

Attachment D

**Clause 4.6 Variation Request – Motorbike
Parking**

**CLAUSE 4.6 VARIATION TO CLAUSE 30(H) – STANDARDS FOR BOARDING HOUSES OF
THE STATE ENVIRONMENTAL PLANNING POLICY (AFFORDABLE RENTAL HOUSING)
2009**

1. Introduction

This variation statement seeks to address the proposed variation to Clause 30(h) of the State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPP ARH) as it specifically pertains to the provision of motorcycle parking for boarding house developments.

It should be noted that sufficient bicycle parking is proposed for the development, with the variation specially relating to the non-provision of motorcycle parking spaces.

This submission is made under Clause 4.6 of the *SLEP12 – Exceptions to development standards* and is a “written request” as referred to in subclause (3).

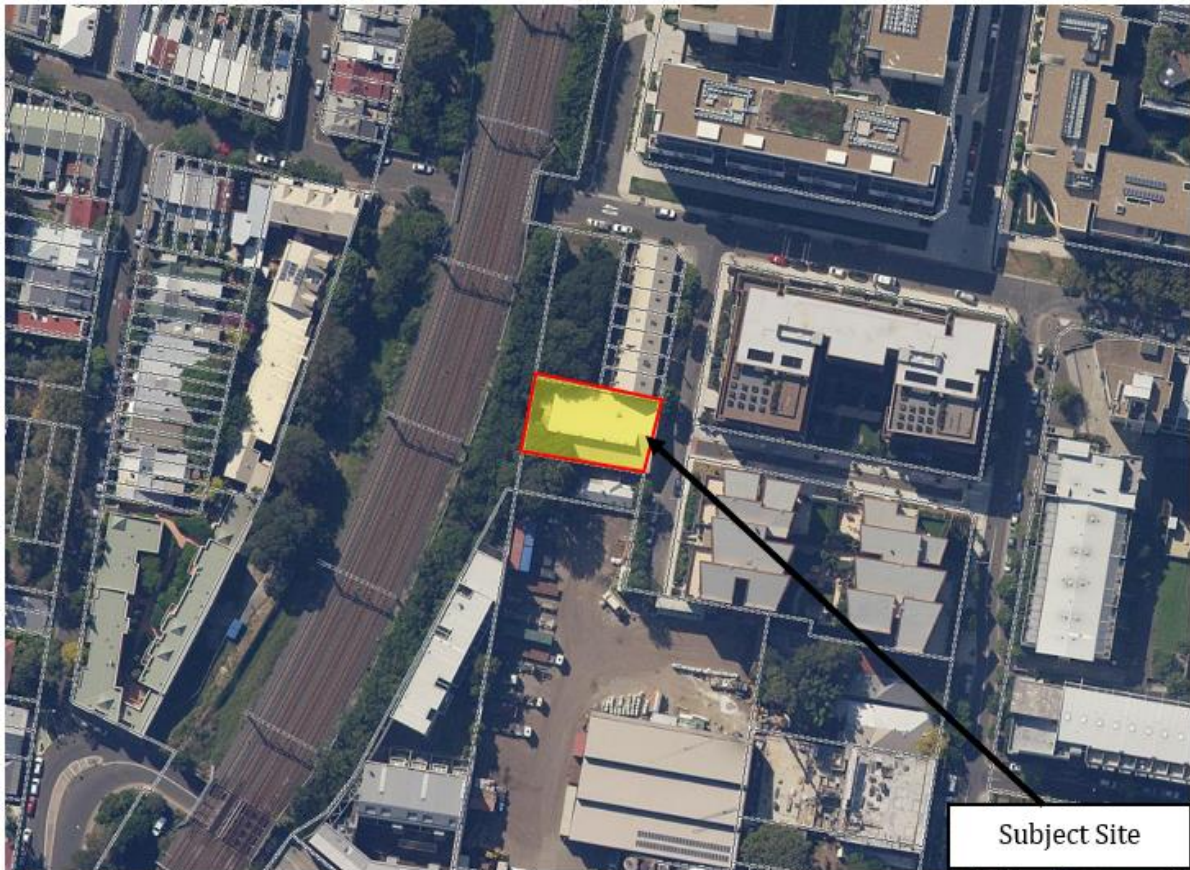
The proposed development seeks for the demolition of all existing structures and redevelopment of the site to contain a four-storey boarding house development containing 35 boarding rooms inclusive of an on-site managers room along with associated site works and landscaping at 1-3 Goddard Street, Erskineville.

