



Minto Planning Services

Town Planning Consultants

PROPOSED HOUSING FOR SENIORS OR PEOPLE WITH A DISABILITY 34-36 BARDO ROAD, NEWPORT

Clause 4.6 - Exceptions to Development Standards - Pittwater Local Environmental Plan 2014

SEPP (Housing for Seniors or People with a Disability) 2004 - Clause 26 - Location and Access to Facilities (Self Contained Dwellings)

This Clause 4.6 Objection is provided in relation to a proposed development for the construction of 12 self-contained dwellings upon land located at 34-36 Bardo Road, Newport.

Clause 26(2)(b) of SEPP (Housing for Seniors or People with a Disability) 2004 requires that the proposed development is located at a distance of not more than 400m from a public transport service available to the residents who will occupy the proposed development.

The subject site is located 394.1m from Bus Stop A and 447.6m from Bus Stop B and which are serviced by Bus Routes 188, 199 & L90. Both bus stops are required in order to complete a to and from journey from the site.

A technical non-compliance exists in that Bus Stop A is located within 400m of the site whilst Bus Stop B is located more than 400m from the site.

Clause 26 of the SEPP in its entirety states that:

26 Location and access to facilities

(1) A consent authority must not consent to a development application made pursuant to this Chapter unless the consent authority is satisfied, by written evidence, that residents of the proposed development will have access that complies with subclause (2) to:

- (a) shops, bank service providers and other retail and commercial services that residents may reasonably require, and*
- (b) community services and recreation facilities, and*
- (c) the practice of a general medical practitioner.*

(2) Access complies with this clause if:

- (a) the facilities and services referred to in subclause (1) are located at a distance of not more than 400 metres from the site of the proposed development that is a distance accessible by means of a suitable access pathway and the overall average gradient for the pathway is no more than 1:14, although the following gradients along the pathway are also acceptable:*

- (i) a gradient of no more than 1:12 for slopes for a maximum of 15 metres at a time,*

- (ii) a gradient of no more than 1:10 for a maximum length of 5 metres at a time,
 - (iii) a gradient of no more than 1:8 for distances of no more than 1.5 metres at a time, or
 - (b) **in the case of a proposed development on land in a local government area within the Greater Sydney (Greater Capital City Statistical Area)—there is a public transport service available to the residents who will occupy the proposed development:**
 - (i) **that is located at a distance of not more than 400 metres from the site of the proposed development and the distance is accessible by means of a suitable access pathway, and**
 - (ii) **that will take those residents to a place that is located at a distance of not more than 400 metres from the facilities and services referred to in subclause (1), and**
 - (iii) **that is available both to and from the proposed development at least once between 8am and 12pm per day and at least once between 12pm and 6pm each day from Monday to Friday (both days inclusive),**
and the gradient along the pathway from the site to the public transport services (and from the public transport services to the facilities and services referred to in subclause (1)) complies with subclause (3), or
 - (c) *in the case of a proposed development on land in a local government area that is not within the Greater Sydney (Greater Capital City Statistical Area)—there is a transport service available to the residents who will occupy the proposed development:*
 - (i) *that is located at a distance of not more than 400 metres from the site of the proposed development and the distance is accessible by means of a suitable access pathway, and*
 - (ii) *that will take those residents to a place that is located at a distance of not more than 400 metres from the facilities and services referred to in subclause (1), and*
 - (iii) *that is available both to and from the proposed development during daylight hours at least once each day from Monday to Friday (both days inclusive),*
and the gradient along the pathway from the site to the public transport services (and from the transport services to the facilities and services referred to in subclause (1)) complies with subclause (3).

Note.

Part 5 contains special provisions concerning the granting of consent to development applications made pursuant to this Chapter to carry out development for the purpose of certain seniors housing on land adjoining land zoned primarily for urban purposes. These provisions include provisions relating to transport services.

