

Attachment D

Clause 4.6 Request – Maximum Room Size

Clause 4.6 – Exceptions to Development Standards

Request to Vary Clause 69 – Standards for co-living housing in State Environmental Planning Policy (Housing) 2021

Address: 277-279 Broadway, Glebe (Lots 100, 101 and 102 in DP 1067149)

Proposal: Demolition of the existing buildings and construction of a mixed use development containing co-living for student accommodation and commercial uses, located at 263-279 Broadway, Glebe ('the site').

Date: 5 July 2024

1. Introduction

This document is a written request submitted under Clause 4.6 of the Sydney Local Environmental Plan (SLEP) 2012 to vary Clause 69(1)(a) of the State Environmental Planning Policy (Housing) 2021 – Standards for co-living housing applying to the proposed development.

The proposed floor area of five of the private accessible rooms exceeds the maximum private room size control of 25m² per room (excluding kitchens and bathrooms) applicable to the development under the provisions of Clause 69 (1)(a) of the Housing SEPP 2021. Only five rooms of the proposed 120 rooms (i.e. one room on each residential level) exceed the maximum room size control.

As per Council request, this Clause 4.6 variation request has been prepared to address the technical non-compliance with the room size development standard.

2. Description of the Environmental Planning Instrument, development standard and proposed variation

2.1. What is the name of the environmental planning instrument that applies to the land?

The State Environmental Planning Policy (Housing) 2021.

2.2. What is the zoning of the land?

The land is zoned E1 Local Centre under the Sydney Local Environmental Plan (SLEP) 2012.

The objectives of the zone are:

- *To provide a range of retail, business and community uses that serve the needs of people who live in, work in or visit the area;*
- *To encourage investment in local commercial development that generates employment opportunities and economic growth;*

- To enable residential development that contributes to a vibrant and active local centre and is consistent with the Council's strategic planning for residential development in the area;
- To encourage business, retail, community and other non-residential land uses on the ground floor of buildings; and
- To maximise public transport patronage and encourage walking and cycling.

2.3. What is the development standard being varied?

The development standard being varied is a standard for co-living housing under Clause 69(1) of the Housing SEPP which relates to the room size of private co-living rooms.

2.4. Is the development standard a performance based control?

The standard is a numerical control.

2.5. Under what Clause is the development standard listed in the environmental planning instrument?

The development standard is listed under Clause 69 (1)(a) of the State Environmental Planning Policy (Housing) 2021 (Housing SEPP).

2.6. What are the objectives of the development standard?

Clause 69 of the Housing SEPP does not contain any objective for the development standard. The Explanation of Intended Effects that was prepared for the Housing SEPP does not include any objective or identify the purpose of a maximum room size standard. The Department of Planning Housing and Infrastructure (DPHI) Policy and legislation: Housing SEPP - Boarding houses and co-living housing overview, identifies the purpose of the maximum room sizes for private rooms as follows

'there are maximum room sizes for private rooms to make a clear distinction between apartments in a residential flat building and these housing types'.

In absence of any objectives in the Housing SEPP, the purpose or intent of the room size development standard under Clause 69 (1)(a) is to differentiate co-living housing accommodation from residential apartments, by limiting the overall size of the accommodation room.

2.7. What is the numeric value of the development standard in the environmental planning instrument?

Clause 69 (1)(a) of the Housing SEPP establishes a maximum floor area of 25m² for each room as illustrated in Figure 1.

The standard under Clause 69 (1)(a) of the Housing SEPP is as follows:

- (a) each private room has a floor area, excluding an area, if any, used for the purposes of private kitchen or bathroom facilities, **that is not more than 25m²** and not less than—
 - (i) for a private room intended to be used by a single occupant—12m²
 - , or
 - (ii) otherwise—16m²

2.8. What is the proposed numeric value and percentage variation of the development standard in the development application?

The proposed floor area (excluding kitchen and bathroom facilities) of Accessible Suite B is 27.3m² which exceeds the floor area permitted under Clause 69 (1)(b) by 2.3m². This is a 9.2% variation from the development standard. (refer to Figure 1).

