

Attachment D

Clause 4.6 – Motorcycle Parking
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Clause 4.6 Variation
Motorcycle Parking

84 City Road Chippendale

DEVELOPMENT STANDARD ATTRIBUTES	
Environmental Planning Instrument	State Environmental Planning Policy (Affordable Rental Housing) 2009 ¹
Zoning	R1 – General Residential
Standard to be varied	Motorcycle Parking - Clause 30(1)(h)
Development Standard	“At least one parking space will be provided for a bicycle, and one will be provided for a motorcycle, for every 5 boarding rooms”
Proposal	4 bicycle spaces (exceeds the minimum of 2) and; Nil motorcycle spaces (does not comply)
Variation	100%

OBJECTIVES	
Zone Objectives	<ul style="list-style-type: none">• To provide for the housing needs of the community.• To provide for a variety of housing types and densities.• To enable other land uses that provide facilities or services to meet the day to day needs of residents.• To maintain the existing land use pattern of predominantly residential uses.
Development Standard Objectives (Motorcycle Parking)	<p>There are no objectives to the development standard.</p> <p>More broadly, the stated ‘Aims’ of the SEPP (ARH) 2009 are:</p> <ul style="list-style-type: none">(a) to provide a consistent planning regime for the provision of affordable rental housing,(b) to facilitate the effective delivery of new affordable rental housing by providing incentives by way of expanded zoning permissibility, floor space ratio bonuses and non-discretionary development standards,(c) to facilitate the retention and mitigate the loss of existing affordable rental housing,(d) to employ a balanced approach between obligations for retaining and mitigating the loss of existing affordable rental housing, and incentives for the development of new affordable rental housing,

Development Standard Objectives cont...	<p>(e) to facilitate an expanded role for not-for-profit-providers of affordable rental housing,</p> <p>(f) to support local business centres by providing affordable rental housing for workers close to places of work,</p> <p>(g) to facilitate the development of housing for the homeless and other disadvantaged people who may require support services, including group homes and supportive accommodation.</p>
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¹ NSW Government Legislation website – legislation.nsw.gov.au
Current version for 28 February 2019 to date (accessed 11 May 2019)

<p>Clause 4.6(3)</p> <p><i>(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:</i></p> <p><i>(a) that compliance with the development standard is <u>unreasonable or unnecessary</u> in the circumstances of the case, and</i></p> <p><i>(b) that there are <u>sufficient environmental planning grounds</u> to justify contravening the development standard.</i></p>
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Cl.4.6(3)(a) - Unreasonable or unnecessary

The position that compliance with the development standard is unreasonable or unnecessary may be demonstrated in one or more of the ways offered by *Wehbe V Pittwater Council (2007) NSWLEC 827 Preston CJ*. In this particular case, consistent with that decision, it can be demonstrated that the objectives of the development standard are achieved notwithstanding non-compliance with the standard, as below (emphasis added):

“43 The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served).”
Wehbe V Pittwater Council (2007) NSWLEC 827 Preston CJ

It is important to note that under clause 30(2) of the SEPP (ARH) the development standards do not apply to minor alterations or additions to an existing boarding house and in those cases there would be no consideration of motorcycle parking rates. With the exception of the new laneway structure, the renovation to the existing boarding house itself would easily classify as ‘minor alterations and additions’ as the scope of works is essentially to provide an ensuite, kitchenette and wardrobe fit-out within the existing rooms with minor associated additions.

Even with the laneway structure, the proposal may *still* be classified as minor additions to a boarding house as there is no net increase in the number of boarding rooms and the substantial building on the site is being essentially retained as is.

Nevertheless, for the purpose of abundant caution a request to vary the development standard is provided.

