INNER WEST COUNCIL

File ref: 2663

13 December 2017

Director, Planning Frameworks
NSW Department of Planning & Environment
GPO Box 39
SYDNEY NSW 2001

Dear Sir,

EXPLANATION OF INTENDED EFFECTS –
REPEAL OF TWO OPERATIONAL SEPPS
SEPP 1 – DEVELOPMENT STANDARDS and
SEPP (MISCELLANEOUS CONSENT PROVISIONS) 2007

The Inner West Council appreciates the opportunity to comment on the Explanation of Intended Effects – Repeal of State Environmental Planning Policy No. 1 – Development Standards and State Environmental Planning Policy (Miscellaneous Consent Provisions) 2007.

The Council's comments in relation to the Explanation of Intended Effects – Repeal of two operational SEPPs are attached to this letter.

For the reasons detailed in the submission the Council recommends that neither of the SEPPs be repealed.

In the event that State Environmental Planning Policy No. 1 – Development Standards is repealed and a Clause 4.6 Exceptions to development standards Standard Instrument LEP equivalent clause is included in Leichhardt Local Environmental Plan 2000 (LLEP 2000) Council requests that the maximum floor space ratio development standard of 3.9:1 in Clause (4) (a), and the maximum height development standards of "*12.5 metres above the existing road level*" specified in subclause (4)(f), the "*reduced level of 52.0 metres*" specified in subclause (4)(g), and the "*reduced level of 82.0 metres*" specified in subclause (4)(h) respectively in Schedule 1 of LLEP 2000 relating to the Balmain Leagues Club Precinct site be listed as development standards not to be capable of being varied.

The submission includes a number of suggested changes to address the issues identified, and to assist with the Government's objective for a clear, contemporary and transparent planning system and to provide uniformity in the planning provisions applying across NSW.

Council trusts the submission assists the Department in its deliberations.

Should you have any enquiries please contact Peter Wotton, Council's Strategic Planning Projects Coordinator, Marrickville on 9335 2260.

Yours Sincerely

David Birds
Group Manager, Strategic Planning
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INNER WEST COUNCIL

EXPLANATION OF INTENDED EFFECTS –
REPEAL OF TWO OPERATIONAL SEPPS
SEPP 1 – DEVELOPMENT STANDARDS and
SEPP (MISCELLANEOUS CONSENT PROVISIONS) 2007

The following are Council's comments in relation to the Department's Explanation of Intended Effects for the repeal of two operational SEPPs. The comments in relation to both State Environmental Planning Policy No. 1 – Development Standards and State Environmental Planning Policy (Miscellaneous Consent Provisions) 2007 have been broken down into general comments and comments relating specifically to the Inner West LGA.

The submission also includes a number of suggested changes to address the issues identified and to assist with the Government's objective for a clear, contemporary and transparent planning system and to provide uniformity in the planning provisions applying across NSW.

Council's comments are as follows:

a. State Environmental Planning Policy No. 1 - Development Standards (SEPP 1)

SEPP 1 has been in place since 1980. It is aimed at providing flexibility in the application of certain planning controls by allowing councils to approve a development application that does not comply with a development standard where it can be shown that compliance is unreasonable or unnecessary.

Environmental planning instruments made under the Standard Instrument LEP include Clause 4.6 *Exceptions to development standards*. State Environmental Planning Policy No. 1 - Development Standards (SEPP 1) does not apply to land to which those instruments apply.

SEPP 1 only applies to small proportions of Local Government Areas where lands were deferred from the application of the Standard Instrument LEP and to eight older SEPPs.

Part of the proposed amendments include incorporating a Clause 4.6 Standard Instrument LEP equivalent provision into the following State Environmental Planning Policies:

i. SEPP (Affordable Rental Housing) 2009;
ii. SEPP (Housing for Seniors or People with a Disability) 2004;
iii. SEPP (Kurnell Peninsula) 1989;
iv. SEPP (Penrith Lakes Scheme) 1989;
v. SEPP (State Significant Projects) 2005 (Schedule 3);
vi. SEPP (Three Ports) 2013;
vii. SEPP No. 16 — Walsh Bay; and
viii. SEPP No. 26 — City West

General Comments:

It is contended the incorporation of a Clause 4.6 Standard Instrument LEP equivalent provision into the above SEPPs would be clumsy, cumbersome and would unnecessarily complicate those SEPPs especially considering that for all land to which a local environmental planning instrument made under the Standard Instrument LEP applies, the provisions of SEPP 1 **do not** apply.

