

Appendix C

SEPP 1 Objection: Cl. 30(2)(b) Building Height Plane



SEPP 1 Objection - Clause 30(2)(b) Building Height Plane

Amended DA

74-80 Alfred Street, Milsons Point

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Introduction

This Objection under State Environmental Planning Policy No.1 – Development Standards (SEPP 1) has been prepared by Urbis Pty Ltd on behalf of Bridge Hill Developments Pty Ltd. It is submitted to North Sydney Council (the Council) in support of a Development Application (DA) for the mixed use residential conversion of the existing commercial building at 80 Alfred Street, Milsons Point. This SEPP 1 Objection should be read in conjunction with the Statement of Environmental Effects (SEE) and supports design amendments to the DA, described in the addendum report prepared by Urbis Pty Ltd.

It relates to Clause 30(2)(b): Building Height Plane under the North Sydney Local Environmental Plan 2001 (the LEP).

This SEPP 1 Objection replaces the SEPP 1 Objection to the Clause 30(2)(b) of the North Sydney LEP 2001 submitted with the Development Application. A description of the amendments to DA126/2013 is provided in the addendum to the Statement of Environmental Effects prepared by Urbis dated July 2013.

1.1 THE EXISTING DEVELOPMENT CONTEXT

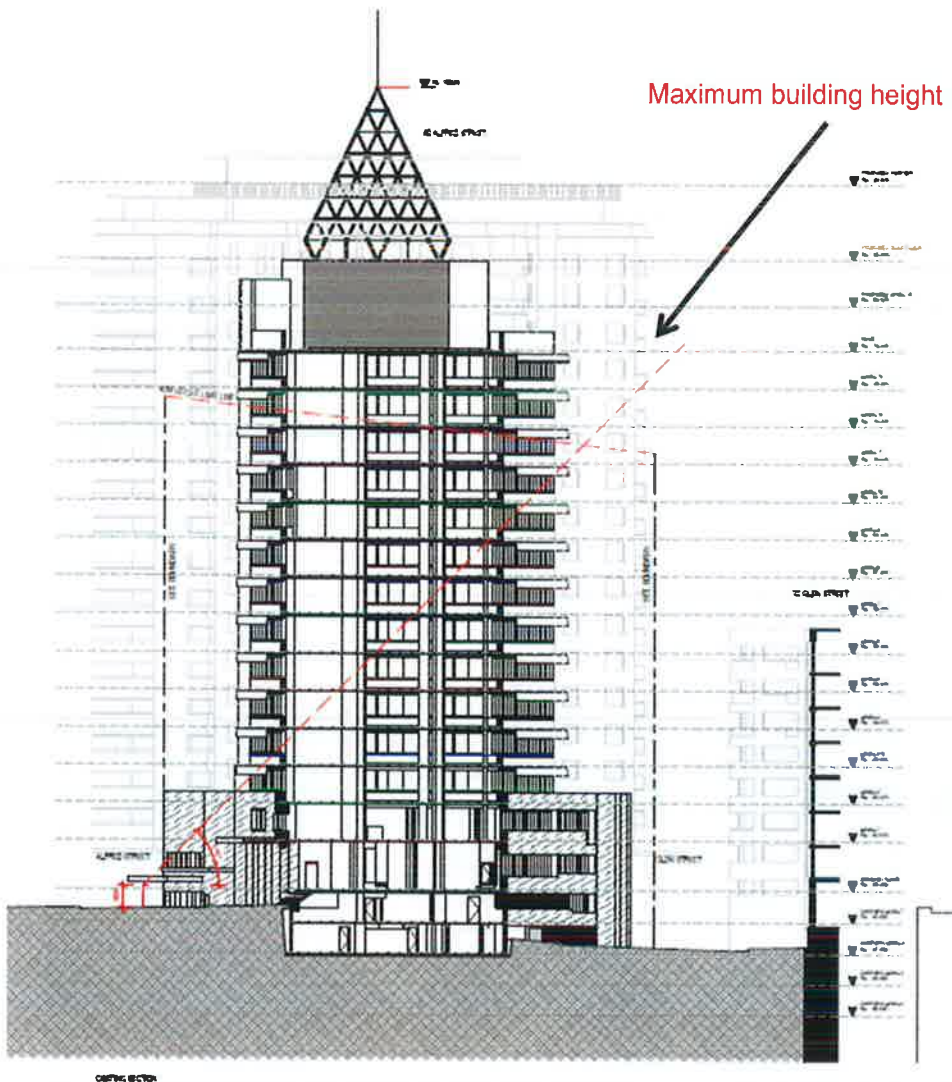
The site currently accommodates a 14 storey commercial building with an additional two storey plant room and a 13.5 metre steel roof structure. The existing building has a maximum height of approximately 75.3 metres (refer to Figure 1 below and Figure 2 overleaf).