Whilst there is no stated objective to the development standard itself, the aims of the SEPP (ARH) are achieved by the proposal despite the lack of motorcycle parking given that the renovation of the existing boarding house provides for the introduction of greater amenity and communal facilities for the benefit of the occupants. This goes directly to Aims (c), (e), (f) and (g):

- (c) to facilitate the retention and mitigate the loss of existing affordable rental housing,*
- (e) to facilitate an expanded role for not-for-profit-providers of affordable rental housing,*
- (f) to support local business centres by providing affordable rental housing for workers close to places of work,*
- (g) to facilitate the development of housing for the homeless and other disadvantaged people who may require support services, including group homes and supportive accommodation.*

In the previous DA, a request to vary this development standard was not accepted by the Council. The applicant's written request suggested that the only area capable of providing motorcycle parking was in the front yard area due to the provision of a laneway building at the rear, and that this was undesirable. The Council's assessment report provided a contrary view:

"The site is sufficiently unencumbered so as to be able to provide some if not all of the required motorcycle parking accessed from the rear lane. Fundamentally, it is due to the built form and overall scale of the proposal that the motorcycle parking has not been provided."

Accepting the Council's view, and accepting the premise that motorcycle parking, if proposed, must enter the site from the rear lane (and the proposition must be accepted), then to achieve both compliance with this standard and the provision of new communal facilities would require either a reduction in the size of the communal facilities or a relocation of the communal facilities into the main building to allow sufficient space for motorcycle parking.

The existing boarding house has 10 rooms that are in a dilapidated and unrenovated state. The proposal is to retain the existing number of rooms whilst introducing a higher level of amenity. Part of that amenity is the provision of a communal kitchen/living/dining area and laundry at the rear of the site. It is accepted that the rear of the site is the only area from which on-site motorcycle parking may be provided as it would be highly objectionable to create a motorcycle parking area in the front landscaped courtyard of a contributory building within a heritage conservation zone. It would also pose safety risks to riders and pedestrians.

If the communal facilities were reduced in size they would not comply with the relevant controls for minimum communal room sizes. If they were internalised within the main building, the net result would be the loss of 2 boarding rooms. Strict compliance with the development standard would therefore have the effect of either:

1. Retaining the number of rooms (10) and providing motorcycle parking in the rear yard with no new communal facilities; or
2. Reducing the number of rooms to 8 to provide communal facilities within the main building, providing motorcycle parking in the rear yard.

The first option inappropriately places a higher threshold of importance on providing motorcycle parking for up to 2 lodgers than providing new communal facilities for the occupants of all 10 rooms. The second option disincentivises increasing the amenity to the existing rooms as the 10 rooms, which have existing for over 100 years, would reduce to 8 rooms, contravening the Aims of the SEPP (ARH).

Both of these scenarios would result in an undesirable planning outcome. Imposing strict compliance with the development standard, despite there being no net increase in the number of existing rooms from this renovation, would be unnecessary (as the Aim of the SEPP is achieved anyway) and unreasonable (as it would serve the purpose of discouraging or diminishing the quality of the renovation of the building).

CI.4.6(3)(b) - Sufficient environmental planning grounds

There are sufficient environmental planning grounds to support the variation as the absence of motorcycle parking allows for a refined design of the laneway structure at the rear of the site and an increased provision of communal living/kitchen/dining and laundry facilities in the least impactful location on the site. The provision of 2 motorcycle spaces would significantly diminish or eliminate the ability to accommodate these improvements onto the site without reducing the overall capacity of the boarding house below the rates that have existed for over 100 years.

The upgraded boarding house will contribute to the viability of local centres by retaining affordable housing within a location that is well serviced by public and active transport infrastructure, and within close proximity to employment opportunities and educational facilities and therefore the use of a motorcycle is not necessarily required.

To offset the motorcycle parking deficit, the proposal seeks an alternative solution to provide commuter parking opportunities on the site, by providing double the bicycle parking spaces than is required by the controls within the front setback zone. The 4 bicycle spaces mean that 40% of the rooms have access to a dedicated and secure parking space for their bicycle. This promotes the use of active transport, aligning with City of Sydney's Liveable Green Network, in a way that does not compromise the visual aesthetic of this contributory building. In this respect, the proposal is considered to achieve a better planning outcome than compliance with the development standard.

Clause 4.6(4)

(4) Development consent must not be granted for development that contravenes a development standard unless:

(a) the consent authority is satisfied that:

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

(b) the concurrence of the Secretary has been obtained.

