



The General Manager
North Sydney Council
PO Box 12
North Sydney NSW 2059

6 October 2011

Attention: Susanna Cheng

Dear Susanna

**State Environmental Planning Policy No. 1 Objection – Building Height Plane
D/329/2011 – 8–10 Berry Street, North Sydney**

1.1_Overview

This SEPP 1 Objection seeks to vary the building height plane of the *North Sydney Council Local Environmental Plan 2001*. It is prepared by HASSELL on behalf of the Australian Catholic University (ACU) in relation to the proposed change of use and internal fit out of the existing building at 8-10 Berry Street, North Sydney.

1.2_SEPP 1-Development Standards

SEPP 1 permits variations to development standards where it can be demonstrated that *'strict compliance with those standards would, in any particular case, be unreasonable or unnecessary'* (refer SEPP 1, Clause 3).

Clause 8 of SEPP 1 outlines the matters which must be considered when assessing variation to a development standard:

- (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.*

1.3_Requirement for variation

This application seeks to vary Clause 30(2) of *North Sydney Local Environmental Plan 2001* (NSLEP 2001) which relate to determining the building height plane within the Mixed Use zone. This clause is outlined below:

(2) Building height plane controls

A building must not be erected in the mixed use zone, on land that adjoins or is adjacent to land within a residential or open space zone, if any part of the building will exceed a building height plane:

- (a) *commencing 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 that adjoin land within the residential A1, A2, B or F zone or open space zone, or*

- (b) *commencing 1.8 metres above existing ground level, and projected at an angle of 45 degrees, from the centre of any road that separates the land from land within the residential A1, A2, B or F zone or open space zone, or*
- (c) *commencing 3.5 metres above existing ground level, and projected at an angle of 45 degrees, at all points from each of the boundaries of the site that adjoin land within the residential C zone, or*
- (d) *commencing 3.5 metres above existing ground level, and projected at an angle of 45 degrees, from the centre of any road that separates the land from land within the residential C zone, or*
- (e) *commencing 1.8 metres above existing ground level, projected at all points from each of the boundaries adjoining a laneway or other road of a similar width and character referred to in Schedule 14 that separates the land from land within the Residential A1, A2, B, D or F (McMahons Point) Zone or the Public Open Space Zone, or*
- (f) *commencing 3.5 metres above existing ground level, projected at all points from each of the boundaries adjoining a laneway or other road a similar width and character referred to in Schedule 14 that separates the land from land within the Residential C Zone.*

1.4_Extent of Variation

The subject site is located within the Mixed Use zone of the NSLEP 2001, and adjoins land zoned Residential C to the immediate west and north. As such, clause 30(2)(c) applies and sets a building height at a 45 degree angle commencing 3.5 metres above existing ground level at the western boundary across the subject site.

A new 800mm high roof is proposed above the existing central lightwell of the building generally within the centre of the existing building. This roof is proposed to allow increased light and natural ventilation into the existing building. A small portion of the new lightwell roof protrudes outside part of this building height plane.

As such variation to the building height plane standard under SEPP 1 is required to permit the construction of the new roof over the internal lightwell.

1.5_Justification

The assessment of the variation takes into account the recent decision in *Wehbe v Pittwater Council* [2007] NSW LEC 827 which raised the following issues to be considered in a SEPP 1 variation:

- _ Is the planning control in question a development standard?*
- _ If so, what is the underlying object or purpose of the standard?*
- _ Is compliance with the standard consistent with the aims of the policy, and in particular, does compliance with the standard tend to hinder the attainment of the objects specified in s 5(a)(i) and (ii) of the Environmental Planning & Assessment Act 1979?*
- _ Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case? (A related question is: would a development which complies with the standard be unreasonable or unnecessary?)*
- _ Is the objection well founded?*

These issues are discussed in detail below.

Applicable development standard

As identified above, the applicable development standard is the building height plane control set out under Clause 30(2)(c) of the NSLEP 2001.

Objectives of the development standard

The objectives of Clause 30 are identified as:

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

- (b) *minimise adverse effects on land in adjoining residential or open space zones in relation to ventilation, views, building separation, solar access and light and to avoid overshadowing of windows, landscaped areas, courtyards, roof decks, balconies and the like*

The existing building presents to the street and the adjacent properties as a three storey brick building. The adjacent residential properties are identified as a higher density residential zone, having an interface with the Mixed Use zone.

The proposed lightwell roof is located generally within the centre of the building, and rises slightly above the existing building roof. While the roof will protrude into the building height plane, it will not be visible to surrounding the residential properties as it is set well back from all boundaries of the building and only extends approximately 800mm above the existing building roof. It is considered that the addition of the new roof area to the building will have no impact upon the compatibility of the building with the surrounding context, as it will not significantly alter the building form beyond its existing extent.