As detailed in this written request for a variation to Clause 30(h) Standards for Boarding Houses under SEPP ARH 2009, the proposed development meets the requirements prescribed under Clause 4.6 of the SLEP 2012.

2. Site Background

The subject site is located on the western side of Goddard Street. The site is legally known as Lot 1 in Deposited Plan 741276 and is commonly referred to as No. 1-3 Goddard Street, Erskineville.

The site is rectangular in shape with a frontage of 18.03m to Goddard Street, with the rear property boundary measuring 18.08m in its length. Both side boundaries provide for a length of 30.62m, respectively. The overall site area measures 552.7m². Refer to Figure 1 – Site Location Map.



Source: <https://maps.six.nsw.gov.au/>

Figure 1: Site Location Map

Located on the subject site at present is a two-storey disused warehouse built form which is of an older style and character.

Development within the immediate locality is mixed in nature with a series of residential properties located to the north of the site. These are of a more contemporary housing stock. Immediately to the south at No. 5 Goddard Street is a single storey dwelling house which is of an older housing stock. Immediately opposite the subject site is a recently completed 5-storey residential flat building development which addresses nearby McDonald Street. There are also several recently completed residential flat buildings within an immediate vicinity of the subject site.

Immediately to the north of the subject site is Kirsova 1 Playground which provides for an area of public recreation within proximity of the subject site and for the benefit of the local community. This space is appropriate in facilitating more passive recreational opportunities.

Erskineville Oval along with Harry Noble Reserve are located approximately 480m of the subject site in a north-eastern orientation which provide for more expansive public green open spaces within the locality. These spaces are of an appropriate size and dimension to facilitate a various degree of active and passive recreational opportunities. Sydney Park is located at an approximate distance of 330m south of the subject site which offers a comparable amenity.

Alexandria-Erskineville Bowling Club is located at an approximate distance of 480m north-east of the site which diversifies the recreational opportunities made available within the locality.

Erskineville Public School is situated at an approximate distance of 356m north of the subject site. There are also several goods and services located within the locality namely those along nearby Euston Road.

The subject site is well serviced by public transport, being located approximately 500m walking distance to Erskineville Train Station, 650m walking distance to St Peters Railway Station, and between 350m-650m from a series of bus services. These provide regular services to the City, Liverpool, and provide connectivity to the broader Sydney metropolitan rail network. Furthermore, the subject site is situated within proximity to a series of designated commuter and recreational cycle routes and car share pods.

The site is considered to be appropriately located and conducive to the proposed development.

3. Clause 4.6

This submission is made under Clause 4.6 of the Sydney Local Environmental Plan 2012 – Exceptions to development standards. Clause 4.6 states the following:

“4.6 Exceptions to development standards

- (1) *The objectives of this clause are as follows:*
 - (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (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.*
- (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:*
 - (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*
- (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.*
- (5) *In deciding whether to grant concurrence, the Secretary must consider:*
 - (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - (b) *the public benefit of maintaining the development standard, and*

- (c) *any other matters required to be taken into consideration by the Secretary before granting concurrence.*
- (6) *Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:*
- (a) *the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
- (b) *the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*

Note. When this Plan was made it did not include all of these zones.

