

Clause 4.6 Exceptions to development standards Written Request – Private Car Accommodation

Construction of a Seniors Housing development containing seventy-nine (79) self-contained dwellings under the State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.



8-12 Kings Road, Five Dock NSW 2046
Lot 13, 14 & 15 DP 6513

Clause 4.6 Exception to Development Standards (Compulsory)
State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004

Applicant's name: Creative Planning Solutions Pty Limited

Site address: 8-12 Kings Road, Five Dock

Proposal: Construction of a Seniors Housing development containing seventy-nine (79) self-contained dwellings under the State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.

1. Name of the applicable planning instrument which specifies the development standard:

State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004

The number of the relevant clause therein:

Schedule 3 – Clause 5(a)

The relevant subclause states:

5 Private car accommodation

If car parking (not being car parking for employees) is provided:

(a) Car parking spaces must comply with the requirements for parking for persons with a disability set out in AS 2890, and

2. The nature of Development Standard sought to be varied and details of variation:

An interpretation of Schedule 3 Clause 5 (a) can be that all resident spaces must comply with AS2890 parking for persons with a disability. However we also understand that clauses 5 (a) and (b) have been drafted for the dimensions of parking for the disabled provided in AS2890.1 (1993 and the current 2004 versions), which is 3.2m wide spaces.

So all resident spaces in a housing for seniors development would be 3.2m wide. This interpretation makes sense with clause 5 (b) which requires at least 5% of the 3.2m wide spaces to be capable of being increased to 3.8m wide. However if the interpretation of 5 (a) now uses the new disabled space dimensions in AS2890.6, being a 2.4m disabled space with a 2.4m wide shared area alongside, this would have an onerous impact on parking provision. Instead of providing 3.2m wide spaces for all residents and 3.8m wide spaces for 5%, the interpretation would require all spaces to be 2.4m wide plus a 2.4m wide shared area, effectively totalling 4.8m wide.

This interpretation also conflicts with 5 (b) which requires at least 5% of spaces to be able to be increased to 3.8m. If each space is effectively 4.8m wide, 5 (b) is redundant. For this reason, we do not consider that Clause 5 was written with this intention.

Whilst Clause 50(h)(ii) of the SEPP only requires 16 spaces to be provided but 37 spaces are proposed, Schedule 3 – Clause 5(a) essentially requires that all of the spaces be accessible. Of the 37 spaces proposed, only 4 spaces are accessible under the Development Application and meet the current Australian Standard as referred to above.

It should also be noted that this proposed development is not designed nor intended to be used for only disabled residents. It is planned to be for seniors with a range of physical abilities, and not all will require parking for the disabled. For this reason a requirement that all resident parking spaces comply with the new AS2890.6 disabled parking requirements is also onerous.

Furthermore, the application of the car parking standard based on the latest Australian Standard results in the reduction of the car parking. Also, a key objection during the notification period was insufficient car parking and traffic impacts. The additional car parking provided will mitigate on-street parking and reduce impacts on the local road network.

Additionally, the land owner BaptistCare has confirmed that all residents that would drive a car, will be abled bodied, meaning the need in reality for a shared space is redundant.

It is also noted that the additional space does not constitute gross floor area as the car parking is not provided at ground level and is not in excess of 1 per dwelling as per the definition of gross floor area under the SEPP.

3. Statement on the objective of the standard to be varied as it relates specifically to the subject site and proposal:

No objectives exist under the relevant standard.

4. Explanation as to how the proposal, notwithstanding the non-compliance with the development standard, will achieve the objective of the development standard.

As per the above, no objectives exist under the relevant development standard.

5. Would strict compliance hinder the attainment of the objectives under Section 5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979?

Strict compliance with the development standard in this instance is considered to unnecessary to achieve orderly and economic development of the subject site in accordance with the intention of BaptistCare being able to provide more car parking to meet its preferred target of 1 car space per 2 dwellings.

As typically undertaken by Councils, the following assessment of the Clause 4.6 exception to development standards applies the principles arising from the NSW Government Department of Planning and Infrastructure's guide to varying development standards publication and *Hooker Corporation Pty Limited v Hornsby Shire Council* (NSWLEC, 2 June 1986, unreported) by using the questions established in *Winten Property Group Limited v North Sydney Council* (2001) NSW LEC 46 (6 April 2001) and as reiterated in *Wehbe v Pittwater Council* (2007) NSW LEC 827, as follows:

- *Is the planning control in question a development standard?*

Yes.

- *What is the underlying purpose of the standard?*

Schedule 3 – Clause 5(a) of the SEPP requires all spaces to essentially be accessible.

The relevant parts of Section 5(a) of the EP&A Act are stated inter alia:

- (i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,
- (ii) the promotion and co-ordination of the orderly and economic use and development of land,

Accordingly, strict enforcement of the development standard in this instance would hinder the desired redevelopment outcome for the site for Seniors Housing.

- *Is compliance with the standard unreasonable or unnecessary in the circumstance of the case?*

Having regard to the comments above, it is considered that strict compliance with this standard is unnecessary in this case.