

## Objection to Separate Entrances For Residential Uses Development Standard



621 Pacific Highway, St Leonards  
Residential Mixed Use Development  
Submitted to North Sydney Council  
On Behalf of Votrant 281

May 2012 ■ 11683

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Date 07/05/12

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Date 07/05/12

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## 1.0 Introduction

This objection under State Environmental Planning Policy No.1 - Development Standards (SEPP 1) has been prepared by JBA Planning Consultants Pty Ltd (JBA) on behalf of Votaint 281. It relates to the development standard for new buildings in the mixed use zone that requires the residential component of the building be provided with an entrance separate from the entrances to the remainder of the building (herein referred to as 'separate entrances development standard') (clause 32(2)(c)) within the *North Sydney Local Environmental Plan 2001*. This SEPP 1 Objection should be read in conjunction with the Statement of Environmental Effects (SEE) dated April 2012.

### 1.1 SEPP 1 Framework

The objective of SEPP 1 is to allow flexibility in the application of numeric development standards. It enables a consent authority to vary a development standard within an environmental planning instrument (EPI) 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 (EP&A Act).

The objectives of Section 5(a) are to encourage:

- (i) *the proper management, development and conservation of natural and man-made 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 of 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 relation to the proposed development.

Clause 8 of the Policy sets out matters to be considered by the Department of Planning or consent authority under delegation in assessing SEPP 1 objections where it states:

*the matters that shall be taken into consideration in deciding whether concurrence should be granted 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 NSW Land and Environment Court (LEC) established five questions to be addressed in SEPP 1 objections through the judgment of Justice Lloyd, in *Winter Property Group Ltd v North Sydney Council* [2001] 130 LGERA 79 at 89. The test was later rephrased by Chief Justice Preston, in the decision of *Wehbe v Pittwater Council* [2007] NSW LEC 827.

The test is now 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 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.*

Accordingly, the following SEPP 1 Objection is set out using the current LEC considerations for SEPP 1.

## 1.2 Is the Planning Control in Question a Development Standard?

The Environmental Planning Instrument to which this objection relates is *North Sydney Local Environmental Plan 2001* (LEP 2001). The Separate Entrances development standard is found in clause 32(2) of LEP 2001, and is as follows:

### (2) Design controls

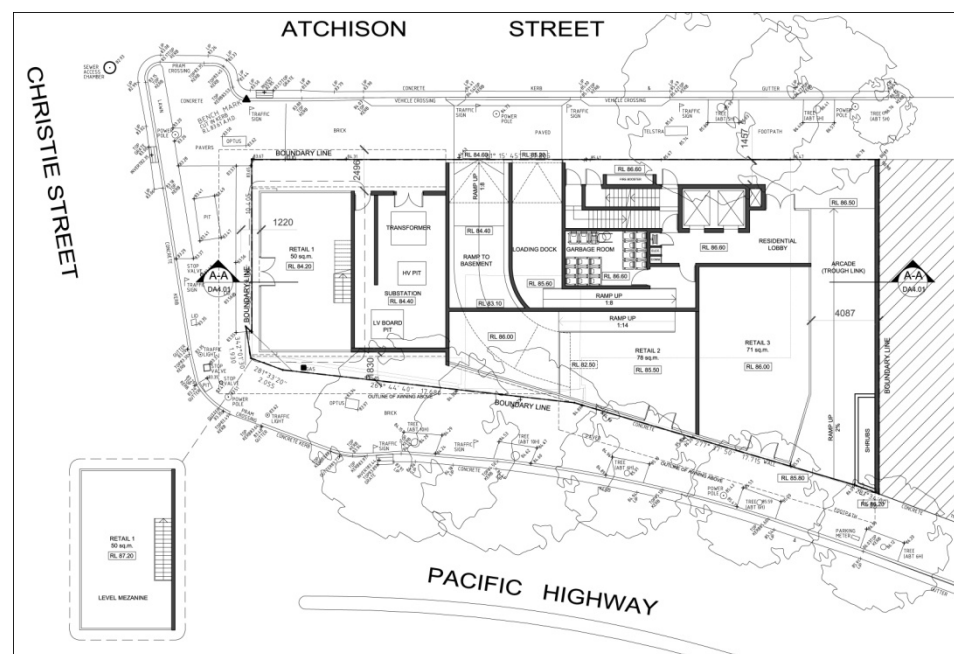
*A new building in the mixed use zone must not be erected unless:*

(a) ...