The reason why the provisions of SEPP 1 do not apply to the land referred to above are contained within provisions of the Standard Instrument. The relevant provisions are Clause 1.3, Clause 1.9 and Clause 4.6 (2) of the Standard Instrument. Those clauses read as follows:

> ***"1.3 Land to which Plan applies***
>
> *This Plan applies to the land identified on the Land Application Map.*
>
> ***1.9 Application of SEPPs***
>
> *(1) This Plan is subject to the provisions of any State environmental planning policy that prevails over this Plan as provided by section 36 of the Act.*
>
> *(2) The following State environmental planning policies (or provisions) do not apply to the land to which this Plan applies:*
>
> *State Environmental Planning Policy No 1—Development Standards*
>
> ***4.6 Exceptions to development standards***
>
> *[....]*
>
> *(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause."*

The State Environmental Planning Policies, referred to previously, that are proposed to be amended to include a Clause 4.6 Standard Instrument LEP equivalent provision are all environmental planning instruments under the Environmental Planning and Assessment Act. Any development standard contained within those State Environmental Planning Policies would be "*a development standard imposed by ~~this or~~ any other environmental planning instrument*" and as such would be a development standard to which Clause 4.6 (2) of the Standard Instrument LEP applies.

The land to which a local environmental planning instrument (The Plan), made under the Standard Instrument LEP, applies is the land identified on the Land Application Map for that area (Clause 1.3 of the Standard Instrument LEP).

State Environmental Planning Policy No. 1 — Development Standards does not apply to land to which The Plan applies (Clause 1.9 (2) of the Standard Instrument LEP).

Consequently the provisions of SEPP 1 do not apply to land to which the Standard Instrument LEP applies.

It should also be noted that there are some differences between SEPP 1 and Clause 4.6 Exceptions to development standards of the Standard Instrument LEP.

Under SEPP 1, the following criteria must be satisfied:

a. the objection must be in writing and be well founded in addressing whether compliance with the relevant development standard is unreasonable or unnecessary in the circumstances of the case;

b. the consent authority must be of the opinion that granting consent is consistent with the aims of SEPP 1; and

c. concurrence from the Department of Planning has been given (or can be assumed to have been given).

Under Clause 4.6 of the Standard Instrument LEP, the following criteria must be satisfied:

a. pursuant to Clause 4.6(4)(a)(i), a written objection must, to Council's satisfaction, adequately address the following issues:

   i. compliance with the standard is unreasonable or unnecessary in the circumstances of the case (Clause 4.6(3)(a)); and
   ii. there are sufficient environmental planning grounds to justify contravening the development standard (Clause 4.6(3)(b)); and

b. pursuant to Clause 4.6(4)(a)(ii)), the Council must be satisfied that the development is consistent with the objectives of the relevant development standard and the objectives for development within the applicable zone in which the development is proposed to be carried out; and

c. pursuant to Clause 4.6(4)(b), concurrence from the Department has been given (or can be assumed to have been given).

As detailed above, whilst there are similarities between the instruments (particularly via the need to show compliance with a standard is unreasonable or unnecessary), there are some key differences, namely:

i. The requirement for sufficient environmental planning grounds to justify contravening the development standard; and

ii. The requirement that the development be consistent with the objectives of the applicable standard and the objectives for development within the zone in which the development is proposed to be carried out.

It is because of those key differences it is recommended that State Environmental Planning Policy No. 1 – Development Standards **NOT** be repealed.

