

**Objection under State Environmental Planning Policy No. 1 –
Development Standards**

Property Description: 5 – 15 Lamond Drive, Turramurra.

Development: Demolition and Construction of a Residential Flat
Building with Basement Car Park

Development Standard: Building Height

Introduction

The amended plans have been designed to comply with the maximum number of storeys and ceiling height development standards contained in the Ku-ring-gai Planning Scheme Ordinance (PSO) pursuant to clause 25K – Steep Slope Sites which allows a building to exceed the number of storeys and height by an additional storey and 3m. It is noted that the majority of the proposed buildings are 4 – 5 storeys with localised portions being 6 storeys being 4.8% of the building footprint.

The building height measured from natural ground is 4 – 6 storeys, with the majority of the basement levels below ground level- excluding minor extrusions due to the topography.

Clause 25I(9) of the PSO excludes levels exclusively used for car parking, storage and plant from being counted as storey. Due to the slope of the subject site the levels in section are a combination of car parking and residential dwellings. In this case, there is a technical non-compliance with the height control as the basement levels (below ground) are counted as a storey. The number of storeys based on this technical assessment is 4 –7 storeys.

A SEPP 1 objection is prepared due to the technical non-compliances with the development standards relating to building height contained in Clauses 25I(5), 25I(7), 25I(8) and 25K of the PSO.

The SEPP 1 Objection applies the principles established in *Winten Property Group Limited v North Sydney Council* (2001) NSW LEC 46 (6 April 2001) and further refined in *Wehbe v Pittwater Council* (2007) NSW LEC 827.

Is the planning control in question a development standard?

The development standards contained in Clauses 25I(5), 25I(7), 25I(8), 25I(9) and 25K of the Ku-ring-gai (PSO) are as follows:

Clause 25I(5) states:

Maximum number of storeys

Buildings on land to which this Part applies are not to have more storeys than allowed by the Table to this subclause.

Table

Maximum number of storeys

Site area	Maximum number of storeys
Less than 1,800m ²	3
1,800m ² or more but less than 2,400m ²	4
2,400m ² or more	5

Clause 25I(7) states:

Limit on floor area of top storey

In Zone No 2 (d3), where the maximum number of storeys permitted is attained, then the floor area of the top storey of a residential flat building of 3 storeys or more is not to exceed 60% of the total floor area of the storey immediately below it.

Clause 25I(8) states:

Subject to subclause (5) and clause 25K, buildings on land to which this part applies are not to have:

- (a) More storeys than the maximum number of storeys specified in Column 2 if the Table to this subclause, or*
- (b) Given the number of storeys in the building, a perimeter ceiling height greater than that specified in Column 3 of that Table.*

Zone	Maximum number of storeys	Calculation of maximum perimeter ceiling height	
	Number of storeys in a building (not including top storey with floor area reduced because of	Number of storeys in a building (not including top storey with floor area reduced because of	Maximum perimeter ceiling height of building (not including top storey with floor

	subclause (7) or attics, where applicable)	subclause (7) or attics, where applicable)	area reduced because of subclause (7) or attics, where applicable)
2(c1) and 2(c2)	2	1 2	4.5 metres 7.2 metres
2(d3)	4	1 2 3 4	4.5 metres 7.2 metres 10.3 metres 13.4 metres

Clause 25I(9) states:

Any storey which is used exclusively for car parking, storage or plant, or a combination of them, in accordance with the requirements of this Ordinance and no part of which (including any wall or ceiling which encloses or defines the storey) is more than 1.2 metres above ground level, is not to be counted as a storey for the purposes of the Table to subclause (8).

Clause 25K states:

Consent may be granted to a building on a site with a site slope greater than 15% that would:

- (a) exceed the number of storeys controls in clause 25I (8) by only one storey for up to 25% of the building footprint, or*
- (b) exceed the height controls in clause 25I (8), but only by up to 3 metres for up to 25% of the building footprint, or*
- (c) take advantage of the concessions conferred by both paragraphs (a) and (b), but only for up to the same 25% of the building footprint.*

The definition of a development standard is provided in Section 4 of the Environmental Planning and Assessment Act, 1979 (the Act) and the maximum number of storeys (building height), floor area of top storey and ceiling height are within this definition and enable further consideration under SEPP 1.

What is the underlying purpose of the standard?

It is contended that in the absence of specified objectives for the height controls the underlying purpose of the building height development standards are as follows:

- To ensure buildings do not result in unreasonable amenity impacts in terms of overshadowing, privacy, or view loss;
- To ensure development is consistent with the existing topographical setting of the site and the broader locality;
- To enable development with a compatible built form;

- To ensure development responds to the desired scale and character of the street and local area;
- To allow reasonable daylight access to all developments and the public domain; and
- To reduce the visual scale of the upper most level of buildings.

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

The variation to the building height development standards is a result of a technical interpretation of clause 25I(9) counting the basement car parking levels, that due to the slope of the site are at the same level as residential dwellings.