- (3) *For the purposes of subclause (2) (b) and (c), the overall average gradient along a pathway from the site of the proposed development to the public transport services (and from the transport services to the facilities and*

services referred to in subclause (1)) is to be no more than 1:14, although the following gradients along the pathway are also acceptable:

- (i) a gradient of no more than 1:12 for slopes for a maximum of 15 metres at a time,*
 - (ii) a gradient of no more than 1:10 for a maximum length of 5 metres at a time,*
 - (iii) a gradient of no more than 1:8 for distances of no more than 1.5 metres at a time.*
- (4) For the purposes of subclause (2):*
- (a) a **suitable access pathway** is a path of travel by means of a sealed footpath or other similar and safe means that is suitable for access by means of an electric wheelchair, motorised cart or the like, and*
 - (b) distances that are specified for the purposes of that subclause are to be measured by reference to the length of any such pathway.*
- (5) In this clause:*
- bank service provider** means any bank, credit union or building society or any post office that provides banking services.*

In accordance with the decision of the Court in *Principal Healthcare Finance P/L v Council of the City of Ryde [2016] NSWLEC 153* it is submitted that Clause 26 is a development standard for which Clause 4.6 is applicable.

This Clause 4.6 submission has been prepared having regard to recent judgments of the Land & Environment Court of NSW including *Australian Nursing Home Foundation Limited v Ku-ring-gai Council [2019] NSWLEC 1205*.

Based upon the content of this submission it is my opinion that compliance with the standard in the circumstances of this case is unreasonable and that there are sufficient environmental planning grounds to warrant the variation.

It is therefore my opinion that this variation submission is well founded and is worthy of the support of the Court acting as the consent authority.

The following is an assessment of the proposed variation against the requirements of Clause 4.6 of the Pittwater Local Environmental Plan 2014, being the Local Environmental Plan applicable to the subject land and the enabling SEPP.

1. What are the objectives of Clause 4.6 and is the proposal consistent with them.

The objectives of Clause 4.6 of the LEP are:

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development, and*
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

It is my opinion, as is demonstrated by the responses to the questions below that the proposed variation is consistent with the objectives of this clause and is justified in the circumstances of this particular case.

Reference is also made to sub-clause (2) of Clause 4.6 of the LEP and which states that:

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

State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 is another environmental planning instrument and is not expressly excluded from the operation of this clause.

2. Is the standard to be varied a Development Standard to which Clause 4.6 applies.

In accordance with the decision of the Court in *Principal Healthcare Finance P/L v Council of the City of Ryde [2016] NSWLEC 153* it is submitted that Clause 26 is a development standard for which Clause 4.6 is applicable.

It is also noted that both Clause 4.6 and Clause 26 do not contain provisions which specifically exclude the application of Clause 4.6 or the former SEPP No.1.

On this basis it is considered that Clause 26 is a development standard for which Clause 4.6 applies.

3. Is compliance with the development standard unreasonable or unnecessary in the circumstances of this case.

In determining whether compliance with the development standard is unreasonable and/or unnecessary regard is had to the objective of the Clause. Whilst there is no stated objective in relation to Clause 26 it is considered that the underlying objective is to ensure that the future residents of the development will have access to all services and facilities required by the clause that they would reasonably require.

On this basis it is my opinion that strict compliance with the requirements of Clause 26 of the SEPP is unreasonable in the circumstances of this case for the reason that the objectives of the standard are achieved notwithstanding non-compliance with the written standard.

In forming this opinion it is my opinion that in accordance with Clause 26(2)(b) of the SEPP residents of the development will have access to a public transport service that it is available both to and from the proposed development at least once between 8am and 12pm per day and at least once between 12pm and 6pm each day from Monday to Friday (both days inclusive).

It is noted that the relevant public transport services are Bus Routes 188, 199 & L90 and that each service relies upon both Bus Stop A & B identified on the Bus Stop Distance Plan prepared by Popov Bass, Drawing No. 0565-DA140 and dated 28/4/20. Both Bus Stops are relied upon noting that the bus services are not loop services and therefore service both sides of the street.