Unlike the development standards contained within Standard Instrument LEPs, the development standards contained in older instruments generally do not contain objective(s) for that particular development standard. In such scenarios it would not be possible to determine that a Clause 4.6 objection was "*consistent with the objectives of the particular standard.*"

In addition where certain land was deferred from the application of the Standard Instrument LEP it was generally because of highly complex planning issues relating to that land. In some cases the land which was deferred from the application of the Standard Instrument LEP related to particular land where additional uses were permitted on the land under the environmental planning instrument that were not otherwise permissible under the Land Use Table for the zone that applied to the land under the instrument. In such scenarios it would be difficult to determine that a Clause 4.6 objection was "*consistent with the objectives for development within the zone in which the development is proposed to be carried out.*"

It should also be noted that on some land where land has been deferred from the application of the Standard Instrument LEP, the environmental planning instrument applying to the land sets objectives for development on that land, and where those objectives are inconsistent with the objectives for development within the zone under that instrument, the objectives for development on that land prevail to the extent of the inconsistency. The above scenario highlights issues with the Clause 4.6 (4) (ii) requirement that a proposed development is "*consistent with the objectives ..... for development within the zone*".

Whilst the repeal of SEPP 1 would "*reduce the number of State Environmental Planning Policies*" for the reasons detailed above, it is contended that the repeal of SEPP 1 and the incorporation of a Clause 4.6 Standard LEP equivalent provision into a number of older State Environmental Planning Policies in the manner suggested in the Department's Explanation of Intended Effect (October 2017) would not make *"them easier for use for all stakeholders."* It is also contended that such amendments would be contrary to *"the Government's objective for a clear, contemporary and transparent planning system."*

Although the provisions of State Environmental Planning Policy No. 1 – Development Standards apply to a small percentage of land in NSW, for the reasons detailed above it is considered essential that SEPP 1 not be repealed.

It is considered that rather than repealing SEPP 1, and the consequential need to make commensurate amendments to a number of State Environmental Planning Policies to incorporate a Clause 4.6 Standard LEP equivalent provision into those SEPPs, to make the planning system "*easier for use for all stakeholders*" it would be a lot simpler to amend State Environmental Planning Policy No.1 – Development Standards to clarify when the SEPP applies.

Clause 4 of State Environmental Planning Policy No. 1 – Development Standards currently reads as follows:

> ***"4 Application of Policy***
> *(1) This Policy applies to the State, except as provided by this clause.*
> *(2) This Policy does not apply to the land shown edged heavy black and shaded on the map marked "State Environmental Planning Policy No 1— Development Standards (Amendment No 5)" deposited in the head office of the Department of Planning and copies of which are deposited in the office of Wollongong City Council."*

To add greater clarification when the policy applies it is suggested that an additional sub-clause be added to the above clause reading as follows:

"(3) This Policy does not apply to land to which an environmental planning instrument made under the Standard Instrument LEP applies."

On a separate note, regardless whether SEPP 1 is repealed, the definition of "***existing maximum floor space***" ratio under State Environmental Planning Policy (Affordable Rental Housing) 2009 should be amended to delete the words "*or State Environmental Planning Policy No 1 – Development Standards*" from the definition of that term.

<u>Comments relating specifically to the Inner West LGA</u>

The only land deferred from the application of the Standard Instrument LEP in the Inner West LGA is the land referred to as the "*Balmain Leagues Club Precinct site*".

The land to which the Balmain Leagues Club Precinct site relates is identified as a "*Deferred matter*" on the Land Application Map of Leichhardt Local Environmental Plan 2013 (LLEP 2013). Clause 1.3 (1A) of LLEP 2013 states:

> *"(1A) Despite subclause (1), this Plan does not apply to the land identified as "Deferred matter" on the Land Application Map."*

Of the eight State Environmental Planning Policies that are proposed to have a Clause 4.6 Standard Instrument LEP equivalent provision incorporated into them, only SEPP (Affordable Rental Housing) 2009, SEPP (Housing for Seniors or People with a Disability) 2004 and SEPP No. 26 – City West) apply to land in the Inner West LGA.

For the reasons discussed previously in the general comments section of this report that the provisions of SEPP 1 only apply to land to which an environmental planning instrument made under the Standard Instrument LEP does not apply, in the case of those State Environmental Planning Policies, the provisions of SEPP 1 would only apply to development proposed to carried out under the Affordable Rental Housing SEPP or the Senior Housing SEPP, but only on the land referred to as the Balmain Leagues Club Precinct site.

The local environmental plan applying to land referred to as the "Balmain Leagues Club Precinct site" is Leichhardt Local Environmental Plan 2000 (LLEP 2000). That instrument is not an environmental planning instrument made under the Standard Instrument LEP.

