



SEPP 1 Objection –  
Clause 17(3) - Building  
Height

Monte Sant' Angelo  
Mercy College

29 June 2012



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# State Environmental Planning Policy No.1 Development Standards – Objection to Clause 17(3) of the *North Sydney Local Environmental Plan 2001*

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## 1. Introduction

This is a SEPP No. 1 Objection to clause 17(3) of the *North Sydney Local Environmental Plan 2001* that provides standards for building height within the residential zones.

Clause 17(3) requires the building height within a residential zoned to be a maximum of 8.5m, the wording of clause 17(3) is detailed as follows:

*“(3) Building height controls*

*Except as otherwise provided in this clause, a building must not be erected, in a residential zone, in excess of 8.5 metres in height.”*

Within the Residential B zoned part of the site, the proposed development complies with this development standard. However, Clause 34 of the LEP, which relates to buildings in the Special Use zone, requires the application of the development controls of the most restrictive adjoining zone to development in the special use zone.

Clause 34(3) and (4) states:

*“(3) Building controls*

*A building must not be erected on land to which this clause applies unless:*

- (a) the building is consistent with the objectives and permissible uses that apply to the land adjoining the site and land directly across a road from the site, and*
- (b) the building complies with the relevant development standards, for the particular type of building, that apply to the land adjoining the site and land directly across a road from the site.*

*(4) If the site adjoins, or is directly across a road from, land in more than one zone, the objectives, permissible uses and development standards that are applied by subclause (3) are the most restrictive development standards.”*

In the case of the subject site, the site is zoned part Special Uses and part Residential B, in this regard the most restrictive adjoining zone is the Residential B zone. This means that the building height requirements of Clause 17(3) also apply to the Special Uses zoned part of the site.

## 2. Proposed Development

The site of the proposed works is zoned part Residential B and part Special Uses (Convent School). The proposed Arts and Creativity Common building is located in the north-east corner of the site and involves work within both the Residential B and the Special Uses zoned land.

Development within the Residential B zoned part of the site complies with the 8.5m height control, however within the Special uses zoned part of the site, the building is proposed to have a maximum height of approximately 10.5m (RL90.93) to the roof or 10.9m to the top of the lift shaft.

In this regard, the proposal does not comply with the 8.5m building height development standard of Clause 17(3) when applied to the Special Uses zoned part of the site.

### 3. Principles for SEPP 1 Objections

This SEPP 1 objection seeks a variation to the 'height of building' development standard applying to the site. The decision of Justice Lloyd in *Winten v North Sydney Council* identifies the principles against which a SEPP 1 objection must be considered. These are:

- Is the planning control in question a development standard;
- What is the underlying object or purpose of the standard;
- Is compliance with the development standard consistent with the aims of the Policy, and in particular does compliance with the development standard tend to hinder the attainment of the objects specified in section 5(a)(i) and (ii) of the *Environmental Planning and Assessment Act 1979*;
- Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case;
- Is a development which complies with the development standard unreasonable or unnecessary;
- Is the objection well-founded.

In addition, the decision of Justice Preston in *Wehbe V Pittwater [2007] NSW LEC 827* detailed that in considering granting concurrence to a variation, the requirements of clause 8 (a) and 8(b) of the SEPP should be considered, being:

- (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 above principles are addressed in detail below.

#### 3.1 Is the planning control in question a development standard?

The planning control in question is a development standard for the building height plane.

Clause 17(3) requires Council to ensure the development of land within a residential zone (and by virtue of Clause 34 the Special Use zone) has a maximum height of 8.5m.

This control is a numerical development standard and therefore is capable of being varied under the provisions of State Environmental Planning Policy No.1 – Development Standards.

