

**ITEM NO: 7 ADDENDUM**

**SUBJECT: DEVELOPMENT APPLICATION NO. X05/1022 FOR THE ADDITION OF 3 BY 128 SEAT CINEMAS, ROCK CLIMBING GYM, RELOCATION OF EXISTING RESTAURANT FACILITIES AND REVISED RETAIL ON LOT 1 DP 848603, NOS. 225-237 GREAT WESTERN HIGHWAY, KATOOMBA**

**FILE NO: X05/1022**

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**Recommendation:**

*That the recommendation for refusal of this development application, contained in the report to the Council for Item 7, remain as is and that the following reason be added:*

- 7. The objection pursuant to State Environmental Planning Policy No 1, to the development standard limiting the development to a maximum of two storeys, is not considered to be well founded.*
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**Report by Group Manager, Environmental and Customer Services:**

**Introduction**

This development application is the subject of an appeal to the Land and Environment Court for a deemed refusal and the matter is listed for call over on 24 November.

This report must be read in conjunction with and is an addendum to the Item 7 of the Business Paper ( the 'main report') Ordinary Meeting of 21 November 2006, which is before the Council for consideration with a recommendation that the development application be refused.

The main report to the Council explains that the development exceeds the two storey height limit imposed by Blue Mountains LEP 4 (LEP 4) and that the applicant had been invited to submit an objection pursuant to State Environmental Planning Policy No. 1 (SEPP 1), which objection would be addressed as an addendum to the main Report contained in the published business paper.

SEPP 1 enables the Council, where it is satisfied that the objection is well founded and the granting of consent is consistent with the aims of the Policy, to grant consent notwithstanding that development standard.

Accordingly, the applicant has submitted an objection to the two storey height limit. The purpose of this Addendum is to assess that objection and make any such amendment or addition to the recommendation contained in the main Report as is relevant.

**Non compliance with the development standard**

Clause 39 'Height of buildings' in LEP 4 relevantly provides:

"A person shall not erect a building on land within –

(b) a zone other than Zone No. 2 (b1), if the building contains more than 2 storeys above ground level."

A "storey" is defined as a floor of a building other than:

(a) a floor used principally for storage; or

(b) a floor used wholly or partly for parking.

The main report to the Council on this matter (page 65) notes as follows with respect to the applicant's submission that the development complies with the maximum 2 storey limit:

"For the substantial areas within the building this is correct because the mezzanine, which is the principal floor that has been inserted into the large volume of the building, is offset from other floors inserted at other levels, so as to minimise overlap of those floors.

However, in the central spine of the new part of the development connected by the lift, there are more than two floors intersected by a vertical line (ie. the interpretation of 'storey' contained in SEPP No 6). An administration floor is inserted into the space between the cinemas and the food court below and the projection room sits above the corridor between the mezzanine and the cinemas. In this central access and administration spine, the building does exceed 2 storeys and is up to 4 storeys through one section and 3 storeys through the other."

**The SEPP 1 objection to the development standard**

The applicant has submitted an objection to the two storey limit on development, the key points of which are:

1. An outline of the SEPP 1 decision making framework and relevant draft amendments to that Policy;
2. The extent of non-compliance ( ie the relevant number of storeys), as interpreted under State Environmental Planning Policy No 6, is 4 storeys, where a vertical line is drawn through areas that include the access corridors and mezzanine areas.
3. The proposed development, for reasons set out in the Table of Compliance included as Appendix G of the Statement of Environmental Effects, satisfies all of the relevant objectives of LEP 4, being ' ...to promote orderly and economic development of the City of the Blue Mountains in a manner consistent with the need to protect environment.'
4. Submits that the proposed development will achieve the objects of the Environmental Planning and Assessment Act 1979( the Act), S5(a)(i) and (ii), in that it:
  - a. Constitutes proper management, development and conservation of natural and man made resources;
  - b. Promotes the social and economic welfare of the community and a better environment, by better utilising the existing infrastructure and resources of the community; and

- c. Would result in the promotion and coordination of the orderly and economic use and development of the land.
5. Submits that the SEPP 1 objection is well founded in that it has been demonstrated that compliance with the development is unreasonable and unnecessary because the proposed development satisfies the assumed objective of the development standard, planning instruments and the Act in the following ways:
  - a. The cinema complex is consistent with the maximum height of the existing cinema;
  - b. The proposed extensions are a rational extension and implementation of further stages of construction foreshadowed in the initial approval of the complex;
  - c. The previously approved stages cinema complex did not proceed as the previous owners were not able to generate sufficient income from the existing operation to continue, let alone undertake the required expansion to respond to contemporary economic imperatives of cinema operations;
  - d. The proposed development does not impact unreasonably on the surrounding environment nor have an unacceptable impact on the views of the adjoining heritage item;
  - e. The proposed development is consistent with the objects of the Act as demonstrated in earlier discussion;
  - f. The development standard of maximum 2 storeys applies to floors in a building and the parts of this building that exceed 2 storeys are only a small part of the overall footprint, 5%- 10%;
  - g. A cinema complex by nature of its function has limitations on built form configuration and contains atypical internal voids and mezzanines;
  - h. If the corridors and passages were eliminated the result would not decrease the overall height;
  - i. The proposed development will not have any adverse environmental, social or economic impact on surrounding development;
  - j. The extent of the departure is minor; and
  - k. The particular circumstances of the variation related to the form of the cinema building will not undermine the development standard.
6. The development results in a better planning outcome because it will significantly improve the quality and standard of the existing cinema complex.
7. The corridors and passage ways are entirely internal to the building and will not generate any adverse impact on the adjoining properties, including the Renaissance Centre.