**(c) the residential component of the building is provided with an entrance separate from the entrances to the remainder of the building, and**

(d) ...

As a result of the shallow depth of the site and the design objectives to activate the streetscape and provide a through-site link, the proposed development seeks approval for a development that does not provide an entrance separate from the entrances to the remainder of the building (see **Figure 1**).



**Figure 1** – Ground floor plan showing the entrance to the building

"Development Standards" has the following definition under Section 4(1) of the *Environmental Planning and Assessment Act (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) ...

(d) the character, location, siting, bulk, scale, shape, size, height, density, **design** or external appearance of a building or work

(our emphasis)

As this SEPP 1 objection relates to a departure from a standard for the design of the building, it is considered that clause 32(2)(c) of NSLEP 2001 is a development standard and not a 'prohibition' in respect of development.

It is noted that its omission from subclause (4), which identifies subclause a) to be a prohibition, further confirms that subclause (2)(c) is a development standard.

### 1.3 What is the Underlying Object or Purpose of the Standard?

The objectives for the 'design of development' as detailed in clause 32(1) of NSLEP 2001 are as follows:

#### *(1) Design objectives*

*The specific objectives of the design of development in the mixed use zone controls are to:*

*(a) promote development containing a mix of residential and non-residential uses, and*

*(b) protect the amenity and safety of residents, and*

*(c) concentrate the non-residential component of development in the mixed use zone at the lower levels of a building.*

The objective of particular relevance to the subject development standard is (b), to 'protect the amenity and safety of residents'.

## 2.0 The Objection is "Well Founded"?

Item 1 of the LEC SEPP 1 Matters for Consideration states that the applicant must satisfy the consent authority that "the objection is well founded" as compliance with the development standard is unreasonable and unnecessary in the circumstances of the case.

In the decision of *Wehbe v Pittwater Council* [2007] NSW LEC 827, Chief Justice Preston expressed the view that there are five different ways in which an objection to a development standard might be shown as unreasonable or unnecessary and is therefore well founded. The five ways include:

1. **The objectives of the standard are achieved notwithstanding non-compliance with the standard.**
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.
3. The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.
4. **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.**
5. 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.

Of particular relevance in this instance are ways 1 and 4. The following section demonstrates that the proposed development will achieve the objectives of the standard notwithstanding the variation from the standard and the development standard has been varied in many instances with consents departing from the standard.

### 1. **The objectives of the standard are achieved notwithstanding non-compliance with the standard**

The development standard is intended to protect the amenity of safety of residents by ensuring that incompatible commercial uses do not share the same entrance as the residential use.

Whilst the serviced apartments and residential uses will operate separately and function differently to each other, sharing the same entrance is not expected to generate any adverse land use conflicts in the same way other commercial uses, might. Access to this lobby will be managed via security door and intercom arrangement, with swipe card access within the lift to the residential and serviced apartment floors. Therefore the development standard is unnecessary and unreasonable in the circumstances of the case as the objectives of the standard are achieved notwithstanding non-compliance with the standard.

### 4. **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**

The design of the ground floor initially submitted for the approved DA for 619 Pacific Highway (D/163/2011) incorporated separate entrances for the residential uses and serviced apartments. As part of the assessment process Council's Design Review Panel acknowledged the constraints of the site and requested the architects, Marchese Partners, amend the proposed design to have one shared entrance for the serviced apartments and residential uses so that the ground floor could be designed to provide greater activation.