Cl.4.6(4)(a)(i) - Adequately addressing subclause 3

The Council can be satisfied that the reasons expressed above in this request adequately address the matters required by subclause 3.

Cl.4.6(4)(a)(ii) - The public interest

The proposal is in the public interest as it has been demonstrated that it is consistent with the Aims of the SEPP (ARH) for the reasons previously expressed.

Zone objectives

In relation to the objectives of the zone, the proposal:

- “provides for the housing needs of the community” in that it retains and improves an existing boarding house and therefore meets the housing need of affordable rental accommodation in areas of high amenity;
- “provides for a variety of housing types and densities” by including a range of room sizes within the boarding house, in a setting amongst other boarding houses, share houses, single dwellings and apartments;
- whilst it does not provide for “other land uses that provide facilities or services to meet the day to day needs of residents”, it is focussed on housing choice and therefore does not contravene this objective; and
- “maintains the existing land use pattern of predominantly residential uses” by retaining the boarding house use that has existed on the site for over 100 years.

Precedents

Varying the motorcycle control in this instance has no negative public interest implications, does not undermine the integrity of the SEPP (ARH) and does not set an undesirable precedent. There are various examples noted in Council's Register of Development Standard Variations where 100% variations have been granted to the motorcycle parking control, many of which have similar characteristics to the subject site with heritage overlay and rear lane access:

D/2012/568 - 304-308 King Street Newtown – 100% variation – approved 15/10/2012
“Variation acceptable due to being close to public transport, a new vehicle crossover would result in negative heritage impact”

D/2014/446 - 5 Hudson Street Redfern - 100% variation – approved 15/09/2014
“Variations meet the zone objectives”

D/2015/56 - 50 Bray Street Erskineville - 100% variation - approved 14/12/2015
“Public transport is sufficiently close to support the variation in motorcycle parking”

D/2016/1347 - 461 Harris Street Ultimo - 100.0% variation – approved 11/01/2017
“The proposal is considered not to have unreasonable impact on the amenity of the adjoining properties or the street scape”

D/2017/363 - 89 Crown Street Darlinghurst - 100.0% variation – approved 18/09/2017
“The proximity of the site to public transport and amenities does not warrant the provision of motorbike parking in this instance”

D/2016/1604 - 437 Wattle Street Ultimo - 100% variation – approved 13/11/2017
“The proposed alterations are integrated with the existing heritage character of the building and the area, and will create minimal amenity impacts to nearby dwellings”

D/2018/132 - 638 King Street Erskineville - 100.0% variation - approved 23/05/2018
“The proposal is considered not to have unreasonable impact on the amenity of the adjoining properties or the street scape”

D/2017/1648 - 26 Lower Fort St Dawes Point – 100% variation – approved 19/06/2018
“The proposal is considered not to have unreasonable impact on the amenity of the adjoining properties or the street scape”

D/2018/759 - 175 St Johns Road Glebe - 100% variation – approved 10/10/2018
“The proposal is considered not to have unreasonable impact on the amenity of the adjoining properties or the street scape”

Cl.4.6(4)(b) - Concurrence of the Secretary

The Council may assume the required Director-General’s concurrence provided that it has considered all of the relevant matters under Clause 4.6 as expressed above.

Conclusion

This statement demonstrates that in this particular case a variation pursuant to clause 4.6 of the LEP is justified as there are sufficient environmental planning grounds to exceed the standard and that strict compliance would be unreasonable and unnecessary. As such, the consent authority can be satisfied that the above justification adequately addresses clause 4.6(3) of the LEP, as required by clause 4.6(4)(a)(i).

The proposal will be in the public interest because it is consistent with the Aims of the SEPP (ARH) and the objectives of the R1 zone and provides a reasonable environmental planning outcome for the site, satisfying clause 4.6(4)(a)(ii).

There are no matters of State or regional planning significance as a result of the non-compliance, satisfying clause 4.6(5)(a). There is also no public benefit in maintaining the development standard in this particular case given the proposal meets the zone and development standard objectives and has no unreasonable impact on the amenity of the locality generally or the adjoining properties, satisfying clause 4.6(5)(b).

The variation therefore is acceptable having regards to the considerations under clause 4.6 of the LEP.