



Appendix B

SEPP 1 Objection: Cl. 29(2) Building Height



SEPP 1 Objection - Clause 29 (2) Building Height

Amended DA126/2013

74-80 Alfred Street, Milsons Point

July 2013

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1 Introduction

This Objection under State Environmental Planning Policy No.1 – Development Standards (SEPP 1) has been prepared by Urbis Pty Ltd on behalf of BridgeHill Milsons Point 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) prepared by Urbis and the DA documents submitted to Council.

It relates to Clause 29 (2) under the North Sydney Local Environmental Plan 2001 (the LEP).

This SEPP 1 Objection replaces the SEPP 1 Objection to the Clause 29(2) of the North Sydney Local Environmental Plan (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

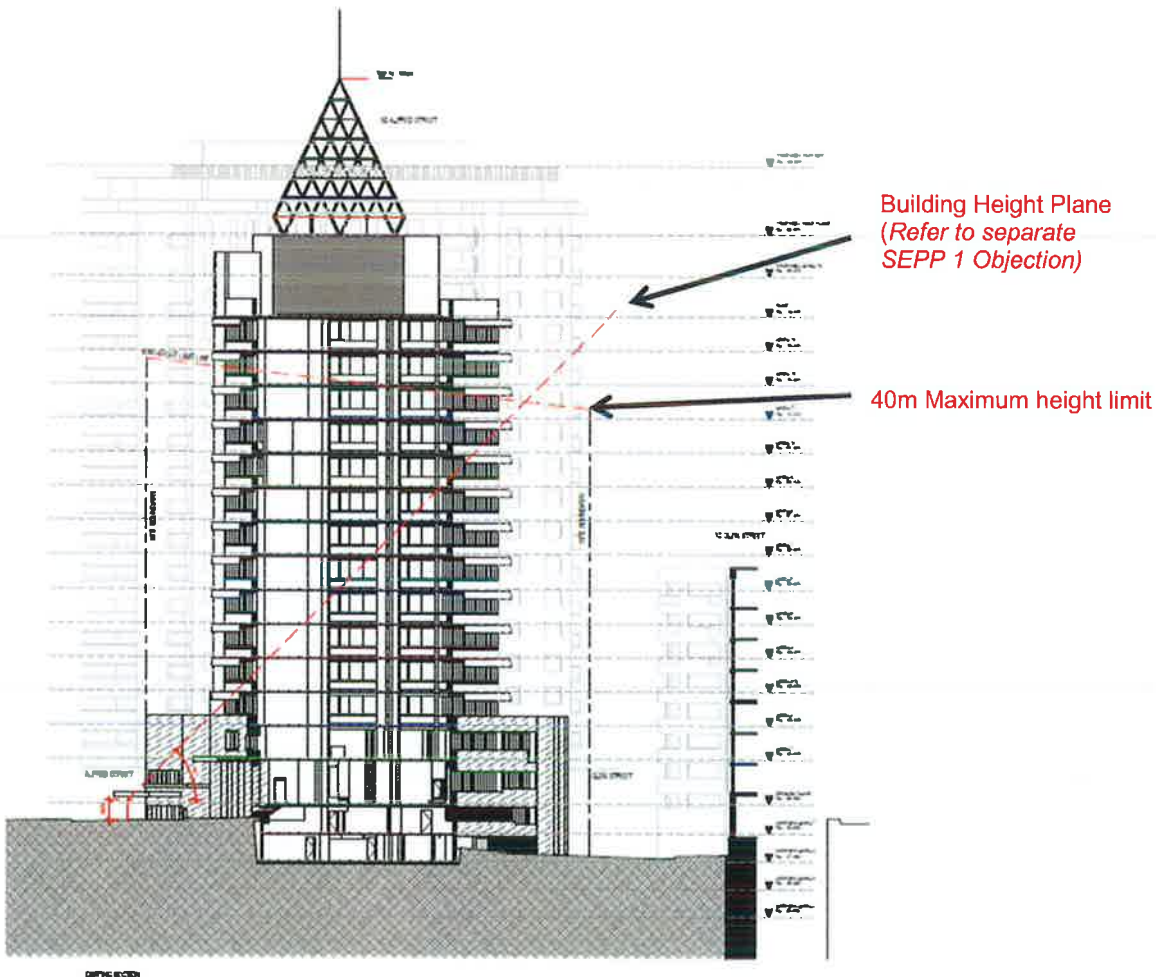
The site currently accommodates a 14 storey commercial building with an additional two storey plant room and a 13.5 metre steel roof structure. The existing building has a maximum height of approximately 75.3 metres above existing ground level (refer to **Figure 1** below and **Figure 2** overleaf).