#### 3.2 What is the underlying purpose of the standard?

The specific objectives of the building height controls are to:

- (a) *limit the height of buildings in residential zones to:*
  - (i) *one storey, at the street façade, where that is the characteristic building height, or*
  - (ii) *subject to subparagraph (i), heights which are the same as or similar to the characteristic building heights, or*
  - (iii) *if neither subparagraph (i) nor (ii) applies, two storeys, or*
  - (iv) *despite subparagraphs (i)–(iii), in the case of apartment buildings in the residential C zone, three storeys or the height indicated on the map, and*
- (a1) *promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient, and*
- (b) *promote gabled and hipped roofs in all residential zones and avoid other roof forms except:*
  - (i) *skillion roofs over verandas and rear extensions to buildings that have a main roof that is gabled or hipped, or*

- (ii) *where it is desirable to preserve views, other roof forms that are characteristic of the area, and*
- (c) *promote the retention of and, if appropriate, sharing of existing views, and*
- (d) *maintain solar access to new and existing dwellings, public reserves and streets, and promote solar access to new buildings, and*
- (e) *maintain privacy for residents of existing dwellings and promote privacy for residents of new buildings, and*
- (f) *prevent the excavation of sites for building works, other than for garages and car parking.*

The proposed development is considered consistent with the Objectives of the height control for the following reasons:

- The proposed building is comparable with the bulk and scale of the existing O'Regan House;
- The proposed building is of a significantly lower bulk and scale than the adjoining 4 storey commercial building at 194 Miller Street;
- The proposal scales down to the McLaren Street properties ensuring that the scale is compatible with their single storey scale; and
- The proposal will not impact on views, solar access or privacy of any of the surrounding buildings.

### 3.3 **Is compliance with the development standard consistent with the aims of the Policy, and in particular, does the development standard tend to hinder the attainment of the objects specified in section 5(a)(i) and (ii) of the *EP&A Act 1979*?**

The aims and objectives of State Environmental Planning Policy No.1 – Development Standards are as follows:

*"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 necessary or tend to hinder the attainment of the objects specified in section 5 (a) (i) and (ii) of the Act."*

The objects set down in Section 5(a)(i) and (ii) are as follows:

- "(a) to encourage*
  - (i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural area, forest, mineral, 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..."*

Compliance with the Policy would not hinder the attainment of the objects of section 5(a)(i) and (ii) of the Act, which are to encourage development that promotes the social and economic welfare of the community and a better environment, and to promote and co-ordinate orderly and economic use and development of land.

Strict compliance with the development standard would not result in any discernible benefits to the community given that the siting of the proposed development and the scale of O'Regan House and the adjoining commercial building. Further, the proposal satisfies the zone, site specific and development standard objectives and therefore strict compliance with the standard is not required in order to achieve compliance with the objectives.

Strict compliance would result in an inflexible application of policy. It does not serve any purpose that is outweighed by the positive outcomes of the development.

The development as proposed is consistent with the provisions of orderly and economic development.

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

Yes. In the circumstances of the case, the provision of strict numerical compliance would be unnecessary and unreasonable on the basis of that:

- Clause 17(3) seeks to restrict the scale of development within the residential zone to a maximum of 2 storeys;
- That part of the proposed development that exceeds the 8.5m height control is within the Special Uses zoned part of the site and does not affect the amenity of any residential properties;
- That part of the proposed development that exceeds the 8.5m height control is immediately adjacent to a significantly taller 4 storey commercial building;
- The proposal is comparable to the height of the O'Regan House building; and
- The development of land is consistent with the general aims and objectives of the *North Sydney Local Environmental Plan No. 2001*;
- The exhibited draft North Sydney LEP 2009 proposes a height limit of 16.0m, which the proposal complies with.

Given the circumstances of the case, the provision of a strict numerical compliance would be unnecessary and unreasonable on the basis that the proposed development achieves compliance with the objectives of the standard.

### **3.5 Is a development which complies with the development standard unreasonable or unnecessary in the circumstances of the case; and**

A development which complied with the development standard would be unreasonable and unnecessary for the following reasons:

- It is unnecessary to require the development to comply with the development standard in this instance as the intention of the standard is to restrict residential development in the Residential B zone to 1 and 2 storeys and to protect residential amenity;
- That part of the site affected is zoned Special Uses, is located on the southern side of a significantly taller building, being the four storey commercial building at 194 Miller Street; and
- The proposal does not impact on the amenity of any surrounding residential buildings .
- It is unnecessary to require the development to comply in this instance as the scale of the development is comparable with O'Regan House and the Monte Sant' Angelo Mercy College Chapel buildings;
- The scale of the development is in keeping with the scale of adjoining development.
- It is unnecessary to require the development to comply in this instance in order to achieve compliance with the underlying development standard as the objectives are irrelevant in this situation.
- It is unreasonable to require the proposal to comply with the standard in this instance as there are examples of similarly non-compliant development immediately adjacent the site.

