

Attachment D

<p>Clause 4.6 Variation Request – Motorcycle Parking</p>

Clause 4.6 Exceptions to development standards Written request – Standards for Boarding Houses (Motorcycle Parking)

Demolition of existing structure and construction of a mixed use boarding house and part ground floor retail/cafe tenancy.



7 Layton Street, Camperdown

Prepared for: Prescott Architects

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**Clause 4.6 Written Request to Vary a Development Standard
Sydney Local Environmental Plan 2012**

Applicant's name	Prescott Architects
Site address	7 Layton Street, Camperdown
Proposal	Demolition of existing structures and construction of a mixed use boarding house and part ground floor café development.
Environmental Planning Instrument	<i>State Environmental Planning Policy (Affordable Rental Housing) 2009 (ARH SEPP)</i>
Development standard to be varied	<p>Clause 30</p> <p>The relevant subclause states:</p> <p><i>(1) A consent authority must not consent to development to which this Division applies unless it is satisfied of each of the following—</i></p> <p><i>(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.</i></p>

Below is the written request relating to the proposed variation to Clause 30 of ARH SEPP in accordance with the provisions of Clause 4.6 of SLEP 2012.

Details of development standard sought to be varied

Clause 4.3 of SLEP 2012 prescribes the maximum height of buildings for land to which the plan applies. The entirety of Clause 4.3 is reproduced below:

30 Standards for boarding houses

(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 - (f) (Repealed)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.

Emphasis added

Part (h) of subclause (1) of the standard requires a minimum of one bicycle space and one motorcycle parking space be provided for every 5 boarding rooms. The proposal comprises 17 boarding rooms and would therefore require 4 bicycle spaces and 4 motorcycle parking spaces.

The proposal provides 12 bicycle spaces within the ground floor common breezeway but provides no motorcycle parking. This represents a 100% variation to the motorcycle parking development standard.

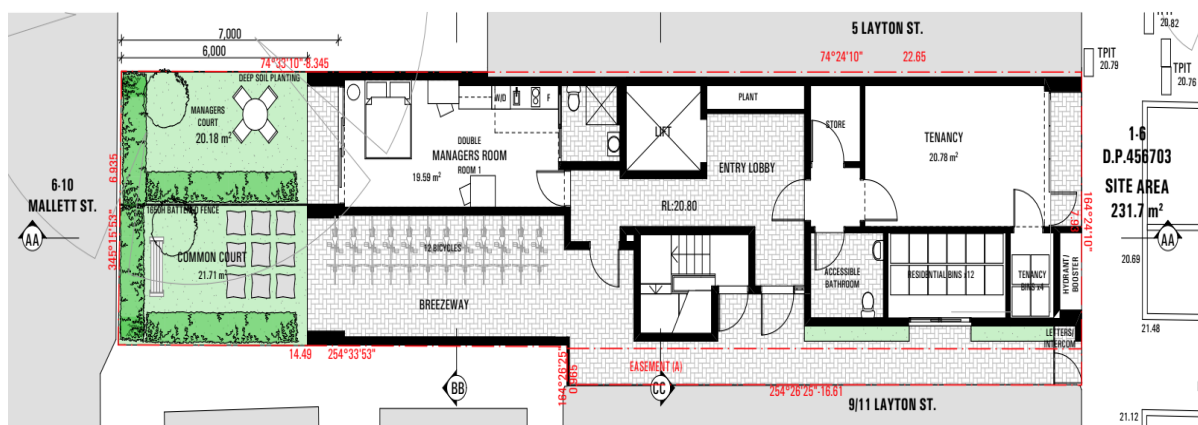


Figure 1 - Ground floor layout of proposed development

Source: Prescott Architects

Clause 4.6 Exceptions to Development Standards - Sydney Local Environmental Plan 2012

Clause 4.6 of SLEP 2012 is the mechanism by which a consent authority is able to grant consent to a development despite non-compliance with a prescribed development standard. Clause 4.6 is reproduced below:

- (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 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 E3 Environmental Management or Zone E4 Environmental Living.

- (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),
- (cgi) clause 6.40 (2–32 Junction Street, Forest Lodge),
- (cgj) clause 6.43 (Danks Street South Precinct),
- (ch) Division 1 of Part 7 (Car parking ancillary to other development).

Emphasis added

4.6(3) compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and there are environmental planning grounds to justify the contravention of the standard

The authority established by *Four2Five Pty Ltd v Ashfield Council* (2015) NSWCA 248, necessitates that environmental planning grounds for the proposed variation must be established aside from the consistency of the development with the objectives of the standard and the objectives of the zone.

In *Wehbe v Pittwater Council* (2007) NSW LEC 827, Preston CJ set out the following 5 different ways in which an objection (variation) may be well founded:

1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard;*
2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
3. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*
4. *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;*
5. *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard that would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

It is generally understood that Clause 4.6(3) can be satisfied if it is established that a development satisfies one or more of points 2-5 above.

