents), and due to the open plan nature of this room, additional light is obtained from the other living room windows, thus retaining amenity to this room.



Compliance with objectives of the standard

- 7.1.6 The objectives of the building height and massing of developments controls in the North Sydney Town Centre have been considered as follows:
- a) to achieve a transition of building heights generally from 100 Miller Street (Northpoint) and 79-81 Berry Street (being the location of the tallest buildings) stepping down towards the boundaries of the North Sydney Centre,
- 7.1.7 The development achieves a transition in building height. The building height has no impact on the shadow impact, the podium creates the additional shadow.
- b) to promote a height and massing that has no adverse impact on land in the public open space zone or land identified as a special area on Sheet 5 of the map marked "North Sydney Local Environmental Plan 2001 (Amendment No 9)- North Sydney Centre" or on heritage items,
- 7.1.8 The development has no impact on land in the public open space zone or identified as a special area. The impact on the nearby heritage item has been considered by Urbis Heritage Consultants where it was concluded that the development was appropriate.
- c) to minimise overshadowing of land in the residential and public open space zones or identified as a special area on Sheet 5 of the map marked "North Sydney Local Environmental Plan 2001 (Amendment No 9)-North Sydney Centre"
- 7.1.9 The development has no impact on land in the public open space zone or identified as a special area.
- d) to protect the privacy of residents within and around the North Sydney Centre,
- 7.1.10 The building has sufficient separation to maintain the privacy of existing residents. Additional privacy measures including privacy screens are provided to the lower levels on the western elevation.
- e) to promote scale and massing that provides for pedestrian comfort, in terms of weather protection, solar access and visual dominance,
- 7.1.11 The podium has been designed to provide a human scale, with the tower element setback from the laneway to minimise its visual dominance. A continuous awning is provided along the Hwy frontage to ensure weather protection.
- f) to encourage consolidation of sites for provision of high grade commercial space and provision of public benefits
- 7.1.12 The development encourages residential development which recognises the high supply and vacancy rates of commercial uses in the North Sydney Centre. The development will

facilitate a permanent residential presence in the city to add to the vitality and liveability of the city.

- 7.1.13 It is therefore considered that the development maintains compliance with the objectives of the control.

Is not contrary to any matters of State or Regional planning significance

- 7.1.14 The proposed variation to the development standard does not raise any matters of significance for state or regional planning. The variation is also not contrary to any state policy of ministerial directive.

- 7.2 Due to the reasons stated above, it is concluded that compliance with the standard is unreasonable and unnecessary in the circumstances.



8.0 COMPLIANCE WITH DRAFT SEPP 1 GUIDELINES

- 8.1 As previously noted, the Draft SEPP requires the applicant to provide an assessment of the variation to the standard pursuant to 'two tests'.

TEST A

That the departure from the development standard will result in a better environmental planning outcome than that which could have been achieved on the site had the standard been complied with.

A better environmental outcome must demonstrate that compliance with the standard:

- a) is necessary because of unusual site characteristics, or
- b) comprises any one or more of the following:
 - a. exceptional design quality,
 - b. social benefit to the community,
 - c. economic benefit to the community,

- 8.2 The following table provides an assessment of the proposed variation against the environmental criteria:

CRITERIA	COMMENTS
Unusual site characteristics	The affected property is located adjacent to the North Sydney Town Centre. The main orientation of the dwelling is towards the north. The affected window is on the eastern boundary and due to the narrow width of the laneway, maintaining solar access and developing the site is not possible. It is noted that no impact occurs to the window during winter or summer.
Exceptional Design Quality	<p>The development has been designed by architects PDB Architects + Project Managers.</p> <p>The design concept provided for a build form that has a strong podium to continue the commercial feel at the lower levels.</p> <p>The design adopts both strong architectural and urban design principles that allow the development to integrate well within its context and presentation to both street frontages.</p> <p>The architecture adopts a contemporary styles with high levels of residential amenity.</p>



CRITERIA	COMMENTS
	A key design feature of the building is the combination of the perforated metal screen and glass louvers that provides a highly articulated and interesting treatment to the podium. The high quality architecture and interesting materials will ensure this building is memorable.
Social Benefit to the community	<p>The subject site is zoned for mixed use development. Encouraging permanent residential accommodation in the city will assist in revitalising and encouraging a cosmopolitan city.</p> <p>The provision of suitable housing in close proximity to public transport and employment opportunities is a social benefit to the community.</p>
Economic benefit to the community	The immediate and ongoing economic benefits from construction and ongoing maintenance are considered to be a direct economic benefit to the community generally. The increased population will create further expenditure in the North Sydney Town Centre.

