

Attachment D

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

413-415 Sussex St, Haymarket

Clause 4.6 variation to Motorbike parking in the ARH SEPP

On behalf of
Elegant Dixon Pty Ltd
December 2019 *(Amended June 2021)*



1 Introduction

The Development Application (**DA**) for 413-415 Sussex St, Haymarket and 82-84 Dixon Street, Haymarket (the **site**) proposes a mixed-use development comprising student accommodation and retail component. This Clause 4.6 variation under the Sydney Local Environmental Plan 2012 (**SLEP 2012**) to Clause 30/(1)/(h) Motorbike parking control in the State Environmental Planning Policy (Affordable Rental Housing) 2009 (**ARH SEPP**) accompanies the DA.

2 Clause 4.6 Exceptions to Development Standards

Clause 4.6 of the SLEP 2012 enables an exception to the motorbike standard upon consideration of a written request from the applicant justifying the contravention in the terms stated below. Clause 4.6 of the SLEP reads as follows:

Clause 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 Director-General has been obtained.*
- (5) *In deciding whether to grant concurrence, the Director-General 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 Director-General before granting concurrence.

3 The Development Standard to be varied

The development standard to be varied is Clause 30/(1)/(h) which requires motorbike parking control in the ARH SEPP. Clause 30/ (1)/(h) of the ARH SEPP stipulates that at least 1 bicycle and 1 motorbike space is to be provided for every 5 boarding rooms.

Clause 30 of the ARH SEPP 2009 states that:

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.**

4 Extent of Variation to the Development Standard

The proposal includes a total of 306 student accommodation rooms, which is required to provide a total of 61.2 motorbike spaces under the ARH SEPP 2009 (1 motorcycle space for every 5 boarding rooms). The proposal does not provide any motorbike parking spaces.

However, the proposal provides a total of 122 bicycle parking spaces for student lodgers and retail employees (refer to **Figure 1** below). The variation is considered acceptable as the proposal provides sufficient bicycle parking spaces in exceedance of the planning controls, which better aligns with the City of Sydney's transport strategy that focuses on active transport such as cycling over motorbikes and car use.

The subject site is within a highly accessible location with close proximity to a number of public transport and commercial services, and the reduced proposed basement to minimise any potential impacts to the heritage building at 82-84 Dixon Street, Haymarket.