### **3.6 Is the objection well founded?**

Yes. It is concluded that the objection is well founded as compliance with the standard is both unnecessary and unreasonable. Notwithstanding strict numerical compliance, the development is well founded for the following reasons:

- The building height development standard was not intended to apply in this scenario on the southern side of a 4 storey commercial building;

- The scale of the proposed development is comparable with the heritage listed O'Regan House;
- Compliance with the building height would not achieve a better outcome as the scale of the proposal is appropriate in this immediate context.

### 3.7 Would non-compliance raise any matter of significance for state or regional planning?

The non-compliance will not raise any matter of State or Regional Significance. The variation purely relates to residential building heights and support of the variation will not impact upon State or Regional Planning considerations.

### 3.8 Is there a public benefit of maintaining the planning standard?

There is no desirable public benefit in seeking apply the standard in this location given the context of surrounding buildings.

## 4. Conclusion

The proposed variation is based on the reasons contained within this submission.

The objection is well founded as compliance with the standard is both unnecessary and unreasonable for the following reasons:

- The building height development standard of Clause 17(3) was intended to control the scale of residential development and preserve the residential amenity of the immediately adjoining properties;
- Clause 17(3) was never intended to apply in this scenario between a 4 storey commercial building and a 3 storey college building;
- The scale of the proposed development is comparable with the heritage listed O'Regan House;
- Compliance with the building height plane would not achieve a better outcome, with adequate setbacks provided and the scale of the proposal appropriate in this immediate context.

Variation of Clause 17(3) of *North Sydney Local Environmental Plan No. 2001* is sought.

A development strictly complying with the numerical standard would not serve any planning purpose or outcome nor significantly improve the relationship of the development to surrounding land uses. In the context of the locality it would be unreasonable for strict compliance to be enforced, given the scale of the adjoining commercial building immediately to the north of this boundary.

It is concluded that the objection is well founded as compliance with the standard is both unnecessary and unreasonable.





SEPP 1 Objection –  
Clause 18(2) –  
Building Height Plane

Monte Sant' Angelo  
Mercy College

29 June 2012



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# State Environmental Planning Policy No.1 Development Standards – Objection to Clause 18(2) of the *North Sydney Local Environmental Plan 2001*

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## 1. Introduction

This is a SEPP No. 1 Objection to clause 18(2) of the *North Sydney Local Environmental Plan 2001* that provides standards for the building height plane within the residential zones.

Clause 18(2) restricts development within a Residential B zone to a building height plane commencing at 1.8m above existing ground level, and projecting at an angle of 45 degrees, at all points from each of the boundaries of the site.

The wording of clause 18(2) is detailed as follows:

*“A building must not be erected in the residential A1, A2, B or F zone if any part of the building will exceed a building height plane, commencing at 1.8 metres above existing ground level, and projected at an angle of 45 degrees, at all points from each of the boundaries of the site.”*

Within the Residential B zoned part of the site, the proposed development complies with this development standard. However, Clause 34 of the LEP, which relates to buildings in the Special Use zone, requires the application of the development controls of the most restrictive adjoining zone to development in the special use zone.

Clause 34(3) and (4) states:

*“(3) Building controls*

*A building must not be erected on land to which this clause applies unless:*

- (a) the building is consistent with the objectives and permissible uses that apply to the land adjoining the site and land directly across a road from the site, and*
- (b) the building complies with the relevant development standards, for the particular type of building, that apply to the land adjoining the site and land directly across a road from the site.*
  
- (4) If the site adjoins, or is directly across a road from, land in more than one zone, the objectives, permissible uses and development standards that are applied by subclause (3) are the most restrictive development standards.”*

In the case of the subject site, the site is zoned part Special Uses and part Residential B, in this regard the most restrictive adjoining zone is the Residential B zone. This means that the building height plane requirements of Clause 18(2) also apply to the Special Uses zoned part of the site.

## 2. Proposed Development

The site of the proposed works is zoned part Residential B and part Special Uses (Convent School). The proposed Arts and Creativity Common building is located in the north-east corner of the site and involves work within both the Residential B and the Special Uses zoned land.

