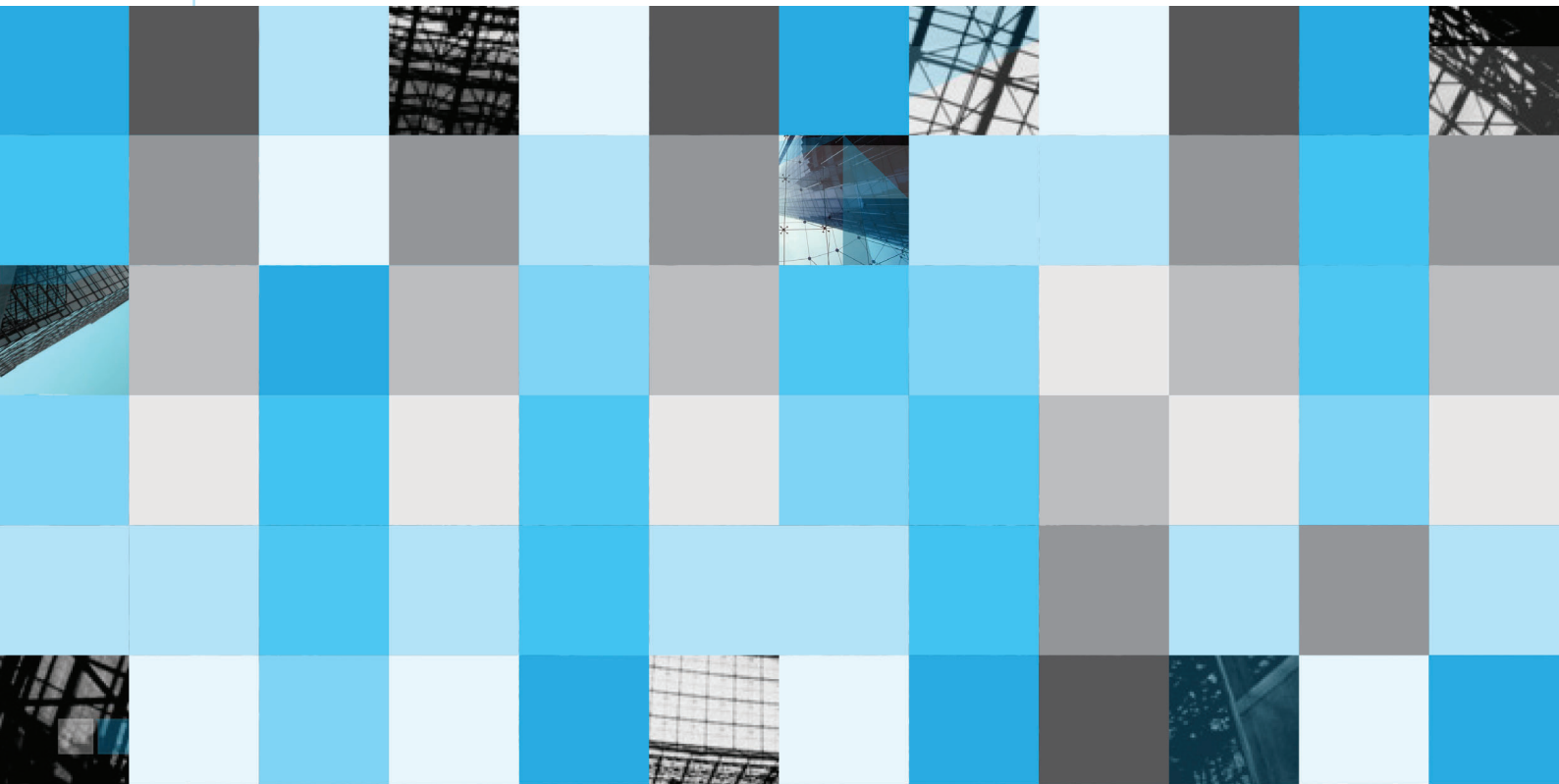


Attachment B

**Clause 4.6 Variation Request –
Motorcycle Parking**



17 Billyard Avenue, Elizabeth Bay

Clause 4.6 – Motorcycle Parking

Clause 4.6 – Motorcycle Parking

17 BILLYARD AVENUE, ELIZABETH BAY

1 June 2021

Prepared under instructions from
[John Pooley](#)