- (7) *After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*
- (8) *This clause does not allow development consent to be granted for development that would contravene any of the following:*
- (a) *a development standard for complying development,*
- (b) *a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
- (c) *clause 5.4,*
- (ca) *clause 4.3 (Height of buildings), but only in relation to land shown as being in Area 1 or Area 2 on the Height of Buildings Map,*
- (cab) *clause 4.5A (Balconies on certain residential flat buildings),*
- (cb) *clause 5.3A (Development below ground level in Zone RE1),*
- (cc) *clause 6.10 (Heritage floor space),*
- (cd) *clause 6.11 (Utilisation of certain additional floor space requires allocation of heritage floor space),*
- (cda) *clause 6.11A (Temporary alternative heritage arrangements in relation to allocation of heritage floor space),*
- (ce) *clause 6.17 (Sun access planes),*
- (cf) *clause 6.18 (Exceptions to sun access planes),*
- (cg) *clause 6.19 (1) (d)–(h) and (j), unless the additional overshadowing is caused by playground equipment, a shade structure, an awning, a sculpture or artwork, or a community notice or public information sign,*
- (cga) *clause 6.26 (AMP Circular Quay precinct),*
- (cgb) *clause 6.29 (58–60 Martin Place, Sydney),*
- (cgc) *clause 6.33 (230–238 Sussex Street, Sydney),*
- (cgd) *clause 6.35 (45 Murray Street, Pyrmont), but only if the development is an alteration or addition to an existing building,*
- (cge) *clause 6.36 (12–20 Rosebery Avenue, 22–40 Rosebery Avenue and 108 Dalmeny Avenue, Rosebery),*
- (cgf) *clause 6.37 (296–298 Botany Road and 284 Wyndham Street, Alexandria),*
- (cgg) *clause 6.41 (7–15 Randle Street, Surry Hills),*
- (cgh) *clause 6.42 (102–106 Dunning Avenue, Rosebery),*
- (cgh) *clause 6.40 (2–32 Junction Street, Forest Lodge),*

(ch) Division 1 of Part 7 (Car parking ancillary to other development).

This submission has been prepared having regard to the following guideline judgements:

- Winten Property Group Limited v North Sydney Council [2001] NSWLEC 46;
- Wehbe v Pittwater Council [2007] NSWLEC 827;
- Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009 ('Four2Five No 1');
- Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 ('Four2Five No 2');
- Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 ('Four2Five No 3');
- Micaul Holdings Pty v Randwick City Council [2015] NSWLEC 1386;
- Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7; and
- Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118.

The use of Clause 4.6 to enable an exception to this development standard is appropriate in this instance and the consent authority may be satisfied that all requirements of Clause 4.6 have been satisfied in terms of the merits of the proposed development and the content in this Clause 4.6 variation request report.

Clause 4.6 Exceptions to development standards establishes the framework for varying development standards applying under a local environmental plan. Subclause 4.6(3)(a) and 4.6(3)(b) requires that a consent authority must not grant consent to a development that contravenes a development standard unless a written request has been received from the applicant that seeks to justify the contravention of the standard by demonstrating that:

4.6(3)(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

4.6(3)(b) that there is sufficient environmental planning grounds to justify contravening the development standard.

In addition, 4.6(4)(a)(i) and (ii) requires that development consent must not be granted to a development that contravenes a development standard unless the:

(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

The Environmental Planning Instrument to which this variation relates is the State Environmental Planning Policy (Affordable Rental Housing) 2009. The development standard to which this variation relates is Clause 30(h) – Standards for boarding houses. The Clause reads as follows:

(1) A consent authority must not consent to development to which this Division applies unless it is satisfied of each of the following—

(a) if a boarding house has 5 or more boarding rooms, at least one communal living room will be provided,

(b) no boarding room will have a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of more than 25 square metres,

(c) no boarding room will be occupied by more than 2 adult lodgers,

(d) adequate bathroom and kitchen facilities will be available within the boarding house for the use of each lodger,

(e) if the boarding house has capacity to accommodate 20 or more lodgers, a boarding room or on site dwelling will be provided for a boarding house manager,

(f) (Repealed)

(g) if the boarding house is on land zoned primarily for commercial purposes, no part of the ground floor of the boarding house that fronts a street will be used for residential purposes unless another environmental planning instrument permits such a use,

(h) at least one parking space will be provided for a bicycle, and one will be provided for a motorcycle, for every 5 boarding rooms.

(2) Subclause (1) does not apply to development for the purposes of minor alterations or additions to an existing boarding house.

4. Extent of Non-Compliance

As noted in accordance with Clause 30(h) of the SEPP ARH 2009, at least one parking space is to be provided for a motorcycle for every 5 boarding rooms.

In the case of the proposed development, this would generate 6.8 motorcycle parking spaces.

The current proposal seeks a variation to this standard with no motorcycle parking spaces proposed. A 100% variation is sought in this instance.

It is our submission that the variation to the standard will not impact on the amenity of the development nor that of future residents.

A degree of flexibility is considered reasonable in this instance.