Clause 18(2) of the *North Sydney Local Environmental Plan 2001* requires development within the Residential B zone to comply with a building height plane of 1.8m and pitching back at 45 degrees at the boundaries of the site. By virtue of Clause 34, this control also applies to the Special Uses zoned part of the site.

The proposed development is setback approximately 2.8m from the northern boundary of the site adjacent to No.194 Miller Street, North Sydney, on the northern side of the O'Regan House building. At this point the proposed building has a height of 10.2m and therefore does not comply with the building height plane

For this reason, the proposal does not comply with clause 18(2) as it exceeds the building height plane development standard.

### 3. Principles for SEPP 1 Objections

This SEPP 1 objection seeks a variation to the 'subdivision' development standard applying to the site. The decision of Justice Lloyd in *Winten v North Sydney Council* identifies the principles against which a SEPP 1 objection must be considered. These are:

- Is the planning control in question a development standard;
- What is the underlying object or purpose of the standard;
- Is compliance with the development standard consistent with the aims of the Policy, and in particular does compliance with the development standard tend to hinder the attainment of the objects specified in section 5(a)(i) and (ii) of the *Environmental Planning and Assessment Act 1979*;
- Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case;
- Is a development which complies with the development standard unreasonable or unnecessary;
- Is the objection well-founded.

In addition, the decision of Justice Preston in *Wehbe V Pittwater [2007] NSW LEC 827* detailed that in considering granting concurrence to a variation, the requirements of clause 8 (a) and 8(b) of the SEPP should be considered, being:

- (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 above principles are addressed in detail below.

#### 3.1 Is the planning control in question a development standard?

The planning control in question is a development standard for the building height plane.

Clause 18(2) requires Council to ensure the development of land within the Residential B zone (and by virtue of Clause 34 the Special Use zone) has a maximum height of 1.8m at the boundary then pitches back at an angle of 45 degrees.

This control is a numerical development standard and therefore is capable of being varied under the provision of State Environmental Planning Policy No.1 – Development Standards.

#### 3.2 What is the underlying purpose of the standard?

The objectives of the Building height control is to:

- (a) *control the bulk and scale of buildings, and*
- (b) *provide separation between buildings, and*
- (c) *preserve the amenity of existing dwellings and provide amenity to new dwellings in terms of shadowing, privacy, views, ventilation and solar access.*

The proposed development is considered to be consistent with the Objectives of the building height plane control for the following reasons:

- The proposed building is comparable with the bulk and scale of the existing O'Regan House;
- The proposed building is of a significantly lower bulk and scale than the adjoining 4 storey commercial building at 194 Miller Street;
- The proposal provides a 2.8m setback to a 3 storey building, which is greater than the 2m setback of the adjoining 4 storey commercial building;
- The proposal preserves the amenity of the adjoining building in terms of light and ventilation.

**3.3 Is compliance with the development standard consistent with the aims of the Policy, and in particular, does the development standard tend to hinder the attainment of the objects specified in section 5(a)(i) and (ii) of the *EP&A Act 1979*?**

The aims and objectives of State Environmental Planning Policy No.1 – Development Standards are as follows:

*"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 necessary or tend to hinder the attainment of the objects specified in section 5 (a) (i) and (ii) of the Act."*

The objects set down in Section 5(a)(i) and (ii) are as follows:

- "(a) to encourage*
- (i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural area, forest, mineral, 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..."*

Compliance with the Policy would not hinder the attainment of the objects of section 5(a)(i) and (ii) of the Act, which are to encourage development that promotes the social and economic welfare of the community and a better environment, and to promote and co-ordinate orderly and economic use and development of land.

Strict compliance with the development standard would not result in any discernible benefits to the community given that the boundary in question is to a commercial building. Further, the proposal satisfies the zone, site specific and development standard objectives and therefore strict compliance with the standard is not required in order to achieve compliance with the objectives.

Strict compliance would result in an inflexible application of policy. It does not serve any purpose that is outweighed by the positive outcomes of the development.

The development as proposed is consistent with the provisions of orderly and economic development.

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

Yes. In the circumstances of the case, the provision of strict numerical compliance would be unnecessary and unreasonable on the basis that:

- Clause 18(2) is intended to apply to residential zoned properties to preserve the residential amenity between residential properties.

