

Expansion of Scalibrini Village, Chipping Norton

State Environmental Planning Policy No. 1 Development Standards, Objection - Building height standard (SEPP HSPD, clause 40(4)(a) and (b))

1.0 Introduction

This State Environmental Planning Policy No. 1 - Development Standards (**SEPP 1**) Objection accompanies a Development Application (**DA**) for expansion of Scalibrini Retirement Village which is located at 199 Epsom Road, Chipping Norton (the **site**).

This SEPP 1 objection justifies a proposed departure from the 8m and two storey building height standards for residential care facilities (**RCFs**) pursuant to State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (**SEPP HSPD**), cl. 40(4)(a) and (b).

This objection demonstrates that compliance with the building height standards is unreasonable and unnecessary in the circumstances of this case.

2.0 Proposed departure

As detailed in the Statement of Environmental Effects (**SEE**) by Robinson Urban Planning, proposed Building D breaches the 8m and two storey height standards in SEPP HSPD as shown in **Table 1**.

The extent of non-compliance is illustrated by on the architectural elevations by ThomsonAdsett (see attached DA45). Only a very small portion of Building D reaches the maximum height of 14.0m where the site falls steeply towards Council Reserve Road (see attached DA06).

Table 1: Height in zones where residential flat buildings are not permitted (SEPP HSPD, cl. 40(4))

SEPP HSPD standard (cl. 40(4))		Proposed Building D	
If residential flat buildings are not permitted:			
(a)	8 metres or less	x	10.8m – 14.0m
(b)	a building that is adjacent to a boundary of the site ...must be not more than 2 storeys in height, and	x	3 storeys
(c)	a building located in the rear 25% area of the site must not exceed 1 storey in height.	✓	

2.0 SEPP 1 considerations

In accordance with the provisions of SEPP 1 and the decisions in *Wehbe v Pittwater Council* (2007) NSWLEC 827, *Hewitt v Hurstville Council* (2001) NSWLEC 294, *Winten Property Group Limited v North Sydney Council* (2001) NSWLEC 46 and *Hooker Corporation Pty Limited v Hornsby Shire Council* NSWLEC 2 June 1986, unreported, an objection under SEPP 1 should consider the following matters:

- 1) What is the planning control and is it a development standard?
- 2) What is the underlying object or purpose of the standard?
- 3) Is compliance with the development standard consistent with the aims of the Policy, and in particular does compliance with the development standard tend to hinder the attainment of the objects specified in s. 5(a)(i) & (ii) of the *Environmental Planning and Assessment Act, 1979 (EPA Act)*?
- 4) Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?
- 5) Is the objection well founded?

These questions are addressed below.

1) What is the planning control and is it a development standard?

This objection relates to the building height development standards at cl. 40(4)(a) and (b) of SEPP HSPD. Clause 40(4) sets three height standards for residential care facilities in zones where residential flat buildings are not permitted (the proposal complies with part (c)):

(4) Height in zones where residential flat buildings are not permitted

If the development is proposed in a residential zone where residential flat buildings are not permitted:

- (a) *the height of all buildings in the proposed development must be 8 metres or less, and*
- (b) *a building that is adjacent to a boundary of the site (being the site, not only of that particular development, but also of any other associated development to which this Policy applies) must be not more than 2 storeys in height, and*
- (c) *a building located in the rear 25% area of the site must not exceed 1 storey in height.*

(5) Development applications to which clause does not apply

Subclauses (2), (3) and (4) (c) do not apply to a development application made by any of the following:

- (a) *the Department of Housing,*
- (b) *any other social housing provider.*

The height control is not framed as a prohibition. The control is therefore a *development standard*¹ as defined at s. 4 of the EPA Act (part (c) of the definition refers to height).

2) What is the underlying object or purpose of the standard?

The objectives of the height standards are not expressly stated in SEPP HSPD, but it is reasonable to assume that they relate to:

- Preservation of amenity for adjoining residents (privacy, solar access, outlook and views)
- Avoidance of an abrupt change in the scale of development in the streetscape (as indicated by the note to cl. 40(4)(b))
- To provide greater flexibility in the application of development standards for *social housing providers*² (see cl. 40(5) above).

The proposal satisfies these assumed objectives as the wings to proposed Building D are setback a minimum of 13.5m and 14.2m from the side boundary to the adjoining residential lots at 209-217 Epsom Road. Existing and proposed planting is provided along the side boundary. As detailed in the SEE (Section 6.2) and summarised below, the impacts of the proposal on the amenity of the adjoining residents are reasonable:

Privacy

- Proposed setbacks/landscaping minimises sightlines and overlooking from proposed Building D to the adjoining houses (the wings to proposed Building D are setback a minimum of 13.5m and 14.2m from the side boundary to 209-217 Epsom Road)

¹ Pursuant to the EPA Act, s. 4:

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:

...

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

² Pursuant to SEPP HSPD, cl.3:

social housing provider means any of the following:

- (a) the New South Wales Land and Housing Corporation,
- (b) the Department of Housing,
- (c) a community housing organisation registered with the Office of Community Housing of the Department of Housing,
- (d) the Aboriginal Housing Office,
- (e) a registered Aboriginal housing organisation within the meaning of the Aboriginal Housing Act 1998,
- (f) the Department of Ageing, Disability and Home Care,
- (g) a local government authority that provides affordable housing,
- (h) a not-for-profit organisation that is a direct provider of rental housing to tenants.

- This achieves a distance separation well above the 12m recommended by the *Residential Flat Design Code* that accompanies SEPP 65
- RCF rooms are not provided with balconies and in general do not give rise to significant overlooking concerns
- Communal balconies on Levels 1 and 2 are setback a minimum of than 30m from the side boundary.