5. Is Compliance with the Development Standard Unreasonable or Unnecessary in the Circumstances of the Case?

The proposed variation from the development standard is assessed against the required tests in Clause 4.6. In addition, in addressing the requirements of Clause 4.6(3), the accepted five possible approaches for determining whether compliances are unnecessary or unreasonable was established by the NSW Land and Environment Court in *Wehbe v Pittwater Council* [2007] NSWLEC 827 at [42] – [49].

In the matter of *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1008, Pearson C states:

“...the case law developed in relation to the application of SEPP 1 may be of assistance in applying Clause 4.6. While Wehbe concerned an objection under SEPP 1, in my view the analysis is equally applicable to a variation under Clause 4.6 where Clause 4.6 (3)(a) uses the same language as Clause 6 of SEPP 1.”

In the decision of *Wehbe vs Pittwater Council*, Preston CJ summarised the five (5) different ways in which an objection under SEPP 1 has been well founded and that approval of the objection may be consistent with the aims of the policy. The five possible ways are as set out below:

First	<i>The most commonly invoked way is to establish that compliance with the development standards is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.</i>
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	<i>The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. If the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary and unreasonable. (applicable)</i>
Second	<i>A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary. (not applicable)</i>
Third	<i>A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable. (not applicable)</i>
Fourth	<i>A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (not applicable).</i>
Fifth	<i>A fifth way is to establish that "the zoning of particular land" was "unreasonable or inappropriate" so that "a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land" and that "compliance with the standard in that case would also be unreasonable or unnecessary. (not applicable)</i>

With respect to the standard which requires motorcycle parking as it applies to the subject property, the first method is invoked.

Compliance with objectives of standard

Whilst there are no objectives stated for the development standard itself, the aims of SEPP ARH have been considered and are achieved by the proposal notwithstanding the variation which is being sought to motorcycle parking. The aims of the SEPP have been discussed individually below.

The aims of this Policy are as follows—

- (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,*
- (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.*

Aim

- (a) to provide a consistent planning regime for the provision of affordable rental housing,*

Comment:

The proposed variation to motorcycle parking would not impede upon a consistent planning regime to be provided for affordable rental housing. An affordable housing development can still be achieved at the site with an appropriate amenity, notwithstanding the variation.

Aim

(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,

Comment:

In the case of not providing any motorcycle spaces for the development, no incentives are sought or relied upon with respect to the variation.

Aim

(c) to facilitate the retention and mitigate the loss of existing affordable rental housing,

Comment:

The proposed variation would not result in the loss of affordable rental housing. Rather through the support of the proposed variation, the provision of affordable rental housing would be facilitated at the subject site.

Aim

(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,

Comment:

The proposed variation would not restrict the provision of affordable rental housing at the subject site.

Aim

(e) to facilitate an expanded role for not-for-profit-providers of affordable rental housing,

Comment

Not applicable in this instance.

Aim

(f) to support local business centres by providing affordable rental housing for workers close to places of work,

Comment

The subject site is located within proximity to an array of local goods, services and amenities which promote employment opportunities within the immediate and broader locality. With the subject site being situated within a highly accessible area, this would encourage the use of alternative modes of transport such as walking and cycling. The provision of motorcycle spaces is therefore deemed excessive for the development in its context.

Aim

(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.

Comment

The variation would not prohibit the provision of affordable rental housing at the site. A variation would still allow for diverse housing types and choice in the locality and more broadly within the local government area.

6. Are there Sufficient Environmental Planning Grounds?

A contravention to Clause 30(h) of SEPP ARH is justified as there are sufficient environmental planning grounds to do so. These grounds, which are particular to the circumstances of the site are as follows.

Given the context of the subject site and its flooding affectation, providing onsite motorcycle parking would likely require a basement parking level given the proposed building footprint and alignments which are proposed. To provide motorcycle parking at the ground level would cause a disruption to the overall character of the development and streetscape presentation of the proposal, given there is no opportunity for rear access from a laneway or secondary street. A desirable urban outcome is therefore considered to result through the variation along with a harmonious streetscape presentation.

