



APP Corporation



State Environmental Planning Policy No 1 – Development Standards, Floor Space Ratio

Ausgrid Chatswood Office Building

Date: July 2012

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This report has been prepared and reviewed in accordance with our quality control system. The report is a preliminary draft unless it is signed below.

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Date 06.7.2012

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Date 06.7.2012

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1. SEPP 1 – Introduction

This objection under State Environmental Planning Policy No.1 – Development Standards (SEPP 1) should be read in conjunction with the Statement of Environmental Effects (SEE) prepared by APP accompanying the DA for the Ausgrid Office Development at Chatswood.

SEPP 1 was introduced to allow flexibility in the application of planning controls in the form of numeric development standards. It enables Council's to vary a development standard where strict compliance with that standard is shown to be unreasonable or unnecessary, or would hinder the attainment of the objectives specified in Section 5(a)(i) and (ii) of the *Environmental Planning and Assessment Act 1979* (the EP&A Act).

The objects of the Act are:

(5)(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 provides that a person may make a written objection demonstrating that compliance with a development standard is unreasonable or unnecessary in the circumstances relating to the proposed development.

Clause 8 of the Policy sets out matters to be considered by the Department of Planning and Infrastructure in deciding whether concurrence should be granted or by a consent authority under delegation in assessing the SEPP 1 objection SEPP 1. They are:

- (a) whether non-compliance with the development standard 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.*

The Department of Planning and Infrastructure's "Varying development standards: A Guide" (August 2011) states that:

Variation of a development standard may be justified where it is consistent with the objectives that the relevant environmental planning instrument is attempting to achieve.

The application must:

- address whether strict compliance with the standard, in the particular case, would be unreasonable or unnecessary and why, and
- demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard.

In deciding whether to approve a development application and associated application to vary a standard, council must consider whether non-compliance with the development standard raises any matter of significance for State and regional planning, and the public benefit of maintaining the planning controls adopted by the environmental planning instrument. As part of the consideration, council should examine 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.

A proposed variation to a development standard may, in some circumstances, achieve the underlying purpose of the standard as much as one which complies. If the development is not only consistent with the underlying purpose of the standard, but also with the broader planning objectives for the locality, strict compliance with the standard would be deemed to be unreasonable and unnecessary and council could approve a variation.

Justice Lloyd in a decision in *Winten Property Group Ltd v North Sydney Council* [2001] 130 LGERA 79 at 89 identified five questions to be addressed in SEPP 1 objections. The test was later rephrased by Chief Justice Preston, in the decision of *Wehbe v Pittwater Council* [2007] NSW LEC 827.

The test or issues considered by the Court relevant to consideration of a SEPP 1 objection are as follows:

1. The applicant must satisfy the consent authority that “the objection is well founded” and compliance with the development standard is unreasonable or 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 Environmental Planning and Assessment Act 1979; 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.

The following SEPP 1 Objection is set out addressing the LEC considerations for SEPP 1.

1.1. Standard objected to

The objection relates to clause 36 of Willoughby Local Environmental Plan 1995 (LEP 1995) which provides a maximum floor space ratio (FSR) for buildings on land zoned 3(b) Special Business of 1:1.

1.2. Proposed departure from the standard

The site that is subject to the DA has a total area of 6080sqm (by survey). The site has a split zoning, part 3(b) Special Business and part 5(a) Special Uses 'A' – Electricity Depot. That part of the site zoned 3(b) has a site area of 2,738sqm. The gross floor area of the proposal located in the 3(b) zoned part of the site is 6034sqm. This results in an FSR of 2.2:1 which exceeds the maximum FSR standard of 1:1 for land zoned 3(b). The overall development site comprises land that is zoned. No Maximum FSR control applies to land within the 5(a) zone. It is noted that the total FSR for the development site (zoned 3(b) and 5(a) is 1.16:1.

Under the draft WLEP 2012 the development site is proposed to be zoned part B5 Business Development and Part SP2 Infrastructure. Under the draft LEP 2012 the maximum FSR in the B5 zone is 2.5:1. No floor space ratio control applies for land within the SP2 zone. The proposed development complies with the draft FSR development standard for land zoned B5.