- The boundary in question relates to the boundary between a Special Use zone and a Commercial zone. For this reason, it is questionable whether the control should actually be applied in this scenario;
- The adjoining development at 194 Miller Street is of a significantly greater scale than the proposal and does not meet the building height plane controls;
- 194 Miller Street is located to the north of the subject site and therefore overshadows the site. For this reason little is achieved in terms of compliance with the building height plane in terms of minimising overshadowing.
- The objectives seek to control the bulk and scale of development and restrict development to a lower residential scale, which is not appropriate in this scenario;
- The objectives seek to protect the amenity of the adjoining properties, which is not required in this scenario; and
- The development of land is consistent with the general aims and objectives of the *North Sydney Local Environmental Plan 2001* and is consistent with the specific objectives of the respective zones.

Given the circumstances of the case, the provision of a strict numerical compliance would be unnecessary and unreasonable on the basis that the proposed development achieves compliance with the objectives of the standard.

### **3.5 Is a development which complies with the development standard unreasonable or unnecessary in the circumstances of the case; and**

A development which complied with the development standard would be unreasonable and unnecessary for the following reasons:

- It is unnecessary to require the development to comply with the development standard in this instance as the intention of the standard is to protect residential amenity and the boundary in question and the buildings on either side of the boundary are not residential in use.
- It is unnecessary to require the development to comply in this instance with the standard as compliance would result in a building of a significantly lesser scale and or significantly greater setbacks than the commercial development on the adjoining property.
- It is unnecessary to require the development to comply in this instance in order to achieve compliance with the underlying development standard as the objectives are irrelevant in this situation.
- It is unreasonable to require the proposal to comply with the standard in this instance as there are examples of similarly non-compliant development immediately adjacent the site.

### **3.6 Is the objection well founded?**

Yes. It is concluded that the objection is well founded as compliance with the standard is both unnecessary and unreasonable. Notwithstanding strict numerical compliance, the development is well founded for the following reasons:

- The building height plane development standard was not intended to apply in this scenario between a 4 storey commercial building and a 3 storey college building;
- The scale of the proposed development is comparable with the heritage listed O'Regan House;
- Compliance with the building height plane would not achieve a better outcome, with adequate setbacks provided and the scale of the proposal appropriate in this immediate context;

### 3.7 Would non-compliance raise any matter of significance for state or regional planning?

The non-compliance will not raise any matter of State or Regional Significance. The variation purely relates to building heights and envelopes between residential uses and support of the variation will not impact upon State or Regional Planning considerations.

### 3.8 Is there a public benefit of maintaining the planning standard?

There is no desirable public benefit in seeking to apply the standard in this instance.

## 4. Conclusion

The proposed variation is based on the reasons contained within this submission.

The objection is well founded as compliance with the standard is both unnecessary and unreasonable for the following reasons:

- The building height plane development standard of Clause 18(2) was intended to control the scale of residential development and preserve the residential amenity between immediately adjoining residential properties;
- Clause 18(2) was never intended to apply in this scenario between a 4 storey commercial building and a 3 storey college building;
- The scale of the proposed development is comparable with the heritage listed O'Regan House;
- Compliance with the building height plane would not achieve a better outcome, with adequate setbacks provided and the scale of the proposal is appropriate in this immediate context.

Variation of Clause 18(2) of *North Sydney Local Environmental Plan No. 2001* is sought.

A development strictly complying with the numerical standard would not serve any planning purpose or outcome nor significantly improve the relationship of the development to surrounding land uses. In the context of the locality it would be unreasonable for strict compliance to be enforced, given the scale of the adjoining commercial building immediately to the north of this boundary.

It is concluded that the objection is well founded as compliance with the standard is both unnecessary and unreasonable.





SEPP 1 Objection –  
Clause 20 –  
Landscaped Area

Monte Sant' Angelo  
Mercy College

29 June 2012



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# State Environmental Planning Policy No.1 Development Standards – Objection to Clause 20 of the *North Sydney Local Environmental Plan 2001*

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## 1. Introduction

This is a SEPP No. 1 Objection to clause 20 of the *North Sydney Local Environmental Plan 2001* that provides standards for the minimum landscaped area within the residential zones.