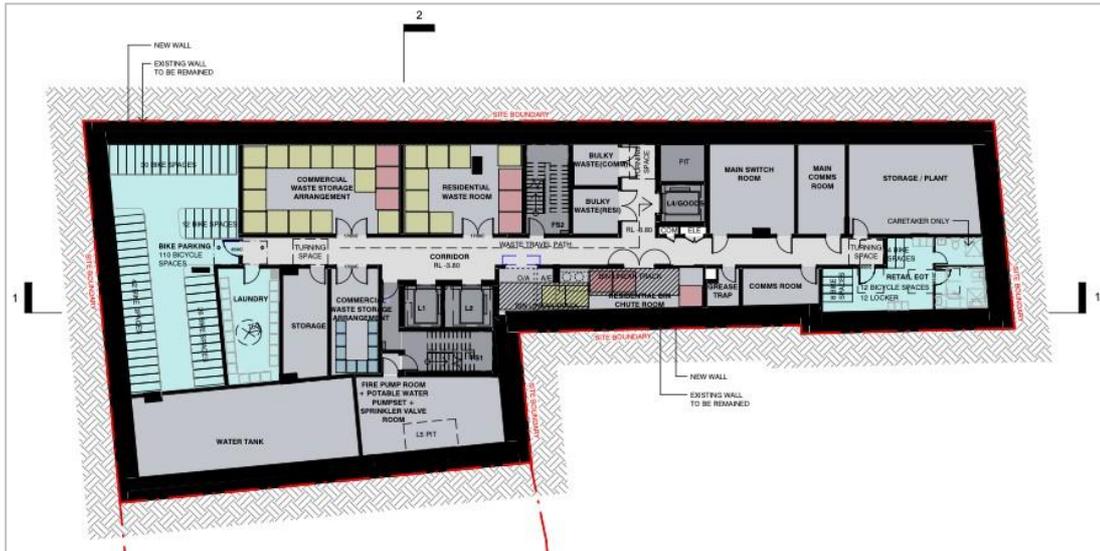


Figure 1 Proposed Basement 02 (extract from DA-10-0800 T)
Source: PTW Architects

5 Objectives of the Standard

There are no stated objectives associated with the control or Clause 30 in general. However, it is considered that the purpose of Clause 30 of the SEPP is to ensure that boarding houses are compatible with their context, provide adequate facilities for occupants and do not result in any adverse impacts to the surrounding area, including traffic impacts. Furthermore, Council's parking controls within the SLEP2012 are maximum rates, specifically designed to reduce car and motorbike riding within the LGA and increase use of public transport, walking and cycling to improve health and environmental outcomes.

6 Objectives of the zone

The objectives of the B8 Metropolitan Centre zone are as follows:

- *"To recognise and provide for the pre-eminent role of business, office, retail, entertainment and tourist premises in Australia's participation in the global economy.*
- *To provide opportunities for an intensity of land uses commensurate with Sydney's global status.*
- *To permit a diversity of compatible land uses characteristic of Sydney's global status and that serve the workforce, visitors and wider community.*
- *To encourage the use of alternatives to private motor vehicles, such as public transport, walking or cycling.*
- *To promote uses with active street frontages on main streets and on streets in which buildings are used primarily (at street level) for the purposes of retail premises."*

7 Assessment

Clause 4.6(3)(a) - Is Compliance with the development standard unreasonable or unnecessary in the circumstances of the case

Compliance with the motorbike parking requirement is unreasonable and unnecessary given the following circumstances of this case:

- The proposal will align with the objectives of the maximum parking rates in the SLEP 2012 and will promote the use of public transport, walking and cycling,

which better aligns with Council's strategic documents for Central Sydney including the Central Sydney Planning Strategy and the Local Strategic Planning Statement. The site is highly accessible with Central train station, a number of bus services along George Street and light rail stations located within close proximity to the subject site;

- It is considered that the future residents (being students) and retail tenants and users would not rely on motorbikes for transport and would rely more on cheaper forms of transport (being public transport, cycling and walking) due to the site location;
- The proposal provides sufficient bicycle parking that suits the intent of the residents, being students, who are more likely to use bicycles than motorcycles to travel, and complies with ARH SEPP and SDCP 2012 minimum requirements;
- The proposal will not significantly impact upon the amenity of the adjoining neighbours;
- The proposed development is nevertheless consistent with the B8 Metropolitan Centre zone objectives as described below;
- The contravention of the motorbike parking requirement does not raise any matter of State or regional planning significance; and
- There is no public benefit in maintaining the standard in the circumstances of the case as explained below.

Therefore, strict compliance with the motorbike parking requirement would be unreasonable and unnecessary in the circumstances.

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

There are sufficient environmental planning grounds for the contravention to the height standard as follows:

- The removal of motorbike parking spaces is a better outcome for the site and development as it will promote the use of more sustainable forms of transport including public transport, cycling and walking and is consistent with Council's approach to traffic and parking, which is to reduce private vehicle trips within the LGA and Central Sydney in particular;
- The removal of motorbike parking spaces reduces the need for below ground excavation of the site, which better ensures the structural soundness of the heritage buildings at 82-84 Dixon Street. The conservation of these buildings has been a key driver in the overall development and minimising basement excavation better ensures their soundness.
- The proposal provides sufficient bicycle parking which complies with ARH SEPP and Council DCP;
- The proposal will not create any additional traffic generation to the surrounding road network given no private car parking spaces and no motorbike spaces are provided; and
- Given the above strict compliance with the motorbike parking requirement would hinder the attainment of the objects of the Act, and would not result in the orderly and economic use and development of land.