FIGURE 1 – THE EXISTING BUILDING AT 80 ALFRED STREET



The existing building exceeds the maximum building height plane as illustrated in **Figure 2** below.

FIGURE 2 – NORTHERN ELEVATION OF THE EXISTING BUILDING AT 80 ALFRED STREET



It is noteworthy that Alfred Street is characterised by high rise buildings that significantly exceed the building height plane limit (refer to **Figure 3**). Strict application of the building height plane standard would have resulted in a substantially different built form scale and character than exists in the Alfred Street streetscape.

FIGURE 3 – EXISTING HIGH RISE DEVELOPMENT ON ALFRED STREET



The building height plan control is not reflected by the existing urban form on Alfred Street between Lavender Street and Dind Street, which all front Bradfield Park.

1.2 SEPP 1 FRAMEWORK

SEPP 1 enables Council to vary a development standard within the LEP 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* (the Act).

The current NSW Land and Environment Court (LEC) SEPP 1 considerations were set out by Chief Justice Preston, in the decision of *Wehbe v Pittwater Council* [2007] LEC 827. They are 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.*

This SEPP 1 Objection has been structured using these considerations.

1.3 IS THE PLANNING CONTROL A DEVELOPMENT STANDARD?

The development standard applicable to the Objection is found under Clause 30(2)(b) of the LEP, outlined as follows:

30 Building height plane

(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:

- (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,*

The building height has been calculated in accordance with the LEP height definition reproduced below:

‘height in relation to a building, means the greatest distance measured vertically from any point on the building to the existing ground level, or the level of the lowest habitable floor, immediately below that point, whichever is the lower, excluding chimneys.’

“Development Standards” has the following definition under Section 4(1) of the 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:

(amongst others)

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

(emphasis added)

As this SEPP 1 Objection relates to a departure from the numerical standard for maximum height it is considered that Clause 30(2)(b) of the LEP is a development standard and not a 'prohibition' in respect of development.

1.4 PROPOSED VARIATION TO THE STANDARD

The site is located fronting Alfred Street which adjoins land zoned Open Space under the LEP. It is requested that Council vary Clause 30(2)(b) of the LEP to enable non-compliance with the building height plane. **Figure 4** illustrates a building height plane measured 1.8m above the centre line of Alfred Street and projected at an angle of 45 degrees through the subject site. The proposal seeks approval for a variation to the extent illustrated in **Figure 4** below.

FIGURE 4 – THE EXISTING DEVELOPMENT AND THE PROPOSED ADDITIONAL VARIATION TO THE EXISTING UPPER LEVEL BUILDING ENVELOPE (NORTHERN ELEVATION)