Bus Stop A is identified as being 394.1m from the site whilst Bus Stop B is located 447.6m from the site.

In determining that strict compliance with the 400m development standard is unreasonable in the circumstances of this case, reference is made to the Access Report prepared by Accessibility Solutions (NSW) P/L and which accompanies the Development Application. That report at Section 2.4 states that:

While clause 26(4) of the SEPP HS requires a concrete footpath or similar for measuring “distance”, predominantly for motorized wheelchairs and scooters then the users of these devices are not adversely impacted by the 447 metre trip and hence the variation is acceptable.

For ambulant pedestrians it is noted that the most direct pedestrian route along the western side of Bishop Street reduces the distance by 35 metres making the journey to southbound services 412 metres with the extra 12 metres beyond the 400 metre target negligible and satisfactory to accept the variation.

Notwithstanding the above comment, given the gradual, almost level footpath along Gladstone Street it is my opinion that the additional 47 metres would have negligible impact on pedestrians and is a reasonable variation to the requirements of Clause 26 of the SEPP HS to warrant a clause 4.6 (SEPP 1) application.

The presence of multiple seniors living developments in Bardo Road directly adjacent and opposite the subject site confirms the general locality is suitable for the proposed development.

It is therefore my opinion based upon the opinion of Mark Relf of Accessibility Solutions that the proposal satisfies the underlying objective of Clause 26 and as such compliance with the standard is unreasonable in the circumstances of this case.

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

It is considered that a contravention of the development standard in the circumstances of this case is justified on environmental planning grounds for the following reasons:

1. The subject site is located within 400m of a bus stop that will take residents to the range of services and facilities as required by Clause 26 of the SEPP.
2. The return bus stop which is located at 447m from the site is not considered to be located at a distance which could not be traversed by the majority of residents of the development.
3. The site is located immediately adjacent to an existing Seniors Living Development and which relies upon access to the same bus stops.
4. The site is located closer to the bus stops than other Seniors Living Developments in the vicinity of the site.

5. Is the proposed development 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.

Whilst there is no stated objective in relation to Clause 26 it is considered that the underlying objective is to ensure that the future residents of the development will have access to all services and facilities required by the clause that they would reasonably require.

It is my opinion that the proposal is in the public interest for the following reasons:

- i. The proposal is considered to be in the public interest in that the underlying objective of the standard will be satisfied by the proposal in that the required bus stops are located within a reasonable and appropriate distance of the site and are accessed via appropriate footpaths.
- ii. The proposal seeks to provide for a much needed form of housing which is specifically designed for the areas older and disabled population.

iii. The proposal is considered to be consistent with the applicable objectives of the R2 - Low Density Residential zone in that:

- *To provide for the housing needs of the community within a low density residential environment.*

The proposal seeks to provide for 12 dwellings specifically designed for older people or people with a disability and which are compatible with the character of surrounding development and that anticipated by the enabling SEPP.

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Not Applicable.

- *To provide for a limited range of other land uses of a low intensity and scale, compatible with surrounding land uses.*

Not Applicable

6. What is the public benefit of maintaining the development standard.

It is my opinion that there is no public benefit in requiring strict compliance with the development standard in the circumstances of this case given that the underlying objective of the standard is met and noting that the proposal will provide for the provision of 12 self-care dwellings in an area where there is a need for this form of accommodation.

It is also considered that the proposal provides for a high quality architectural and landscape outcome for the site which will make a positive contribution to the locality and will not result in any unreasonable impacts upon adjoining properties or upon the character of the locality.

Conclusion

It is therefore my opinion based upon the content of this submission and the accompanying report prepared by Mark Relf of Accessibility Solutions that a variation of Clause 26(2)(b) of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 is appropriate in this instance.

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