The same approach has therefore been adopted for the subject DA, noting that not only is the site narrower than 619 Pacific Highway, it also provides a through-site link, which may not otherwise be able to be provided if a separate entrance was required.

The approval of the DA for 619 Pacific Highway without separate entrances demonstrates that compliance with the separate entrances development standard would be unreasonable because Council has granted variations to the separate entrances development standard on the adjoining site and therefore the consistent application of the standard has been reduced.



### 3.0 Consistency with the Policy's Aim

Item 2 of the LEC SEPP 1 Matters for Consideration states that 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*.

Section 2.0 demonstrates that strict compliance with the building height development standard is both unreasonable and unnecessary in the circumstances of the case.

In addition to this, strict compliance with the building height 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 depth of the site doesn't enable the provision of separate lobbies without sacrificing other more important aspects of the development such as the through-site link and retail tenancies which provide greater activation to Atchison Street. The variation to the separate entrances development standard will provide a better design and streetscape outcome on a constrained site.

Therefore preventing a variation to the development standard would hinder the proper management, development, and delivery of a proposal that would enhance the social and economic welfare of the community.

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

The existing building on the site is past its economic lifespan and presents an unattractive, detracting, and tired building at a prominent gateway site within the St Leonards centre near excellent public transport infrastructure. The building is currently leased for low rents and has a high turnover of tenants and a high vacancy rate. The proposed variation will assist in the redevelopment of the site and thus the orderly and economic use and development of the site.

## 4.0 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.

### 4.1 Matters of State or Regional Planning Significance

The proposed variation to the separate entrances development standard is not inconsistent with any State planning policies or Ministerial directives and does not raise any matters of state or regional planning significance.

### 4.2 Public Benefit

This SEPP 1 Objection demonstrates that the proposed variation to the separate entrances development standard will have no adverse environmental impacts. The variation is therefore in the public interest as it allows for the ground floor plane of the building to be designed to maximise activation of the site's street frontages and provide a through-site link.

## 5.0 Conclusion

This SEPP 1 Objection demonstrates that Council and the Joint Regional Planning Panel can be satisfied that the proposed variation to the separate entrances development standard is justified as:

- it is 'well founded' because the objectives of the standard are achieved notwithstanding non-compliance with the standard and the standard has already been varied by Council;
- strict application of the standard would be unreasonable and unnecessary in the circumstances;
- the variation will not result in any adverse impacts on amenity of surrounding development or within the proposed development;
- the JRPP recently approved a combined residential and serviced apartment lobby at 619 Pacific Highway; and
- it allows for the maximum activation of the streetscape and the provision of a through-site link.

It is therefore requested that the Joint Regional Planning Panel grant development consent for the proposed development.

## Objection to Maximum Building Height Development Standard



**621 Pacific Highway, St Leonards**  
Residential Mixed Use Development  
Submitted to North Sydney Council  
On Behalf of Votrant 281

May 2012 ■ 11683

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## 1.0 Introduction

This objection under State Environmental Planning Policy No.1 - Development Standards (SEPP 1) has been prepared by JBA Planning Consultants Pty Ltd (JBA) on behalf of Votaint 281. It relates to the Building Height development standard (clause 29) within the *North Sydney Local Environmental Plan 2001*. This SEPP 1 Objection should be read in conjunction with the Statement of Environmental Effects (SEE) dated April 2012.

### 1.1 SEPP 1 Framework

The objective of SEPP 1 is to allow flexibility in the application of numeric development standards. It enables a consent authority to vary a development standard within an environmental planning instrument (EPI) 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 (EP&A Act).

The objectives of Section 5(a) are to encourage:

- (i) the proper management, development and conservation of natural and man-made 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 of 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 relation to the proposed development.

