



27-29 North Avalon Road, Avalon Beach

Clause 4.6 – Bus Stop Distance

Clause 4.6 – Bus Stop Distance

27-29 NORTH AVALON ROAD, AVALON BEACH

October 2019

Prepared under instructions from
[Armada Avalon Pty Ltd](#)

by

[Amy Sutherland](#)
B Planning UNSW (Hons)

amy@sutherlandplanning.com.au
Tel: 0402 852 034
PO BOX 814 BOWRAL NSW 2576

1.0	CLAUSE 4.6 REQUEST – DISTANCE TO THE BUS STOP	4
1.1	Introduction	4
1.2	Clause 4.6 Exceptions to development standards	4
1.3	Development Standard to be varied	4
1.4	Extent of Variation to the Development Standard	5
1.5	Clause 4.6(3)(a) Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?	6
1.6	Clause 4.6(3)(b) Are there are sufficient environmental planning grounds to justify contravening the development standard?	9
1.7	Clause 4.6(4)(a)(i) consent authority satisfied that this written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3)	10
1.8	Clause 4.6(4)(a)(ii) consent authority satisfied that the proposal is in the public interest because it is consistent with the zone and development standard objectives	10
1.9	Objectives of Clause 4.6	11
1.10	Conclusion	11

1.0 CLAUSE 4.6 REQUEST – BUS STOP DISTANCE

1.1 Introduction

This written request for an exception to a development standard is submitted in respect of the development standard contained within Clause 26(2)(b)(ii) of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.

The request relates to an application for demolition works, tree removal, site consolidation and the construction of ten self-contained dwellings for seniors or people with a disability with 15 car parking spaces at 27 and 29 North Avalon Road, Avalon Beach. The development relies on the provisions of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.

1.2 Clause 4.6 Exceptions to development standards

Pittwater Local Environmental Plan 2014 (PLEP) applies to the land. Pursuant to clause 4.6(2) of PLEP development consent may be granted for development even though the development would contravene a development standard imposed by the PLEP, or any other environmental planning instrument (emphasis added in underline).

However, clause 4.6(3) states that development consent must not be grant for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstance of the case, and
- (b) there are sufficient environmental planning grounds to justify contravening the development standard.

In accordance with clause 4.6(3) the applicant requests that the development standard be varied.

1.3 Development Standard to be varied

Clause 26(1) and (2) are as follows:

(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

1.4 Extent of Variation to the Development Standard

Residents have access to the North Avalon local shops within 400 metres of the site via an accessible path of travel. The local shops are located on the southern side of North Avalon Road, opposite Binburra Avenue. The shops are located approximately 230 metres from the site. The shops include a small local supermarket and newsagent, café and restaurant, takeaway food shop, bottle shop and a clothing shop. There is not currently a bank or general medical practitioner available at the local shops.

As detailed in the Statement of Environmental Effects prepared by Sutherland and Associates Planning, residents are able to access the full range of shops and services listed in clause 26(1) by using the bus services available from the bus stops on the eastern and western sides of Barrenjoey Road. The 199, E88 and L90 bus services take passengers to a range of locations where the shops and services referred to in clause 26(1) are available.

To meet the access requirements of clause 26 the standards of clause 26(2)(b) must be met.

Clause 26(2)(b)(i) states that a public transport service must be available to residents 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 path of travel.

The Assessment of Distance and Path of Travel to the Bus Stops prepared by AE&D, and accompanying plan showing the path of travel, show an accessible path of travel can be provided from the primary pedestrian entry

of the site (which is located 23 metres from the western boundary) from the bus stops on the eastern and western sides of Barrenjoey Road.

The bus stop on the eastern side of Barrenjoey Road is 361 metres from the site and 384 metres from the primary pedestrian entrance to site which complies with the distance requirement. The bus stop on the western side of Barrenjoey Road is 412 metres from the site and 435 metres from the primary pedestrian entrance to the site. As the distance from the site to the bus stop on the western side of Barrenjoey Road marginally exceeds 400 metres a clause 4.6 request is required.