8.3 As demonstrated in the table above, the development provides an appropriate planning outcome.

TEST B

That the proposed development will be in the public interest by being consistent with any aims and objectives expressed in, or implied from the:

- zone in which the objectives is proposed to be carried out; or
- development standard.

8.4 The proposed variation is considered in the public interest for the following reasons:

8.4.1 It will enable the economic and orderly development of the site.

8.4.2 The building form is consistent with the North Sydney Character statement and achieves provides a strong base which enhances the Pacific Hwy frontage.

8.4.3 The design of the building with generous setbacks improves the residential amenity of the dwellings and allows the movement of air and shared solar access which is in the public interest.

8.5 It is therefore considered that the proposed variation to clause 25D(2)(d) is not contrary to the public interest.



9.0 CONCLUSION

9.1 It is concluded that the non-compliance with the building height control contained in Clause 28D(2)(e) of North Sydney LEP 2001 is acceptable in the circumstances of this case for the following reasons:

- The extent of the non-compliance is minor and only occurs in Autumn.
- The development maintains compliance with the objectives of the standard
- The non-compliance is not contrary to any matter of state or regional planning significance.
- The non-compliance satisfies the 'two test' criteria of the Draft SEPP 1 Guidelines.
- Compliance with the standard is considered unreasonable and unnecessary in the circumstances of this application.



SEPP 1 OBJECTION TO COMPLIANCE WITH MINIMUM SITE AREA

156 – 158 PACIFIC HWY,
NORTH SYDNEY

JULY 2011

Prepared by:



LJB Urban Planning Pty Limited

1.0 INTRODUCTION

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- 1.3 This submission provides justification to the proposed variation to Clause 28D(2)(e) of North Sydney LEP 2001 which specifies the minimum site area within the North Sydney Town Centre.
- 1.4 This SEPP 1 Objection should be read in conjunction with the Statement of Environmental Effects prepared by LJB Urban Planning Pty Ltd dated July 2011 accompanying the DA.



2.0 SEPP 1 FRAMEWORK

- 2.1 SEPP 1 was introduced in 1980 to allow flexibility in the application of numeric development standards. It enables Councils to vary a statutory development standard where strict compliance with that standard is shown to be unreasonable or unnecessary.
- 2.2 Clause 8 of the Policy sets out other criteria for assessing SEPP 1 objections where it states:
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- a. Whether non-compliance with the development application 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."
- 2.3 The Department of Planning's 'Guidelines For the Use of State Environmental Planning Policy No. 1' states 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 purpose of the standard, but also with the broader planning objectives of the locality, strict compliance with the standard would be unnecessary and unreasonable."
- 2.4 In considering whether to grant its discretion under SEPP 1 to vary a development standard, the consent authority must give consideration to whether compliance with the development standards would be unreasonable or unnecessary in the circumstances of the particular case.
- 2.5 The objective of the zoning and the purpose of the relevant development standard, are relevant considerations in determining whether compliance with that standard would be unreasonable or unnecessary.
- 2.6 A SEPP 1 objection will be well founded if it has shown that the underlying purpose of the development standard is satisfied by the proposed development.

3.0 DRAFT STATE ENVIRONMENTAL PLANNING POLICY (APPLICATION OF DEVELOPMENT STANDARDS 2004)

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- 3.3 The Draft SEPP also requires applicants to demonstrate how their proposals will result in a better planning outcome than would be the case if the development standard were strictly adhered to. As part of the process of demonstrating better planning outcomes, consideration is required as to the impact of development on the broader community.
- 3.4 Clause 7 of the Draft SEPP requires a written statement to be prepared and submitted with a DA that identifies the development standard and justifies the departure.
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 - That the proposed development will be in the public interest by being consistent with any aims and objectives expressed in, or implied from the:
 - zone in which the objectives is proposed to be carried out; or
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- 3.6 The Draft SEPP provides that a better environmental planning outcome will not be demonstrated unless the element of the proposed development that is inconsistent with the relevant development standard:
- a) is necessary because of unusual site characteristics, or
 - b) comprises any one or more of the following:
 - a. exceptional design quality,
 - b. social benefit to the community,
 - c. economic benefit to the community,which is above and beyond that which could have been achieved had the development standard been complied with (or both).