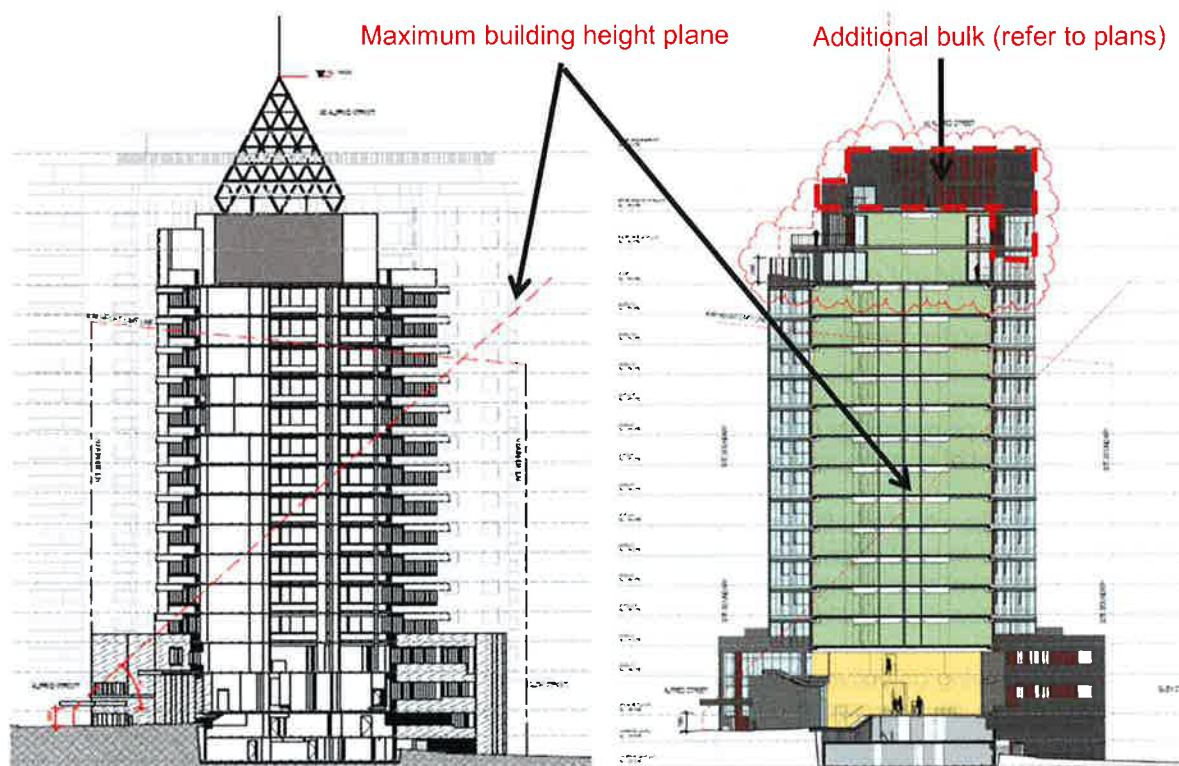
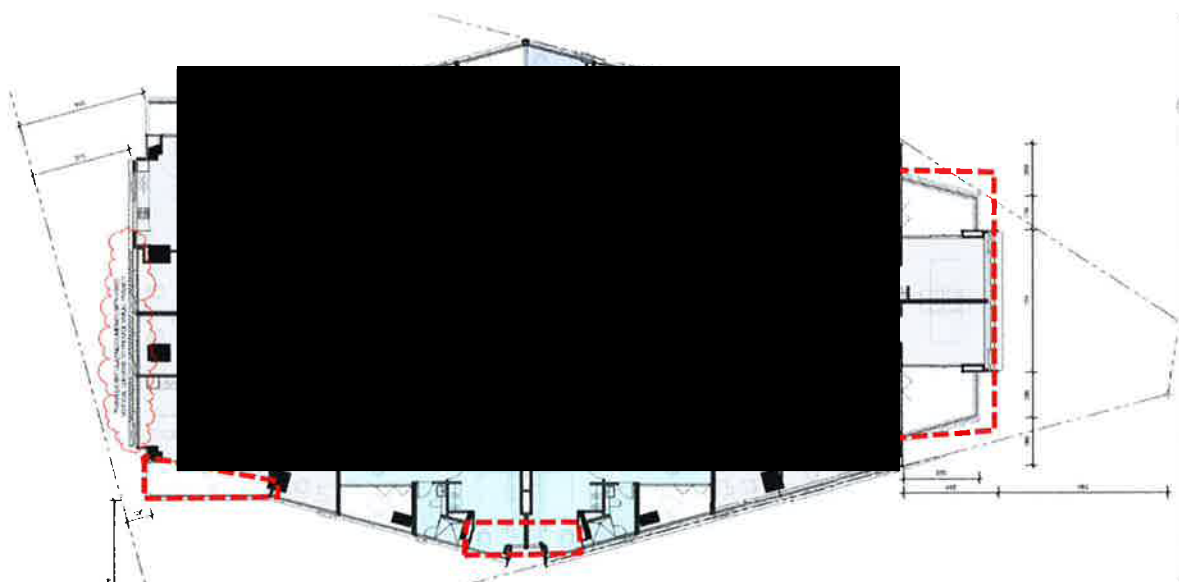


FIGURE 5 – FLOOR PLAN (L3 – 6*) ILLUSTRATING THE PROPOSED VARIATION TO THE EXISTING BUILDING ENVELOPE



*Note: Additional building bulk is also located on L7 – 13 consistent with the floor plan in

Figure 5.

