

Attachment C

Clause 4.6 Variation Request – Car Parking



231 Chalmers Street, Redfern

REQUEST FOR VARIATION TO PARKING DEVELOPMENT STANDARD FOR SECONDARY DWELLINGS PURSUANT TO CLAUSE 53(2)(b) OF STATE ENVIRONMENTAL PLANNING POLICY (HOUSING) 2021

This Clause 4.6 variation relates to a proposal for alterations and additions to the existing dwelling and secondary dwelling at 231 Chalmers Street, Redfern.

The proposal results in a non-compliance with clause 53(2)(b) of the *State Environmental Planning Policy (Housing) 2021* (Housing SEPP) which relates to parking for secondary dwellings. As such, this Clause 4.6 request has been prepared in accordance with Clause 4.6 of the Sydney Local Environmental Plan 2012 (SLEP) which applies to the subject site.

The request demonstrates that compliance with the development standard relating to parking for secondary dwellings is unreasonable or unnecessary in the circumstances of the case and establishes that there are sufficient environmental planning grounds to justify contravening the development standard, satisfying clause 4.6(3) of the SLEP.

Based on this Clause 4.6 request, the consent authority can be satisfied that the written request has adequately addressed the matters required to be demonstrated by subclause (3), and that the proposed development will be consistent with the objectives of the Housing SEPP, noting that there are no objectives for the specific development standard.

The nature of the exceedance to the development standard relating to parking is set out below, followed by consideration of the relevant matters in clause 4.6 of the SLEP.

The NSW Department of Planning, Industry and Environment (DPI&E) provides guidance on how to prepare Clause 4.6 variations; 'Varying development standards: A Guide' (August 2011). This written request to vary the standards is based on the Guide.

Zoning of the site

The zoning of the land is R1 – Low Density Residential. The objectives of the R2 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.*

Clause 53(2)(b) – Parking for secondary dwellings

The Standard

Clause 53 of the Housing SEPP sets non-discretionary development standards for matters relating to the development of secondary dwellings. The development standards require that

- (2)(a) A site on which a detached secondary dwelling is proposed must have an area greater than 450m² and*
- (2)(b) That the number of parking spaces on site be the same as that number immediately before the development is carried out.*

The site has an area of 156m². The proposal is compliant with clause 53(2)(a) of the Housing SEPP as the proposed secondary dwelling is attached to main dwelling.

However, the proposal includes the removal of a parking space at the rear the site, reducing the total number of car parking spaces up from one to no spaces. As such, the proposal varies the development standard for secondary dwelling parking at clause 53(2)(b) of the Housing SEPP.

The objectives of Clause 53

There are no objectives relating to the subject non-discretionary development standard. An assessment with respect to the principles of the Housing SEPP is provided below. These principles are:

- (a) enabling the development of diverse housing types, including purpose-built rental housing,*

- (b) *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,*
- (c) *ensuring new housing development provides residents with a reasonable level of amenity,*
- (d) *promoting the planning and delivery of housing in locations where it will make good use of existing and planned infrastructure and services,*
- (e) *minimising adverse climate and environmental impacts of new housing development,*
- (f) *reinforcing the importance of designing housing in a way that reflects and enhances its locality,*
- (g) *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,*
- (h) *mitigating the loss of existing affordable rental housing.*

Clause 4.6 – Exceptions to Development Standards

Clause 4.6 of the SLEP allows for exceptions to Development Standards. The objectives of this 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.*

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- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

Clause 4.6(2) provides the power for development consent to be granted even though the development would contravene a development standard, subject to that clause:

- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a*
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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.

We note that clause 4.6(2) allows for variations to development standards in the SLEP as well as *any other environmental planning instrument*, which includes the Housing SEPP.

Clause 4.6(3) sets out what a clause 4.6 written request seeking to justify a contravention of a development standard must demonstrate in order for consent to be granted for development that contravenes a development standard:

- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that:*
 - (a) *compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) *there are sufficient environmental planning grounds to justify contravening the development standard.*

The matters required to be demonstrated under clause 4.6(3) are set out below as Points 1 and 2.

Clause 4.6(4) requires that Council keep a record of its assessment carried out under Clause 4.6(3).