Clause 8 of the Policy sets out matters to be considered by the Department of Planning or consent authority under delegation in assessing SEPP 1 objections where it states:

*the matters that shall be taken into consideration in deciding whether concurrence should be granted 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 NSW Land and Environment Court (LEC) established five questions to be addressed in SEPP 1 objections through the judgment of Justice Lloyd, in *Winten Property Group Ltd v North Sydney Council* [2001] 130 LGERA 79 at 89. The test was later rephrased by Chief Justice Preston, in the decision of *Wehbe v Pittwater Council* [2007] NSW LEC 827.

The test is now 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 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.*

Accordingly, the following SEPP 1 Objection is set out using the current LEC considerations for SEPP 1.

## 1.2 Is the Planning Control in Question a Development Standard?

The Environmental Planning Instrument to which this objection relates is *North Sydney Local Environmental Plan 2001* (LEP 2001). The Building Height development standard applicable to the site is found in clause 29 of LEP 2001, and is as follows:

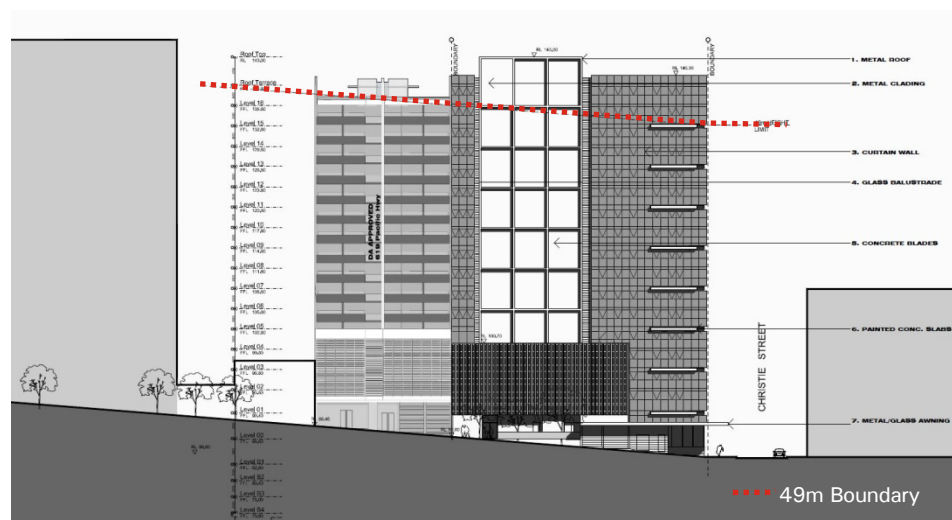
(2) *Building height controls*

*A building must not be erected in the mixed use zone in excess of the height shown on the map.*

The LEP 2001 height map establishes a maximum building height control of 49m over the proposed site.

Partially as a result of the sloping topography of the site, the proposed development seeks approval for a development with a maximum height ranging between 53.7m - 57.7m which is 4.7m – 8.7m more than the development standard under LEP 2001 (**Figure 1**).

It is noted that the maximum height of the building has been calculated in accordance with the LEP height definition using the highest point of the building at the top of the architectural roof feature and lift overrun. The actual height variation to the main parapet of the building is between 7.2m - 8.4m and (which occupies a small portion of the overall building).



**Figure 1** – North elevation of the proposed development showing the 49m development standard (dotted red)



"Development Standards" has the following definition under Section 4(1) of the *Environmental Planning and Assessment Act (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) ...

(d) the character, location, siting, bulk, scale, shape, size, **height**, density, design or external appearance of a building or work

(our emphasis)

As this SEPP 1 objection relates to a departure from the numerical standard for the building height, it is considered that clause 29 of NSLEP 2001 is a development standard and not a 'prohibition' in respect of development.