4.0 STANDARD THIS SUBMISSION OBJECTS TO

4.1 This submission objects to the following standard:

28D Building Heights and massing

- (2) Consent must not be granted to the erection of a building within the North Sydney Centre, unless:
 - (e) the site area is not less than 1,000 square metres.

5.0 PURPOSE OF THE STANDARD

5.1 Subclause 28D(1) provides the objectives to controlling building height and massing of developments in the North Sydney Town Centre. The objectives are:

- a) to achieve a transition of building heights generally from 100 Miller Street (Northpoint) and 79-81 Berry Street (being the location of the tallest buildings) stepping down towards the boundaries of the North Sydney Centre,
- b) to promote a height and massing that has no adverse impact on land in the public open space zone or land identified as a special area on Sheet 5 of the map marked "North Sydney Local Environmental Plan 2001 (Amendment No 9)- North Sydney Centre" or on heritage items,
- c) to minimise overshadowing of land in the residential and public open space zones or identified as a special area on Sheet 5 of the map marked "North Sydney Local Environmental Plan 2001 (Amendment No 9)-North Sydney Centre"
- d) to protect the privacy of residents within and around the North Sydney Centre,
- e) to promote scale and massing that provides for pedestrian comfort, in terms of weather protection, solar access and visual dominance,
- f) to encourage consolidation of sites for provision of high grade commercial space and provision of public benefits



6.0 PROPOSED VARIATION TO THE STANDARD

- 6.1 It is requested that North Sydney Council vary clause 28D(2)(e) of North Sydney LEP 2001 to enable non-compliance with the minimum site area.
- 6.2 The proposed lots have a site area of 792.7m². This represents a shortfall of 207m² or 20%.

7.0 JUSTIFICATION FOR THE DEPARTURE

- 7.1 In the circumstances of this development application, strict compliance with Clause 28D(2)(e) of North Sydney LEP 2001 is unreasonable and unnecessary for the following reasons:

The extent of the non-compliance is minor & results in consolidation of two allotments

- 7.1.1 The development proposes to consolidate two lots providing a total area of 792.7m². This represents a shortfall of 20%.
- 7.1.2 Each of the allotments has the benefit of development consent to develop independently.
- 7.1.3 Development consent on these sites was issued on the basis of a SEPP 1 objection to the minimum site area control, accordingly based on a significantly higher departure from the development standard.
- 7.1.4 This development application will consolidate the two allotments, achieving a larger development site that accommodates a more appropriately design residential building with high residential amenity.
- 7.1.5 The size of the site and its dimensions facilitates an appropriate sized floor plate to accommodate the residential units in accordance with the good design principles of SEPP 65.

Amalgamation would not facilitate a better site design

- 7.1.6 As indicated above, the size of the site is conducive to this form of development. The overall height and form is appropriate in the sites context. The amalgamation with the

neighbouring site would create a long site which would result in a large building with long corridor widths and reduced residential amenity with higher single aspect units.

- 7.1.7 A larger development would significantly impact on the curtilage of the adjacent heritage item. The length of the building would create a large wall effect which would impact adversely compared to the reduced width of the rear portion of the building under the current development.
- 7.1.8 As such, the development provides optimum floor plates for residential development and further site amalgamation would not achieve a better planning outcome.

The non-compliance does not adversely impact on adjoining dwellings

- 7.1.9 The building has been designed to minimise its impacts on adjoining dwellings in terms of overshadowing, privacy, visual amenity, solar access and bulk and scale.
- 7.1.10 The development results in a minor shadow impact in Autumn only to the dwelling at 1 Doohat Avenue, however this impact would not be lessened by consolidation with the corner allotment.

Unsuccessful attempts have been made to amalgamate

- 7.1.11 The purchaser of 156-158 Pacific Hwy, Luxcon Developments has approached the agents for 160 Pacific Hwy regarding the potential purchase of the property.
- 7.1.12 The property at 160 Pacific Hwy was placed on the market for sale by auction. My client made numerous attempts to obtain copies of the Information Memorandum and Contract for the purchase prior to the auction. In addition an offer was made to purchase the property, at a fair and reasonable market rate. All attempts were unsuccessful. Email evidence accompanies this SEPP 1 objection indicating the client's attempts to receive sale documentation and the making of an offer beyond market value. So formal response was ever received from the vendor.
- 7.1.13 However a key restriction with this property is vacant possession. Rental agreements with tenants within the property were recently updated as shown on the following tenancy schedule extract:

TENANCY SCHEDULE - 160 PACIFIC HIGHWAY, NORTH SYDNEY AS AT 25 NOVEMBER 2010									
Suite	Tenant	NLA Sq m	\$/m2	\$ p.a.	Term/ Option	Lease Comm.	Lease Expiry	Next Review	Type
Ground 1	Grady Property Group	112.90	\$400.40	\$45,205.20	3 + 3	5.11.09	4.11.12	5.11.11	Fixed 4%
Level 1	Grady Sheffield Property	107.70	\$353.60	\$38,082.72	3 + 3	5.11.09	4.11.12	5.11.11	Fixed 4%
Level 2	Day of Difference Foundation	132.00	\$411.01	\$54,253.08	3 + 3	1.7.08	30.6.11	1.7.11	Fixed 4%
Level 2A	M.Tech Products	139.70	\$213.20	\$29,784.00	3 + 3	1.9.09	31.8.12	1.9.11	Fixed 4%
Level 3	MDA Australia Pty Ltd*	252.50	\$433.29	\$109,406.64	5 + 5	1.2.06	31.1.11	1.2.11	
Suite 401	Vacant	114.77	-	-	-	-	-	-	-
Suite 402 (Residence)	Paul Stevenson**	103.76	-	\$32,240.00	-	27.2.10	27.8.10	-	-
		963.33		\$308,971.64					

* MDA Australia Pty Ltd has now executed a new lease commencing on 1 February 2011 of 4 years plus 4 year option.

- 7.1.14 The site as not offered as vacant possession, tenants had signed agreements which expire in November 2015.
- 7.1.15 This does not facilitate the economic and orderly redevelopment of the site. This would significantly impact on the commencement of any redevelopment of the three sites and would put the viability of the project at risk with significant holding costs on the remaining land.
- 7.1.16 Further consolidation would not be economically viable.

Compliance with objectives of the standard

- 7.1.17 The objectives of the building height and massing of developments controls in the North Sydney Town Centre have been considered as follows:
- to achieve a transition of building heights generally from 100 Miller Street (Northpoint) and 79-81 Berry Street (being the location of the tallest buildings) stepping down towards the boundaries of the North Sydney Centre,
- 7.1.18 The development achieves a transition in building height. The development provides high levels of articulation with the overall height of the building and the setback from the facades facilitating a transition to the boundaries of the North Sydney Centre.
- to promote a height and massing that has no adverse impact on land in the public open space zone or land identified as a special area on Sheet 5 of the map marked "North Sydney Local Environmental Plan 2001 (Amendment No 9)- North Sydney Centre" or on heritage items,

- 7.1.19 The development has no impact on land in the public open space zone or identified as a special area. The impact on the nearby heritage item has been considered by Urbis Heritage Consultants where it was concluded that the development was appropriate.
- c) to minimise overshadowing of land in the residential and public open space zones or identified as a special area on Sheet 5 of the map marked "North Sydney Local Environmental Plan 2001 (Amendment No 9)-North Sydney Centre"
- 7.1.20 The development has no impact on land in the public open space zone or identified as a special area.
- d) to protect the privacy of residents within and around the North Sydney Centre,
- 7.1.21 The building has sufficient separation to maintain the privacy of existing residents. Additional privacy measures including privacy screens are provided to the lower levels on the western elevation.
- e) to promote scale and massing that provides for pedestrian comfort, in terms of weather protection, solar access and visual dominance,
- 7.1.22 The podium has been designed to provide a human scale, with the tower element setback from its front and rear boundaries to minimise its visual dominance. A continuous awning is provided along the Hwy frontage to ensure weather protection.
- f) to encourage consolidation of sites for provision of high grade commercial space and provision of public benefits
- 7.1.23 The development encourages residential development which recognises the high supply and vacancy rates of commercial uses in the North Sydney Centre. The development will facilitate a permanent residential presence in the city to add to the vitality and liveability of the city.
- 7.1.24 It is therefore considered that the development maintains compliance with the objectives of the control.

Is not contrary to any matters of State or Regional planning significance

- 7.1.25 The proposed variation to the development standard does not raise any matters of significance for state or regional planning. The variation is also not contrary to any state policy of ministerial directive.
- 7.2 Due to the reasons stated above, it is concluded that compliance with the standard is unreasonable and unnecessary in the circumstances.



8.0 COMPLIANCE WITH DRAFT SEPP 1 GUIDELINES

- 8.1 As previously noted, the Draft SEPP requires the applicant to provide an assessment of the variation to the standard pursuant to 'two tests'.

TEST A

That the departure from the development standard will result in a better environmental planning outcome than that which could have been achieved on the site had the standard been complied with.

