

APPENDIX N

STATE ENVIRONMENTAL PLANNING POLICY NO. 1 OBJECTION

MINIMUM STREET FRONTAGE

1.0 Introduction and Background

This State Environmental Planning Policy No.1 (SEPP 1) objection has been prepared in support of a development application that seeks development consent to construct a residential flat building development which consists of the following components:

- 7 x 3 bedroom units, 33 x 2 bedroom units and 2 x 1 bedroom units in 2 residential flat buildings up to 6 storeys in height,
- Basement parking for a 61 car parking spaces; and
- Associated landscaping.

The development site is located at 6A - 8 Buckingham Road, Killara which is legally described as Lots 1, 3 & 4 DP 414101.

The subject site has a street frontage to Buckingham Road of 28.3 metres which is less than the minimum street frontage development standard contained at Division 5, Clause 251(3) of the Ku-ring-gai Planning Scheme Ordinance (KPSO) which requires a minimum street frontage of 30 metres for sites greater than 1,800m². The subject site has a total area of 3,792.2m².

2.0 Provisions of SEPP 1

2.1 Clause 3 of SEPP 1 – Aims and Objectives states;

“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”

2.2 Requirements of SEPP 1 Objections

Clause 6 of SEPP 1- Making of Applications states;

“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 standard is unreasonable or unnecessary in the circumstances of the case, and specifying the grounds of that objection.”

3.0 Identification of Development Standard Objected to

This SEPP 1 Objection relates to the KPSO Division 5, Clause 25 I(3) Minimum Street Frontages.

Division 5 Clause 25 I(3) Minimum Street Frontages states;

“The standards for street frontages set out in the Table to this subclause apply to a site used for the purpose of multi-unit housing;

Table - Minimum Street Frontages

Site Area	Minimum Street Frontage
1,800m ² or more	30 metres
1,200m ² or more but less than 1,800m ²	23 metres

As the subject site has an area of 2,792.2m², a 30 metre frontage is required.

4.0 Objective of the Minimum Site Requirements Development Standard

Whilst there is no specific objective to the Minimum Street Frontage Development Standard, there are objectives for residential zones stated in Clause 25D, sub-clause (2) which relate generally to minimum street frontages. Objective (c) states;

“To provide side setbacks that enable effective landscaping, tree planting between buildings, separation of buildings for privacy and views from the street to rear landscaping.”

Despite the subject site having a frontage of 28.3 metres and not 30 metres or more, the proposed development complies with the 6 metre side setback to the basement levels which allows sufficient space for deep rooted plants to be established along the side boundaries. This provides a corridor of vegetation along both side setbacks that connects to significant landscaping at the rear of the site. The setbacks will ensure that vegetation can be established on the site commensurate with the scale of the development.

As discussed in the Statement of Environmental Effects, the property to the east at 2 - 6 Buckingham Road has had a 5 storey residential flat building approved. The proposed development maintains a 12 metre setback from the lower levels of the proposed development to the adjoining approved residential flat building which complies with SEPP 65 in terms of building setbacks. Similarly, the setback of the proposed residential flat building is 15.265 metres from the dwelling at 10 Buckingham Road. It is therefore considered that despite the street frontage not complying with the development standard, the design of the proposed development still allows adequate space for deep rooted planting and provides adequate setbacks to adjoining residential buildings in terms of SEPP 65 for privacy and solar access.

Clause 25D(1)(b) requires development to consider the impact on the heritage significance of buildings in the vicinity of the subject site. A Heritage Impact Statement has been prepared by Archnex Designs which is attached at **Appendix D** of the SEE addresses the

impact of heritage significance on the adjoining heritage listed building at No. 10 Buckingham Road and other heritage items in the vicinity of the subject site. The Heritage Impact Statement indicates that the proposed development is considered to be satisfactory and will not adversely impact on the heritage significance of that building.

It is therefore considered that the 28.3 metre street frontage does not result in a proposed residential flat development that will have a detrimental impact on the streetscape or on the adjoining heritage listed building.

5.0 Justification for Non-Compliance with the Minimum Street Frontages Development Standard

5.1 Is Compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

Strict compliance with the 30 metre minimum street frontage development standard is considered to be unreasonable and unnecessary in this case as the subject site is the last remaining land on the southern side of Buckingham Road that is either not developed for residential flat buildings or does not have an approved residential flat building on it in the Residential 2(d3) zone. Land adjoining the site to the east at 2 - 6 Buckingham Road is zoned 2(d3) and extends up to the Pacific Highway. This site has had a 5 storey residential flat building approved and as such, the land is not available to be consolidated with the subject site. Despite this the owner of the subject site has been able to negotiate with the owner of 2-6 Buckinham Road to allow an easement to be registered for the purposes of a right of way to facilitate vehicular access to the subject site via the approved basement at 2- 6 Buckingham Road.

The subject site shares a common boundary with a residential flat building located on the Pacific Highway and as such is not available for consolidation. The heritage listed property being 10 Buckingham Road to the west is zoned Residential 2(b) whilst the land adjoining the subject site to the south west is zoned Residential 2(c2). It is therefore considered unreasonable and unnecessary to comply with the 30 metre street frontage requirement as it is essentially impossible to comply with given that the subject site is the last remaining section of land zoned Residential 2(d3) in this section of Buckingham Road which is not subject to a development consent or already developed for residential units. Approval of a residential flat building on the subject site would complete the redevelopment in this section of Buckingham Road in accordance with the K.P.S.O.

It is however essential to ensure that a residential flat building located on land with a street frontage of less than 30 metres does not adversely impact on adjoining properties. As discussed in the Statement of Environmental Effects submitted with the development application, the proposed development complies with the building separation distances in SEPP 65.