FIGURE 1 – THE EXISTING BUILDING AT 80 ALFRED STREET



The existing building exceeds the maximum height limit by 35.3 metres to the top of the roof structure (refer to **Figure 2**).

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



Alfred Street is characterised by high rise buildings many which significantly exceed the 40 metres height limit (refer to **Figure 3**).

FIGURE 3 – EXISTING HIGH RISE DEVELOPMENT ON ALFRED STREET.



The 40 metre height limit is not reflected by the existing urban form on Alfred Street between Lavender Street and Dind Street, which generally exceeds the height limit.

1.2 THE SITE

The site is irregular, almost triangular in shape, and is legally described as Lot 1 DP 499547 and Lot 2 DP 547912 (refer to Figure 4).

FIGURE 4 – LOT AND DEPOSITED PLAN



The site has a cross fall of approximately 11m from north-east to south-west. Refer to site survey at **Figure 3** and submitted with the development application.

FIGURE 5 – SITE SURVEY.



1.3 SEPP 1 FRAMEWORK

SEPP 1 enables Council and the Joint Regional Planning Panel 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 having regard to these considerations.

1.4 IS THE PLANNING CONTROL A DEVELOPMENT STANDARD?

The Environmental Planning Instrument to which this Objection relates is the LEP. The applicable development standard applicable is found under Clause 29 (2) of the LEP, outlined as follows:

29 Building height

(2) Building height controls

A building must not be erected in the mixed use zone in excess of the height shown on the map.

The LEP height map has a 40 metre height limit for the subject site.

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,

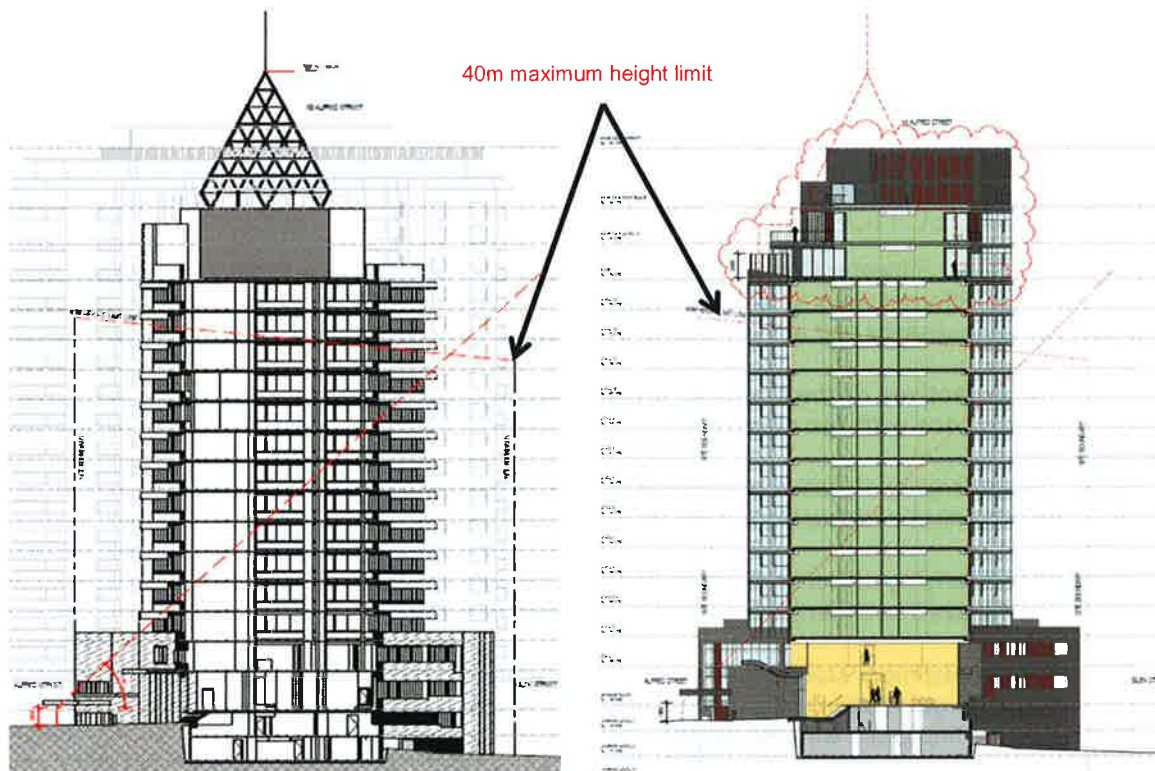
(emphasis added)

As this SEPP 1 Objection relates to a departure from the numerical standard for maximum height it is considered that Clause 29 (2) of the LEP is a development standard and not a 'prohibition' in respect of development.