2. Underlying Objectives of Standard

Clause 13E of the WLEP 1995 outlines the objectives of floor space ratio controls:

13E Objectives of floor space ratio controls

The objectives of the floor space ratio controls contained in this plan are as follows:

- (a) to limit the intensity of development to which the controls apply so that it will be carried out in accordance with the environmental capacity of the land and the zone objectives for the land,*
- (b) to limit traffic generation as a result of that development,*
- (c) to limit the bulk and scale of that development.*

The proposed development is consistent with the objectives of the development standard in that:

- The size and intensity of the development is suitable for the site. The overall FSR across the development site is 1.16:1. The design and scale of the building allows for the massing of the proposed building to be sited within the 3(b) zoned land. This allows for the building to address and activate the street frontages of the Pacific Highway and Nelson Streets to create vitality in the area and the site itself, restoring function to a site that has been vacant since its previous use as a Caltex service station was discontinued. It is noted that the proposed FSR easily meets the maximum FSR requirements of 2.5:1 in the B5 zone under the draft WLEP 2012
- As demonstrated in the Traffic and Parking Report prepared by Taylor Thomson Whitting (submitted with the development application), the proposed development would have no unacceptable traffic operational implications on the surrounding area as low volumes of traffic are generated and attracted by the development.
- The proposed 3 storey commercial building is consistent with the height, bulk and scale of existing development within the site and its surrounding area. The scale and bulk of the building can be accommodated on the site with minimal impact on the appearance of the streetscape, or on neighbouring amenity in terms of overshadowing or loss of outlook. The design of the building including information boxes encourages pedestrians to stop and engage with the new building. The provision of high quality commercial space and new street trees, footpath and paving along the site's Pacific highway and Nelson Street frontages provide an enhancement of the site and vicinity. The proposed development will have a high standard of design and quality materials and finishes.

3. Consistency with the Policy Aims

As previously noted, the Court has held and SEPP 1 requires that the consent authority must be of the opinion that granting consent to the development application would be consistent with the aims of SEPP 1 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.

Section 2.0 of this submission demonstrates that strict compliance with the FSR development standard is both unreasonable and unnecessary in the circumstances of the case. The strict adherence of the FSR control would not allow for the activation of the street frontages of the Pacific Highway and Nelson Streets, nor provide high quality office space for future occupants.

In addition to this, strict compliance with the FSR development standard will hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the EP&A Act, as detailed below.

(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,

The proposed development sees the redevelopment of a currently under-utilised site. The proposed development will make a positive contribution to the built form of Chatswood locality and will provide for the consolidation of Ausgrid's employees from Chatswood and other Sydney Depot sites. The proposed development will provide quality office accommodation in close proximity to the Chatswood CBD, with excellent access to transport, employment, recreation and social infrastructure.

This SEPP 1 Objection and the Environmental Assessment at Section 5 of the SEE demonstrates that the proposed variation to the FSR control will have no adverse impacts.

Therefore, by preventing a variation to the development standard it would hinder the proper management and development for the purpose of promoting social and economic welfare of the community.

(ii) the promotion and co-ordination of the orderly and economic use and development of land,

The proposed variation will enable in the redevelopment of the site, and thus the orderly and economic use and development of the site. Strict compliance with the standard would be unreasonable and unnecessary in the circumstances of this application.

4. Other Matters for Consideration

Item 3 of the LEC SEPP 1 Matters for Consideration states that 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.*

The matters are addressed in detail below.

The main determinant for varying a development standard under SEPP 1 is whether the objectives or intent of the development standard are nevertheless achieved, which in turn needs a careful assessment of the effects of the variation.

4.1. Matters of State or Regional Planning Significance

The proposed variation to the building height development standard is not inconsistent with any State planning policies or Ministerial directives.

4.2. Aims and Objectives of LEP 1995

The aims and objectives of LEP 1995 are set out in Clause 2:

- (a) *to update planning controls for the City of Willoughby, and*
- (b) *to allow development at a scale that is sensitive to environmental and planning constraints, and*
- (c) *to control and manage adverse environmental impacts of development, and*
- (d) *to maintain and enhance the amenity of residential areas, for example, by protecting these areas from inappropriate development, and*
- (e) *to ensure that residential development conforms with the scale and character of the individual residential development areas, and*
- (f) *to accommodate various housing types, and*
- (g) *to identify and protect environmentally sensitive areas, and*
- (h) *to conserve specific buildings and items of the environmental heritage and to retain the character of urban conservation areas, and*
- (i) *to provide adequate and accessible open space, and*
- (j) *to maintain and encourage a diversity of functional industrial uses by applying appropriate development standards, and*
- (k) *to make adequate provision for future local and regional traffic needs, and*
- (l) *to ensure that the intensity of commercial and industrial development does not adversely affect the amenity and safety of adjoining residential areas or the efficiency of the operation of any local or regional traffic network, and*
- (m) *to make better use of the existing infrastructure in the Chatswood Town Centre by removing the impediments to residential development in the centre, and*

