

**PROPOSED DUAL OCCUPANCY  
Lot 8 Macadamia Court Kingswood**

**OBJECTION PURSUANT TO THE PROVISIONS OF SEPP NO 1**

**Background**

This objection under State Environmental Planning Policy No 1 – Development Standards (“SEPP No. 1”) has been prepared in relation to a development application for the erection of new multi-unit housing on subject land, pursuant to the provisions of Penrith Local Environmental Plan 2010 (PLEP). The SEPP No. 1 objection relates to a non-compliance with PLEP in relation to land size.

**The Provisions of SEPP No. 1**

SEPP No. 1 – Development Standards is a State Policy mechanism available to applicants to seek variation of development standards contained within an environmental planning instrument.

Clause 3 of the Policy details the aims and objectives of the Policy and provides as follows:

*“3. This policy provides 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.”*

The relevant objects of Clause 5 of the Environmental Planning and Assessment Act, 1979 are:

*“(a) to encourage:*

- (i) the proper management, development and conservation of natural and manmade resources, including agricultural land, natural areas, forest, minerals, water courses, towns and villages for the purposes 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;”*

Clause 6 of SEPP No. 1 incorporates the mechanism for the making of a SEPP No. 1 objection and provides as follows:

*“6. Where development could, but for any development standard, be carried out under the act (either with or without necessity for consent under the Act being obtained therefore) the person intending to carry out that development may make a development application in respect of that development, supported by written objection that*

*compliance with that development standard is unreasonable or unnecessary in the circumstances of the case, and specifying the grounds of that objection.”*

The SEPP No. 1 objection is made in accordance with the provisions of Clause 6.

Clause 7 of SEPP No. 1 provides the discretion and power to the Consent Authority to support a SEPP No. 1 objection and grant development consent and provides:

*“7. Where the consent authority is satisfied that the objection is well founded and is also of the opinion that granting consent to that development application is consistent with the aims of this Policy as set out in Clause 3, it may, with the concurrence of the Director, grant consent to that development referred to in Clause 6.”*

**Development Standard to Which the SEPP 1 Objection Applies**  
**Objectives of Clause 12, Paragraph (1)**

**4.1A Minimum lot sizes for dual occupancies, multi dwelling housing and residential flat buildings**

- (1) The objective of this clause is to achieve planned residential density in certain zones.
- (2) Development consent may be granted to development on a lot in a zone shown in Column 2 of the Table to this clause for a purpose shown in Column 1 of the Table opposite that zone, if the area of the lot is equal to or greater than the area specified for that purpose and shown in Column 3 of the Table.

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
Dual occupancy (attached)	Zone R2 Low Density Residential	650 square metres
Dual occupancy (attached)	Zone R3 Medium Density Residential	550 square metres for a standard lot
Dual occupancy (attached)	Zone R3 Medium Density Residential	600 square metres for a battle-axe lot
Dual occupancy (detached)	Zone R2 Low Density Residential	750 square metres

*The objective of this clause are to*

*(a) prescribe minimum lot areas and lot widths for certain developments in Zones that will:*

*(i) allow development and promotes housing choice; and*

*(ii) preserve available development potential for multi unit housing; and*

*(iii) achieve an appropriate separation between buildings and site boundaries;*

*and*

*(b) preserve the amenity of internal residential lots by limiting dual occupancy developments to standard lots only*

**Variation Sought**

To apply the site area of 747.5sqm for detached dual occupancy.

## **Zone R2 Low Density Residential**

### **1 Objectives of zone**

- To provide for the housing needs of the community within a low density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To promote the desired future character by ensuring that development reflects features or qualities of traditional detached dwelling houses that are surrounded by private gardens.
- To enhance the essential character and identity of established residential areas.
- To ensure a high level of residential amenity is achieved and maintained.

### **2 Permitted without consent**

Home occupations

### **3 Permitted with consent**

Bed and breakfast accommodation; Boarding houses; Building identification signs; Business identification signs; Child care centres; Community facilities; Dual occupancies; Dwelling houses; Emergency services facilities; Environmental protection works; Exhibition homes; Flood mitigation works; Group homes; Health consulting rooms; Home-based child care; Home businesses; Home industries; Information and education facilities; Neighbourhood shops; Places of public worship; Recreation areas; Residential care facilities; Respite day care centres; Roads; Secondary dwellings; Shop top housing

### **Objectives of the applicable Development Standard**

#### **8.3.2.1 Vision for The Knoll**

The Knoll comprises accessible grassland with an area of approximately 7.33 hectares. The Knoll is surrounded by existing residential development.