1. Clause 4.6(3)(a) - Compliance with the development standard must be unreasonable or unnecessary in the circumstances of the case:

In order to assess whether strict compliance with the development standard is unreasonable or unnecessary, a proposal is considered against the following five ways¹:

1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard;
2. The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary;

¹ see *Wehbe v Pittwater Council* [2007] NSWLEC 827

3. The underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable;
4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard; or
5. The zoning of particular land was unreasonable or inappropriate so that a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to the land.

These five ways were re-emphasised by the Court². Each 'test' offers a potential way of demonstrating that compliance is unnecessary or unreasonable in a particular circumstance³. All tests are separate and not all tests may not be applicable in each case. Therefore, not all tests need to be met.

This objection relies on the first method set out above, that compliance with a standard is unreasonable and unnecessary given that the objectives of the standard are met even though the standard is not complied with⁴.

This object identifies the standard at clause 53(2)(b) of the Housing SEPP as a development standard, which makes it amenable to clause 4.6(2) of the SLEP⁵. However, it does not outline the underlying purpose or objectives of the standard.

The Court has held that development standards should be seen as part of the environmental planning instrument (in this case the Housing SEPP) as a whole⁶. When viewed in this way, and in the absence of specific objectives for the standard, it is appropriate to consider the proposal against the aims or principles of the Housing SEPP.⁷

The eight principles of the Housing SEPP are listed at clause 3 of the policy and the proposal is assessed against them in turn below.

Principle (a) Enabling the development of diverse housing types, including purpose-built rental housing

² *Micaul Holdings Pty Limited v Randwick City Council* [2015] NSWLEC 1386

³ *Mecone Pty Limited v Waverley Council* [2015] NSWLEC 1312

⁴ *Wehbe v Pittwater Council* [2007] NSWLEC 827, *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 and *Al Maha Pty Ltd v Huajun Investments Pty Ltd* [2018] NSWCA 245

⁵ See *Principal Healthcare Finance Pty Ltd v Council of the City of Ryde* [2016] NSWLEC 153

⁶ *Strathfield Municipal Council v Poynting* [2001] NSWCA 270 at [94].

⁷ *Principal Healthcare Finance Pty Ltd v Council of the City of Ryde* [2016] NSWLEC 153 at [49]

Comment:

The proposal is for the development of a diverse housing typology as it relates to alterations and additions to an existing garage to create a secondary dwelling. The development of secondary dwellings is controlled by Chapter 3 Housing SEPP which sets provisions for diverse housing, *ergo* identifying such developments as a diverse housing type. Accordingly, the proposal meets objective (a).

Principle (b) 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,

Comment:

The works will result in a new dwelling capable of being occupied by vulnerable members of the community.

The secondary dwelling is directly accessible from the Wells Street at ground level and does not include stairs. This makes the dwelling liveable for less mobile or senior members of the community.

In addition, the removal of a parking does not reduce the liveability of the dwelling for persons with mobility issues, given the sites excellent accessibility to shops, services and public transportation.

Finally, the works to the secondary dwelling will result in a new, liveable dwelling that could potentially be leased low to moderate income residents of the area and could assist with placing downward pressure on rents in Redfern.

Principle (c) ensuring new housing development provides residents with a reasonable level of amenity,

Comment:

The proposal provides excellent internal amenity without detracting from that of neighbouring sites.

Firstly, the ground floor, stair free design of the proposal ensures accessibility of the secondary dwelling.

Solar access is provided to the secondary dwelling, by providing new north-facing windows able to catch sunlight at midwinter. As shown in the accompanying shadow diagrams this is not at the expense of solar access to

adjacent properties, which retain a level of sunlight to the windows and private open spaces that is identical to the existing situation.

There are no known views that are affected by the proposal, and low and compliant height of the secondary dwelling will ensure that incidental views are unaffected.

The secondary dwelling is a low scale residential development that is unlikely to generate much in the way of noise or disturbance. The proposal meets the DCP requirements for setbacks.

Windows are either highlight windows or have translucent glazing to ensure visual privacy between sites and from the public domain.

Finally, the design of the garage and secondary dwelling sits comfortably on Wells Street, which is typified by low-scale dwellings with pitched roofs. As such, the visual impact of the proposal is minimal.