by

[Amy Sutherland](#)
B Planning UNSW (Hons)

amy@sutherlandplanning.com.au
Tel: 0402 852 034
PO BOX 814 BOWRAL NSW 2576

1.0 CLAUSE 4.6 REQUEST – MOTORCYCLE PARKING 4

1.1	Introduction	4
1.2	Clause 4.6 Exceptions to development standards	4
1.3	Development Standard to be varied	4
1.4	Extent of Variation to the Development Standard	4
1.5	Clause 4.6(3)(a) Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?	5
1.6	Clause 4.6(3)(b) Are there are sufficient environmental planning grounds to justify contravening the development standard?	7
1.7	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)	8
1.8	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	8
1.9	Objectives of Clause 4.6	9
1.10	Conclusion	9

1.0 CLAUSE 4.6 REQUEST – MOTORCYCLE PARKING

CLAUSE 4.6 REQUEST FOR AN EXCEPTION TO THE MOTORCYCLE PARKING DEVELOPMENT STANDARD

1.1 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 alterations and additions to the existing building, construction of an addition to the building and use of the building as a boarding house at 17 Billyard Avenue, Elizabeth Bay.

1.2 Clause 4.6 Exceptions to development standards

Clause 4.6(2) of the Sydney Local Environmental Plan 2012 (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 circumstance of the case, and

(b) 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 [SEPP (ARH)], be varied.

1.3 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 sepp (ARH) which provides that a consent authority must not consent to development to which Division 3 of the SEPP unless it is satisfied at least one parking space will be provided for a motorcycle for every 5 boarding rooms.

1.4 Extent of Variation to the Development Standard

In accordance with Clause 30(1)(h) of the Affordable Housing SEPP, 6 motorcycle parking space would be required for the proposed development. No motorcycle parking is proposed.

1.5 [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.

In addition, in the matter of *Randwick City Council v Mical Holdings Pty Ltd* [2016] NSWLEC 7 [34] the Chief Justice held that “establishing that the development would not cause environmental harm and is consistent with the objectives of the development standards is an established means of demonstrating that compliance with the development standard is unreasonable or unnecessary”.

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 residents have adequate parking and access to transport, minimise the amount of vehicular traffic and to ensure that boarding house developments do not result in any loss of on-street parking.

The site is in a highly accessible location being in close proximity to the 311-bus service which operates along Macleay Street, Greenknowe Avenue and Elizabeth Bay Road. The site is also within 950 metres walk of King Cross train station. Several go-get car sharepods are located in close proximity to the site. In this regard the provision of motorcycle parking on the site is not necessary. The non-provision of motorcycle parking on the site ensures the development will have no additional impact on the local road network.

On-street parking in the surrounding streets is timed from 8am to 10pm. Residents will not have access to parking permits. As such residents are not able to park on the street and reduce the availability 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 only requires motorcycle parking to be provided in buildings that require onsite parking and requires 1 motorcycle parking space for every 12 car parking spaces.

As motorcycle parking is not essential for future residents due to the availability of alternative forms of transport, and the proposal will not adversely impact the availability of on-street parking, the underlying objective of the control is satisfied by not providing 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 residents have adequate parking and access to transport, minimise the amount of vehicular traffic and to ensure that boarding house developments do not result in any 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 only requires motorcycle parking to be provided in buildings that require onsite parking and requires 1 motorcycle parking space for every 12 car parking spaces.

The SLEP 2012 and SDCP do not require car or motorcycle parking on the site due to the availability of alternative forms of transport and due to the limited number of car parking spaces on site. 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. The non-provision of motorcycle parking was supported for the boarding house developments 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.

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

- The provision of motorcycle parking on the site is hindered by the retention of the existing garages to maintain the existing streetscape and the use of the three existing garages for the provision of 2 car parking spaces, garage storage and providing access to the building for people with a disability. By not providing an additional access point to the site for motorcycles the façade of the existing building can be retained and the character of the lane can be maintained.
- 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.
- Residents have access to a range of transport options including the train, buses and GoGet car share. The site is also in walking distance to a range of shops of services on Macleay Street and Darlinghurst

Road. The development also provides more bicycle parking spaces than required. The provision of motorcycle parking on the site is not necessary to provide adequate access to transport.