Providing motorcycle parking is considered excessive and unwarranted in the context of the subject site given its proximate location to public transport infrastructure. The site is located approximately 500m walking distance to Erskineville Railway Station, 650m walking distance to St Peters Railway Station and between 350m-650m walking distance to several bus services within the immediate locality. Each of these provide connections to nearby services, amenities, goods, and to a more expansive public transport network. The site is also proximately located to a series of commuter cycle routes which further encourage the use of alternative transport modes.

It should be noted that the adequate bicycle spaces have been provided for the proposed development with 15 proposed. This exceeds the minimum requirement stipulated by SEPP ARH by 8.2 spaces. The additional provision of bicycle parking at the site is deemed appropriate in compensating for the non-provision of motorcycle spaces. Hence, it would be considered excessive if any motorcycle spaces were provided at the site. This excessiveness is reinforced given the sites accessible location as detailed earlier.

The residential amenity for future residents would in no way be impacted through the non-provision of motorcycle spaces as active modes of transport are encouraged through the additional provision of bicycle spaces and the alternative transport options made available in the locality. This will ensure future residents are able to stay well connected to goods, services and amenities which are offered in the immediate and broader locality.

7. Is the Variation in the Public Interest?

Clause 4.6 states that the development consent must not be granted for development that contravenes a development standard unless 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 to be carried out.

It is considered that this submission provides sufficient environmental planning grounds to justify contravening the development standard under Part 6.

Furthermore, it is important to also consider the objectives of the B4 Mixed Use zone in relation to the development. Additional comments with respect to the proposals positive response to each objective are also provide below. The objectives of the zone are as follows:

1 Objectives of zone

- *To provide a mixture of compatible land uses.*
- *To integrate suitable business, office, residential and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*
- *To ensure uses support the viability of centres*

Objective

- *To provide a mixture of compatible land uses.*

Comment:

The proposal provides for a residential land use. The surrounding development is also predominantly residential, with significant new housing stock being located within the area. The non-provision of motorcycle spaces would not impede upon the proposed use of the site.

Objective

- *To integrate suitable business, office, residential and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*

Comment:

The subject site is benefited by its proximate location to public transport infrastructure being situated approximately 500m walking distance to Erskineville Railway Station, 650m walking distance to St Peters Railway Station, and between 350m-650m from a series of bus services. These provide regular services to nearby suburbs, goods, services and amenities along with connectivity to the broader public transport network. The proposed residential development is therefore well-located to encourage public transport patronage and to encourage walking and cycling. The provision of bicycle spaces in excess of the minimum requirement will ensure that residents have the capacity to utilise alternative transport modes and reduce dependence on motorised transport. Motorcycle spaces are deemed excessive in this instance given the highly accessible nature of the site and additional bicycle spaces.

Objective

- *To ensure uses support the viability of centres*

Comment

The subject site is located approximately 400m walking distance from the closest B2 Local Centre zone. It is considered that the provision of residential accommodation within walking distance to this local centre zoned land supports the viability and the vitality of the local centre.

Given the proximate location of a local centre, it is considered that residents will be able to access this via the alternative transport options made available to them. As such motorcycle spaces would be excessive in this context given the alternative transport modes made available and the additional bicycle spaces proposed.

8. Public Benefit of Maintaining the Standard

It is considered that the public benefit will not be undermined by varying the standard. The proposal provides for a high-quality boarding house development in keeping with the desired land uses and objectives of the B4 Mixed Use zone.

Given the site's orientation, location and context it is considered that the site is well suited for the development.

The development is generally consistent with the current planning controls.

It is not considered that the variation sought raises any matter of significance for State or Regional environmental planning.

The departure from the standard which requires motorcycle parking within the SEPP ARH allows for the orderly and economic development of the site in a manner which achieves the outcomes and objectives of the relevant planning controls.

9. Is the Variation Well Founded?

It is considered that this has been adequately addressed in Parts 6 and 7 of this submission. In summary, this Clause 4.6 Variation is well founded as required by Clause 4.6 of the SLEP12 in that:

- ❑ Compliance with the development standard would be unreasonable and unnecessary in the circumstances of the development;
- ❑ There are sufficient environmental planning grounds to justify the departure from the standard;
- ❑ The development meets the objectives of the B4 Mixed Use zoning of the land;
- ❑ The proposed development and variation maintain consistency with the aims of SEPP ARH.
- ❑ The proposed development is in the public interest and there is no public benefit in maintaining the standard;
- ❑ The breach does not raise any matter of State or Regional Significance; and
- ❑ Additional bicycle spaces have been provided which assists in compensating for the reduction in motorcycle parking spaces at the subject site.

