

# **Attachment C**

<p><b>Clause 4.6 Variation Request – Motorcycle Parking</b></p>
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**Address:** Nos. 10 - 12 Egan Street, Newtown  
**Proposal:** Boarding House  
**NOVEMBER 2020**

## CLAUSE 4.6 VARIATION



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EGAN STREET, NEWTOWN

# PROJECT INFORMATION

The Proposal: This Clause 4.6 Variation accompanies additional documentation submitted in support of Development Application No. D/2020/517 for the adaptive reuse of an existing factory for a two storey boarding house development comprising 19 rooms at Nos. 10 – 12 Egan Street, Newtown.

Site: Lot 1 Deposited Plan 77654  
Nos. 10 – 12 Egan Street  
NEWTOWN NSW 2042

Architect:



Level 2, Nos. 12 - 16 Queen Street  
CHIPPENDALE NSW 2008



## CLAUSE 4.6 VARIATION – MOTORCYCLE PARKING

### STATE ENVIRONMENTAL PLANNING POLICY (AFFORDABLE RENTAL HOUSING) 2009

State Environmental Planning Policy (Affordable Rental Housing) 2009 was introduced on 31 July 2009. The policy's intent is to increase the supply and diversity of affordable rental and social housing in the state. The SEPP covers housing types including villas, townhouses and apartments that contain an affordable rental housing component, along with secondary dwellings (granny flats), new generation boarding houses, group homes, social housing and supportive accommodation. 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.

Clause 30(1)(h) of State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPP ARH) states that a consent authority must not consent to development unless at least one parking space will be provided for a bicycle, and one will be provided for a motorcycle, for every 5 boarding rooms.

### SYDNEY LOCAL ENVIRONMENTAL PLAN 2012

The Sydney Local Environmental Plan 2012 was gazetted on 14 December 2012 and applies to all land within the Sydney local government area (LGA). The aims of the LEP are as follows:

- a) to reinforce the role of the City of Sydney as the primary centre for Metropolitan Sydney,
- b) to support the City of Sydney as an important location for business, educational and cultural activities and tourism,
- c) to promote ecologically sustainable development,
- d) to encourage the economic growth of the City of Sydney by—
  - i. providing for development at densities that permit employment to increase, and
  - ii. retaining and enhancing land used for employment purposes that are significant for the Sydney region,
- e) to encourage the growth and diversity of the residential population of the City of Sydney by providing for a range of appropriately located housing, including affordable housing,
- f) to enable a range of services and infrastructure that meets the needs of residents, workers and visitors,
- g) to ensure that the pattern of land use and density in the City of Sydney reflects the existing and future capacity of the transport network and facilitates walking, cycling and the use of public transport,
- h) to enhance the amenity and quality of life of local communities,
- i) to provide for a range of existing and future mixed-use centres and to promote the economic strength of those centres,
- j) to achieve a high quality urban form by ensuring that new development exhibits design excellence and reflects the existing or desired future character of particular localities,
- k) to conserve the environmental heritage of the City of Sydney,

l) to protect, and to enhance the enjoyment of, the natural environment of the City of Sydney, its harbour setting and its recreation areas.

#### Clause 4.6 – Exceptions to Development Standards

The proposal does not satisfy the SEPP's motorcycle parking development standard. However, Clause 4.6 of the Sydney Local Environmental Plan 2012 states that 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**.

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.

**Comment:** The proposal seeks flexibility in application of the standard where the minimum motorcycle requirement cannot be achieved on site. The development standard would require 4 motorcycle spaces to be provided on-site to support the development. However, due to the nature of the proposed adaptive reuse of an existing heritage building, provision for on-site motorcycle parking spaces is not able to be made available. It is therefore requested that flexibility in applying the standard be applied in the circumstances.

Light rail, the Sydney Metro and increased bus, ferry and train services each help meeting the demand for increasing travel demand by Sydney residents, but they are not sufficient to serve the rapidly growing population. City of Sydney Council has identified that walking and cycling remain the most efficient and sustainable ways to make short trips to work, schools, shops and parks in our area. This is especially true in a constrained and crowded inner city environment. More people riding bikes for transport frees up space on the road for deliveries and services, and space on busy public transport, particularly in the city centre. The City's Sustainable Sydney 2030 vision for a green, global, connected city calls for a safe and attractive walking and cycling network. This helps reduce traffic congestion, improve health and wellbeing, and reduce air pollution and greenhouse gas emissions.

The City of Sydney Cycling Strategy and Action Plan notes that 40% of City of Sydney households are now car-free, and that cycling trips have doubled in the last decade, with the implementation of significant infrastructure throughout the city.