### 1.3 What is the Underlying Object or Purpose of the Standard?

The objectives of the building height development standard as detailed in clause 29 of NSLEP 2001 are as follows:

(1) *Building height objectives*

*The specific objectives of the building height controls in the mixed use zone are to:*

- (a) *ensure compatibility between development in the mixed use zone and adjoining residential areas and open space zones, and*
- (b) *encourage an appropriate scale and density of development for each neighbourhood that is in accordance with, and promotes the character of, the neighbourhood, and*
- (c) *provide reasonable amenity for inhabitants of the building and neighbouring buildings, and*
- (d) *provide ventilation, views, building separation, setback, solar access and light and to avoid overshadowing of windows, landscaped areas, courtyards, roof decks, balconies and the like, and*
- (e) *promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient, and*
- (f) *avoid the application of transitional heights as justification for exceeding height controls.*

In summary, the underlying purpose of the LEP building height development standard is to control the scale and density of development in order to minimise adverse environmental effects, and ensure compatibility with the existing character of the area.

## 2.0 The Objection is "Well Founded"?

Item 1 of the LEC SEPP 1 Matters for Consideration states that the applicant must satisfy the consent authority that "the objection is well founded" as compliance with the development standard is unreasonable and unnecessary in the circumstances of the case.

In the decision of *Wehbe v Pittwater Council* [2007] NSW LEC 827, Chief Justice Preston expressed the view that there are five different ways in which an objection to a development standard might be shown as unreasonable or unnecessary and is therefore well founded. The five ways include:

1. **The objectives of the standard are achieved notwithstanding non-compliance with the standard.**
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.
3. The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.
4. **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.**
5. 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.

Of particular relevance in this instance are ways 1 and 4. The following section demonstrates that the proposed development will achieve the objectives of the standard notwithstanding the non-compliance with the standard and the development standard has been varied in many instances with consents departing from the standard.

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

- (a) *ensure compatibility between development in the mixed use zone and adjoining residential areas and open space zones,*

The purpose of the above objective is to ensure development in the mixed use zone is compatible with the adjoining development in the residential and open space zones.

The site does not directly adjoin any open space zones or residential areas. The nearest residential uses are generally located on the upper floors of similar medium to high-rise buildings and are therefore compatible with the proposed development.

The closest residential zones are within the Lane Cove LGA to the south west across the Pacific Highway and within Willoughby LGA to the north of Chandos Street (excluding the approved development to the east at 619 Pacific Highway). As a result of the considerable separation between the site and these areas the proposed variation to the building height control will not have any perceivable impact or compatibility issues with these residential areas.

In terms of the proposed height, and its general compatibility with the area, the site is located on the Pacific Highway, a wide arterial road, and is part of a series of taller buildings fronting the Highway.

Accordingly, the proposed variation to the height control will result in a development that is consistent and compatible with the existing character of the area and therefore compliance with the development standard is unnecessary.

- (b) encourage an appropriate scale and density of development for each neighbourhood that is in accordance with, and promotes the character of, the neighbourhood,*

*Proposal is of an appropriate scale and density for the St Leonard's Centre*

The St Leonards Centre is characterised by large high rise buildings such as the Forum, IBM and Abode buildings, but also includes a mixture of older lower scale commercial buildings which are progressively being replaced by new high-rise mixed use and commercial buildings, such as the approved 619 Pacific Highway development to the east. The site is located near the St Leonards Centre (the core of the Centre) on the Pacific Highway, and forms part of a series of taller buildings which front the Highway.

In determining what is an appropriate scale and density for the neighbourhood, the built form principles in DCP Character Statement for St Leonards must be considered. The DCP seeks to achieve building heights that step down from the Forum development landmark towards Willoughby Road, Hume Street and Chandos Street, to fit in with lower scale development and to reduce adverse affects on those lower scale areas. This is intended to create a larger scale urban marker at the Forum development (the 'centre' of St Leonards) and its immediate surrounds, that then transitions to a lower scale surrounding lower scale residential areas such as Crows Nest.