Clause 20 requires development within the residential zones to provide a minimum proportion of the site as landscaped area. The proportion of the site required to be landscaped area is dependent on the lot size on which the development is proposed.

The wording of clause 20 is detailed as follows:

*“Development must not be carried out in the residential A1, A2, B, C, or F zone, if (because of carrying out the development) the percentage of any site area that is landscaped area is less than the minimum percentage for the site area as specified in the following Table:*

<i>Site area</i>	<i>Landscaped area as a percentage of site area</i>
• <i>Less than 500m<sup>2</sup></i>	• <i>50%</i>
• <i>500m<sup>2</sup> or more but less than 600m<sup>2</sup></i>	• <i>52%</i>
• <i>600m<sup>2</sup> or more but less than 700m<sup>2</sup></i>	• <i>54%</i>
• <i>700m<sup>2</sup> or more but less than 800m<sup>2</sup></i>	• <i>56%</i>
• <i>800m<sup>2</sup> or more but less than 900m<sup>2</sup></i>	• <i>58%</i>
• <i>900m<sup>2</sup> and above</i>	• <i>60%</i>

Further to Clause 20, Clause 34 of the LEP, which relates to buildings in the Special Use zone, requires the application of the development controls of the most restrictive adjoining zone to development in the special use zone.

Clause 34(3) and (4) states:

*“(3) Building controls*

*A building must not be erected on land to which this clause applies unless:*

- (a) the building is consistent with the objectives and permissible uses that apply to the land adjoining the site and land directly across a road from the site, and*
- (b) the building complies with the relevant development standards, for the particular type of building, that apply to the land adjoining the site and land directly across a road from the site.*
- (4) If the site adjoins, or is directly across a road from, land in more than one zone, the objectives, permissible uses and development standards that are applied by subclause (3) are the most restrictive development standards.”*

In the case of the subject site, the site is zoned part Special Uses and part Residential B. In this regard the most restrictive adjoining zone is the Residential B zone. This means that the landscaped area requirements of Clause 20 also apply to the Special Uses zoned part of the site i.e. the majority of the College site.

## 2. Proposed Development

The site of the proposed works is zoned part Residential B and part Special Uses (Convent School). The proposed Arts and Creativity Common building is located in the north-east corner of the site and involves work within both the Residential B and the Special Uses zoned land.

The development proposes work on two lots within the Residential B zone being Lots 5 and 6 DP 5030, being 31-33 and 29 McLaren Street. These two lots have a lot size of approximately 920m<sup>2</sup> and 935m<sup>2</sup> each respectively.

Clause 20 of the North Sydney *Local Environmental Plan 2001* requires development within the Residential B zone with a lot size in excess of 900m<sup>2</sup> to achieve a minimum landscaped area equating to 60% of the site area.

By virtue of Clauses 34(3) and (4) of the LEP, the minimum 60% landscaped area control also applies to the Special Uses zoned part of the site, being the remainder of the Monte Sant' Angelo Mercy College, which has an area of approximately 1.753ha.

The existing and proposed landscaped area statistics for the two lots are identified in the table below.

Address	Lot size	Existing Landscaped Area	Proposed Landscaped Area
29 McLaren	937m <sup>2</sup>	400m <sup>2</sup> (42%)	183m <sup>2</sup> (20%)
31-33 McLaren	919m <sup>2</sup>	180m <sup>2</sup> (20%)	210m <sup>2</sup> (23%)
128 Miller Street	1.753ha	3,250m <sup>2</sup> (18%)	unchanged

It is evident from the above statistics, that the proposal does not comply with clause 20 in its application to both the Residential B and Special Use zoned parts of the site.

## 3. Principles for SEPP 1 Objections

This SEPP 1 objection seeks a variation to the 'subdivision' development standard applying to the site. The decision of Justice Lloyd in *Winten v North Sydney Council* identifies the principles against which a SEPP 1 objection must be considered. These are:

- Is the planning control in question a development standard;
- What is the underlying object or purpose of the standard;
- Is compliance with the development standard consistent with the aims of the Policy, and in particular does compliance with the development standard tend to hinder the attainment of the objects specified in section 5(a)(i) and (ii) of the *Environmental Planning and Assessment Act 1979*;
- Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case;
- Is a development which complies with the development standard unreasonable or unnecessary;
- Is the objection well founded.