When measured to *the site* the walking distance for the complete return journey (to and from the bus stops) is 27 metres **less** than permitted by the standard.

The Statement of Environmental Effects confirms the proposal's compliance with the requirements of clause 26(2)(ii) and (iii).

The proposed development meets the requirements of clause 26 except a variation is required to clause 26(2)(b)(i) for the distance to the bus stop on the western side of Barrenjoey Road. This bus stop is located just over 400 metres from the site (412 metres) and 435 metres from the main pedestrian entry to the development. The distance to the bus stop on the eastern side of Barrenjoey Road complies being 16 metres below the 400-metre requirement.

1.5 [Clause 4.6\(3\)\(a\) Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?](#)

Historically the most commonly invoked way to establish that a development standard was unreasonable or unnecessary was satisfaction of the first test of the five set out in *Wehbe v Pittwater Council* [2007] NSWLEC 827 which requires that the objectives of the standard are achieved notwithstanding the non-compliance with the standard.

In addition, in the matter of *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 [34] the Chief Justice held that “establishing that the development would not cause environmental harm and is consistent with the objectives of the development standards is an established means of demonstrating that compliance with the development standard is unreasonable or unnecessary”.

This request addresses the five-part test described in *Wehbe v Pittwater Council*. [2007] NSWLEC 827, followed by a concluding position which demonstrates that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case:

1. **the objectives of the standard are achieved notwithstanding non-compliance with the standard;**

Clause 26 does not include a specific objective for the specific access requirements of the clause.

The aims of the *Policy* are set out in clause 2 of the SEPP. Clause 2 provides the following:

- (1) This Policy aims to encourage the provision of housing (including residential care facilities) that will:
 - (a) increase the supply and diversity of residences that meet the needs of seniors or people with a disability, and
 - (b) make efficient use of existing infrastructure and services, and

(c) be of good design.

(2) These aims will be achieved by:

(a) setting aside local planning controls that would prevent the development of housing for seniors or people with a disability that meets the development criteria and standards specified in this Policy, and

(b) setting out design principles that should be followed to achieve built form that responds to the characteristics of its site and form, and

(c) ensuring that applicants provide support services for seniors or people with a disability for developments on land adjoining land zoned primarily for urban purposes.

The proposed development is consistent with the aims of the SEPP in that the development increases the supply and diversity of residences that meet the needs of seniors or people with a disability by providing 10 self-contained dwellings that comply with the access and usability standards of the SEPP for self-contained dwellings.

The site is in an existing low-density residential area and as such the necessary services and infrastructure are available to the two allotments. The development is able to make use of the existing infrastructure and services including local public transport services (being the local buses and the trial Keoride On-Demand Public Transport Service).

The development is of a good design as detailed in the accompanying Statement of Environment Effects. The Statement of Environmental Effects describes each aspect of the development and the proposal's compliance with all relevant planning provisions. The proposal's high level of compliance with the objectives and standards reflects the high quality of the design and its responsiveness to the local development context.

The underlying objective and purpose of the standard which limits the walking distance to the bus stop is to ensure that sites that are developed for the purpose of housing seniors and people with a disability are in a location where residents will have reasonable access to shops, bank service providers, medical practitioners and other services that residents may require.

The proposal is consistent with the underlying objective of the standard in that:

- Residents have access to local shops within approximately 230-250 metres walking distance of the site. The local shops include a small supermarket and newsagent, café, bottle shop, takeaway food shop and surf shop. Residents therefore are able to access some retail offerings within 400 metres of the site.
- The development provides car parking spaces for each dwelling. Each dwelling will therefore have access to at least one car parking space. The provision of car parking on site provides residents who are able to drive the choice of driving to the required services or using public transport.
- For those residents who are unable to drive, or who would prefer to use public transport, the bus stop on the eastern side of Barrenjoey Road is accessible via an accessible path of travel and is less than 400 metres walking distance of the site. The walk for the return journey is marginally longer than the specified in the standard however this additional walking distance does not

impose an unreasonable or excessive additional requirement on residents who are capable of walking 400 metres to and from a bus stop and then additional steps once at the destination to access the required services.

