

Attachment E

**Clause 4.6 Variation Request – Solar
Access**



Clause 4.6 Variation Request

Non-discretionary development standard – Solar access

82 Wentworth Park Road, Glebe

Prepared on behalf of:

NSW LAHC

FPDplanning

Document control

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Project summary

Applicant	NSW Land and Housing Corporation
Land to be developed	82 Wentworth Park Road, Glebe
Legal description	Lot 1-4 DP82924
Project description	Clause 4.6 variation request for variation to solar access provisions in Clause 18(2)(e) of the Housing SEPP.

Contents

Document control	ii
1 Introduction	5
2 The site and proposed development.....	7
3 Extent of proposed variation.....	9
4 Justification for the proposed variation	10
5 Conclusion.....	14
Table 1: Five ways to demonstrate compliance is unreasonable or unnecessary.....	10
Table 2: Consideration of Clause 3 Principles of Policy in the Housing SEPP	11
Table 3 Consideration of objectives of the R1 General Residential zone.....	12
Figure 1 Subject site	7

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1 Introduction

This report has been prepared to request a variation to a non-discretionary development standard within Clause 18 of the *State Environmental Planning Policy (Housing) 2021* (Housing SEPP) in connection with a development application for a residential flat building for the purpose of affordable housing (to be managed as 100% social housing by NSW LAHC) at 82 Wentworth Park Road, Glebe.

Clause 18 (2) (e) of the Housing SEPP contains a non-discretionary development standard for solar access.

In accordance with Section 4.15 (3(b) of the *Environmental Planning and Assessment Act 1979* (EP&A Act), a provision in an environmental planning instrument that allows flexibility in the application of a development standard may be applied to a non-discretionary development standard.

Clause 4.6 of the *Sydney Local Environmental Plan 2012* (Sydney LEP) provides flexibility in applying certain development standards to particular development and allows for consent to be granted to development that does not comply with a development standard in the Sydney LEP or any other environmental planning instrument.

The site is currently zoned R1 General Residential under the Sydney LEP and the following built form controls apply:

- FSR of 1.75:1
- Maximum height of 12m

The non-discretionary standard in Clause 18 (2) (e) of the Housing SEPP requires living rooms and private open spaces in at least 70% of the dwellings to receive at least 3 hours of direct solar access between 9am and 3pm at mid-winter.

The proposal achieves solar access to 35% of dwellings for a minimum of 3 hours between 9am and 3pm.

The proposal has been designed to comply with solar access criteria in the Apartment Design Guide, which requires at least 2 hours of solar access to 70% of apartments in mid-winter. The proposal achieves excellent solar access, with 81% of all apartments receiving at least 2 hours of solar access in mid-winter.

Clause 4.6 of the Sydney LEP includes provisions that allow the consent authority to vary development standards in certain circumstances. The objectives of clause 4.6 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.

Clause 4.6 requires the consent authority to consider a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating that:

- Compliance with the development standard is unreasonable or unnecessary in the circumstances.
- There are sufficient environmental planning grounds to justify contravening the development standard.

The Department of Planning, Industry and Environment has issued the *Guide to Varying Development Standards November 2023* to assist applicants in applying to vary development standards. The guide sets out five common ways which have been established by the NSW Land and Environment Court which may be considered in applying Clause 4.6 to determine whether the objection to the development standard is well founded. The matters have been considered and addressed by this report.

2 The site and proposed development

2.1 The site

The site is located at 82 Wentworth Park Road, Glebe, and is legally described as Lot 1- 4 DP82924. The site has an approximate site area of 1,633sqm.

The site is bound by Wentworth Park Road to the east, Bellevue Street to the west, Cardigan Street to the south and the Glebe and Wentworth Park railway viaducts to the north. The site is directly opposite Wentworth Park, a significant regional open space asset.

The site is occupied by 17 social housing dwellings comprising semi-detached dwellings and townhouses. The site has numerous trees within the boundary, particularly along on the northern and western boundary, and mature heritage-listed street trees are located along Wentworth Park Road.

To the rear of the site is a steep rock shelf between 3-10 metres high resulting in a significant level change to Bellevue Street in this location. Two to three storey residential terraces and Thomas Portley Reserve, a small local park and playground, are located on Bellevue Street.

To the south of the site is Cardigan Street and the carpark of the neighbouring commercial uses which are located in two storey buildings located between Cardigan Lane and Bellevue Street. A series of two storey terraces front Wentworth Park Road to the south of the site. The surrounding residential uses are predominantly low scale Victorian terraces and semi-detached housing or converted warehouse apartments.



Figure 1 Subject site

2.2 The proposal

The proposed development is for a four-storey residential apartment building providing 43 affordable housing dwellings. Key aspects of the proposal are described in further detail below.

The proposed development is for the construction of a four-storey residential apartment building for the provision of 43 affordable housing dwellings (100% affordable housing). Key aspects of the proposal are described below.

