

ANNEXURE 5

SEPP 1 – Building Height

**Objection under State Environmental Planning Policy No. 1 –
Development Standards**

Property Description: 1444B - 1454 Pacific Highway, Turramurra.

Development: Demolition and Construction of a Residential Flat
Building with Basement Car Park

Development Standard: Building Height

Introduction

Clause 25K – Steep slope site contained in the Ku-ring-gai PSO applies to the subject site, noting the site has a slope of approximately 28% along the majority of the building footprint. Clause 25K allows the development to exceed the number of storeys by one storey, and the height control by up to 3m for 25% of the building footprint. The development proposal is 5 – 6 storeys with the portion of the building exceeding the storey and height control being greater than 25% of the building.

In this case the SEPP 1 objection is prepared due to non-compliances with the development standards relating to building height contained in Clauses 25I(5), 25I(7), 25I(8) and 25K of the Ku-ring-gai PSO.

The development proposal incorporates a 5-6 storey built form that exceeds the 5-6 storey built form permitted by the combined operation of the aforementioned clauses.

The SEPP 1 Objection applies the principles established in *Winten Property Group Limited v North Sydney Council* (2001) NSW LEC 46 (6 April 2001) and further refined in *Wehbe v Pittwater Council* (2007) NSW LEC 827.

Extent of Variation

Number of Storeys

The proposal adopts a 5-6 storey building form, noting that on Blocks A-D and Block E approximately 80% of the building is considered 6 storeys which exceeds the 25% 'bonus' afforded by Clause 25K on steep slope sites and the maximum number of storeys control contained in 25I(5).

Limit on Top Storey

The revised building design adopts a greater stepping than the previous form and is more consistent with the provisions of Clause 25I(7) when viewed in elevation as the top most storeys adopt less floor space than the levels below. However, due to technical definition of Clause 25I(7), the slope of the site, and the need to confine the building form on the least sensitive part of the site the proposal still exceeds the 60% control.

The top storey of Blocks A-D equates to approximately 80% of the floor area of the levels below.

The top storey of Block E incorporates a total of 70% of the floor area of the level below.

Perimeter Ceiling Height

The perimeter ceiling height of the proposal ranges from 11.8m to 16.4m. However the extent of the building forms that exceed the 13.4m perimeter ceiling height control equates to approximately 80% of the building which exceeds the 25% 'bonus' contained in Clause 25K.

Is the planning control in question a development standard?

The development standards contained in Clauses 25I(5), 25I(7), 25I(8) and 25K of the Ku-ring-gai (PSO) are as follows:

Clause 25I(5) states:

Maximum number of storeys

Buildings on land to which this Part applies are not to have more storeys than allowed by the Table to this subclause.

Table

Maximum number of storeys

<i>Site area</i>	<i>Maximum number of storeys</i>
<i>Less than 1,800m²</i>	<i>3</i>
<i>1,800m² or more but less than 2,400m²</i>	<i>4</i>
<i>2,400m² or more</i>	<i>5</i>

Clause 25I(7) states:

Limit on floor area of top storey

In Zone No 2 (d3), where the maximum number of storeys permitted is attained, then the floor area of the top storey of a residential flat building of 3 storeys or more is not to exceed 60% of the total floor area of the storey immediately below it.

Clause 25I(8) states:

Subject to subclause (5) and clause 25K, buildings on land to which this part applies are not to have:

- (a) More storeys than the maximum number of storeys specified in Column 2 of the Table to this subclause, or*
- (b) Given the number of storeys in the building, a perimeter ceiling height greater than that specified in Column 3 of that Table.*

Zone	Maximum number of storeys	Calculation of maximum perimeter ceiling height	
	Number of storeys in a building (not including top storey with floor area reduced because of subclause (7) or attics, where applicable)	Number of storeys in a building (not including top storey with floor area reduced because of subclause (7) or attics, where applicable)	Maximum perimeter ceiling height of building (not including top storey with floor area reduced because of subclause (7) or attics, where applicable)
2(c1) and 2(c2)	2	1 2	4.5 metres 7.2 metres
2(d3)	4	1 2 3 4	4.5 metres 7.2 metres 10.3 metres 13.4 metres

Clause 25K states:

Consent may be granted to a building on a site with a site slope greater than 15% that would:

- (a) exceed the number of storeys controls in clause 25I (8) by only one storey for up to 25% of the building footprint, or*
- (b) exceed the height controls in clause 25I (8), but only by up to 3 metres for up to 25% of the building footprint, or*
- (c) take advantage of the concessions conferred by both paragraphs (a) and (b), but only for up to the same 25% of the building footprint.*

The definition of a development standard is provided in Section 4 of the Environmental Planning and Assessment Act, 1979 (the Act) and the maximum number of storeys (building height), floor area of top storey and number of storeys and ceiling height are fall within this definition and enable further consideration under SEPP 1.

What is the underlying purpose of the standard?

It is contended that in the absence of specified objectives for the height controls the underlying purpose of the building height development standards are as follows:

- To ensure buildings do not result in unreasonable amenity impacts in terms of overshadowing, privacy, or view loss;
- To ensure development is consistent with the existing topographical setting of the site and the broader locality;
- To enable development with a compatible built form;
- To ensure development responds to the desired scale and character of the street and local area;
- To allow reasonable daylight access to all developments and the public domain; and
- To reduce the visual scale of the upper most level of buildings.