In addition, the decision of Justice Preston in *Wehbe V Pittwater [2007] NSW LEC 827* detailed that in considering granting concurrence to a variation, the requirements of clause 8 (a) and 8(b) of the SEPP should be considered, being:

- (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 above principles are addressed in detail below.

### 3.1 Is the planning control in question a development standard?

The planning control in question is a development standard for landscaped area.

Clause 20 requires Council to ensure the development of land within the Residential B zone (and by virtue of Clauses 34(3) and (4) the Special Uses zone) meets the minimum landscaped area requirements depending on the lot size.

A minimum of 60% of the site area is required to be landscaped area within both parts of the site.

This control is a numerical development standard and therefore is capable of being varied under the provisions of State Environmental Planning Policy No.1 – Development Standards.

### 3.2 What is the underlying purpose of the standard?

The objectives of the Landscaped Area control is to:

- (a) *promote the character of the neighbourhood, and*
- (b) *provide useable private open space for the enjoyment of residents, and*
- (c) *provide a landscaped buffer between adjoining properties, and*
- (d) *maximise retention and absorption of surface drainage water on site, and*
- (e) *minimise obstruction to the underground flow of water, and*
- (f) *promote substantial landscaping, including trees which will grow to a minimum height of 15 metres, and*
- (g) *control site density, and*
- (h) *minimise site disturbance.*

The proposed development is considered to be consistent with the Objectives of the Landscaped Area control for the following reasons:

- The majority of the building is sunk below ground level with a landscaped courtyard roof above a development that is in keeping with the scale and character of the surrounding development;
- The development is sympathetic to the heritage significance and character of the surrounding buildings;
- Both of the McLaren Street congregational buildings retain useable private courtyards;
- The design facilitates the collection of roof rainwater for reuse across the site;
- Landscaping on site is to be augmented with the planting of semi-mature trees at the rear of the McLaren Street properties and to the south of O'Regan House; and
- The density of development is comparable with surrounding development and is appropriate for the location.

**3.3 Is compliance with the development standard consistent with the aims of the Policy, and in particular, does the development standard tend to hinder the attainment of the objects specified in section 5(a)(i) and (ii) of the *EP&A Act 1979*?**

The aims and objectives of State Environmental Planning Policy No.1 – Development Standards are as follows:

*“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 necessary or tend to hinder the attainment of the objects specified in section 5 (a) (i) and (ii) of the Act.”*

The objects set down in Section 5(a)(i) and (ii) are as follows:

- “(a) to encourage*
- (i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural area, forest, mineral, 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...”*

Compliance with the Policy would not hinder the attainment of the objects of section 5(a)(i) and (ii) of the Act, which are to encourage development that promotes the social and economic welfare of the community and a better environment, and to promote and co-ordinate orderly and economic use and development of land.

Strict compliance with the development standard would not result in any discernible benefits to the community given that there are no adverse impacts that arise from the proposal. Further, the proposal satisfies the zone, site specific and development standard objectives and therefore strict compliance with the standard is not required in order to achieve compliance with the objectives.

Strict compliance would result in an inflexible application of policy. It does not serve any purpose that is outweighed by the positive outcomes of the proposed development.

The development as proposed is consistent with the provisions of orderly and economic development.

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

Yes. In the circumstances of the case, the provision of strict numerical compliance would be unnecessary and unreasonable on the basis of that:

- The development of land is consistent with the general aims and objectives of the *North Sydney Local Environmental Plan 2001* and is consistent with the specific objectives of the Residential B and Special Uses zones;
- Nos. 29 McLaren Street used by the Sisters of Mercy for administrative purposes for the congregation and the existing grass rear yard will be replaced by a landscaped courtyard on the roof top of the theatre building.
- The rear of No. 31-33 McLaren Street is currently dominated by a bitumen carpark which is proposed to be demolished and replaced with a landscaped rooftop courtyard of the theatre building. In fact, the extent of landscaping on the 31-33 McLaren will be increased by the proposed development.
- A landscaped courtyard is proposed on the rooftop of the building within the Residential B zoned land effectively delivering a landscaped open space useable by both the College and the congregation;

- The works within the Special Uses zone is largely contained within an area of the site occupied by the O'Regan House building and the service shed and bitumen car park at the rear, in this respect resulting in a negligible change to the landscaped area within the Special Uses site;
- The application of the 60% "Landscaped Area" control to the whole of the College site is inequitable given the extent of works within the scale of this site is minimal, with the majority of the site developed with a variety of educational buildings, outdoor recreational areas, accessways and driveways; and
- The development is consistent with adjoining land within the same zone being the congregation and car park use of Stormanston House at 27 McLaren Street and the McLaren Hotel at 25 McLaren Street to the west of the site.