- A complying number of bicycle parking spaces is proposed, and the site is within walking distance of a range of services, shops, employment opportunities and public transport options such as bus stops. In this regard the development promotes the use of sustainable transport and walking.
- On-street parking in the surrounding streets is timed from 8am to 10pm. Residents will not have access to parking permits. As such residents are not able to keep a motorcycle parked on the street and reduce the availability of on street parking.

1.6 [Clause 4.6\(3\)\(b\) Are there are sufficient environmental planning grounds to justify contravening the development standard?](#)

The Land & Environment Court matter of *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 2018, provides assistance in relation to the consideration of sufficient environmental planning grounds whereby Preston J observed that:

- in order for there to be 'sufficient' environmental planning grounds to justify a written request under clause 4.6, the focus must be on the aspect or element of the development that contravenes the development standard and the environmental planning grounds advanced in the written request must justify contravening the development standard, not simply promote the benefits of carrying out the development as a whole; and
- there is no basis in Clause 4.6 to establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development.
- the grounds relied on by the applicant in the written request under cl 4.6 must be “environmental planning grounds” by their nature. The adjectival phrase “environmental planning” is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the Environmental Planning & Assessment Act 1979 (EP&A Act).

Section 1.6 of this clause 4.6 request details the proposal’s consistency with the aim of the underlying objective of the standard. This discussion addresses key environmental planning grounds being the proposal’s consistency with the applicable parking requirements of the SLEP and SDCP, the lack of additional impact on the local traffic network and on-street parking and the availability of a range of modes of transport to ensure that adequate transport is available to residents (Objectives (1), (b) and (g) of the EP&A Act).

In addition to the above grounds the following environmental planning grounds 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 an additional access point for motorcycle parking would compromise the eastern façade of the building as the walls of the existing building with frontage to Billyard Avenue. The existing façade has been retained to minimise the impact of the development on the streetscape and the significance of the heritage conservation area.
- 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.

Other environmental planning grounds that justify the variation include the following:

- The development provides additional housing in an area that is serviced by existing infrastructure and as such the development is consistent with object (c) of the EP&A Act which seeks to promote the orderly and economic use and development of land.
- The proposed variation does not result in any adverse impact on the built or cultural heritage significance of the area as detailed in the SOHI prepared by Graham Hall and Partners and as such the development is compatible with object (f) of the EP&A Act.
- The pattern and form of the development is compatible with the character of the local area as detailed in the Statement of Environmental Effects that accompanies the application particularly having regard to the proposal's compliance with the building height, floor space ratio and landscaped area standards of SEPP ARH. The development is therefore consistent with object (g) of the EP&A Act despite the variation proposed.
- The development will not impact on any threatened species, ecological communities and their habitats. In this regard the development is consistent with object (e) of the EP&A Act which seeks to protect the environment including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats.

1.7 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.

1.8 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. The underlying objectives of the standard are addressed above.

Objectives of the Zone

Clause 4.6(4) also requires consideration of the relevant zone objectives. The site is located within the R1 General Residential zone and the objectives of the zone are:

- To provide for the housing needs of the community.
- To provide for a variety of housing types and densities.
- 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.

The proposed development provides for residential accommodation in the form of a boarding house which is a permissible use within the zone and is compatible with the surrounding residential land uses. The development will contribute to the supply of affordable housing in Elizabeth Bay.

The density of housing proposed is appropriate having regard to the proposal’s compliance with the applicable FSR development standard.

The provision of low-cost accommodation at this location provides housing for students and workers 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 R1 zone.

1.9 Objectives of Clause 4.6

The specific objectives of Clause 4.6 are:

- (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.

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 walls of the existing building and therefore the character of the street can be retained. The retention of the walls of the existing building (with limited modification) assists in protecting the significance of the heritage conservation area in which the site is located.

1.10 Conclusion

The proposed variation to the motorcycle parking standard contained within clause 30(1)(h) of the ARH SEPP 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