The development of the Knoll is to:

- a) Provide an appropriate balance between low-density residential development and public open space.
  - b) Create a 'Hill Top Park' for community use.
  - c) Demonstrate a high standard of residential amenity and a high standard of urban and architectural design quality.
  - d) Maintain the existing established character of the areas adjoining the Knoll.
  - e) Facilitate connections with land and development adjoining the Knoll.
  - f) Maintain district views and vistas attained from the Hill Top Park.
  - g) Provide an integrated, convenient and sustainable road, footpath and cycle network.
- In order to achieve the vision for the Precinct, a Structure Plan was prepared as part of the planning proposal. This Structure Plan demonstrated the opportunity to subdivide land into a minimum of 45 individual residential lots and establish an area of informal public open space, to be known as Hill Top Park, at the central portion of the precinct.

The Knoll Structure Plan establishes the urban structure and form for the planning and future development of the Knoll. The Structure Plan (Figure E8.5) demonstrates the subdivision of the Knoll to provide 45 individual residential lots and an area of public open space in the form of a hill top park.

#### **DCP 8.3.3.3 Open Space Network**

A. Objectives:

- a) To create a sense of identity for the precinct while maintaining the existing character of surrounding development.
- b) To respect the amenity and privacy of existing residential properties adjacent to the precinct.
- c) To create passive recreational open space for the precinct for both future residents of the precinct and existing residents of surrounding properties.
- d) To provide a visual focal point of the precinct.
- e) To maintain district views and vistas of Orchard Hills and beyond from the hilltop at the precinct.

#### **DCP 8.3.4.2 Streetscape, Feature Elements and Roof Design**

A. Objectives:

- a) To encourage dwelling designs which create a harmonious streetscape and responds to the predominate character of the surrounds of the precinct.
- b) To provide a clear distinction between public and private space and to encourage casual surveillance of the street and Hill Top Park.
- c) To identify elements of roof design that respond appropriately to the streetscape character while providing weather protection to windows.
- d) To create an attractive and cohesive streetscape through the provision of simple and articulated building and roof forms in a contemporary style.
- e) To reduce the dominance of garages on the streetscape.
- f) To encourage eaves, verandahs, balconies and other feature elements on the front facades of dwellings.

#### **Reasons to Support the Variation**

Compliance with the development standard is unreasonable or unnecessary on the following grounds:

- a) Generally, the site area falls within 10% of the required minimum area and in fact is less than 0.5% and because of its location having two street frontages and the topography of the site a proposal for detached dual occupancy can be better supported than a proposal for attached dual occupancy without compromising the amenity and objectives of the LEP. It can only be established that the underlying objective or purpose is not relevant to the development with the consequence that compliance would affect the amenity of both units and courtyard aspect and so is unreasonable or unnecessary.
- b) Notwithstanding (a) above, the objectives of the development standard are achieved notwithstanding non-compliance to site area.

#### **Objectives of Zone and Standard Have Been Achieved**

There can only be a variance in the development standard and zone objective to provide 750sqm if it can be concluded that the objective of the zone and standard has been achieved as landscape open space and private courtyard has been achieved.

**Why Compliance with the Standard is Unreasonable or Unnecessary**

In this particular circumstance it is unreasonable or unnecessary to comply with the development standard as the proposal can be better achieved as detached dual occupancy and therefore compliance with the standard is unreasonable and unnecessary.

**Conclusion**

In summary, it is my opinion that SEPP No. 1 objection hereby submitted should be supported and that the development standard varied, as the proposed development is consistent with the objectives for site area. Further, the development will not result in any detrimental impacts upon the amenity of residential properties or upon the streetscape in relation to the proposed breach.

It is my opinion that the variation to the standard prescribed by the PLEP has been shown to be consistent with the aims of SEPP No. 1 and consistent with the objectives of the standard. As such, strict adherence to the standard is unreasonable and unnecessary in the circumstances of the case.

In my opinion the SEPP No.1 objection can be supported by the consent authority and the development may be granted consent on its merits.

Todd Obradovic