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

The variations to the building height development standards are acceptable in the circumstances of this case and compliance with the development standards are considered unreasonable and unnecessary based on the following:

- The portion of the site that accommodates the built forms adopts a slope of approximately 28% which substantially exceeds the 15% threshold contained in Clause 25K;
- The development proposal complies with the remaining density controls, notably controls pertaining to site coverage and floor space ratio. The proposed FSR is 1.11:1 which is well below the permitted 1.3:1;
- The design of the development proposal, which seeks to minimise the building footprint by marginally increasing height, enables retention of substantial stands of Blue Gum High Forest which is identified as a critically endangered ecological community;
- The design of the development proposal serves to retain substantial vegetation areas and provides for 53.3% of the site as deep soil zones

which is well above the control specified within the residential flat design code;

- The development proposal presents a five (5) storey built form to the Pacific Highway- given the change in levels- which is comparable to other developments to the north-west and south-east, as shown on elevation no. 301 prepared by Mackenzie Architects;
- The majority of the building facades will be screened by the substantial number of trees in the middle third of the site to ensure that the built form is subservient to the landscape setting;
- The portion of the building in contention does not generate unreasonable amenity impacts to the adjoining properties with regard to overshadowing, loss of views/outlook or privacy impacts;
- When viewed in elevation it can be seen that the upper most levels present a reduced visual scale through the stepping of the built form and the use of more lightweight materials at the uppermost levels; and
- The current proposal is a superior urban design outcome in the present circumstance when considering the substantial site constraints and the considerable environmental benefit in minimising the building footprint on the site to retain as much of the Blue Gum High Forest ecological community as possible.

Clause 25I of the PSO contains site requirements and development standards for multi-unit housing including heads of consideration, and these heads of consideration should also be considered as they partially inform the prescriptive controls. The heads of consideration are addressed as follows:

(a) The desirability to provide high proportion of deep soil landscape to the site area,

Comment: The development proposal has been designed ensuring the building footprint is located over the basement car park providing 53.3% of the site as soft landscape area, noting that a substantial amount of existing vegetation is retained and rehabilitated.

(b) The impact of any overshadowing, and any loss of privacy and loss of outlook, likely to be caused by the proposed development,

Comment: The building setbacks and landscaping ensures the development proposal will not result in a loss of privacy or outlook from the surrounding residential properties. The position of the buildings and orientation of the subject site ensures the proposal will not cast shadow

onto adjoining residential properties and reduce solar access to adjoining properties to less than the required three (3) hours. The proposal also incorporates a range of design measures to further mitigate privacy impacts, including the use of fixed screens, highlight windows, and obscure glazing.

- (c) *The desirability to achieve an appropriate separation between buildings and site boundaries and landscape corridors along rear fence lines,*

Comment: The development proposal has a 10 – 12m setback to the Pacific Highway for a width of approximately 50% of the site frontage, a minimum 6m setback to the side boundaries, and over 20m to the rear boundary allowing for deep soil landscape corridors surrounding the building.

- (d) *The environmental features that are characteristic of the zone in which the site is situated by requiring sufficient space on-site for effect landscaping,*

Comment: The proposal includes the retention of significant trees on the site that are identified as being part of the Blue Gum High Forest ecological community, with 80% of existing BGHF species to be retained as part of the proposal. 53.3% of the site will be soft landscaped areas and these areas are appropriately sized to be effective landscaped areas.

These existing trees have been incorporated into the landscape design prepared by Arterra Landscape Architects and a Flora and Fauna assessment prepared by Keystone Ecological provides detail on the retention value of existing vegetation.

- (e) *The desirability of adequate landscaping so that the built form does not dominate the landscape,*

Comment: The development proposal exceeds the deep soil landscaping of 50% and is consistent with the maximum site coverage of 35% ensuring there are large areas surrounding the building to accommodate additional canopy tree planting contributing to the landscape setting of the locality. The design concept provides for the retention of the substantial landscape elements at the front and rear of the site and the built form steps down the site to be subservient to the landscape character.

- (f) *How principles of water cycle management can be applied to limit the impacts of runoff and stormwater flows off the site.*

Comment: The development application is supported by a Concept Stormwater Plan and Report prepared by Martens Consulting Engineers and designed with on site detention and reuse storage.

Is compliance with the development standard consistent with the aims of the Policy?

It is contended that achieving technical non-compliance with the control is unreasonable in the present circumstances as the underlying objectives of the controls are achieved. This is consistent with the aims of the policy that seek to:

provide 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.

Moreover requiring technical compliance with the controls would serve to hinder the attainment of the following the objects of the *Environmental Planning and Assessment Act 1979*:

(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,*

This is based on the fact that a complying built form, in order to remain financially viable and represent an orderly and economic use of the land, would ultimately necessitate an increased footprint, and presentation of a convoluted stepped façade. Moreover a compliant building form would not enable the retention of the same proportion of Blue Gum High Forest as the site coverage would increase and deep soil zones be further reduced. Given the critically endangered status of the Blue Gum High Forest proper management of this scarce resource is essential and achieves an improved environmental outcome.

Is the objection well founded?

In *Wehbe v Pittwater Council (2007) NSW LEC 827* Preston CJ set out there were five (5) ways in which a SEPP 1 objection could be considered well founded, with the first of those being:

the objectives of the standard are achieved notwithstanding non-compliance with the standard.

In that decision it was further noted that there is public benefit in maintaining planning controls and that SEPP 1 should not be used in an attempt to effect general planning changes throughout the area. This SEPP 1 objection does not attempt to affect the planning outcomes for the broader locality; rather it reflects the identified site specific development constraints and a performance based design approach in achieving the underlying intent of the controls.

In my opinion the SEPP 1 objection is well founded and as addressed the development proposal facilitates attainment of the Objects of the Act and does not hinder the achievement or the aims and objectives of the PSO. Accordingly the variations to the identified building height controls should be supported.

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