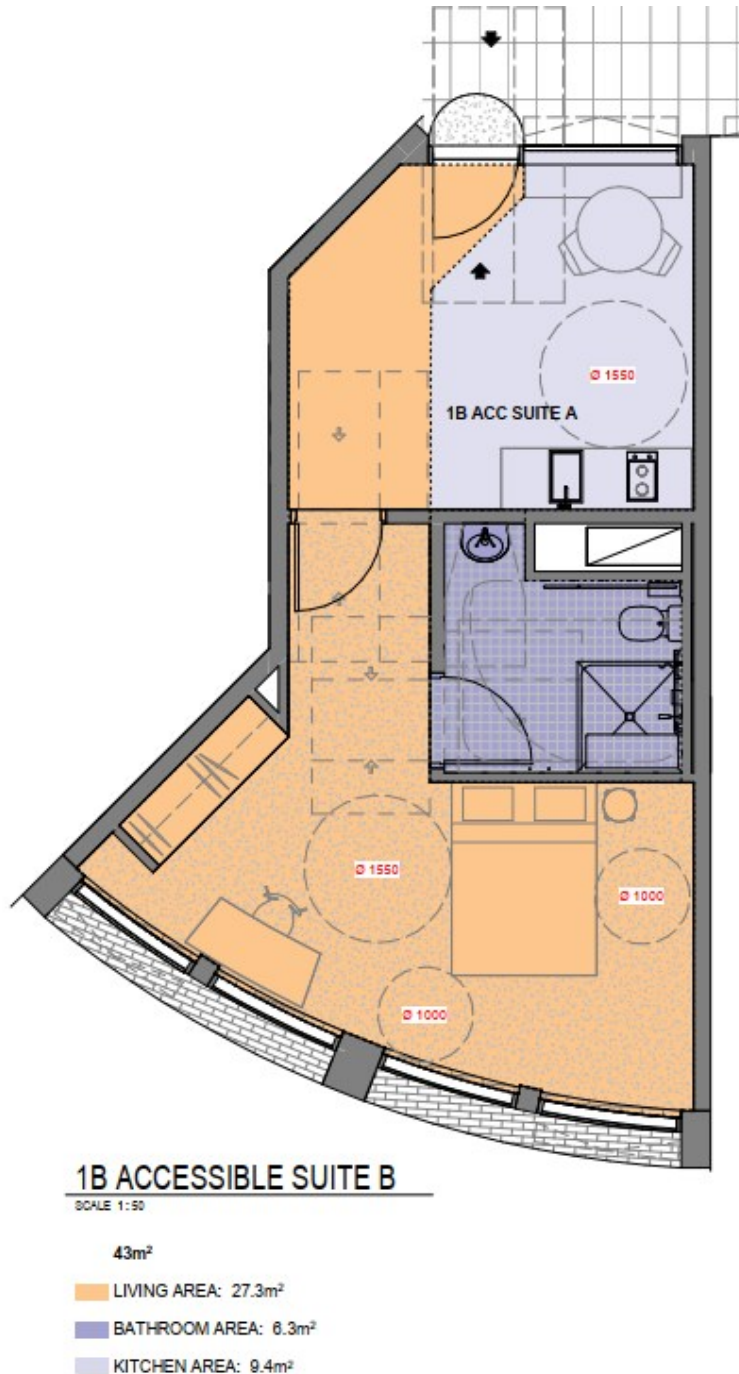


Figure 1: Extract of the proposed accessible room layout

3. Justification of the Proposed Variation

3.1. Clause 4.6 Exceptions to Development Standards

Clause 4.6 establishes the framework for varying development standards in an Environmental Planning Instrument.

Clause 4.6(3)(a) and 4.6(3)(b) require that a consent authority must not grant consent to a development that contravenes a development standard unless a written request has been received from the applicant that seeks to justify the contravention of the standard by demonstrating that:

- (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 standards.”*

This written request has been prepared in accordance with the *Guide to Varying Development Standards*, published by the NSW Department of Planning and Environment in November 2023 and has regard to the following judgements:

- *Winten Property v North Sydney Council (2001) NSW LEC 46;*
- *Wehbe v Pittwater Council (2007) NSW LEC 827;*
- *Four2Five Pty Ltd v Ashfield Council (2015) NSW LEC 90;*
- *Randwick City Council v Micaul Holdings Pty Ltd (2016) NSW LEC 7;*
- *Moskovich v Waverley Council (2016) NSW LEC 1015;*
- *Initial Action Pty Ltd v Woollahra Municipal Council (2018) NSW LEC 118;*
- *Bringham v Canterbury-Bankstown Council (2018) NSW LEC 1046;*
- *Initial Action Ltd v Woollahra Municipal Council (2019) NSW LEC 1097;*
- *RebelMH Neutral Bay Pty Limited v North Sydney Council (2019) NSWCA 130;*
- *SJD DB2 Pty Ltd v Woollahra Municipal Council (2020) NSW LEC 112;*
- *WZSydney Pty v Ku-ring-gai Municipal Council (2023) NSW LEC 1065;*
- *Sioud v Canterbury-Bankstown Council (2023) NSW LEC 1171;*
- *Big Property Group Pty Ltd v Randwick City Council (2021) NSW LEC 1161; and*
- *Denny v Optus Mobile Pty Ltd (2023) NSW LEC 27.*

3.2. *Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?*

The five common ways to establish whether compliance with the development standard is unreasonable or unnecessary have been summarised in *Wehbe v Pittwater Council [2007] NSWLEC 827* and are outlined as follows.