Currently the St Leonards Centre skyline does not reflect the DCP's built form vision, which as shown in **Figure 2**, haphazardly steps up and down. In particular the IBM building, to the east of the site, is a 17 storey commercial building which considerably steps up in height from the existing commercial building on the site (**Figure 3**).

A building which complies with the 49m height control will still be considerably shorter than the IBM building and therefore will not promote the built form character of the neighbourhood which is intended to step down from the Forum to the surrounding areas. The proposed building steps from the Forum and is an intermediary element between the Forum and the recently approved 619 Pacific Highway development. In contrast, the proposed variation to the height control will provide a built form that more closely aligns with Council's vision for building heights within the Centre, refer to **Figure 2**.

The site on the opposite side of the Pacific Highway, which is located in Lane Cove LGA has a maximum building height of 72m. This discrepancy between the two controls, despite their similar locations within the Centre, further demonstrates that an increase in the maximum building height would be of appropriate scale for the neighbourhood.

The proposed variation to the height control is considered to be of an appropriate scale and density and will promote the character of the neighbourhood as:

- the site is located in close proximity to the Forum, where larger scale development is considered more appropriate and taller buildings already exist;
- the site is capable of accommodating a building larger than that proposed; and
- the variation will better achieve Council's vision for building heights in the Centre.



**Figure 2** - Birds eye view of the existing St Leonards Centre  
Source: *Winten Property Group*



**Figure 3** - View of the Pacific Highway streetscape (the site is shown in red with 619 Pacific Highway and the IBM building to the right side of the image).



*(c) provide reasonable amenity for inhabitants of the building and neighbouring buildings, and*

The Environmental Assessment at Section 4.0 of the SEE demonstrates that the proposal will achieve a high level of amenity for residents of the building and the neighbouring buildings. It is noted that the variation to the building height control will not affect compliance with the SEPP 65 'rules of thumb'.

The proposed height variation (above the maximum permissible height) will not result in any additional adverse amenity impacts on the neighbouring buildings, particularly in terms of overshadowing. The site's location on the northern side of the Pacific Highway means that the shadows cast by a building of the proposed height will fall predominantly on the Pacific Highway, and commercial zoned area to the south (See **Appendix A** of the SEE).

The proposed height variation will also not result in any additional view loss from adjoining buildings, than those that would occur from a development compliant with the 49m height limit. A complying development and building envelope would result in some view loss from the existing upper level apartments within 2-4 Atchison Street to the north-west. However, the proposed variation to the height control **will not result in any additional view loss beyond this complying envelope** (see **Figure 5**). Therefore, the additional building form above the maximum height is already above the highest point of the affected building and will have no additional view impacts.

As the proposed variation to the development standard will provide reasonable amenity for the inhabitants of the building and neighbouring buildings, compliance with the development standard is demonstrated as unnecessary in the circumstance of the case.

*d) provide ventilation, views, building separation, setback, solar access and light and to avoid overshadowing of windows, landscaped areas, courtyards, roof decks, balconies and the like,*

As discussed above, the proposed height variation will not have any additional view impacts on the adjoining buildings.

The proposal does not comply with the side setback control in the St Leonards DCP Character Statement, consistent with the DA approval for the adjoining building at 619 Pacific Highway. Section 4.4.4 of the SEE demonstrates a non-compliance with the setback control is acceptable and will result in a better design outcome on the site.

The proposed height will not have any adverse impacts on the solar access of adjoining properties. As discussed above, the site's location on the northern side of the Pacific Highway means that the shadows cast by the building (including roof top garden and lift overrun) will fall predominantly on the Pacific Highway, railway corridor and commercial zoned area to the south. Some overshadowing on the commercial area to the south is considered reasonable in a commercial centre, and the additional impact caused by the height variation is minor.

Considering the above, the proposed variation to the height development standard will still meet this objective.