1.5 PROPOSED VARIATION TO THE STANDARD

The proposal seeks approval for a development with a maximum height limit ranging from 44.67m fronting Alfred Street to 63m fronting Glenn Street which is 4.67m – 23m above the development standard measured in accordance with the LEP height definition (refer to **Figure 6**).

FIGURE 6 – THE EXISTING AND PROPOSED VARIATION TO THE LEP BUILDING HEIGHT LIMIT (NORTHERN ELEVATION)



The proposal will reduce the overall height of the existing building by 7.5 metres. The proposal seeks to replace the roof plant with two residential levels (with an increased footprint at those levels (14 and 15) and provide a new roof plant level to the building.

This will result in additional building bulk on the upper levels above the 40 metres height limit.

1.6 WHAT IS THE UNDERLYING PURPOSE OF THE STANDARD?

The objectives of the building height development standard as detailed in Clause 29 of the LEP are reproduced below:

- (1) *Building height objectives*

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

- (a) *ensure compatibility between development in the mixed use zone and adjoining residential areas and open space zones, and*
- (b) *encourage an appropriate scale and density of development for each neighbourhood that is in accordance with, and promotes the character of, the neighbourhood, and*
- (c) *provide reasonable amenity for inhabitants of the building and neighbouring buildings, and*
- (d) *provide ventilation, views, building separation, setback, solar access and light and to avoid overshadowing of windows, landscaped areas, courtyards, roof decks, balconies and the like, and*
- (e) *promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient, and*
- (f) *avoid the application of transitional heights as justification for exceeding height controls.*

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. Each of these objective are addressed below.

1.7 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.

1.8 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 areas and open space zones,***

The amended proposal will not hinder the achievement of the objective and is consistent and compatible with the surrounding residential development (within the mixed use zone) and Bradfield Park (zoned open space) as outlined below:

- The amended proposal is immediately adjacent to the 23 storey 'Grandview' residential building. The Grandview is located in the mixed use zone. The proposal does not adjoin any residential zones.
- The amended 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 amended proposal with the conversion of the existing roof plant zone to accommodate two levels of residential dwellings and the new roof plant level 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 existing and proposed buildings.
- The shadow analysis demonstrates that there will be no additional impact on Bradfield Park at the winter solstice (21 June). There will be no net increase in overshadowing at the equinox (21 March and 21 September) and summer solstice (21 December) above the 40m height limit. 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 Statement of Environmental Effects.
- Shadow analysis of the proposal impact on Grandview Apartments at 70 Alfred Street demonstrates that the proposed variations will not prevent northern façade of the Grandview Apartments receiving the minimum 2 hours solar access at 21 June as recommended by the NSW Residential Flat Design Code 2002 (RFDC) guidelines, where those units currently receive this standard of solar access.

(b) encourage an appropriate scale and density of development for each neighbourhood that is in accordance with, and promotes the character of, the neighbourhood,

The proposal is located in the Milsons Point Town Centre. The proposed variation will not hinder the achievement of the objective as outlined below:

- Alfred Street, Milsons Point is characterised by high rise commercial and residential development of a similar scale and height (refer to **Figure 3** above). The additional residential levels and the roof plant is setback from the eastern parapet of the building, which reduces its scale and impact on the Alfred Street pedestrian environment. The architectural expression and treatment of the roof plant will increase the recessive nature of the roof plant.
- The proposal is generally consistent with the North Sydney DCP 2002 character statement. The character statement outlines the desired future outcome for development and states that:

'Also on the shores of Lavender Bay is Milsons Point consisting of a number of multi storey residential and mixed use towers located at the base of the Sydney Harbour Bridge surrounded by landmarks such as Luna Park, Bradfield Park and North Sydney Pool...

Residential growth in accordance with the Residential Development Strategy is mainly accommodated in the mixed use core of Milsons Point Town Centre.'