Principle (d) promoting the planning and delivery of housing in locations where it will make good use of existing and planned infrastructure and services,

Comment:

The proposal is located within an established urban area that is already connected to all essential utilities and services, including electricity, sewage, water and telecommunication services. The site is proximate to shops services and eateries on Redfern Street. The proposal will not have any major effects on traffic or parking in the locality, especially considering that the proposal removes parking

The site has excellent access to public transport, with regular services on bus routes 320, 343, 355, 308, 310 to the City, Bondi Junction, Zetland, Kingsford, Rosebery, Marrickville, Gore Hill and Botany easily accessible from the site. Moreover, the site is close to Redfern and Central Railway Stations as well as the under construction Waterloo Metro Station.

It is also noted that the existing garage is not suitable for parking, given the narrow width of Wells Street and the location of a pole. Swept paths have been provided demonstrating its unsuitability.

Principle (e) minimising adverse climate and environmental impacts of new housing development,

Comment:

The DA is accompanied by a BASIX certificate, demonstrating compliance with BASIX targets for Water, Energy and Thermal Comfort and which applies to this development. As such, the proposal will not give rise to adverse climatic or environmental impacts.

Principle (f) reinforcing the importance of designing housing in a way that reflects and enhances its locality,

Comment:

The secondary dwelling and garage sits comfortably in its context, matching similar low scale residential developments facing Wells Street. Wells Lane is typified by garages and low-scale dwellings built to and directly accessed from the laneway. The proposed development mirrors this surrounding development and when viewed by a passer-by on Wells Street, will appear entirely in character with its context. The removal of parking will not affect this context.

Principle (g) 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,

Comment:

In the long term, the secondary dwelling is capable of supporting short-term rental accommodation as a home-sharing activity and contributor to local economies, with limited social and environmental impacts from this use,

Principle (h) mitigating the loss of existing affordable rental housing.

Comment:

The proposal adds to, rather than reduces the stock of potential rental accommodation in Redfern.

2. Clause 4.6(3)(b) - There are sufficient environmental planning grounds to justify contravening the development standard:

The proposal results in the removal of one space on the site, one less than currently exists and thus varies the development standard in Clause 53(2)(b) of the Housing SEPP

In addition to the consistency of the proposal against the principles of the Housing SEPP (see **Point 2 above**), in my opinion there are sufficient

environmental planning grounds to justify contravening the development standard⁸. These are detailed below.

1. The proposal is otherwise for a development that meets the controls in the SLEP, SDCP and Housing SEPP

- The proposal is for a permissible use within the site's R1 General Residential and complies with all SLEP development standards, including for height and floor space ratio;
- The works align with the SDCP controls, including those for setbacks, private open space, wall height and amenity. The works have been assessed by an experienced heritage advisor and found to have nil impacts upon the Redfern Estate Heritage Conservation Area. Notably, the removal of an existing car space will remain in line with the maximum rate of parking for residential development;
- Notwithstanding control 53(2)(b), the proposal meets all the standards for secondary dwellings in the Housing SEPP, including for floor area, number of dwellings on site and lot size;

2. There is an absence of any material impacts caused by the development.

- The removal of a parking space will not result in unreasonable environmental amenity impacts as follows:
 - The proposal will not result in the loss of views from surrounding development given that no known views are found in the area and the proposal complies with requirements for height and setbacks;
 - The proposal will not result in unreasonable overshadowing of adjoining properties as the level of solar access to adjacent sites is retained as existing;
 - The proposal will provide a development, which has been designed to ensure that the visual and acoustic privacy of adjoining properties is maintained; and
 - The proposal will provide a development, which is consistent with the scale of the adjoining developments and is of an appropriate visual bulk for the locality;

⁸ see *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 at [90]

- The lack of impact on adjoining properties in terms of solar access, privacy, view loss and visual bulk establishes sufficient planning grounds⁹.

3. The proposal is compatible with its surrounding streetscape

- The proposed parking and secondary dwelling is compatible with surrounding development as it meets the test set in *Project Venture Developments v Pittwater Council [2005] NSWLEC 191*.¹⁰
- The proposal meets the first test as it will not lead to any material impacts on the amenity of surrounding sites (see above) and does not constrain the future redevelopment of surrounding sites¹¹;
- The proposal meets the second test as it provides height, setbacks and landscaping that are compliant and consistent with surrounding development¹²;
- To a casual observer, the proposed form will appear consistent with the character surrounding development facing Bourke Lane, which is predominately made up of garages and low-scale residential development.