Given the circumstances of the case, the provision of a strict numerical compliance would be unnecessary and unreasonable on the basis that the proposed development achieves compliance with the objectives of the standard.

### **3.5 Is a development which complies with the development standard unreasonable or unnecessary in the circumstances of the case?**

A development which complied with the development standard would be unreasonable and unnecessary for the following reasons:

- The site is not typically residential in use, rather a mix of congregation and college uses;
- The proposal delivers an appropriate urban form that is sympathetic to the heritage context and scale of surrounding buildings;
- Existing development on the site does not meet the current 60% landscaped area requirements.
- It is unnecessary to require the development to comply with the development standard in this instance in order to achieve the objectives of the two zones affected by the site as those objectives are satisfied by the numerically non-compliant development.
- It is unnecessary to require the development to comply in this instance in order to maintain the landscape and context of the locality as those elements will be maintained under the proposed development.
- It is unnecessary to require the development to comply in this instance in order to achieve compliance with the underlying development standard objectives as the proposed non-compliant development satisfies those objectives (refer to section 3.2 of this SEPP 1 Objection).
- It is unreasonable to require the proposal to comply with the standard in this instance as there are examples of similarly non-compliant developments immediately adjacent the site.

### **3.6 Is the objection well founded?**

Yes. It is concluded that the objection is well founded as compliance with the standard is both unnecessary and unreasonable. Notwithstanding strict numerical compliance, the development is well founded for the following reasons:

- The proposed does not significantly alter the visual appearance and physical features of the site.
- The proposed development of the land will maintain the existing appearance of land within the locality.

### **3.7 Would non-compliance raise any matter of significance for state or regional planning?**

The non-compliance will not raise any matter of State or Regional Significance. The variation purely relates the provision of landscaping within residential development and support of the variation will not impact upon State or regional Planning considerations.



### 3.8 Is there a public benefit of maintaining the planning standard?

There is no desirable public benefit in seeking to require the minimum landscaped area to be provided on the site. Planting of semi-mature trees is proposed to replace the loss of any existing vegetation and the rooftop of the proposed theatre building is proposed to form a landscaped courtyard for both congregation and college use.

In fact, it could be argued that restricting development on the site will not be in the public benefit in that it will restrict the ability of the College to augment their existing educational facilities.

It is considered that the public benefit of providing upgraded educational facilities supports the approval of the proposed development and support for requested variation to the development standard.

## 4. Conclusion

The proposed variation is based on the reasons contained within this submission.

The proposal will effectively provide a large landscaped courtyard area that is compatible with the shared congregation and college uses and the heritage significance and scale of the surrounding buildings.

The objection is well founded as compliance with the standard is both unnecessary and unreasonable for the following reasons:

- The proposed development does not significantly alter the visual appearance and physical features or character of the neighbourhood;
- The proposal delivers an innovative design that will deliver a purpose built performing arts facility for the arts and music faculties of the college in a sensitive heritage location;
- The proposal is in keeping with the scale of the McLaren Street properties,
- The proposal delivers a landscaped courtyard roof for the use of both the congregation and the college;
- The proposal retains the significant vegetation south of O'Regan House
- Any trees proposed to be removed will be replaced with semi-mature planting; and
- The proposal delivers useable courtyards at the rear of the McLaren Street buildings.

Variation of Clause 20 of *North Sydney Local Environmental Plan No. 2001* is sought.

A development strictly complying with the numerical standard would not serve any planning purpose or outcome nor significantly improve the relationship of the development to surrounding land uses. In the context of the locality it would be unreasonable for strict compliance to be enforced, as the proposed development is compatible with surrounding development.

It is concluded that the objection is well founded as compliance with the standard is both unnecessary and unreasonable.