- The proposal is generally consistent with the requirements of the character statement. Where the proposal varies from the numeric controls (i.e. building separation, solar access, and building setback above podium), it has been demonstrated that the proposal will not hinder the intent of the controls through any significant material impacts to the amenity of the adjacent Grandview Apartments or the public domain. This is discussed in further detail under Section XX of the Addendum SEE.

(c) provide reasonable amenity for inhabitants of the building and neighbouring buildings,

- Refer to the response to Objective (d) directly below.

(d) provide ventilation, views, building separation, setback, solar access and light and to avoid overshadowing of windows, landscaped areas, courtyards, roof decks, balconies and the like,

The planning assessment in the addendum SEE demonstrates that the proposal will not create any unacceptable environmental impacts to the surrounding area. The following discussion summarises the key issues relevant to this objective.

Views

The proposal will provide excellent views for the future residents to the following landmarks and vistas:

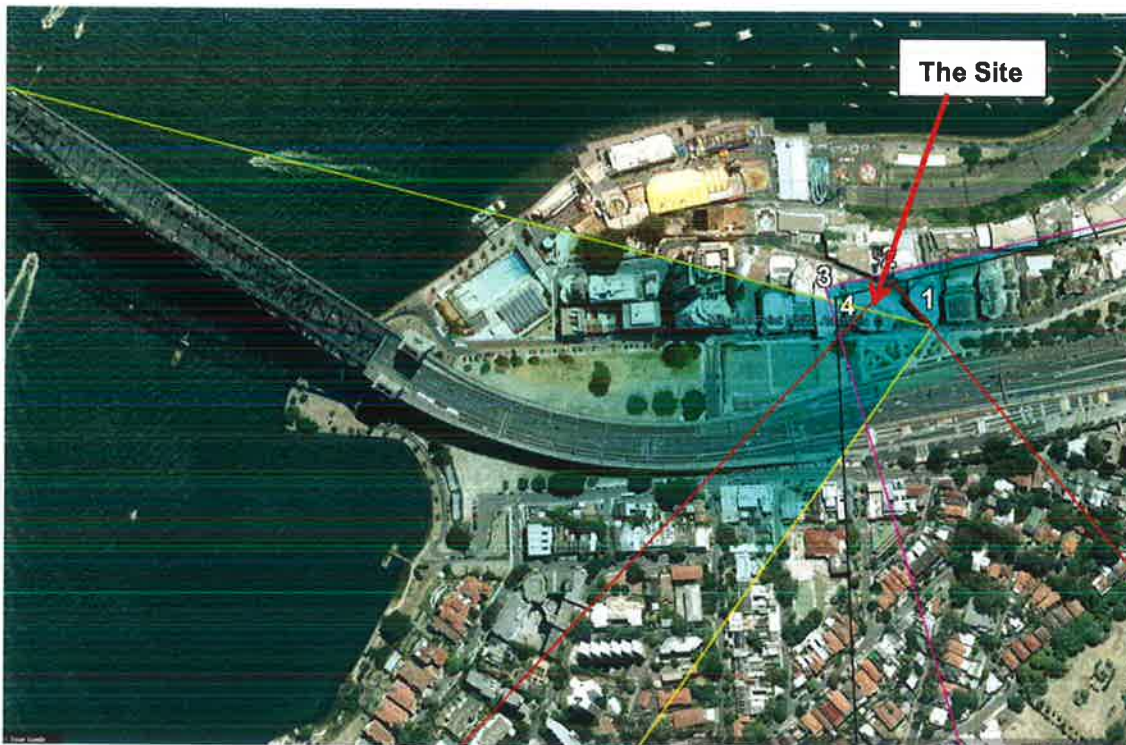
East: Neutral Bay, Kirribilli and the Lower North Shore; Sydney Harbour, the harbour foreshore and the Opera House; and the Eastern Suburbs.

West: Lavender Bay and the Inner Harbour; Walsh Bay; the Inner West; and the Lower North Shore.

A visual impact analysis has been undertaken for the Development Application. It modelled the proposal as viewed from the surrounding residential buildings (refer **Figure 7**), namely:

- 30 Glen Street (1);
- 12 Glen Street (2); and
- 70 Alfred Street (Grandview) (3 & 4).