**Figure 4** – Elevation of 2-4 Atchison Street illustrating that 0 apartments are affected by the area of noncompliance with the building height control

*(e) promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,*

The natural gradient of the land slopes down away from the IBM Building towards the Forum building to the west. The building is not large enough to justify the need to step the building itself. However, the proposed variation to the height control will still result in a development that reflects the natural gradient of the land, which slopes down from the higher IBM Building.

*(f) avoid the application of transitional heights as justification for exceeding height controls.*

The proposed height does not involve a transitional height justification.

4. 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

The site is located within the mixed use zone of North Sydney LEP 2001.

A review of existing buildings and recent approvals reveals that in many instances the built form of the mixed use zone exceeds its nominated height limit from LEP 2001. This includes:

- 619 Pacific Highway, the building approved on the adjoining site had a maximum height of 53.15m, which exceeds the development standard by 4.15m.
- 601 Pacific Highway (IBM Building), whilst approved prior to LEP 2001 has a height of 68m (17 storeys), which significantly exceeds the current building height control of 49m.
- 2-4 Atchison Street, whilst also approved prior to LEP 2001 its height of approximately 50m (16 storeys) exceeds the site's current control of 49m.
- 599 Pacific Highway (The Abode), whilst approved prior to LEP 2001 its height of approximately 62m (19 storeys) significantly exceeds the site's current control of 40m.
- 32-38 Atchison Street, recent approval for a 15 storey building approved at 8.3m (approximately 3 storeys) above its 40m height control (DA78/09).
- 5-11 Atchison Street, approval for a 12 storey building at 3m (approximately 1 storey) above its 40m height control (DA257/05).
- 45-49 Chandos Street, approval for a 12 storey building at 1.8m above its 33m height control (DA105/2003).
- 13-19 Atchison Street, approval for a 12 storey building at 0.9m above its 40m height control (DA87/01).

These buildings and recent approvals demonstrate that compliance with the maximum building height development standard would be unreasonable based on the Land and Environment Court 'tests' because:

- Council has in many instances granted variations to the building height control in the mixed use zone, in many instances greater than a storey. The consistent application of the building height standard in the mixed use zone has therefore been reduced.
- The site is located in the immediate vicinity of existing building stock that exceeds their LEP 2001 nominated control of 49m (i.e. The Abode, 619 Pacific Highway, and IBM buildings).

- Whilst exceeding the 49m control, the proposal provides a better fit within the context of the Pacific Highway streetscape including The Abode, IBM building, the approved 619 Pacific Highway building and the Forum to the west.
- The variation to the height control includes the provision of a communal roof top, which will have significant amenity benefits to occupants in terms of a communal open space, without privacy, overshadowing or view impacts.



### 3.0 Consistency with the Policy's Aim

Item 2 of the LEC SEPP 1 Matters for Consideration states that 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*.

Section 2.0 demonstrates that strict compliance with the building height development standard is both unreasonable and unnecessary in the circumstances of the case based on the relevant 'tests' in the Land and Environment case cited.

In addition to this, strict compliance with the building height 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 site is located near the centre of St Leonards, a Strategic Centre, with excellent access to public transport and other community infrastructure. This SEPP 1 Objection and the Environmental Assessment at Section 4.0 of the SEE demonstrates that the proposed variation to the height control will have no additional adverse impacts on the surrounding area from that of a complying building envelope.

The variation to the building height development standard will provide more housing close to services and jobs, and close to high quality public transport infrastructure. The proposal will result in an increase of public transport patronage, reducing motor vehicle dependence, improving air quality and more efficient use of energy. The provision of additional housing, including a mixture of studios, and one and two bedroom units will also increase housing affordability in an area of high amenity.

The additional housing also assists in meeting the DCP Character Statement's vision for the area as being a busy, vibrant urban Centre with a diverse range of uses. This makes for a more interesting place to live with increased night time activity, as desired in the Character Statement, and will increase passive surveillance, thereby enhancing safety.