A 6 metre side setback is provided on the lower levels to the western and eastern side boundary in accordance with DCP 55. This results in a 15.265 metre building separation to the adjoining heritage listed property at 10 Buckingham Road.

The Heritage report prepared by Archnex Designs indicates that the proposal does not affect the heritage significance of the adjoining heritage item at No. 10 Buckingham Road.

The subject site is irregular in shape and is 28.3 metres wide for the first 35 metres of the length of the site. The rear 55 metres of the site ranges in width from 42.5 metres to 63 metres. Therefore the majority of the subject site has a width of greater than 42 metres which exceeds the minimum street frontage of 30 metres.

The funnel shaped allotment has dictated the design of the proposal with a slender residential flat building located in the front section where the width of the allotment is 28.3 metres, whilst at the rear of the site, a residential flat building with a larger footprint has been provided responding to the increase in width of the subject site. The construction of two separate residential flat buildings improves the solar access and cross ventilation capabilities of the individual units.

5.2 Is compliance with the development Standard consistent with the aims of the Policy?

Strict compliance with the minimum street frontage of 30 metres would be inconsistent with the aims of SEPP 1. The aim of SEPP 1 is to provide flexibility in the application of development standards where compliance with that standard is unreasonable and unnecessary. The discussion above has indicated that construction of a residential flat building on the subject site will result in all land zoned Residential 2(d3) on the southern side of Buckingham Road being constructed for residential flat buildings. Approval of a residential flat building which is consistent with the aims of the KPSO and DCP 55 is necessary as the subject site is effectively isolated in terms of its highest and best use. Should development consent not be granted for a residential flat building on the subject site, there would still not be the ability to consolidate with any other allotments as we understand it is the intention of the owners of 2 - 6 Buckingham Road to act on their development consent and construct the residential flat building as approved. Therefore to refuse development consent for a residential flat building on the subject site solely on the grounds that the subject site does not comply with the 30 metre minimum street frontage, would render the subject site undevelopable for residential flat buildings and would prevent the land from being developed for the purposes it was originally zoned for.

Furthermore when development consent was granted by the NSW Land and Environment Court for the residential flat building at 2-6 Buckingham Road, the Court would have given due regard as to whether 6a - 8 Buckingham Road could have been developed for its highest and best use being a residential flat building development.

5.3 Does compliance hinder the attainment of the objects of the Act contained in Clause 3 of SEPP 1?

Section 5 of the Environmental Planning & Assessment Act 1979 outlines the objects of the Act referred to Clause 3 of SEPP 1. These are as follows:

“(a) To encourage:

- (i) *The proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forest, 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."*

Non-compliance with the development standard for the 30 metre minimum street frontage will not prevent obtainment of the relevant objects of the Act listed above. In fact approval of an appropriately designed residential flat building on the subject site despite the minimum 30 metre street frontage development standard will result in orderly and economic use and development of the subject site. Should development consent not be issued solely on the grounds that the minimum 30 metre street frontage is not complied with, the subject site would be rendered undevelopable for residential flat buildings as there are no other opportunities to consolidate with land zoned Residential 2(d3) as 2 - 6 Buckingham Road has a valid development consent for the construction of a residential flat building.

Developing the subject site for residential flat buildings which is for the purpose that the land was zoned will assist in providing additional housing in a locality that is well served by public transport. The replacement of 2 dwellings with 43 units represents an improved economic use of land and will assist in increasing demand for goods and services in the locality which will improve economic activity in the locality.

As the proposal generally complies with the provisions of the KPSO (with the exception of this development standard) DCP 55 and SEPP 65, it is considered that the living environment of the future occupants of the units is satisfactory and given the landscaped setbacks to adjoining properties and design of the proposal its impacts on adjoining properties will be minimised.

6.0 Draft State Environmental Planning Policy (Application of Development Standards 2004)

Draft State Environmental Planning Policy No.1 was publicly exhibited from 10/5/2004 to 18/6/2004. Gazettal of draft SEPP 1 is not imminent. It aims to provide flexibility in development standards but provides a greater level of rigor in terms of justification of the variation of the development standard than the existing SEPP 1. The justification for the request to vary the development standard for the minimum street frontage is addressed in this SEPP 1 Objection.

7.0 Conclusion

Complying with the development standard requiring a minimum street frontage of 30 metres is not possible given that the subject site is the last parcel of land on the southern side of Buckingham Road that is zoned Residential 2(d3) that does not have a valid development consent for residential flat buildings. The subject site has a frontage of 28.3 metres which is 94.3% of the 30 metre street frontage required. This SEPP 1 Objection has discussed the shape of the subject site and that the width of the site increases from 28.3 metres to 65 metres at the rear of the site. More than half of the subject site has a width of greater than 30 metres. This has dictated the design of the development proposal and has resulted in 2 separate residential flat buildings joined by a common basement being proposed on the site. This SEPP 1 Objection has considered the relevant aims of the Residential 2(d3) zone in relation to setbacks, landscaping and heritage and has also indicated that the building located on that section of land which is 28.3 metres wide has a

setback of 15.265 metres to the adjoining heritage listed house at 10 Buckingham Road and 12 metres to the approved residential flat building located on 2 - 6 Buckingham Road.

It is concluded that it is appropriate to propose a residential flat building on the subject site despite the street frontage being 28.3 metres and not 30 metres as the proposal complies with the relevant aims of the Residential 2 (d3) zone and does not prevent compliance with other design criteria and development standards in relation to setbacks, solar access or standards contained within SEPP 65 and DCP 55. It is therefore considered that the proposal is consistent with the aim and objectives of SEPP 1.