### **Consideration of the SEPP 1 Objection**

The SEPP 1 objection relies on several key propositions to seek to justify that compliance with the standard is unreasonable and unnecessary in the circumstances, that the development will result in a better planning outcome and that granting of consent would be consistent with SEPP 1.

1. That the proposed development does not result in any unreasonable adverse environmental impacts on adjoining properties or the Renaissance Centre, nor on the environment.

*Response: The main report describes the adverse impacts that are caused to the adjoining development, in particular the further obscuring of views to the Renaissance Centre is contrary to the policy setting established by the Council, sought by the NSW Heritage Office and contained in the Conservation Management Plan for that site. The reasons for refusal include height bulk and scale and adverse impact on the desired future character as set out in the Council's planning instrument and policy and on that basis the adverse impacts have been assessed as not being reasonable.*

*Notwithstanding, the Council may determine that the adverse impacts are considered to be reasonable.*

2. That compliance with the standard is unreasonable or unnecessary because the functional requirements of a cinema are such that non compliance is unavoidable and that, as the floors within the building that cause the 2 storey height to be exceeded are internal, their removal would not change the actual height of the building, therefore there is no benefit to be gained by requiring compliance.

*Response: This is a misleading argument. The necessity for the non compliance arises from the location of the cinemas over the ground floor food court. That is a discretionary matter and a deliberate design choice. The removal of the passages and corridors would change the height of the building; as it would ordinarily cause the cinemas to be located on the ground floor, so enabling compliance with the development standard.*

3. That the aims and objectives of the planning instrument are met, in that the height standard has no stated objective and the proposed development promotes orderly and economic development in the City of Blue Mountains in a manner consistent with the need to protect the environment.

*Response: The submission fails to attempt to identify the 'underlying objective' for the development standard, having identified underlying objectives as relevant factors for consideration by the Council in assessing SEPP 1 objections, noting instead that there is no 'stated' objective for the height standard.*

*'Storeys' are typically up to 3 metres in height. A two storey height limit indicates that the objective is to keep buildings low, consistent with the scale of development predominant in the Blue Mountains and less likely to impact adversely on adjoining owners. This expectation is reinforced by the BM Character Guidelines DCP 10 and has been further confirmed by the desired future character guidelines adopted by the Council for this precinct under LEP 2005. Those precinct guidelines translate the 2 storeys limit to the 6.5 metre maximum height at the eaves. Furthermore, LEP 2005 specifies the way in which proposals to exceed that limit should demonstrate its suitability. This application has not demonstrated its suitability in accordance with those LEP 2005 provisions. (Clause 3 Schedule 1 Katoomba Precinct VH-KA04)*

*The concern that the objectives and aims should be appropriately addressed is not considered and remains notwithstanding that the Council has approved the adjoining 5 storey residential development on the Renaissance Centre. That approval utilised the conservation incentives in the LEP and was also demonstrated to be suitable in accordance with the endorsed the Conservation Management Plan.*

*For these reasons it is considered that the development will not be consistent with the protection of the environment and so the proposal is not considered to be consistent with either the underlying objective of the standard or with the aim of LEP 4*

4. That the development achieves objects of the Environmental Planning and Assessment Act. The submission relies upon the fact that the development will utilise existing resources and infrastructure, will provide a high quality of facility for the Mountains, that extension to this facility has been foreshadowed from the outset and that there will be no adverse environmental, economic or social impact on surrounding development.

*Response: The economic imperative for the applicant/owner is only one dimension of proper management and orderly development. The main report describes some of the undoubted adverse impacts on the adjoining development and one of those adjoining owners has made strong objections in that regard.*

*It is agreed that this development has an important economic and social role in the locality and in recognition of these factors, the Council has previously agreed to significant expansion of the cinema complex on this site, some of which have eroded the desired future character of the precinct.*

*However, that does not necessarily lead to a conclusion that this particular building is one that should be supported. The configuration and size of this building are substantially larger than any proposal previously contemplated and represent an abandonment of previously established principles applying to this site.*

*The urban design consultant report contracted by the Council to provide impartial advice on this difficult matter relevantly noted,*

*“...the applicant purports that the height is acceptable as it is a similar height to the top of the wave roof on the existing complex....If the proposed height did not result in a reduction to the view corridor to the heritage building and therefore its visual significance and had no impact on the surrounding development then I would agree that this would be a reasonable proposition. However,.... The height and bulk is creating adverse impacts.” And*

*“Whilst it is not reasonable, given the scale of the existing development to expect a low scale, articulated building form over the whole site, it is reasonable and appropriate to expect new development to provide a sensitive transitional form to the cottage scale and for it to be respectful of their privacy and amenity.”*

**Conclusion**

It is not considered that the applicant has demonstrated that compliance with the development standard is unreasonable or unnecessary, or that the relevant objects of the Act have been met. The recommendation reflects that conclusion.