To ensure a desirable environmental outcome is achieved, 11 bicycle spaces have been provided to support the development, in lieu of only 4 bicycle spaces being prescribed by Clause 30(1)(h) of ARH SEPP, to promote walking and cycling as the desirable modes of transport for this development given the site's immediate proximity to King Street and their connectivity to the CBD beyond.

(1) 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.

**Comment:** The development standard to be contravened is Clause 30(1)(h) of State Environmental Planning Policy (Affordable Rental Housing) 2009. The minimum motorcycle requirement for boarding houses is one motorcycle space for every 5 boarding rooms. This clause is not expressly excluded from operation of the clause.

(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.

**Comment:** The motorcycle parking standard is not 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.*

**Comment:** This submission is a written request for consideration by the consent authority.

Compliance with the standard is considered unreasonable and unnecessary in the circumstances of this case given the proposed development seeks to adaptively reuse an existing heritage building, and there are clear constraints to engineering a dedicated entry and on site parking facilities for motorcycles, which would detrimentally impact upon retention of the existing building's façade to Egan Street.

The site is located within a highly accessible location. Motorcycle parking is not considered necessary to promote sustainable forms of transport including maximising public transport patronage and encouraging walking and cycling.

The proposal supports the objectives of the Part 7 local provisions of Sydney Local Environmental Plan 2012 which seek 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 of the LEP, the objective to minimise vehicular traffic is relevant and satisfied by the proposal.

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 by this convention.

Contravention of the development standard by the proposal does not give rise to any adverse environmental impact. Rather, the reliance on active modes of transport including walking and use of bicycles as an alternative mode of transport is considered more sustainable and a better outcome for the environment.

(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.*

**Comment:** The site is zoned R1 General Residential. The objectives of the zone are as follows:

- *To provide for the housing needs of the community.*

When compared to other local government areas throughout NSW, the City of Sydney has a disproportionately high number of non-private dwellings, 11% of the city's total housing stock in 2019. This is partly attributed to the city traditionally having a high concentration of boarding houses which accommodates people on lower incomes. The development clearly satisfies this objective of providing for this accommodation demand, by providing a form of 'affordable' housing accommodation within the suburb of Newtown.

- *To provide for a variety of housing types and densities.*

Non-private dwellings, such as student accommodation and boarding houses, provide additional diversity in the rental market. While often absorbing more than 30% of lower income renters, and therefore not considered an 'affordable housing' product (see Housing for All – City of Sydney Local Housing Strategy), these rentals continue to meet an important need in the inner city and ease pressure on the wider market.

- *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.*

Adaptive reuse of this factory building for residential accommodation clearly satisfies this objective, and removes a former prohibited land use, eliminating an intrusive 'existing use'.

Each of the relevant stated objectives of the residential zone are clearly satisfied by the proposed development. The proposed variation to the prescribed minimum motorcycle parking requirement will not cause any disruption to nearby residents and the development will continue provide for the housing needs of the community.

There are no stated objectives in relation to the motorbike parking development standard at Clause 30 of SEPP ARH, however, the aims of the SEPP are relevant in consideration of the intent of the development standard as provided below:

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

The proposal does not impact on the 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,*

The proposal provides new affordable rental housing in the form of a new boarding house which complies with the floor space ratio and all relevant non-discretionary development standards with the exception of motorcycle parking provision. As detailed above, bicycle parking is proposed in favour of motorcycle parking in order to maximise public transport patronage and encourage walking and cycling which is a key objective of Council's sustainable transport vision, and is consistent with the City of Sydney Cycling Strategy and Action Plan.

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



The proposal seeks to replace the existing factory building via adaptive reuse with a new age boarding house development.

*(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 the existing factory building via adaptive reuse, with a new age boarding house development providing accommodation for 19 residents with modern 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 a commercial operator, however, is not inconsistent with this objective.

*(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 Newtown village and 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 motorcycle parking development standard.

*(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.*

**Comment:** The contravention raises no matters of State or regional significance. It is considered that as the proposal is consistent with the desired future character of development in the precinct, there is no public benefit in maintaining the development standard given compensation proposed via bicycle parking, and the very close proximity of this site to a commercial centre (2 minute walk). No other matters are required to be taken into consideration by the Director-General.

*(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 land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Rural Small Holdings, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living.

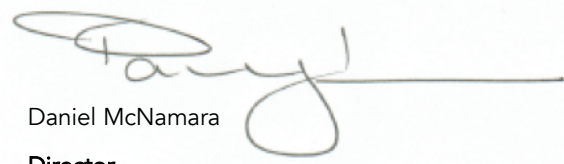
**Comment:** The proposal is not for contravention of a subdivision control.

- (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).

**Comment:** The consent authority will keep a record of the determination.

- (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).

**Comment:** The proposal is not for complying development. The development standard does not arise from the regulations in connection with BASIX. The standard does not arise from Clause 5.4 or any of the other exclusions listed.



Daniel McNamara  
Director