The planning controls applying to land referred to as the "Balmain Leagues Club Precinct site" are contained in LLEP 2000. Schedule 1 *Additional uses and controls for certain land* of LLEP 2000 specifies the following controls for the site:

"Part 3 Amended controls on specific sites

Balmain Leagues Club Precinct site

(1) For the purposes of this Part:

***building height** (or **height of building**) means the vertical distance between ground level at any point to the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.*

***mixed use development** means a building or place comprising 2 or more different land uses that are permissible in the Business Zone.*

***the site** means the site comprising all of the following land:*

(a) 138–152 Victoria Road, Rozelle (being Lot 1, DP 528045),
(b) 154–156 Victoria Road, Rozelle (being Lot 1, DP 109047),
(c) 697 Darling Street, Rozelle (being Lot 104, DP 733658),
(d) 1–7 Waterloo Street, Rozelle (being Lots 101 and 102, DP 629133, Lots 37 and 38, DP 421 and Lot 36, DP 190866),

as shown edged heavy black and lettered "SSP" on the map marked "Leichhardt Local Environmental Plan 2000 (Amendment No 16)" deposited in the office of Leichhardt Municipal Council.

(2) Despite any other provision of this Plan (except clause 19 (6) and (7) or a provision of this Part), consent may be granted for mixed use development on the site, but only if, in the opinion of the Council, the following objectives are met:

(a) the development integrates suitable business, office, residential, retail and other uses so as to maximise public transport patronage and encourage walking and cycling,
(b) the development contributes to the vibrancy and prosperity of the Rozelle Commercial Centre with an active street life while maintaining residential amenity,
(c) the development is well designed with articulated height and massing providing a high quality transition to the existing streetscape,
(d) the traffic generated by the development does not have an unacceptable impact on pedestrian or motor vehicle traffic on Darling Street, Waterloo Street and Victoria Road, Rozelle,
(e) any residential development at street level has a frontage to Waterloo Street, Rozelle and, when viewed from the street, has the appearance of no more than three storeys.

(3) A consent under subclause (2) must not be granted if the application for the development does not apply to the whole of the site.

(4) A consent under subclause (2) must not be granted if the development will result in any of the following:

(a) the floor space ratio for the site exceeds 3.9:1,
(b) the floor space ratio for all shops on the site exceeds 1.3:1,
(c) the floor space ratio for all commercial premises on the site exceeds 0.2:1,
(d) the floor space ratio for all clubs on the site exceeds 0.5:1,
(e) the floor space ratio for all residential development on the site exceeds 1.9:1,
(f) in relation to a building on the site that is less than 10 metres from Waterloo Street, Rozelle—the building height exceeds 12.5 metres above the existing road level,
(g) in relation to a building on the site that is less than 36 metres from Darling Street, Rozelle—the building height exceeds a reduced level of 52.0 metres relative to the Australian Height Datum or exceeds two storeys,
(h) a building height on the site exceeds a reduced level of 82.0 metres relative to the Australian Height Datum or exceeds twelve storeys."

The planning controls for the site came into effect on 29 August 2008 when Leichhardt Local Environmental Plan 2000 (Amendment No. 16) was gazetted.

The Department's Explanation of Intended Effect (October 2017) states that Clause 4.6 (6) will be amended to suit the older LEPs that apply to deferred areas. The Explanation of Intended Effect also notes that "*Clause 4.6 (8) creates an opportunity for local councils to list the clauses in their LEP that they do not want to be capable of being varied by Clause 4.6. Councils have been invited to nominate the clauses in the LEPs applying to deferred areas that they want excluded under subclause (8).*"

The development standards that apply to development on the Balmain Leagues Club Precinct site are principally those contained within sub clause (4) of Schedule 1 of LLEP 2000 reproduced above. Council has an opportunity to request the Department list any development standards that the Council does not want capable of being varied under the Clause 4.6 Standard Instrument LEP equivalent clause proposed to be incorporated into their instrument.

Whilst there is a philosophical argument as to whether developments on "Deferred sites" should be afforded the same degree of flexibility in the application of certain development standards to particular development as developments on non deferred sites, on balance it is generally considered reasonable to do so subject to the circumstances of each case. It should also be noted that the preclusion of the ability to vary certain development standards on deferred sites may act as a catalyst for planning proposals being lodged for such land, which if supported, would result in that land no longer being a "*deferred site*".