Clause 4.6(4)(a)(ii) - Is the proposed development 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 court case *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, Commissioner Pearson stipulates that the consent authority is to be satisfied the proposed development will be in the public interest because it is consistent with:

- a) *the objectives of the particular standard, and*
- b) *the objectives for development within the zone in which the development is proposed to be carried out.*

The objectives of the development standard and the zone are addressed below under the relevant headings:

a) the objectives of the particular standard

It is reiterated that there are no stated objectives associated with the control or Clause 30 in general. However, it is considered that the purpose of Clause 30 of the ARH SEPP is to ensure that boarding houses are compatible with their context, provide adequate facilities for occupants and do not result in any adverse impacts to the surrounding area, including traffic impacts. Furthermore, Council's parking controls within the SLEP 2012 are maximum rates, specifically designed to reduce car and motorbike riding within the LGA and increase use of public transport, walking and cycling to improve health and environmental outcomes.

b) the objectives for development within the zone in which the development is proposed to be carried out.

This falls within the B8 Metropolitan Centre zone and the relevant objectives are addressed below:

- *To recognise and provide for the pre-eminent role of business, office, retail, entertainment and tourist premises in Australia's participation in the global economy.*

The proposed development comprises a mixture of uses including student accommodation and retail premises which will contribute to the viability of the Haymarket Chinatown Area. The development provides adequate and appropriate retail and commercial space to meet the needs of the existing and future workers and residents.

- *To provide opportunities for an intensity of land uses commensurate with Sydney's global status.*

Australia has become one of the most popular tertiary education destinations globally with a high demand of student accommodation in Sydney. The proposal includes a 306 rooms student accommodation development which provides a unique opportunity to accommodate this demand.

- *To permit a diversity of compatible land uses characteristic of Sydney's global status and that serve the workforce, visitors and wider community.*

The proposed mixed-use development will not only provide the need for student accommodation, but also offers additional employment opportunities for the community. The proposed commercial/retail component will offer a variety of job opportunities that promotes the viability of the Haymarket/China town and continues to attract local and international visitors.

- *To encourage the use of alternatives to private motor vehicles, such as public transport, walking or cycling.*

The proposed development will be located in an accessible location which is in proximity to Central train station and a number of bus services and light rail stops which will maximise public transport patronage. Furthermore, the

proposal incorporates additional bicycle parking and is surrounded by a series of footpaths which will encourage walking and cycling.

- *To promote uses with active street frontages on main streets and on streets in which buildings are used primarily (at street level) for the purposes of retail premises.*

The development incorporates ground floor retail along Sussex Street, Dixon Street and Little Hay Streets which promote street activation along all the frontages.

As discussed above the proposal is considered in the public interest as it is consistent with the objectives of the development standard and the B8 Metropolitan Centre zone.

Furthermore, there is no significant benefit in maintaining the motorbike parking requirements given the proposal facilitates a significantly better planning outcome with improved amenity and no significant adverse environmental impact.

8 Any matters of significance for State or regional environmental planning

The contravention with the motorbike standard does not raise any matter of State or regional planning significance.

9 Conclusion to variation to motorcycle standard

This Clause 4.6 variation request is made under the SLEP 2012 to Clause 30/(1)/(h) Motorbike parking control in the ARH SEPP. It justifies the contravention to the motorbike parking requirement in the terms required under Clause 4.6 of the LEP, and in particular demonstrates that the proposal provides a significantly better planning outcome with no significant adverse environmental impacts, and therefore in the circumstances of the case:

- Compliance with the motorbike standard is unreasonable and unnecessary;
- There are sufficient environmental planning grounds for the contravention;
- It is in the public interest in being consistent with the objectives of the zone; and
- There are no matters of State or regional planning significance and no public benefits in maintaining the motorbike standard in this case.



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