4. The existing parking is unsuitable for use as a parking space

- The existing parking space is unable to easily or safely accessed from wells lane given the narrow width of this roadway and the location of the telegraph pole adjacent to the garage entry. This is demonstrated in the swept paths figure below:

⁹ *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 at [94(c)] and *Randwick City Council v Micaul Holdings Pty Ltd* at [34]

¹⁰ *Project Venture Developments v Pittwater Council [2005] NSWLEC 191* at [24] to [33]

¹¹ *Project Venture Developments v Pittwater Council [2005] NSWLEC 191* at [25]

¹² *Ibid* at [26]

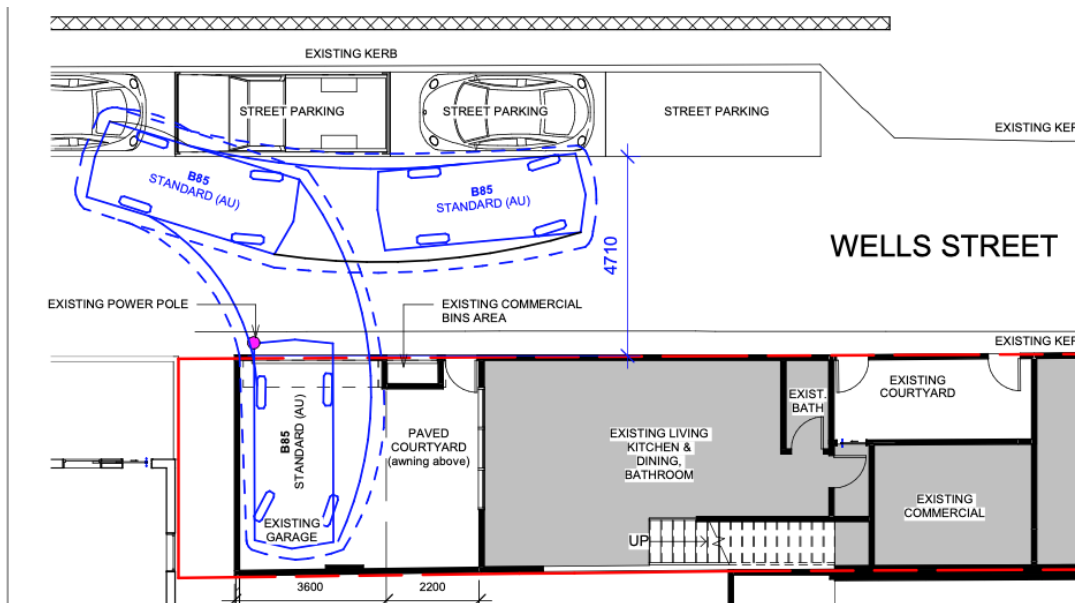


Figure 1 Swept Paths Diagram

- Given that the parking is unable to be used safely or reliably in its current form, the use of the garage as a secondary dwelling is considered to be a more appropriate use of the land and more in line with the objects of the Environmental Planning and Assessment Act 1979 and SLEP.

3. Clause 4.6(5)

In the context of the requirements of Clause 4.6(5), it is considered that no matters of State or regional planning significance are raised by the proposed development. Moreover, it is considered that there would be no public benefit in maintaining the particular planning control in question, in the case of this specific development.

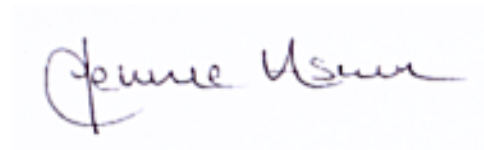
Conclusion

The proposal is consistent with the objects of Section 1.3 of the EP& A Act, 1979, which are to encourage development that promotes the social and economic welfare of the community and a better environment, to promote and coordinate orderly and economic use and development of land, to promote the delivery and maintenance of affordable housing, to promote good design and amenity of the built environment and to protect the heritage of the built environment.

This submission is considered to adequately address the matters required by Clause 4.6 and demonstrates that compliance with the development standard would be unreasonable and unnecessary in the circumstances of this case

and that there are sufficient environmental planning grounds to support the variation.

Based on this Clause 4.6 request, the consent authority can be satisfied that the written request has adequately addressed the matters required to be demonstrated by subclause (3), and that the proposed development is consistent with the objectives of the parking for sites containing a secondary dwelling development standard under the Housing SEPP, in which the development is proposed to be carried out.



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