- (n) to improve development opportunities of the St Leonards subregional centre, placing a particular emphasis on residential development without, however, compromising the efficiency of the regional road network, and*
- (o) to provide for increased residential density in accessible locations, while minimising the potential for adverse impacts of such increased density on the efficiency and safety of the road network, and*
- (p) to co-ordinate the economic and equitable provision and utilisation of community facilities and services, and*
- (q) to encourage methods of transport other than motor vehicles, and*
- (r) to revise existing controls relating to residential development in order to pursue urban consolidation objectives, and*
- (s) to encourage the development of new housing to meet the housing requirements of special needs groups within the City of Willoughby, and*
- (t) to assist in promoting the Council's role in facilitating housing for special needs groups within the City of Willoughby.*

The proposed development is consistent with the relevant aims and objectives of LEP 1995 in that:

- the proposed FSR does not manifest in any significant adverse environmental impact in terms of overshadowing, loss of light or visual impacts. It will not adversely impact any adjacent heritage items or their settings. While the building will be visible from the Great Northern Hotel and the rear of Mowbray House, this does not represent a significant visual impact and there will be no overshadowing of the heritage items;
- the development does not adversely affect the amenity and safety of any residential area or the efficiency of the operation of any local or regional traffic network; and
- The built elements of the development will deliver a development that is sensitive to the environmental and planning constraints as the locality. The development will provide quality office accommodation and has excellent access to public transport and a number of retail services

4.3. Objectives of the 3(b) Special Business Zone

The objectives of the 3(b) Special Business Zone are:

- (a) To allow development for the purposes of dwellings, office and business activities (other than shops) including automotive services, and*
- (b) To accommodate showrooms, provided that the access needs of the showrooms and the traffic generated do not interfere with the safety and efficiency of the road network, and*
- (c) To maintain existing, and to encourage the establishment of new, recreational, leisure, civic and community facilities in appropriate locations.*

The proposed development is consistent with the objectives of the 3(b) Special Business Zone, in that:

- it comprises a commercial office building, consistent with the intended uses of the zone;
- it provides additional commercial floor space and provides for the consolidation of Ausgrid's administration and operational staff; and
- it does not interfere with the safety and efficiency of the existing road network.

4.4. Public Benefit

This SEPP 1 Objection demonstrates that the proposed variation to the FSR development standard will have no adverse environmental impacts. It is in the public's interest that the proposed variation to the FSR development standard is supported because the variation will allow the delivery of a new commercial building of a high standard of design and quality materials and finishes. The proposed development will complement surrounding buildings, improve the appearance of the site from the Pacific Highway without any significant adverse environmental impact. The development makes use of an under-utilised site and allows for the consolidation of Ausgrid's administration and operational staff.

5. A Well Founded Objection

As demonstrated throughout the SEE and this objection, the proposed variation to the maximum floor space ratio development standard is well founded and compliance with the development standard is unreasonable and unnecessary in the particular circumstance of the case. The non-compliance across the whole development site is minor in numerical and physical form.

The proposed development complies with the future FSR and all other controls of the draft Willoughby LEP 2012.

6. Conclusion

This SEPP 1 Objection demonstrates that Council can be satisfied that the proposed variation to the maximum building height development standard for the site is justified as:

- the development meets the assumed underlying objectives of the FSR development standard;
- the variation will not result in any adverse impacts on amenity of surrounding development or the public domain in terms of daylight or sunlight access and will activate the street frontage of the Pacific Highway and Nelson Street; and
- the proposed development will allow the delivery of a new commercial building of a high standard of design and quality materials and finishes. The proposed development will complement surrounding buildings, and improve the appearance of the site from the Pacific Highway and surrounds.

It is important to note that the proposed building also complies with the proposed 2.5:1 FSR development standard for the proposed B5 zone under draft LEP 2012.

It is therefore requested that Council support the proposed variation to the floor space ratio development standard set out in clause 36 of WLEP 1995.