In relation to the Balmain Leagues Club Precinct site it is considered that the maximum floor space ratio permitted for development on the land of 3.9:1 under subclause 4(a) above should be made a development standard that is not able to be varied. That floor space ratio is well in excess of the next highest floor space ratio that applies to land under Leichhardt Local Environmental Plan 2013 of 2.15:1. It should also be noted that a FSR of 3.9:1 is also in excess of the maximum floor space ratio that currently applies to other land in the Inner West LGA of 3.0:1 and 3.7:1 respectively under Ashfield Local Environmental Plan 2013 and Marrickville Local Environmental Plan 2011.

Building height controls are important to ensure that developments respond to the desired future scale and character of the street and local area. The Balmain Leagues Club Precinct site has sensitive interfaces. In light of the above it is considered that Council should request that the maximum height development standard of "*12.5 metres above the existing road level*" specified in subclause (4)(f), the "*reduced level of 52.0 metres*" specified in subclause (4)(g), and the "*reduced level of 82.0 metres*" for the site specified in subclause (4)(h) be made non variable development standards.

It is considered unnecessary to request that the Department list the other development standards contained in subclause (4) as being not capable of being varied under the Clause 4.6 Standard Instrument LEP equivalent provision.

Notwithstanding that Council recommends that State Environmental Planning Policy No. 1 – Development Standards not be repealed for the reasons outlined in this submission, should the Department decide to do so, Council requests that the maximum floor space ratio development standard of 3.9:1 in Clause (4) (a), and the maximum height development standards of "*12.5 metres above the existing road level*" specified in subclause (4)(f), the "*reduced level of 52.0 metres*" specified in subclause (4)(g), and the "*reduced level of 82.0 metres*" specified in subclause (4)(h) respectively in Schedule 1 of LLEP 2000 relating to the Balmain Leagues Club Precinct site be listed as development standards not to be capable of being varied.

b. State Environmental Planning Policy (Miscellaneous Consent Provisions) 2007 (MCP SEPP)

The background information with the Department's Explanation of Intended Effect states (in part) that:

"State Environmental Planning Policy (Miscellaneous Consent Provisions) 2007 (MCP SEPP) was made to ensure that the demolition of buildings, the subdivision of land and the conversion of fire alarm systems were matters that required development consent. The MCP SEPP makes those forms of development require consent across NSW.

The MCP SEPP also introduced State wide provisions to enable:

- *the erection of temporary structures with development consent, and*
- *limited changes of use in certain business zones to occur without consent"*

The Department's Explanation of Intended Effect notes that "*Like SEPP 1, the MCP SEPP now only applies:*

- *on lands that are not subject to a Standard Instrument LEP, that is deferred areas where an older LEP still applies, and*
- *in a smaller number of older SEPPs that do not have clauses addressing demolition, subdivision, temporary use of land and fire alarm systems.*

It is proposed that the Standard Instrument LEP clauses 2.6 (Subdivision), 2.7 (Demolition) and 5.8 (Conversion of fire alarms) be inserted into all the older instruments applying to deferred areas so that there is uniformity across NSW."

It is also proposed to include a Standard Instrument LEP clause 2.8 (Temporary use of land) in those instruments amended to match the temporary use provision in the respective LGA's Standard Instrument LEP.

Initial comments:

Before commenting on the proposed amendments relating to the repeal of State Environmental Planning Policy (Miscellaneous Consent Provisions) 2007 (MCP SEPP) some comments need to be made in relation to the existing provisions of MCP SEPP.

Under Clause 4 of the MCP SEPP the Policy applies to the State. Part 3 of the SEPP contains provisions relating to "*Subdivision, demolition, change of use and fire alarm communication links*".

Clause 13 of the SEPP specifies the land to which Part 3 of the SEPP applies. That clause reads as follows:

"13 Land to which Part applies

(1) This Part applies to land other than land to which a standard plan applies.

(2) In this clause, standard plan means a local environmental plan (whether made before or after the commencement of this clause) that has been made as provided by section 33A (2) of the Act."