Solar access

- The shadow impact of proposed Building D (three storeys) is comparable with an alternate two storey building
- In midwinter, the rear private open spaces to the adjoining dwellings will enjoy unrestricted solar access until around 1pm.
- There is no overshadowing of internal living spaces.

Outlook

- Proposed Building D presents two narrow fingers to the side boundary and sites the longer main wing well away from the adjoining residents
- As demonstrated by the sections at DA05 (SEE, **Appendix B**), sightlines to proposed Building D from the adjoining dwelling houses are limited.

Views

- There are no views (public or private) over the site.

Streetscape

- As demonstrated by the sections at DA05 (SEE, **Appendix B**), sightlines to proposed Building D from Epsom Road are restricted by distance and the intervening houses at 209-217 Epsom Road. As such, there will be no abrupt change in scale (existing buildings on the site have two storeys and pitched tile rooves).

It is also noted that Scalibrini is a not for profit organisation. It does not strictly meet the SEPP HSPD definition of a *social housing provider* as only some of its accommodation is provided on a rental basis. Notwithstanding, it is appropriate to provide flexibility in the application on the SEPP HSPD height development standards given the not for profit status of the applicant.

3) Is compliance with the development standard consistent with the aims of the Policy, and in particular does compliance with the development standard tend to hinder the attainment of the objects specified in section 5(a)(i) and (ii) of the EP&A Act?

Clause 5(a)(i) and (ii) of the EPA Act state:

The objects of the Act are:

(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,

Contrary to the objects of the EPA Act, compliance with the 8m and two storey height standards would necessitate redistribution of the proposed additions necessitating some or all of the following:

- Reduced setbacks to the adjoining dwellings at 209-217 Epsom Road. This would increase the potential loss of privacy, solar access and outlook for adjoining residents.
- If the proposed GFA was preserved, the building footprint/site cover would need to increase, reducing the landscaped area and compromising the Village's garden setting.
- If the GFA was reduced to achieve compliance, the proposed increase in aged care beds (+47 beds) would reduce considerably. This would reduce the social/community benefits of the proposal and jeopardise its viability/commencement.
- If the GFA was reduced, but the number of aged care beds was retained, there would be pressure to provide beds on the ground floor (the flood protection measures include locating all existing and future residents on Levels 1 and 2).

Given the above points and the consistency of the proposal with the assumed objectives of the height standard, compliance with the building height development standards would tend to hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the EPA Act as it would increase the impacts of the proposal.

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

In this instance, strict compliance with the building height development standards is **unreasonable** given the:

- Site constraints (in particular flooding, foreshore building line, easement to drain water and existing buildings) which limit siting options and the available footprint
- Topography of the site, which falls steeply near Council Reserve Road
- Reasonable impacts of the proposal
- Merit of providing additional and improved aged care beds
- Compliance of the proposal with the FSR development standard at cl. 48(b) of SEPP HSPD (1:1 permitted and 0.64:1 proposed) demonstrating that the proposal has not utilised the floor space potential of the site
- Scalibini is a not for profit organisation.

5) Is the objection well founded?

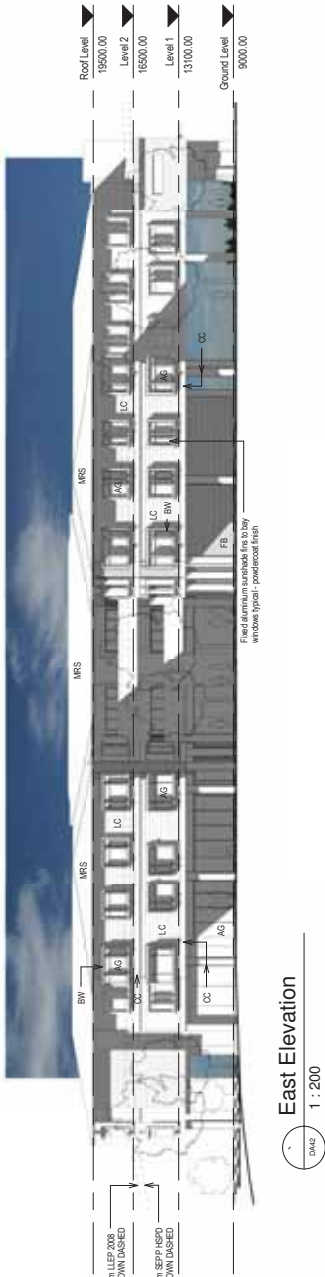
For the reasons set out above, the proposed departure from the building height development standards is well founded.

Conclusion

Whilst proposed Building D does not strictly comply with the building height developments standard in SEPP HSPD, cl. 40(4)(a) and (b); it nevertheless satisfies the five SEPP 1 tests established by the Court.

Compliance with the development standards is therefore unreasonable in the circumstances of the case.

LEGEND - ELEVATIONS	
AG	Aluminium framed glazing
BW	Bay window projection - metal / lightweight cladding
CC	Concrete column/slab edge - paint finish
FB	Face brickwork
LC	Lightweight fibrocement cladding with horizontal expression - paint finish
MC	Metal wall cladding with vertical expression
MRS	Metal roof sheeting



REV.	DATE	DESCRIPTION	DRAWN	CHECKED	DATE
A	16/03/2013	Revised Approved Name			
4	13/04/2013	Revised D5 Issue			
2	18/03/2013	Revised D5 Issue			
1	04/03/2013	Preliminary Issue			

Scalabrini Village

RETIREMENT VILLAGE AND
AGED CARE COMPLEX
Epsom Road, Chipping Norton

BUILDING D - Elevations

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REVISION

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