

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

5 November 2012

Attn: Ms George Youhanna

SEPP 1 OBJECTION (BUILDING HEIGHTS & MASSING)

DA 272/12 Alterations and Additions to 8-10 Berry Street North Sydney

This SEPP 1 Objection seeks to vary a building heights and massing development standard in North Sydney Council Local Environmental Plan 2001 as it applies to 8-10 Berry Street North Sydney in regard to site area. This objection has been prepared on behalf of the proponent Australian Catholic University (ACU).

1.0 SEPP 1 – Development Standards

State Environmental Planning Policy No 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 to Clause 3).

Clause 8 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.*

2.0 Subject development standard

Clause 28D(2)(e) of North Sydney Local Environmental Plan 2001 (NSLEP 2001) establishes a minimum site area for the erection of a building within the North Sydney Centre:

(2) Building heights and massing

Consent must not be granted to the erection of a building within the North Sydney Centre, unless:

- (e) *the site area is not less than 1,000 square metres.*

3.0 Extent of Variation

The proposed development involves alterations and additions to an existing building at 8-10 Berry Street North Sydney within the North Sydney Centre. In particular, it is proposed to add three new storeys to an existing commercial building for which a change of use to educational establishment has been approved and commenced.

As the subject site has an area of 632sqm, a SEPP 1 Variation is required.

4.0 Justification for Variation of Standard

The assessment of the variation is structured around the issues raised in the decision in *Wehbe v Pittwater Council* [2007] NSW LEC 827 and Clause 8 of SEPP 1.

4.1 Is the planning control in question a development standard?

Yes- Development standard of building heights and massing controls are set out in clause 28D(2) of the NSLEP 2001. The controls include a minimum site area stipulated in clause 28D(2)(e).

4.2 If so, what is the underlying object or purpose of the standard?

The objectives of Clause 28D include to:

- (e) *promote scale and massing that provides for pedestrian comfort, in terms of weather protection, solar access and visual dominance, and*
- (f) *encourage consolidation of sites for provision of high grade commercial space and provision of public benefits.*

4.3 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 section 5(a)(i) and (ii) of the Environmental Planning and Assessment Act 1979?

In this instance non-compliance with the building height and massing standard would be consistent with the objectives of Clause 28D and of Section 5(a)(i) and (ii) of the *Environmental Planning and Assessment Act 1979* for the following reasons.

- _The proposed development relates to alterations and additions to an existing building in which pedestrian comfort will remain unaffected. Reaching a total of six storeys, the building will remain a modest structure in the streetscape.
- _The proposal will considerably improve the quality and appearance of the existing building.

4.4 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?)

Yes- Clause 28D(2)(e) establishes a minimum site area for development which is contrary to the site area of the existing building. Broadly, compliance with Clause 28D(2)(e) is unreasonable as it would prevent alterations and additions to an existing building.

In regards to the proposed development, compliance with the site area is considered unnecessary as the alterations and additions are to result in a high grade educational building.

4.5 Is the objection well founded?

Yes- In this instance non-compliance with the minimum site area is consistent with the matters for consideration in Clause 8 of SEPP 1, as the non-compliance would:

- _Not impact any matter of significance for State or regional environmental planning
- _Not be detrimental to the public benefit of the development standard as the minimum site area of 1,000sqm is completely unreasonable for alterations and additions to an existing building on a site which has an area of 632sqm.

5.0 Conclusion

As outlined in this SEPP 1 Objection strict adherence to the minimum site area as it applies to the subject site is unnecessary and unreasonable as the development standard sets a limit which is above the site area of the existing building. Construction of three additional storeys will improve the quality of the existing building consistent with the objective in clause 28D(1)(f). Therefore having regards to SEPP 1, non-compliance with the development standard is justified.

Regards



Silvija Smits
Principal

Mobile 0412 960 411
Email [ssmits @hassellstudio.com](mailto:ssmits@hassellstudio.com)