A "*local environmental plan (or LEP)*" and "*State Environmental Planning Policy (or SEPP)*" are separately defined terms under Clause 4 of the Environmental Planning and Assessment Act.

Consequently if a local environmental plan (or "standard plan"), as provided by Section 33A (2) of the Act, applied to the land, the provisions of Part 3 of the MCP SEPP, by virtue of Clause 13, do not apply to that land.

Whilst Part 3 of the SEPP would not apply to land to which a local environmental plan (or "standard plan") applies, it would however apply to all land to which State Environmental Planning Instruments or Sydney Regional Environmental Plans apply **provided** that land is not "*land to which a standard plan applies*". (Clause 13 (1))

Consequently if State Environmental Planning Policy (Miscellaneous Consent Provisions) 2007 is to be repealed it would be necessary to insert Standard Instrument LEP Clauses 2.6, 2.7, 2.8 and 5.8 into **ALL** State Environmental Planning Policies and Sydney Regional Environmental Plans where those environmental planning instruments relate to land that is not land to which a local environmental plan (or "standard plan") applies.

General comments in relation to SEPPs:

The older SEPPs that the Standard Instrument LEP clauses are proposed to be inserted into are the same SEPPs listed previously in the discussion on State Environmental Planning Policy No. 1 – Development Standards.

Once again it should be noted that for all land to which a local environmental planning instrument made under the Standard Instrument LEP applies, it is considered unnecessary to amend those older SEPPs because development for the purposes of subdivision, demolition, conversion of fire alarms and the temporary use of land can be carried out on that land under the Standard Instrument LEP that applies to that land.

In other words whilst the respective older SEPPs do not contain provisions concerning those types of development, those developments are capable of being carried out on all land to which a local environmental planning instrument made under the Standard Instrument LEP applies under the provisions of that instrument.

For example all land within the former Marrickville LGA and Ashfield LGA is identified on the respective Land Application Maps under Marrickville Local Environmental Plan 2011 (MLEP 2011) and Ashfield Local Environmental Plan 2013 (ALEP 2013). State Environmental Planning Policy (Affordable Rental Housing) 2009 (Affordable Rental Housing SEPP) applies to the State (Clause 7). Both MLEP 2011 and ALEP 2013 are environmental planning instruments made under the Standard Instrument LEP and contain clauses 2.6 (Subdivision), 2.7 (Demolition), 2.8 (Temporary use of land) and 5.8 (Conversion of fire alarms) and consequently it would be unnecessary to insert those clauses into the Affordable Rental Housing SEPP to enable those types of development to be carried out on land to which MLEP 2011 or ALEP 2011 applies.

The proposed insertion of Standard Instrument LEP Clauses 2.6, 2.7, 2.8 and 5.8 into the older SEPPs in many cases is problematic because the terms used in many of those older SEPPs do not have the same meaning as those terms have in the Standard Instrument.

For example the definition of "*demolition*" under State Environmental Planning Policy (Kurnell Peninsula) 1989. Under that SEPP the term is defined as follows:

*"**demolition** means the partial or total destruction, dismantling or moving of a building. It includes decontamination, rehabilitation or remediation of land on which a building has been partially or totally destroyed or dismantled, or from which a building has been removed."*

It is also noted that some of the older SEPPs adopt definitions from the Environmental Planning and Assessment Model Provisions 1980.

The inclusion of a Clause 2.8 Standard Instrument LEP equivalent provision into SEPPs that apply to the State is also somewhat problematic because of variations in the maximum period of days specified in Clause 2.8 (2) in local environmental planning instruments made under the Standard Instrument that have adopted the optional Clause 2.8 Temporary use of land.

It is also noted that one of the older SEPPs proposed to be amended (SEPP (Penrith Lakes Scheme) 2007) specifies a maximum period for a temporary use of 180 days which is well in excess of the maximum period of 52 days specified in the Standard Instrument – Principal Local Environmental Plan, and the maximum period of 28 days specified in Clause 2.8 (2) of Penrith Local Environmental Plan 2010.

It is also noted that the clause proposed to be inserted into the SEPPs in relation to subdivision is not the same as Clause 2.6 Subdivision – consent requirements under the Standard Instrument LEP in that it does not contain subclause (2).