It is noted that the development proposal complies with the height control measured from natural ground. In this case the technical variation is acceptable in the circumstances of this case and compliance with the development standards are considered unreasonable and unnecessary based on the following:

- The development has been designed with basement levels below ground with the building stepping down to meet the slope of the site presenting a 4 – 5 storey building consistent with the height controls under the PSO.
- The proposal includes localized portions of the building being 6 storeys above ground level. The 6 storey portions of the buildings are 4.8% of the building footprint and complies with the clause 25K of the PSO.
- The basement levels below ground do not contribute to building height, bulk or scale and are required to meet the car parking requirements contained in the PSO. The basement levels of the building present no change to visual scale and form of the buildings.
- The development proposal complies with the density controls, notably controls pertaining to deep soil landscape area, site coverage and floor space ratio. The proposed FSR is 1.12:1 which is well below the permitted 1.3:1;
- The development proposal presents a four (4) storey built form to Lamond Drive and is compatible with the development at 1 – 3 Duff Street, the building under construction at 1440 Pacific Highway and 1 Lamond Drive, and the controls planned for the site;
- The majority of the building facades will be screened by the substantial number of trees surrounding the built form to ensure that the built form is subservient to the landscape setting;

- The technical interpretation of the height control counts the basement levels below ground and clearly these levels will not generate unreasonable amenity impacts to the adjoining properties with regard to overshadowing, loss of views/outlook or privacy impacts; and
- When viewed in elevation it can be seen that the development proposal presents a 4 – 5 storey building form with a recessed upper level consistent with the height controls under the PSO; and

Clause 25I of the PSO contains site requirements and development standards for multi-unit housing including heads of consideration, and these heads of consideration should also be considered as they partially inform the prescriptive controls. The heads of consideration are addressed as follows:

- (a) *The desirability to provide high proportion of deep soil landscape to the site area,*

Comment: The development proposal has been designed ensuring the building footprint is located over the basement car park providing 50.99% of the site as soft landscape area, noting that a substantial amount of existing vegetation is retained and rehabilitated.

- (b) *The impact of any overshadowing, and any loss of privacy and loss of outlook, likely to be caused by the proposed development,*

Comment: The building setbacks and landscaping ensures the development proposal will not result in a loss of privacy or outlook from the surrounding residential properties. The position of the buildings and orientation of the subject site ensures the proposal will not cast shadow onto adjoining residential properties and reduce solar access to adjoining properties to less than the required three (3) hours.

- (c) *The desirability to achieve an appropriate separation between buildings and site boundaries and landscape corridors along rear fence lines,*

Comment: The development proposal has a minimum 13 – 15m setback to Lamond Drive, a minimum 6m setback to the side boundaries, and 9m to the rear boundary allowing for deep soil landscape corridors surrounding the building.

- (d) *The environmental features that are characteristic of the zone in which the site is situated by requiring sufficient space on-site for effect landscaping,*

Comment: The proposal includes the retention of significant trees on the site that are identified as being part of the Blue Gum High Forest

ecological community. 50.99% of the site will be soft landscaped area and these areas are appropriately sized to be effective landscaped areas.

- (e) *The desirability of adequate landscaping so that the built form does not dominate the landscape,*

Comment: The development proposal complies with the deep soil landscaping of 50% and site coverage of 35% ensuring there are large areas surrounding the building to accommodate additional canopy tree planting contributing to the landscape setting of the locality. The design concept provides for the retention of the substantial landscape elements at the front and rear of the site and the built form steps down the site to be subservient to the landscape character.

- (f) *How principles of water cycle management can be applied to limit the impacts of runoff and stormwater flows off the site.*

Comment: The development proposal is supported by Stormwater Plans prepared by Northrop Consulting Engineers and designed with on-site detention and reuse storage.

Is compliance with the development standard consistent with the aims of the Policy?

It is contended that achieving technical non-compliance with the control is unreasonable in the present circumstances as the underlying objectives of the controls are achieved. This is consistent with the aims of the policy that seek 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 unnecessary or tend to hinder the attainment of the objects specified in section 5 (a) (i) and (ii) of the Act.

Moreover requiring technical compliance with the controls would serve to hinder the attainment of the following the objects of the *Environmental Planning and Assessment Act 1979*:

- (a) *to encourage:*

- (i) *the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,*

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

This SEPP 1 is made due to a technical interpretation of storey counting the basement levels that correspond to residential levels due to topography. It is noted that the development proposal is 4 – 5 storeys measured from the natural ground line, with localised minor portions of the building constituting 6 storeys complying with clause 25K of the PSO.

Is the objection well founded?

In *Wehbe v Pittwater Council (2007) NSW LEC 827* Preston CJ set out there were five (5) ways in which a SEPP 1 objection could be considered well founded, with the first of those being:

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

In that decision it was further noted that there is public benefit in maintaining planning controls and that SEPP 1 should not be used in an attempt to effect general planning changes throughout the area. This SEPP 1 objection does not attempt to affect the planning outcomes for the broader locality; rather it reflects a technical interpretation of the definition of storey noting the building complies with the height control contained in the PSO measured from natural ground.

In my opinion the SEPP 1 objection is well founded and as addressed the development proposal facilitates attainment of the Objects of the Act and does not hinder the achievement or the aims and objectives of the PSO. Accordingly the technical variation to the building height controls should be supported.



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