Compliance with the development standard is unreasonable or unnecessary if the:

1. *objectives of the development standard are achieved notwithstanding the non-compliance*
2. *underlying objective or purpose is not relevant to the development*
3. *Underlying objective or purpose would be defeated or thwarted if compliance was required*

4. *development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard*
5. *zoning of the land on which the development is proposed was unreasonable or inappropriate.*

These are five common ways that clause 4.6(3)(a) can be addressed but are not the only ways and are not exhaustive.

This written request relies on the first test described in Wehbe, in that objectives of the development standard are achieved notwithstanding the non-compliance. As outlined in Section 2.6, there are no objectives for Clause 69(1)(a) of the Housing SEPP. The intent and purpose of the standard is identified in the DPHI Policy and legislation: Housing SEPP - [Boarding houses and co-living housing overview](#), as follows:

“There are maximum room sizes for private rooms to make a clear distinction between apartments in a residential flat building and these housing types.”

The five non-compliant rooms are part of a co-living development comprising 120 rooms and associated communal living areas and facilities. The other 115 rooms, comply with the maximum room standard control. The five non-compliant rooms are accessible rooms. These rooms are required to be larger in order to satisfy the relevant accessibility standards as outlined Section 3.3 below. The additional floor area is primarily attributed to the circulation space required for a mobility impaired person.

The non-compliance equates to 2.3m². This exceedance does not alter the characterisation of the rooms as co-living accommodation, comparative to the other 115 rooms within the development. While the five rooms are larger, they contain the same level of amenity and facilities as the other accommodation rooms. In this regard, the five rooms and the development as a whole, are distinct from an apartment within a residential flat building, despite the non-compliance with the maximum room standard.

Notwithstanding the non-compliance, the intent of the development standard is achieved.

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

It is considered that there are sufficient environmental planning grounds to justify contravening the development standard which are detailed outlined below.

Accessibility

The standards contained within the Housing SEPP, do not make provision for accessible rooms. Within the proposed development six of 120 rooms are required to be accessible. The development proposal includes 10 accessible rooms. Of those 10 rooms, five rooms exceed the 25m² maximum room area standard by 2.3m².

As outlined in the Access Design Report, compliance is required in accordance with the access provisions of:

1. Disability (Access to Premises-Buildings) Standards 2010 (Premises Standards)
2. NCC-BCA 2022 Part D4 Access for People with a Disability
3. NCC-BCA 2022 Part E3D8 Lift Installations
4. NCC-BCA 2022 Part F4D5 Sanitary Facilities
5. Australian Standards AS1428.1-2009 - Design for access and mobility Part 1
6. Australian Standards AS1735.12-1999 - Lift, escalators and moving walks Part 12
7. Australian Standards AS4299-1995 - Adaptable Housing

The accessible rooms are required to meet a number of design standards. At the same time, it is important to ensure that the accessible rooms have the same level of amenity as the other rooms within development e.g. provision for double or queen beds.

The key requirements that inform the layout and required size of the accessible rooms include:

- Circulation space around the bed and wardrobe, including 1000mm at each side of bed and 1500mm at foot of bed
- Internal corridors 1000mm min. width 1250mm minimum where a door opens off corridor
- Provision for bathroom area to comply with AS1428.1
- Circulation space at doors to comply with AS1428.1
- Adequate circulation in front of appliances minimum 1550mm
- Kitchen to have a minimum width 2700mm, 1550 clear between benches
- Provision of circulation space of min. 2250mm diameter

Furthermore, part of the non-compliance is attributed to the rooms corner which restricts the floor layout. While maintaining the same level of amenity as all other 120 rooms, including a queen bed, desk and dining room, the width and depth of the room cannot be reduced in order to meet the accessible circulation requirements.

Avoidance of adverse impact

The proposal does not have adverse impacts arising from the non-compliance with the room size standard for the forementioned reasons.

4. Conclusion

The proposed variation is based on the reasons contained within this formal request for an exception to the standard for co-living housing. The proposal accords with the stated objectives for the E1 Local Centre zone and the intent of Clause 69 (1)(a) of the Housing SEPP.

The proposal is appropriate for the site's context and the room size non-compliance will not contribute to the overall building envelope. Thereby, there are no additional bulk and scale impacts including additional overshadowing or adverse view impacts from the public domain or adjoining properties.

The proposed room sizes for the five rooms contribute to equitable opportunity to the student accommodation housing type. The room size non-compliance of 2.3m² within the five rooms does not increase residential density further than anticipated on the site under a fully compliant room size layout.

A development strictly complying with the numerical standard would not improve the amenity of surrounding land uses. In the context of the locality, it would be unreasonable for strict compliance to be enforced. There are considerable benefits of the project including the provision of much needed student accommodation housing with superior amenity outcomes, employment opportunities, and enhanced site connectivity and public domain. It is concluded that the variation to the co-living housing standard is well founded as compliance with the standard is both unnecessary and unreasonable in the circumstances of this case.

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