

Attachment C

**Clause 4.6 Variation Request – Motorcycle
Parking**

APPENDIX A

CLAUSE 4.6 EXCEPTION

REQUEST FOR AN EXCEPTION TO THE MOTORCYCLE DEVELOPMENT STANDARD UNDER CLAUSE 30(1)(H) OF ARHSEPP 2009

131 Botany Road, WATERLOO

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Report Ref: P13219-CL4.6

Prepared for and on behalf of

PFH ARCHITECTS

Prepared By

Mark Solomon

PLANNING INSTITUTE OF AUSTRALIA
(PIA) MEMBERSHIP No. 7915

ASSOCIATION OF CONSULTANTS IN ACCESS AUSTRALIA
(ACAA) ASSOCIATE MEMBERSHIP No. 651

mark@planurbia.com.au

Mobile 0490 143 274

PO BOX 86 GLEBE NSW 2037

INTRODUCTION

This request for a variation to a development standard is submitted in respect of the development standard contained within clause 30(1)(h) of the *State Environmental Planning Policy (Affordable Rental Housing) 2009* which provides that:

- (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.*

The request relates to an application for the retention of and alterations and additions to an existing two storey terrace building for use as a boarding house containing eleven (11) single occupancy boarding rooms AT 131 Botany Road, WATERLOO.

CLAUSE 4.6 EXCEPTIONS TO DEVELOPMENT STANDARDS

Clause 4.6(2) of the SLEP 2012 provides that development consent may be granted for development even though the development would contravene a development standard imposed by the SLEP 2012, or any other environmental planning instrument.

However, clause 4.6(3) states that 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.*

In accordance with clause 4.6(3) the applicant requests the motorcycle parking development standard of the Affordable Rental Housing SEPP (ARHSEPP) be varied.

DEVELOPMENT STANDARD TO BE VARIED

The development standard to be varied is a motorcycle parking provision standard set out in Clause 30(1)(h) of the Affordable Rental Housing SEPP which requires at least one parking space to be provided for a motorcycle for every 5 boarding rooms.

EXTENT OF VARIATION TO THE DEVELOPMENT STANDARD

In accordance with Clause 30(1)(h) of the Affordable Housing SEPP, three (3) motorcycle parking space would be required for the proposed development. No motorcycle parking is proposed.

Clause 4.6(3)(a) – Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

Historically the most commonly invoked way to establish that a development standard was unreasonable or unnecessary was satisfaction of the first test of the five set out in *Wehbe v Pittwater Council*. [2007] NSWLEC 827 which requires that the objectives of the standard are achieved notwithstanding the non-compliance with the standard.

The Land and Environment Court in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 has recently required additional ways of establishing that compliance is unreasonable or unnecessary beyond consistency with the standard and zone objectives to be established. For completeness, this request addresses the five part test described in *Wehbe v Pittwater Council*. [2007] NSWLEC 827, followed by a concluding position which demonstrates that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case:

1. *the objectives of the standard are achieved notwithstanding non-compliance with the standard;*

There are no stated objectives associated with the control or Clause 30 in general. However, it is assumed that the purpose of clause 30(1)(h) of the SEPP is to ensure that boarding houses provide adequate parking facilities (for cars, motorcycles and bicycles) and to ensure that boarding house developments do not result in any unreasonable traffic impacts on the local road network or loss of on-street parking.

The site is in a highly accessible location being in close proximity to bus services and the Waterloo Station / Waterloo Metro Quarter located within 40m of the site to the north, currently under construction. In this regard the provision of car and motorcycle parking on the site is not necessary. The non-provision of parking on the site ensures the development will have no additional impact on the local road network, particularly Botany Road which is a major feeder road to the southern Sydney and the airport, and which is generally at capacity during peak traffic periods.

As car and motorcycle parking is not essential for future residents due to the availability of alternative forms of transport, and the proposal to not provide motorcycle parking will not adversely impact the local road network, the underlying objective of the control is satisfied by not providing car or motorcycle parking.

2. *the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*

The underlying objective of the purpose of the standard is to ensure that adequate parking facilities are provided and to ensure that boarding house developments do not result in any unreasonable traffic impacts on the local road network or loss of on-street parking.

SLEP 2012 stipulates maximum car parking rates for development in the Sydney Local Government Area. The objective of the parking control is to minimise the amount of vehicular

traffic generated. The control also has the effect of encouraging the use of alternative and more sustainable forms of transport. The SDCP 2012 only requires motorcycle parking to be provided in buildings that require onsite parking.

The SLEP 2012 and SDCP do not require car or motorcycle parking on the site due to the availability of alternative forms of transport. The underlying objective of the control which seeks to ensure adequate on-site parking is provided is therefore not relevant to the proposed development.

3. *the underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*

If compliance was required the development would provide more onsite parking than is required for other developments in the City of Sydney local government area. The provision of on-site motorcycle parking would therefore reduce the use of more sustainable forms of transport or walking and result in a greater impact on the road network. Requiring compliance with the standard would therefore be contrary to the underlying objective of the control which seeks to ensure adequate parking is provided whilst minimising the impact of boarding house developments on the local road network.