- 43 apartments within a residential flat building up to 4 storeys
- An apartment mix of 4 studio apartments, 29 x 1-bedroom apartments and 10 x 2 bedroom apartments.
- Landscaped setbacks and terrace style apartments facing Wentworth Park Road
- 44 resident bike parking spaces and 6 visitor bike parking spaces, and waste storage areas located at ground level
- 1 partial basement level accommodating building services
- Green roof and rooftop landscaping

No on-site car parking is proposed.



3 Extent of proposed variation

Clause 18 (2) (e) of the Housing SEPP contains a non-discretionary development standard which requires living rooms and private open spaces in at least 70% of the dwellings to receive at least 3 hours of direct solar access between 9am and 3pm at mid-winter.

The proposal achieves solar access to 35% of dwellings for a minimum of 3 hours between 9am and 3pm.

The proposal has been designed to comply with solar access criteria in the Apartment Design Guide, which requires at least 2 hours of solar access to 70% of apartments in mid-winter.

The proposal achieves excellent solar access, with 81% of all apartments receiving at least 2 hours of solar access in mid-winter.

Achieving compliance with the solar access criteria in the ADG is considered appropriate for residential apartment development over 3 storeys and is the industry standard for achieving a high level of amenity to residential apartments. It is noted that SEPP 65 and the ADG continue to apply to in-fill affordable housing development undertaken in accordance with the Housing SEPP.

The proposal has been designed to ensure the number of apartments oriented to the north and north-west is maximised, within only a limited number of single aspects south facing apartments at the rear of the site. Apartments at the rear of the site have been designed with outlook to communal open space and landscaped areas to provide a high level of amenity.

This non-compliance results in a variation to the solar access provisions in Clause 18 (2) (e) of the Housing SEPP to facilitate the renewal and increase in affordable housing on the site. The proposal provides excellent amenity, with the proposal exceeding the minimum solar access requirements in the ADG.

4 Justification for the proposed variation

This section of the report provides consideration of the requirements of Clause 4.6 and the matters set out in the *Guide to Varying Development Standards November 2023*.

4.1 How is compliance with the development standard is unreasonable or unnecessary in the circumstances of this particular case?

Compliance with the development standard is considered unreasonable and unnecessary in this instance as it is consistent with Clause 3 ‘Principles of Policy’ in the Housing SEPP and the objectives of the R1 General Residential zone.

As demonstrated in Table 2 and Table 3 the objectives are achieved notwithstanding non-compliance. This is consistent with the five-part test established in *Wehbe vs Pittwater* and one of the five ways that compliance can be demonstrated to be unreasonable or unnecessary in the *Guide to Varying Development Standards* (refer to Table 1).

The Department of Planning, Industry and Environment has issued the *Guide to Varying Development Standards November 2023* to assist applicants applying to vary development standards. The guide sets out five common ways that compliance with a development standard may be demonstrated to be unreasonable or unnecessary as established by the NSW Land and Environment Court in determining whether the objection to the development standard is well founded. A Clause 4.6 application is not required to meet all of the tests.

Table 1: Five ways to demonstrate compliance is unreasonable or unnecessary

Objective	Consideration
The objectives of the standard are achieved notwithstanding non-compliance with the standard	The objectives of Clause 3 Principles of Policy of the Housing SEPP and the objectives of the R1 General Residential zone can be achieved, as outlined at Table 2 and Table 3 notwithstanding the non-compliance.
The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary	This test is not applicable in this instance.
The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable	Compliance with the solar access standard in the Housing SEPP is considered unreasonable as it would impact on the provision and delivery of affordable housing on site. The proposal aims to maximise the amount of affordable housing provided on site, while ensuring a high level of solar access and compliance with the solar access criteria in the ADG.
The development standard has been virtually abandoned or destroyed by council’s own actions in granting consents departing from the standard.	This test is not applicable in this instance.
The compliance with the development standard is unreasonable or inappropriate due to the existing use of the land and current character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.	This test is not applicable in this instance.

The proposed development is consistent with the principles of the Housing SEPP and the objectives of the R1 General Residential zone as outlined in Table 2 and Table 3.

Table 2: Consideration of Clause 3 Principles of Policy in the Housing SEPP

Objective	Consideration
Enabling the development of diverse housing types, including purpose-built rental housing,	The proposal will provide the housing needs of the community through the delivery of 43 new affordable housing dwellings (an increase from the 17 social housing dwellings currently on the site).
Encouraging the development of housing that will meet the needs of more vulnerable members of the community, including very low to moderate income households, seniors and people with a disability	The proposal will enhance the variety of housing types in the area providing increased affordable housing in the local area. The proposal is for a residential flat building to be used for the purpose of affordable housing.
Ensuring new housing development provides residents with a reasonable level of amenity,	<p>The proposal ensures that housing meets current accessibility and amenity standards, delivering a positive impact.</p> <p>The proposal complies with the solar access requirements and cross ventilation requirements in the ADG, ensuring a high level of amenity for residents.</p> <p>The proposal achieves at least 2 hours solar access to 81% of apartments in mid-winter, exceeding the requirements in the ADG.</p>
Promoting the planning and delivery of housing in locations where it will make good use of existing and planned infrastructure and services,	<p>The site is extremely well serviced and in area and has excellent access to a range of social services and infrastructure.</p> <p>The site is opposite Wentworth Park, a significant regional open space, is within a 5-minute walk to the Glebe light rail stop, providing high frequency public transport services to the CBD and Central Station. Bus services are also available a short walk from the site on Pymont Bridge Road.</p> <p>The site also within 400-500m to Glebe Point Road high street which provides an extensive array of local shops and services, including Glebe library and local services.</p>
Minimising adverse climate and environmental impacts of new housing development,	The proposal provides a high level of amenity, with high levels of solar access and natural ventilation to apartments, and generous deep soil and tree canopy cover provided on site.
Reinforcing the importance of designing housing in a way that reflects and enhances its locality,	The proposal has been designed to respond to the local context and character. The proposal represents an appropriate built form on the site and is compatible with surrounding built form character.
Supporting short-term rental accommodation as a home-sharing activity and contributor to local economies, while managing the social and environmental impacts from this use,	Not applicable