The existing building, as shown above, is non-compliant with the building height plan control. The proposal seeks to amend the existing building envelope which will increase the building bulk above the maximum building height plane. This is a result of the following:

- Design requirements to accommodate appropriate habitable areas for future residents on the eastern façade (including bedrooms and balconies); and

- The conversion of the roof plant to two residential levels has resulted in a new plant level above to building height plane.

1.5 WHAT IS THE UNDERLYING OBJECT OR PURPOSE OF THE STANDARD?

The objectives of the building height plane development standard as detailed in Clause 30 (1) of the LEP are reproduced below:

(1) *Building height plane objectives*

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

- (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*

In summary, the underlying objective of the building height limit is to manage the scale of any future built form in order to mitigate any adverse impacts to the character and amenity of the surrounding area.

2 Is the Objection well founded?

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 are outlined below:

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 or 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.*

The following section demonstrates that the proposed development will achieve the objectives of the standard notwithstanding the non-compliance.

2.1 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 and open space zones,***

The proposed variation will not hinder the achievement of the objective and is consistent and compatible with the surrounding residential development and Bradfield Park as outlined below:

- The proposal is immediately adjacent to the 23 storey 'Grandview Apartments' residential building. The Grandview is located in the mixed use zone. The proposal does not adjoin any residential zones.
- The proposal will accommodate residential and commercial uses that are consistent with the existing uses of the adjacent and surrounding development. The addition of 129 dwellings in Milsons Point is likely to increase patronage of the Bradfield Park and North Sydney Olympic swimming pool.
- The proposed conversion of the existing roof plant level for two residential levels and new roof level above will not reduce the buildings' compatibility with the existing built form character along Alfred Street which accommodates high rise development of a similar or greater height to the proposed development.
- The shadow analysis demonstrates that there will be no additional impact on Bradfield Park at the winter solstice. There will be some minor additional overshadowing at the equinox and summer solstice, however this additional shadow is consistent with a building which complies with the 40m height limit that applies to the site. The proposal will result in a net reduction in shadows cast above 40m height limit, when compared to the existing building. The additional overshadowing has been assessed to have minimal impact on the existing public amenity of Bradfield Park, and is therefore considered to be acceptable in the circumstances. The shadow analysis is discussed in detail in the addendum to the SEE.

- (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 proposal is located in the mixed use zone; it does not adjoin any residential zones. Therefore, the following discussion addresses the impacts of the additional building bulk on Bradfield Park.

The shadow analysis demonstrates that there will be no additional impact on Bradfield Park at the winter solstice. The shadow analysis is discussed in detail in the addendum to the SEE, which find the overshadowing impact on Bradfield Park, will be minimal and will result in a net reduction in shadows, above the 40m height building throughout the year.

The proposal is consistent with the intent of the objective.

2.2 NORTH SYDNEY DRAFT LOCAL ENVIRONMENTAL PLAN 2012

Council resolved at its meeting of 18 February 2013, to adopt the Draft LEP and send it to the Department of Planning and Infrastructure with a request that the Minister make the plan. The Draft LEP does not contain a maximum building height plane control for the site. Therefore, it can be assumed that Council have abandoned the development standard and it does not form part of Council's future strategic plan for the site. Due to the current status of the Draft LEP, compliance with the building height plane control is not considered to be a significant matter when assessing the proposal.

3 Granting Consent is Consistent with the Policy's Aims

It has been demonstrated above that strict compliance with the development standards is considered both unreasonable and unnecessary in this instance. Further, the proposed variation will not hinder the attainment of the objects detailed in Section 5(a)(i) and (ii) of the Act as outlined below.