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;*

Council has adopted a flexible approach to the provision of motorcycle parking for boarding houses. No motorcycle parking was supported for the boarding house development at 5 Hudson Street, Redfern and 7-9 Knox Street, Chippendale.

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 would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

The proposed zoning of the land is considered to be reasonable and appropriate.

Strict compliance with the motorcycle parking development standard is considered unreasonable or unnecessary for the following reasons:

- It is not possible to provide access to the site from Botany Road due to the existing stairs and level difference between finished floor level of the site and the footpath in the road reserve, at approximately 550mm.
- Providing no motorcycle parking maintains the relationship of the existing 2 storey terrace building with the public domain and streetscape. Providing motorcycle parking would require a substantive demolition of the terrace building.
- If compliance was required the development would provide more on-site parking than is required for other developments in the City of Sydney Local Government Area. The

provision of on-site motorcycle parking would therefore reduce the use of more sustainable forms of transport or walking and result in a greater impact on the road network.

- A complying number of bicycle parking spaces are proposed and the site is within walking distance of a range of services, shops, employment opportunities and public transport options such as bus stops along Botany Road and the site's proximity to the future Waterloo metro station currently under construction. In this regard the development promotes the use of sustainable transport and walking.

Clause 4.6(3)(b) – Are there sufficient environmental planning grounds to justify contravening the development standard?

The following environmental planning grounds are sufficient to justify contravention of the development standard:

- The proposal is consistent with the SLEP 2012 and SDCP requirements for car and motorcycle parking.
- Residents of the boarding house will have access to other forms of transport and are therefore not reliant on the provision of on-site motorcycle parking.
- The non-provision of motorcycle parking will not result in any adverse impacts on the amenity of the surrounding properties.
- The provision of on-site parking would compromise the 2 storey terrace building proposed to be retained, requiring either total demolition of the building or significant structural and façade alterations that would render the terrace house typology redundant as having any value within the streetscape.
- If compliance was required the development would provide more on-site parking than is required for other developments in the City of Sydney Local Government Area. The provision of on-site motorcycle parking would therefore reduce the use of more sustainable forms of transport or walking and result in a greater impact on the road network.

Clause 4.6(4)(a)(i) – Consent authority satisfied that this written request has adequately addressed the matters required to be demonstrated by clause 4.6(3)

Clause 4.6(4)(a)(i) states that development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3).

These matters are comprehensively addressed above in this written request with reference to the five part test described in *Wehbe v Pittwater Council*. [2007] NSWLEC 827 for consideration of whether compliance with a development standard is unreasonable or unnecessary in the circumstances of the case. In addition, the establishment of environmental

planning grounds is provided, with reference to the matters specific to the proposal and site, sufficient to justify contravening the development standard.

Clause 4.6(4)(a)(ii) – Consent authority satisfied that the proposal is in the public interest because it is consistent with the zone and development standard objectives

Clause 4.6(4)(a)(ii) states that development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that 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.

OBJECTIVE OF THE DEVELOPMENT STANDARD

There are no stated objectives of the standard.

OBJECTIVE OF THE ZONE

Clause 4.6(4) also requires consideration of the relevant zone objectives. The site is located within the B4 Mixed-Use zone. The objectives of the zone are as follows:

- *To provide a mixture of compatible land uses.*
- *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.*
- *To ensure uses support the viability of centres.*

The proposed development provides for low cost rental accommodation for residential use which is a permissible use within the zone and is compatible with the surrounding land uses. The site is located within a highly accessible area, being well served by Sydney Buses and in close proximity to the Waterloo Metro Station currently under construction, and bicycle parking spaces are provided on site. The provision of low cost accommodation at this location provides housing for workers and students and who support the vitality and economic activity of the surrounding centres and businesses. For the reasons given the proposal is consistent with the objectives of the B4 zone.

OBJECTIVES OF CLAUSE 4.6

The specific objectives of Clause 4.6(1) are:

- to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

Allowing flexibility in relation to the motorcycle parking development standard ensures consistency between parking requirements of the ARH SEPP and the SDCP. Providing flexibility in the standard also encourages the use of sustainable forms of transport, including walking.

A better built form outcome results from allowing the motorcycle parking standard to be varied as it enables the retention of the existing 2 storey terrace building which will assist in the interpretation and reminder of the typical housing stock once found in the Waterloo locality. Requiring motorcycle parking would result in and require a substantially different form of development than that being proposed.

CONCLUSION

The proposed variation to the motorcycle parking standard contained within clause 30(1)(h) of the ARHSEPP has found to be reasonable and necessary in the circumstance of the case. In addition there are sufficient environmental planning grounds to justify the variation. In this regard it is reasonable and appropriate to vary the motorcycle parking development standard to the extent proposed.



MARK SOLOMON

DIRECTOR

PLAN URBIA PLANNING AND ACCESS CONSULTANTS

PLANNING INSTITUTE OF AUSTRALIA (PIA) MEMBERSHIP No. 7915

ASSOCIATION OF CONSULTANTS IN ACCESS AUSTRALIA (ACAA) ASSOCIATE MEMBERSHIP 651