FIGURE 7 – SURROUNDING PROPERTIES AND EXISTING VIEWS



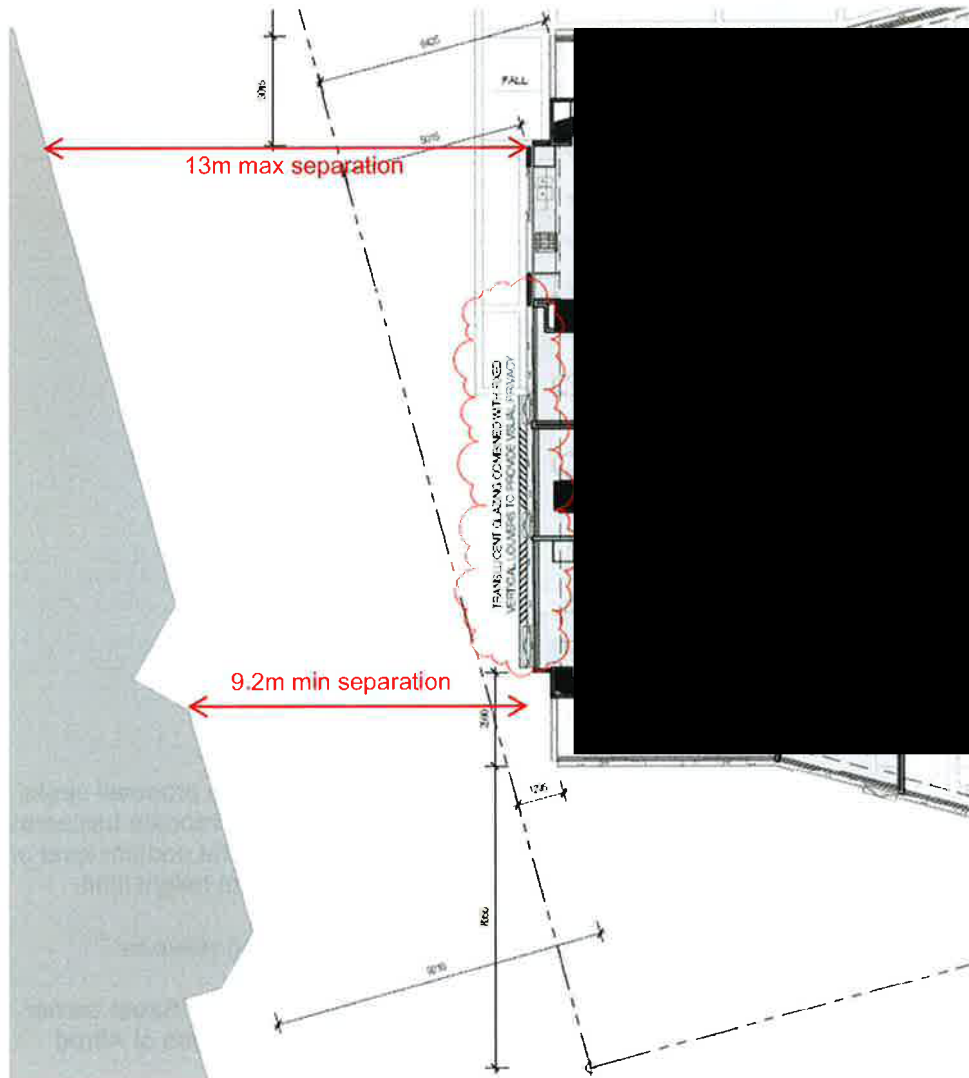
An assessment of the proposal's impact on the existing views enjoyed by the surrounding residential properties was undertaken in accordance with the four step approach to view sharing and view loss as outlined by Roseth SC in *Tenacity Consulting Pty Ltd v Warringah* [2004] NSWLEC 140. The assessment found that the additional building bulk located above the 40 metre maximum height limit would not result in any unacceptable view loss from any of the surrounding residential buildings. The application of the four step approach and the findings of the assessment are discussed in further detail under the Addendum SEE, having regard to the amendments made to the proposed development

The proposal is considered to meet the intent of this objective.

Provide Building Separation

The existing building separation from the commercial tower to the Grandview Apartments to the south varies from 9.2 metres at its closest point to 13.0 metres (refer to **Figure 8**). The existing building separation does not comply with the recommendations of RFDC.

FIGURE 8 – BUILDING SEPARATION



The proposal seeks to provide new balconies on the eastern and western facades, above the 40 metre height limit, that will create additional habitable space that is non-compliant with the separation distance recommendations. The proposal has been designed to mitigate the potential privacy impacts and is considered acceptable for the following reasons:

- There is no change to the existing building separation distance;
- The southern façade is composed of translucent combined with fixed vertical louvers to avoid opportunities for overlooking (Refer to **Figure 8** and **Figure 9**); and
- The tower buildings are sited at angles reducing the ability for direct viewing into habitable rooms.