Based on the above, the variation is considered to be well founded.

10. General

Clause 4.6 also states that:

“(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:

- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
- (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*
- (c) **Note.** When this Plan was made it did not include all of these zones.*

(7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant’s written request referred to in subclause (3).

(8) This clause does not allow development consent to be granted for development that would contravene any of the following:

- (a) a development standard for complying development,*
- (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
- (c) clause 5.4*
- (ca) clause 4.3 (Height of buildings), but only in relation to land shown as being in Area 1 or Area 2 on the Height of Buildings Map,*
- (cab) clause 4.5A (Balconies on certain residential flat buildings),*
- (cb) clause 5.3A (Development below ground level in Zone RE1),*
- (cc) clause 6.10 (Heritage floor space),*
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- (cda) clause 6.11A (Temporary alternative heritage arrangements in relation to allocation of heritage floor space),*
- (ce) clause 6.17 (Sun access planes),*
- (cf) clause 6.18 (Exceptions to sun access planes),*
- (cg) clause 6.19 (1) (d)–(h) and (j), unless the additional overshadowing is caused by playground equipment, a shade structure, an awning, a sculpture or artwork, or a community notice or public information sign,*
- (cga) clause 6.26 (AMP Circular Quay precinct),*
- (cgb) clause 6.29 (58–60 Martin Place, Sydney),*
- (cgc) clause 6.33 (230–238 Sussex Street, Sydney),*
- (cgd) clause 6.35 (45 Murray Street, Pyrmont), but only if the development is an alteration or addition to an existing building,*
- (cge) clause 6.36 (12–20 Rosebery Avenue, 22–40 Rosebery Avenue and 108 Dalmeny Avenue, Rosebery),*
- (cgf) clause 6.37 (296–298 Botany Road and 284 Wyndham Street, Alexandria),*
- (cgg) clause 6.41 (7–15 Randle Street, Surry Hills),*
- (cgh) clause 6.42 (102–106 Dunning Avenue, Rosebery),*
- (cgh) clause 6.40 (2–32 Junction Street, Forest Lodge),*
- (ch) Division 1 of Part 7 (Car parking ancillary to other development).*

Comment:

This variation does not relate to the subdivision of land. The variation sought is not contrary to subclause (6).

Should the exception to the development standard sought under this submission be supported by Council, the Council must retain a record of the assessment of this submission.

The development proposed is not complying development.

A BASIX certificate has been prepared and submitted with this development application.

The development is not affected by clause 5.4, is not located in Area 1 or 2 on the height of buildings map and is not affected by clauses 4.5A, 5.3A, 6.10, 6.11, 6.11A, 6.17, 6.18, 6.19, 6.26, 6.29, 6.33, 6.35, 6.36, 6.37, 6.41, 6.42, 6.40, Division 1 of Part 7 (car parking ancillary to other development).

11. Conclusion

The proposal does not strictly comply with Clause 30(h) of the SEPP ARH 2009 as it specifically relates to the provision of motorcycle parking.

Having evaluated the likely affects arising from this non-compliance, we are satisfied that the objectives of Clause 4.6 of the SLEP12 are satisfied as the breach to the control does not create any adverse environmental impacts.

The shortfall in motorcycle spaces will not restrict the provision of a high-quality development and an architecturally well-designed boarding house on the subject site. A variation to the required number of motorcycle spaces will still result in a development which contributes to providing affordable housing in an area well serviced by public transport infrastructure, local amenities and retail/commercial facilities.

Consequently, strict compliance with this development standard is unreasonable and unnecessary in this particular case and that the use of Clause 4.6 of the SLEP12 to vary this development control is appropriate in this instance.

It is considered that there are sufficient environmental planning grounds to vary the standard, as a variation will result in a better environmental planning outcome.

Based on the above, it is sensible to conclude that strict compliance with the development standard is not necessary and that a better outcome is achieved for this development by allowing flexibility in the application.

Valdis Aleidzans
Town Planner
GAT & Associates
Plan 3316

Gerard Turrisi
Director