This addition to the building will provide greater internal amenity improvements for the building, without significantly altering the building form or having any impact upon the amenity or function of the adjoining residential properties. The new roof extends approximately 800mm above the existing roof, and as such, it will not be visible from the street or surrounding residential properties. The location ensures that it will not cast any increased shadow to surrounding property and does not increase the proximity of building form to the adjacent properties.

The primary function of the roof above the lightwell is to allow natural ventilation opportunities to the building, as well as increase natural light to the central area of the building floor plates. The lightwell space will not be habitable, and as such, there will be no opportunities for overlooking from the building to adjacent properties.

As such, the proposal is considered to be consistent with the objectives of the building height plane control, as it will not compromise the amenity of adjoining residential properties or result in any building elements that are incompatible with the existing residential context.

Compliance with Section 5(a)(i) and (ii) of the Environmental Planning and Assessment Act 1979

- (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,*

The proposal is considered to be consistent with the relevant objects of the Environmental Planning and Assessment Act 1979 (EP&A Act), as it ensures the continued compatibility of the existing building with the surrounding residential properties. Despite having a new building element constructed above the existing lightwell, this element is minor in context to the overall building, and is not visible from ground level at the surrounding street level or adjacent properties. As such, the proposal will not have any impact upon the amenity or function of surrounding residential properties.

The current application (DA 329/2011) seeks to reuse the existing building for educational activities, with minimal external alterations proposed. The proposed lightwell roof is proposed in order to allow for improved internal amenity for future use of the building, including natural ventilation and greater opportunity for natural light to internal spaces.

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

The new roof to the lightwell space is provided approximately 800mm above the existing roof height of the building and is the only part of the building to be elevated above its existing extent. While the new roof area protrudes outside the building height plane, it does not result in any impact upon the surrounding residential amenity by way of overshadowing, overlooking or loss of views. The extent to which the new roof protrudes into the applicable building height plane is

minimal, with well less than half of the new roof area located outside the identified height plane. Further, the roof is only 800mm above the existing roof height and is set back approximately 4 metres from both side boundaries.

Given the proposal results in a small portion of the roof area being outside the building height plane and that it will have no impact upon the surrounding residential amenity, it is considered that strict compliance with the applicable development standards for the building height plane under Clause 30(2)(c) is considered unnecessary in this instance

1.5 Conclusion

The non-compliance of part of the new lightwell roof to the building at 8-10 Berry Street, North Sydney with the development standards of Clause 30(2)(c) of North Sydney Local Environmental Plan 2011 is considered justified on the basis that:

- _ the proposed roof extends only approximately 800mm above the existing building roof, and is located generally within the centre of the floor plate well set back from side boundaries;
- _ the new roof will not provide any additional overshadowing, overlooking to adjacent residential properties;
- _ the new roof will not be visible from the immediate surrounds and will not result in any additional bulk or scale impacts, nor will it result in loss of views; and
- _ the variation is minor, and will not compromise the compatibility of the building within the surrounding mixed use context.

For these reasons above, it is considered that full compliance with the development standards for the building height plane within the Mixed Use zone is unnecessary and unreasonable for this development application, given the proposal is consistent with the objectives of the control.

Regards,



David Hunter
Senior Planner

Email dhunter@hassellstudio.com

-B

The General Manager
North Sydney Council
PO Box 12
North Sydney NSW 2059

6 October 2011

Attention: Susanna Cheng

Dear Susanna

**State Environmental Planning Policy No. 1 Objection – Floor Space Ratio
D/329/2011 – 8–10 Berry Street, North Sydney**

1.1_Overview

This SEPP 1 Objection seeks to vary the building height plane of the *North Sydney Council Local Environmental Plan 2001*. It is prepared by HASSELL on behalf of the Australian Catholic University (ACU) in relation to the proposed change of use and internal fit out of the existing building at 8-10 Berry Street, North Sydney.

1.2_SEPP 1-Development Standards

SEPP 1 permits variations to development standards where it can be demonstrated that *'strict compliance with those standards would, in any particular case, be unreasonable or unnecessary'* (refer SEPP 1, Clause 3).

Clause 8 of SEPP 1 outlines the matters which must be considered when assessing variation to a development standard:

- (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.*

1.3_Requirement for variation

This application seeks to vary Clause 31(2) of *North Sydney Local Environmental Plan 2001* (NSLEP 2001) which relates to floor space within the Mixed Use zone. This clause is outlined below:

(2) Floor space controls

A building must not be erected in the mixed use zone if the floor space ratio of the part of the building to be used for non-residential purposes is not within the range specified on the map.