The proposal is considered to meet the intent of this objective in relation to visual privacy.

FIGURE 9 – DETAILED SOUTHERN FACADE



Setbacks

The building complies with the zero street setbacks at Ground, Level 1 and Level 2. The proposal seeks to vary the existing building envelope to allow additions to the northern façade to accommodate balconies and bedrooms. This results in the proposal encroaching within the 3m setback above the podium level on the northern façade. This includes Levels 11, 12 and 13 which are above the maximum height limit.

The variation is considered minor and acceptable in the circumstances for the following reasons:

- The proposed design achieves an improved architectural resolution at Alfred and Glen Street corner. The corner treatment enhances the buildings presence and relationship with the junction of Alfred Street and Glen Street and to the development to the north;
- There will be no additional wind impacts at the street level as outlined under Section 7.11 in the SEE;
- There will be no unacceptable impacts on view sharing from adjacent residential dwellings as outlined in the addendum to the SEE and summarised above.
- There will be no unacceptable impacts on solar access to Bradfield Park, as demonstrated under the addendum to the SEE.

The proposal is considered to meet the intent of this objective.

Provide Solar Access and Light

The additional building bulk located above the 40 metre height limit will have minor and acceptable impacts on the existing provision of sunlight to Bradfield Park and Grandview Apartments.

- As stated under Objective (a) above, the impacts to Bradfield Park have been assessed to be acceptable in the circumstances. The proposal will result in a net reduction in shadows of Bradfield Park when compared to a complying development; and

- Shadow analysis has been undertaken to understand the additional impact the proposal will have on solar access to the Grandview Apartments. An assessment of the additional impact is provided in the addendum to the SEE. The assessment found that whilst there will be additional overshadowing to apartments on the upper levels of the Grandview Apartments the proposal will not result in the reduction of solar access to less than 2 hours of solar access at midwinter to meet the SEPP 65 Residential Flat Design Code 'rule of thumb'.

The proposal is considered to meet the intent of this objective.

Avoid overshadowing of windows, landscaped areas, courtyards, roof decks, balconies

As stated directly above, the additional building bulk proposed above the 40 metre height limit will create some additional overshadowing of the northern façade of the Grandview Apartments. These areas will not result in a reduction in solar access to less than 2 hours, where apartments currently experience at least this minimum standard.

The proposal is considered to meet the intent of this objective.

(e) *promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,*

- The proposal will reduce the overall height of the existing building.
- The natural gradient of the land slopes steeply away from Alfred Street west to Lavender Bay.
- The existing high rise development along Alfred Street maintains a relatively consistent height and frontage to Alfred Street.
- The height of the existing development on the western side of Glen Street is stepped down considerably - reflecting the natural land fall to Lavender Bay.

The proposed variation to the building height limit is consistent with the purpose of the objective.

(f) *avoid the application of transitional heights as justification for exceeding height controls.*

The proposal does not involve a transitional height justification. Many existing buildings, including the subject site, exceed the 40m height limit.

Summary

The discussion above has demonstrated that the proposed additional building bulk above the 40 metre height limit will not prevent the achievement of the Council's building height objectives. Therefore, for the reasons outlined above, strict compliance with the LEP building height limit is considered to be unreasonable and unnecessary in the circumstances of this development application.

2 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 bulk 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.

3 Other Matters for Consideration

3.1 MATTERS OF STATE OR REGIONAL SIGNIFICANCE

The proposed variation to the building height 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.

3.2 THE PUBLIC INTEREST

The proposed variation to the LEP building height limit will not contravene any matters of 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.

4 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 well founded and justified. The key reasons are outlined below:

- The objection is 'well founded' as the objectives of the standard are achieved notwithstanding the proposal's non-compliance with the standard;
- Strict application of the standard would be unreasonable and unnecessary in the circumstances;
- The proposed variation will not result in any adverse impacts on the amenity of the neighbouring residential dwellings or Bradfield Park;
- The proposal is consistent with the desired future character of Lavender Bay and the Milsons Point Town Centre;
- The proposal is consistent and compatible with the existing urban form along Alfred Street, Milsons Point; and
- It will assist in achieving strategic planning goals for the site.

It is therefore requested that the Council support the proposed variation to Clause 29(2) of the NSLEP and recommend the proposed development for approval by the Joint Regional Planning Panel.

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