<u>General comments in relation to proposed amendments relating to land deferred from the Standard Instrument LEP</u>:

The Department's Explanation of Intended Effect notes that the land deferred from the operation of the Standard Instrument LEP represents approximately 0.2% of the lands of NSW.

The Explanation of Intended Effects lists a total of 43 LEPs that contain land deferred from the application of the Standard Instrument LEP. Such a high number of LEPs which contain land deferred from the application of the Standard Instrument LEP brings into question whether the approach recommended in the Explanation of Intended Effects of repealing the MCP SEPP and the insertion of Standard Instrument LEP Clauses 2.6, 2.7, 2.8 and 5.8 into each one of those 43 LEPs is the best approach to make the planning system *"easier for use for all stakeholders….. consistent with the Government's objective for a clear, contemporary and transparent planning system."*

And as stated in the previous section, not only would those 43 LEPs need to be amended, there would also be a need to amend all State Environmental Planning Policies and Sydney Regional Environmental Plans where those environmental planning instruments relate to land that is not land to which a local environmental plan (or "standard plan") applies.

It is contended a far better approach would be to retain State Environmental Planning Policy (Miscellaneous Consent Provisions) 2007, with amendments to the effect that the Policy only applies to all land to which a local environmental planning instrument made under the Standard Instrument LEP applies, **does not** apply, and amendments to Part 3 of the Policy to incorporate Standard Instrument LEP Clauses 2.6, 2.7, 2.8 and 5.8 provisions.

The approach recommended in this report would achieve the Government's objective of "*making these provisions uniform within each local government area*".

<u>Comments relating specifically to the Inner West LGA</u>

As stated previously the only land deferred from the application of the Standard Instrument LEP in the Inner West LGA is the land referred to as the "*Balmain Leagues Club Precinct site*".

The local environmental plan that applies to that land is Leichhardt Local Environmental Plan 2000 (LLEP 2000).

It is one of the 43 LEPs listed in the Department's Explanation of Intended Effect that contain land deferred from the application of the Standard Instrument LEP.

The proposed amendments would have minimal implications for the Balmain Leagues Club Precinct apart from increasing the maximum period for a temporary use on the land from 26 days (under Clause 31 of LLEP 2000) to a maximum of 106 days, the maximum period permitted for a temporary use under Clause 2.8 of Leichardt Local Environmental Plan 2013.

For the reasons discussed in the previous section the alternate approach recommended is considered a better and simpler approach to ensure that provisions relating to Subdivision (Clause 2.6), Demolition (Clause 2.7), Temporary use of land (Clause 2.8) and Conversion of fire alarms (Clause 5.8) of the Standard Instrument LEP apply uniformly within each local government area.

CONCLUSION

For the reasons detailed in this submission, particularly the key differences between the provisions of State Environmental Planning Policy No. 1 – Development Standards and the provisions of Clause 4.6 Exceptions to development standards of the Standard Instrument LEP it is recommended that SEPP 1 **NOT** be repealed.

Should the Department decide to repeal SEPP 1, Council requests that the maximum floor space ratio development standard of 3.9:1 in Clause (4) (a), and the maximum height development standards of "*12.5 metres above the existing road level*" specified in subclause (4)(f), the "*reduced level of 52.0 metres*" specified in subclause (4)(g), and the "*reduced level of 82.0 metres*" specified in subclause (4)(h) respectively in Schedule 1 of LLEP 2000 relating to the Balmain Leagues Club Precinct site be listed as development standards not to be capable of being varied.

Also as detailed in this submission, the repeal of State Environmental Planning Policy (Miscellaneous Consent Provisions) 2007 and the incorporation of Standard Instrument LEP provisions relating to Subdivision (Clause 2.6), Demolition (Clause 2.7), Temporary use of land (Clause 2.8) and Conversion of fire alarms (Clause 5.8) into SEPPs and local environmental planning instruments that contain land to which the provisions of the Standard Instrument LEP do not apply, would require an extensive number of LEPs, as well as SEPPs, to be amended and would do little to simplify and modernise the planning system. Such extensive amendments are difficult to justify especially considering that the proposed changes are to address an issue which relates to approximately 0.2% of land in the State.

The alternate approach recommended in this submission is considered a better and simpler approach to ensure that those provisions of the Standard Instrument LEP apply uniformly within each local government area.