1.4_Extent of Variation

The subject site is identified as having a non-residential Floor Space Ratio range of 3:1 to 4:1 on the *North Sydney Local Environmental Plan 2001* floor space map. The proposal seeks to change the existing use of the building from office to educational establishment, with a minor

increase in the floor area of the building with an additional 38sqm. This additional space is the result of rearrangement of internal space, as opposed to any new building floors or extensions.

The existing building has a total floor area of 1,668sqm and a non-residential FSR of 2.64:1. As a result of the proposal, the floor area will increase to 1,706sqm, with a non-residential FSR of 2.70:1. This FSR is slightly below the minimum FSR for the site of 3:1.

While the proposal does not meet the minimum FSR, it does not result in any increase in built form to the building and has no external impacts to the surrounding context. The proposal simply seeks to reuse the building in its present form.

As such, a variation to the floor space ratio standard under SEPP 1 is required to permit the use of the existing building for educational activities as sought under DA 329/2011.

1.5_Justitfication

The assessment of the variation takes into account the recent decision in *Wehbe v Pittwater Council* [2007] NSW LEC 827 which raised the following issues to be considered in a SEPP 1 variation:

- _ Is the planning control in question a development standard?*
- _ If so, what is the underlying object or purpose of the standard?*
- _ Is compliance with the standard consistent with the aims of the policy, and in particular, does compliance with the standard tend to hinder the attainment of the objects specified in s 5(a)(i) and (ii) of the Environmental Planning & Assessment Act 1979?*
- _ Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case? (A related question is: would a development which complies with the standard be unreasonable or unnecessary?)*
- _ Is the objection well founded?*

These issues are discussed in detail below.

Applicable development standard

As identified above, the applicable development standard is the floor space ratio control set out under Clause 31(2) of the NSLEP 2001.

Objectives of the development standard

The objectives of Clause 31 are identified as:

- (a) ensure a diverse mix of uses in each building in the mixed use zone, and*
- (b) minimise traffic generation from commercial development.*

The current application seeks to change the use of the building to educational establishment, and will comprise a variety of tertiary education activities. The proposed activity is considered to represent an appropriate future use of the building and will add to the variety and mix of land uses within the western portion of North Sydney Centre.

The proposal does not seek to significantly increase the floor area of the building as the existing area of the building is adequate for the ongoing educational activities proposed. Likewise, it will not result in any increase to the bulk or scale of the development which could have an impact upon the amenity of the adjacent residential properties.

As such, the proposal is considered to be consistent with the objectives of the floor space ratio control, as it ensures that a greater variety of land uses is provided within the mixed use zone, which contributes to diverse mix of activities. Notwithstanding this, the use of the existing building ensures that these new educational activities will not generate any significant impact upon residential amenity or the surrounding traffic function, by way of increased building bulk, scale or overshadowing or significant increase in vehicular traffic.

Compliance with Section 5(a)(i) and (ii) of the Environmental Planning and Assessment Act 1979

- (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,

The proposal will result in the building being provided for ongoing use as an educational building within a mixed use zone. The proposal is considered to represent an appropriate ongoing use of the building and contribute to a diverse land use mix in North Sydney. The area and form of the building is considered suitable for ongoing use for educational activities and as such it is not necessary to further extend the building for the new use.

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

The proposal seeks to reuse the existing building at 8-10 Berry Street, North Sydney in its existing form. Internal alterations will result in some minor increase in gross floor area which will have a minor increase in the floor space ratio. Despite this, the proposal is not compliant with minimum non-residential floor space ratio of 3:1.

The fact that the proposal has an FSR less than the specified minimum for the land is considered to be of little consequence to the surrounding context, as it will not modify the bulk, scale or form of the existing building, hence the development will not have any external impacts. Given the intent of the floor space ratio control is to assist in setting appropriate building form and scale, the existing impact in the surrounding context generated by the proposal is no greater than existing.

1.5 Conclusion

The non-compliance of the proposal at 8-10 Berry Street, North Sydney with the non-residential floor space development standards at Clause 31(2) of North Sydney Local Environmental Plan 2001 is considered justified on the basis that:

- _ the proposal does not result in an unacceptable bulk or scale for the site, as it does not increase the impact of the existing building in the surrounding context; and
- _ the proposal will have no external impact upon the surrounding locality.

For these reasons above, it is considered that full compliance with the development standards for the non-residential floor space ratio within the Mixed Use zone is unnecessary and unreasonable for this development application, given the proposal is consistent with the objectives of the control.

Regards,



David Hunter
Senior Planner

Email dhunter@hassellstudio.com