- 5(a)(i) to encourage 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.*

Notwithstanding the variation to the development standard, the proposal is generally consistent with the relevant planning policies and development controls that govern the development of the site. Where the proposal does vary from the Council's development controls, the SEE and the supporting documentation has demonstrated that there will be no unacceptable environmental impacts beyond those generated by the existing building.

Further, the proposal is located within the Global Sydney centre, adjacent to the Milsons Point Railway Station and other public infrastructure.

The additional building form above the building height limit will contribute to the provision of more housing in the North Sydney LGA close to employment and public transport connections. The provision of a range of studio, 1 bed, 2 bed and 3 bedroom dwellings will increase diversity, choice and affordability in an area with high amenity and connectivity.

The proposal is consistent with the Lavender Bay character statement which seeks to locate residential growth in the Milsons Point Town Centre.

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

The existing commercial building was constructed in the 1960's and does not make a positive contribution to the urban environment in this prominent location opposite Milsons Point Railway Station, Bradfield Park and the Harbour Bridge. The adaptive re-use of the existing structure to accommodate a mix of retail, commercial and residential uses represents an economical approach to utilising the existing asset.

The proposal will provide 129 new dwellings in a location that is entirely suitable for residential accommodation.

4 Other Matters for Consideration

4.1 MATTERS OF STATE OR REGIONAL SIGNIFICANCE

The proposed variation to the building height plane standard will not result in any inconsistencies with matters of State or regional significance.

The State Government's new Draft Metropolitan Strategy for Sydney 2031 has redefined Sydney's subregional boundaries and Milsons Point is located within the Central subregion. A key metropolitan priority for the Government is to intensify housing in locations along key transport corridors such as the North Shore railway line.

The proposal sits in the heart of the Global Economic Corridor. It is a key strategic site, as it is well connected to North Sydney and Sydney CBD, Macquarie Park and St Leonards. It is an attractive location for employees from any of these strategic centres within Global Sydney.

The Government have set a draft minimum target of 82,000 new dwellings in the Central subregion to 2031. The proposal is able to realise 129 new dwellings in a highly strategic location.

The provision of more homes in the Milsons Point will contribute to the vitality of the area and increase passive surveillance and safety in the area. The increase in population will also have flow on economic benefits as patronage of the local businesses will rise.

4.2 THE PUBLIC INTEREST

The proposed variation to the LEP building height plane is in the public interest for the following reasons:

- The proposal represents an opportunity to undertake a residential conversion of an existing commercial building that is tired and out-dated. The existing commercial building will be revitalised to accommodate residential dwellings consistent with the desired future character of the Milsons Point Town Centre.
- The proposed adaptive re-use is a sustainable approach to redevelopment and demonstrates design excellence in a highly visible location. The improvements to the existing building will enhance the quality of the public realm by reducing the amount of blank façade and providing active uses on the ground plane.
- The provision of 129 dwellings adjacent to the Milsons Point Train Station will increase train patronage and reduce car dependency. This will improve air quality and reduce energy use.
- The proposal is consistent with the objectives of the Draft Metropolitan Plan for Sydney 2031 to provide balanced growth that will contribute the achievement of the Central subregions minimum housing targets.

5 Conclusion

This SEPP 1 Objection demonstrates that Council and the Joint Regional Planning Panel can be satisfied that the proposed variation to the LEP building height limit development standard is justified. The key reasons are outlined below:

- The non-compliance will not hinder the achievement of the objects and purpose of the *Environmental Planning and Assessment Act 1979*.
- The objection is 'well founded' as the objectives of the standard are achieved notwithstanding the proposal's non-compliance;
- Strict application of the standard would be unreasonable and unnecessary in the circumstances;
- The proposed variation will not result in any significant adverse impacts on the amenity of the neighbouring residential dwellings or Bradfield Park, in terms of views, wind, solar access and privacy;
- It will assist in achieving strategic planning goals for the site;
- The proposed height of the building is consistent with the scale of development fronting Alfred Street, Milsons Point;
- Approval of the development would not result in an undesirable precedent; and
- The building height plane control is not contained within the Draft LEP signalling Council's intention that it should no longer be a development standard, and therefore should not be given determinative weight in the Council's assessment.

It is therefore requested that the Council recommend that the proposed development is recommended for approval by the Joint Regional Planning Panel.

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