Having regard for the authority within *Wehbe*, compliance with the minimum motorcycle parking space for the boarding house development standard has been determined to be unreasonable and unnecessary in the circumstances of the case, and the following outlines the environmental planning grounds for the proposed variation:

- An objective of the B4 Mixed Use zone is to integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling. The site is within an accessible location being 120-140m from the nearest bus stops on Parramatta Road and Pyrmont Bridge Road which provide direct access to the Sydney CBD and other centres. Motorcycle parking is not considered necessary to promote sustainable forms of transport including maximising public transport patronage and encouraging walking and cycling.
- The site frontage is narrow being 7.93m. Compliance with the development standard is unreasonable or inappropriate as it would require the provision of vehicular access from Layton Street which would dominate the site's narrow frontage, require removal of existing street planter boxes fronting the site, and require removal of the proposed active street frontage which would be contrary to the controls of Sydney Development Control Plan 2012.
- The proposal supports the objectives of the Part 7 local provisions of *Sydney Local Environmental Plan 2012* (SLEP 2012) which seeks to minimise the amount of vehicular traffic generated by proposed developments by imposing maximum car parking space requirements. Despite motorcycle parking not forming part of the requirements within SLEP 2012, the objective to minimise vehicular traffic is relevant.
- Sydney Development Control Plan 2012 provides that where buildings provide on-site parking, 1 motorcycle parking space be provided for every 12 car parking spaces. The proposal does not provide any vehicular car parking and therefore is not required to provide motorcycle parking.
- The existing boarding house does not provide car or motorcycle parking and has been able to function and operate appropriately. Whilst the proposal would intensify the boarding house use through 7 additional boarding rooms, the same provision of no car or motorcycle parking is satisfactory. This is in particular noting the same commercial operator will manage the proposed boarding house.

Clause 4(a)(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,

In the recent judgement within *Initial Action*, Preston CJ indicated that a consent authority only needs to be satisfied that an applicant has adequately addressed the matters within clause 4.6(3), and that, pursuant to 4.6(4)(a)(ii), the development is consistent with the objectives of the standard and consistent with the objectives of the zone. Although not strictly required, this variation has addressed the reasons that the development satisfies 4.6(4)(a)(ii).

The objectives of the B4 Mixed Use zone are as follows:

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

The proposal seeks to provide additional affordable rental housing in the form of 17 boarding rooms to meet the housing needs of the local community. The proposed boarding house development and ground floor retail/café tenancy are complementary to the Camperdown local centre and B4 Mixed Use zone.

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

The proposed development is consistent with the above objective as it will provide a mixture of compatible residential and retail land uses within an accessible location. Bicycle parking is proposed in favour of motorcycle and car parking, which will maximise public transport patronage and encourage walking and cycling.

- *To ensure uses support the viability of centres.*

The proposed development will revitalise the currently underutilised site with a new ground floor café tenancy and new residential accommodation in the form of boarding rooms within the Camperdown local centre. The proposed development will support the viability of the centre.

Clause 30 Standards for boarding houses of the ARH SEPP does not provide objectives for the development standard. In this regard, the aims of the ARH SEPP are most relevant in consideration of the intent of the development standard and is provided below:

Aims of Policy

The aims of this Policy are as follows—

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

The proposal does not impact on the planning regime for 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,*

The proposal provides new affordable rental housing in the form of a new boarding house which complies with the floor space ratio bonuses and all relevant non-discretionary development standards with the exception of car parking provision. As detailed above, bicycle parking is proposed in favour of motorcycle and car parking in order to maximise public transport patronage and encourage walking and cycling which is a key objective of the B4 Mixed Use zone.

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

The proposal seeks to replace the existing boarding house which is largely rundown and unused with a new modern boarding house development with increased affordable rental housing for 17 boarding rooms (7 additional boarding rooms from existing), and modern accommodation and facilities.

(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,

The proposal seeks to replace the existing boarding house which is largely rundown and unused with a new modern boarding house development with increased affordable rental housing for 17 boarding rooms (7 additional boarding rooms from existing), and modern accommodation and facilities. The proposed development will assist in renewing the existing affordable housing stock and gentrification of the area in line with the scale of development expected for the area.

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

The proposed boarding house will be operated by the existing commercial boarding house operator on site.

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

The proposed boarding house will provide new modern affordable rental housing with excellent access to public transport and within close proximity to the Sydney CBD.

(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.

The proposed boarding house would allow for additional housing options for the disadvantaged.

The aims of the ARH SEPP are achieved despite non compliance with the standard.

Conclusion

Having regard to the judgement in *Wehbe*, the objectives of the B4 Mixed Use zone and aims of the ARH SEPP, the reasons for the variation can be summarised as follows:

- The proposal seeks to provide a development that is consistent with the established and desired future character of the area.
- Strict enforcement of the motorcycle parking development standard in this instance would hinder the desired redevelopment outcome for the site, the orderly and economic use of the land, and would not be in line with the objectives of the zone as guided by the local planning provisions.
- Compliance with the development standard is unreasonable as it would require the provision of vehicular access from Layton Street, which would dominate the site's frontage, require removal of existing street planter boxes, and require deletion of the proposed active street frontage which would be contrary to the controls of Sydney Development Control Plan 2012.

- Compliance with the development standard is unreasonable noting the existing boarding house does not provide car or motorcycle parking and has been able to function and operate appropriately. Whilst the proposal would intensify the boarding house use through 7 additional boarding rooms, the same provision of no car or motorcycle parking is satisfactory. This is in particular noting the same commercial operator will manage the proposed boarding house.
- The proposed development is consistent with the objectives of the zone through provision of a mixture of compatible residential and retail land uses within an accessible location. Bicycle parking is proposed in favour of car and motorcycle parking which will maximise public transport patronage and encourage walking and cycling.
- The proposed boarding house development and ground floor café tenancy are complementary to the Camperdown local centre and B4 Mixed Use zone.

Given the above it is considered that the requirements of Clause 4.6 have been satisfied and that the variation to the motorcycling parking development standard can be approved.