<p>Mitigating the loss of existing affordable rental housing.</p>	<p>The proposal will deliver significant public benefit in the form of renewed and increased supply of affordable housing within the local area.</p> <p>The proposal will significantly increase affordable housing on the site, increasing from 17 existing social housing dwellings to 43 modern and accessible affordable housing dwellings.</p>
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Table 3 Consideration of objectives of the R1 General Residential zone

Objective	Consideration
<p>To provide for the housing needs of the community</p>	<p>The proposal will provide the housing needs of the community through the delivery of 43 new affordable housing dwellings (an increase from the 17 social housing dwellings currently on the site).</p>
<p>To provide a variety of housing types and densities</p>	<p>The proposal will enhance the variety of housing types in the area and provide increased affordable housing in the local area.</p>
<p>To enable other land uses that provide facilities or services to meet the day to day needs of residents</p>	<p>Not applicable.</p>
<p>To maintain the existing land use pattern of predominately residential uses</p>	<p>The proposal is for a residential flat building to be used for the purpose of affordable housing.</p>

It is not considered reasonable or necessary to comply with the non-discretionary solar access provisions in the Housing SEPP.

The proposal will increase the provision of affordable housing on the site while delivering a high level of amenity for residents. The proposal will significantly increase the amount of affordable housing (to be managed as social housing) in a highly accessible area with increasing demand for affordable housing.

The proposal exceeds the solar access requirements in the ADG, achieving solar access for more than 2 hours to over 80% of apartments in mid-winter.

Achieving compliance with the solar access criteria in the ADG is considered appropriate for residential apartment development over 3 storeys and is the industry standard for achieving a high level of amenity to residential apartments. It is noted that SEPP 65 and the ADG continue to apply to in-fill affordable housing development undertaken in accordance with the Housing SEPP.

The variation to the non-discretionary development standard in Clause 18 (2) (e) of the Housing SEPP will not impact on the ability of the proposal to achieve the principles of the Housing SEPP or meet the objectives of the R1 General Residential zone.

4.2 Are there sufficient environmental planning grounds to justify contravening the development standard?

As outlined below, there are sufficient environmental planning grounds to justify the variation to the landscaped area in the Housing SEPP in this instance.

The proposal has been designed to comply with solar access criteria in the ADG, which requires at least 2 hours of solar access to 70% of apartments in mid-winter. The proposal achieves excellent solar access, with 81% of all apartments receiving at least 2 hours of solar access in mid-winter.

The proposal has been designed to ensure the number of apartments oriented to the north and north-west is maximised, within only a limited number of south facing apartments at the rear of the site. Apartments at the rear of the site have been designed with outlook to communal open space and landscaped areas to maximise daylight access and amenity.

In summary, the non-compliance with the solar access provisions in the Housing SEPP is justified for the following reasons:

- The proposal will promote the delivery of new and increased affordable housing on the site.
- The proposal will deliver a significant increase in affordable housing on the site, providing increased housing supply and more social housing in the local area.
- The proposal complies with the Design Quality Principles in SEPP 65 and solar access criteria in the ADG ensuring a high level of amenity and solar access to living rooms and private open space areas.
- The proposal achieves a high level of amenity and has been designed to maximise north facing apartments and ensure all apartments have outlook and access to daylight.

5 Conclusion

In summary the proposed variation to the solar access provisions in the Housing SEPP is considered to be justified on the basis that:

- The proposal will deliver new and increased affordable housing on the site, more than doubling the number of dwellings on site to be managed by NSW as social housing, which is particularly important given the current housing crisis.
- The proposal complies with solar access criteria in the ADG, which requires at least 2 hours of solar access to 70% of apartments in mid-winter.
- The proposal achieves excellent solar access, with 81% of all apartments receiving at least 2 hours of solar access in mid-winter.
- The proposal has been designed to ensure the number of apartments oriented to the north and north-west is maximised, within only a limited number of south facing apartments at the rear of the site.
- The proposal complies with the Design Quality Principles in SEPP 65.
- The proposal achieves a high level of amenity and has been designed to maximise north facing apartments and ensure all apartments have outlook to communal open space / landscaping.

On this basis the variation is appropriate and justified.