Preventing a variation to the development standard would hinder the proper management, development, and delivery of a proposal that would enhance the social and economic welfare of the community by limiting the development potential of a site capable of accommodating a taller building, and thereby preventing the achievement of numerous State, regional and local planning objectives.

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

The existing building on the site is past its economic lifespan and presents an unattractive, detracting, and tired building at a prominent gateway site within the St Leonards Centre near excellent public transport infrastructure. The building is currently leased for low rents and has a high turnover of tenants and a high vacancy rate.

The proposed variation will assist in the redevelopment of the site and thus the orderly and economic use and development of the site.

## 4.0 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.

### 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.

North Sydney LEP was prepared in 2001, since that time there has been significant strategic planning undertaken at the State level, which set substantial dwelling targets for the North Sydney LGA including St Leonards. Consequently North Sydney's building height control does not optimally accommodate the need for greater density around the St Leonards centre.

The Metropolitan Plan for Sydney 2036, Inner North Sydney Subregional Strategy (INSS) and St Leonards Strategy seek to bring jobs closer to home creating more compact communities. The INSS targeted St Leonards for increasing residential densities in the area close to the train station where the subject site is located. In particular the St Leonards Strategy highlighted the ability of the subject site's precinct to accommodate mixed use developments with residential on the upper levels. A greater density of mixed use development on the site would meet the objectives of the Metro Plan, INSS and St Leonards Strategy.

Allowing for more homes in the Centre would assist in creating a more vibrant area. This would increase night time activity, passive surveillance and in turn safety of the area. There also are economic benefits from increased patronage of local businesses and the close proximity of the railway station and bus services would increase patronage of sustainable transport.

In particular the serviced apartments will provide ongoing economic and social support of the St Leonards Centre. It is understood that IBM currently lease approximately 50 serviced apartments in the St Leonards area to provide housing for its transient staff and visitors to the company. Providing serviced apartments in close proximity to the Centre will assist in providing the commercial attractors which draw high profile commercial tenants (like IBM) to St Leonards instead of the Sydney CBD or North Sydney, thereby supporting the commercial function of the Centre and attainment of strategic planning objectives and targets.

## 4.2 Public Benefit

This SEPP 1 Objection demonstrates that the proposed variation to the building height development standard will have no adverse environmental impacts.

It is in the public's interest that the proposed variation to the height development standard is supported because:

- the proposal presents the opportunity to redevelop a commercial building, which is well past its economic lifespan, and is detracting to the streetscape and Centre given its prominent gateway location, with a development that will provide employment and retail services, serviced apartments to support the commercial function of the Centre, and increase the residential density in an area with ample infrastructure and high amenity;
- despite being a source of variation from the building height control, providing a communal roof top area will lower demand on existing public open space in the area;
- the development will replace the existing unsympathetic and detracting building with a building of high architectural merit on a prominent site within the St Leonards Centre;
- the redevelopment of the site is likely to be a further catalyst for development within the St Leonards Centre; and
- it is consistent with the Inner North Subregional Strategy which aims to increase residential densities close to the St Leonards Centre.

## 5.0 Conclusion

This SEPP 1 Objection demonstrates that Council and the Joint Regional Planning Panel can be satisfied that the proposed variation to the building height development standard is justified as:

- it is 'well founded' because the objectives of the standard are achieved notwithstanding non-compliance with the standard and the standard has already been varied in many instances by Council, including for the recent approval on the adjacent site at 619 Pacific Highway;
- strict application of the standard would be unreasonable and unnecessary in the circumstances;
- the variation will not result in any adverse impacts on amenity of surrounding development or within the proposed development;
- it is compatible with and promotes the desired future character of St Leonards;
- the urban context of St Leonards is capable of accommodating additional height on the site; and
- it will assist in achieving strategic planning goals for the site.

It is therefore requested that the Joint Regional Planning Panel grant development consent for the proposed development.