A better environmental outcome must demonstrate that compliance with the standard:

- a) is necessary because of unusual site characteristics, or
- b) comprises any one or more of the following:
 - a. exceptional design quality,
 - b. social benefit to the community,
 - c. economic benefit to the community,

- 8.2 The following table provides an assessment of the proposed variation against the environmental criteria:

CRITERIA	COMMENTS
Unusual site characteristics	The site contains a vacant block and redundant commercial building.
Exceptional Design Quality	<p>The development has been designed by architects PDB Architects + Project Managers.</p> <p>The design concept provided for a build form that has a strong podium to continue the commercial feel at the lower levels.</p> <p>The design adopts both strong architectural and urban design principles that allow the development to integrate well within its context and presentation to both street frontages.</p> <p>The architecture adopts a contemporary styles with high levels of residential amenity.</p> <p>A key design feature of the building is the combination of the perforated metal screen and glass louvers that provides a highly articulated and interesting treatment to the podium. The high quality architecture and interesting materials will ensure this building is memorable.</p>

CRITERIA	COMMENTS
Social Benefit to the community	<p>The subject site is zoned for mixed use development. Encouraging permanent residential accommodation in the city will assist in revitalising and encouraging a cosmopolitan city.</p> <p>The provision of suitable housing in close proximity to public transport and employment opportunities is a social benefit to the community.</p>
Economic benefit to the community	<p>The immediate and ongoing economic benefits from construction and ongoing maintenance are considered to be a direct economic benefit to the community generally. The increased population will create further expenditure in the North Sydney Town Centre.</p>

8.3 As demonstrated in the table above, the development provides an appropriate planning outcome.

TEST B

That the proposed development will be in the public interest by being consistent with any aims and objectives expressed in, or implied from the:

- zone in which the objectives is proposed to be carried out; or
- development standard.

8.4 The proposed variation is considered in the public interest for the following reasons:

8.4.1 It will enable the economic and orderly development of the site.

8.4.2 The building form is consistent with the North Sydney Character statement and draft North Sydney LEP achieving a strong podium which enhances the Pacific Hwy frontage.

8.4.3 The design above the podium facilitates residential amenity of the dwellings and allows the movement of air and shared solar access which is in the public interest.

8.5 It is therefore considered that the proposed variation to clause 25D(2)(e) is not contrary to the public interest.

9.0 CONCLUSION

9.1 It is concluded that the non-compliance with the building height control contained in Clause 28D(2)(e) of North Sydney LEP 2001 is acceptable in the circumstances of this case for the following reasons:

- The extent of the non-compliance is minor and results in the consolidation of two allotments.
- Further site amalgamation would not facilitate a better site design.
- The non-compliance does not adversely impact on adjoining dwellings
- Unsuccessful attempts have been made to amalgamate
- The development maintains compliance with the objectives of the standard
- The non-compliance is not contrary to any matter of state or regional planning significance.
- The non-compliance satisfies the 'two test' criteria of the Draft SEPP 1 Guidelines.
- Compliance with the standard is considered unreasonable and unnecessary in the circumstances of this application.



ANNEXURE ONE

Email correspondence re: site amalgamation



Larissa Brennan

From: "ILYA MELNIKOFF" <ilya@luxcon.com.au>
To: <bkenny@chestertons.com.au>
Sent: Thursday, 25 November 2010 12:05 PM
Subject: 160 Pacific hwy
Bevan,

We spoke a couple of days ago regarding our interest in the property. We still have not received an IM or contract for the property nor the response to our previous proposal despite having numerous verbal and written requests to yourself and your colleague Tyler.

I find this conduct somewhat frustrating and disappointing as, despite the fact that our proposal was conditional upon vacant possession, our initial approach was prior to the current long term tenant being signed up. Should we have been provided with documentation and opportunity to properly assess the property, the vendor could have had interest in our proposal.

Furthermore at our last conversation you gave me the price indication of \$3m rather than \$3.9 that Tyler gave me before. Considering that we were willing to pay \$3.5 subject to vacant possession, there was potentially enough incentive for the vendor to consider our offer and even possibly payout the leases to enable vacant possession, not mentioning that it is an agent's duty to inform vendor of all potential offers.

We understand that there is a forthcoming auction on the property and this matter as well as your agency's conduct is becoming a serious loss of opportunity considering we purchased a site next door and acquiring this one would potentially greatly improve planning outcome.

We would like your response and necessary documents as soon as possible.

Kind regards

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