- The gradient to the bus stop is gradual and consistent and is appropriate for seniors or people with a disability. The route to the bus stop does not include variable gradients or any particularly steep sections which may be more difficult or tiring for seniors or people for a disability. A route that complies with the 400-metre requirement (both to and from the bus stop) but has a steeper gradient overall or steeper sections along the walk may actually be more difficult than the proposed route that is marginally longer than contemplated by the standard.
- When measured to *the site* the walking distance for the complete return journey (to and from the bus stops) is 27 metres **less** than permitted by the standard.

2. the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;

The underlying objective and purpose of the distance standard is to ensure that sites that are developed for the purpose of housing seniors and people with a disability are in a location where residents will have access to shops, bank service providers, medical practitioners and other services that residents may reasonably require. The underlying objective of the standard is relevant to the development application.

3. the underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;

The underlying objectives and purpose of the standard are relevant to the proposed development.

4. the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;

The development standard has not been virtually abandoned.

5. the zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

The zoning of land is appropriate.

Strict compliance with the development standard is unnecessary or unreasonable in the circumstance of this site as discussed below:

- The distance from *the site* to the bus stop on the eastern side of Barrenjoey Road is 361 metres. The distance from *the site* to the bus stop on the western side of Barrenjoey Road is only marginally greater than 400 metres being 412 metres. The pedestrian entrance to the site could be moved to the western side of the site to reduce the walking distance calculation however this would not result in any meaningful reduction to the number of metres a resident would need to walk yet it would significantly reduce the landscaping in the front setback and potentially the side setback.
- When measured to *the site* the walking distance for the complete return journey (to and from the bus stops) is 27 metres **less** than permitted by the standard.

- The distance to the bus stop on the eastern side of Barrenjoey Road via an accessible path of travel complies with the standard being 16 metres below the 400-metre requirement. The distance to bus stop on the western side of Barrenjoey Road via an accessible path from the main pedestrian entry of the site is only 35 metres greater than the 400 metre standard. When taking the walking distance for the complete return journey (to and from the bus stop) into consideration via an accessible path, the walk is only 19 metres more than the standard (a 2.4% variation).
- The gradient to the bus stop is gradual and does not include any steep sections. As such, whilst the walk from the return bus stop may be slightly further than 400 metres the walk would not be any more difficult or strenuous than a 400-metre walk of a steeper gradient.
- Requiring strict compliance with the standard would prevent the development of housing for seniors or people with a disability occurring on the site without adequate regard being given to:
 - the relatively gradual and consistent gradient of the route to the bus stops which is not as difficult or tiring as it may otherwise be despite the additional distance to be walked on the return journey;
 - the compliance with the standard for the complete return journey (to and from the bus stop) when measured from the western boundary,
 - the measures taken to improve the streetscape presentation of the development by providing a central pedestrian entry to the site rather than an entry purely at the point closest to the bus stops.

1.6 [Clause 4.6\(3\)\(b\) Are there are sufficient environmental planning grounds to justify contravening the development standard?](#)

The Land & Environment Court matter of *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 2018, provides assistance in relation to the consideration of sufficient environmental planning grounds whereby Preston J observed that:

- in order for there to be 'sufficient' environmental planning grounds to justify a written request under clause 4.6, the focus must be on the aspect or element of the development that contravenes the development standard and the environmental planning grounds advanced in the written request must justify contravening the development standard, not simply promote the benefits of carrying out the development as a whole; and
- there is no basis in Clause 4.6 to establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development.

The pedestrian access to the site could be moved to the western boundary to reduce the number of metres from the site to the bus stop however such an amendment would result in a greater proportion of the front (and potential side) setback being dedicated to a pathway. This would reduce the amount of area available in the front setback for the provision of landscaping and thereby compromise the streetscape and the proposal's consistency with the character of the area.

Requiring strict compliance with the standard in this instance would prevent the provision of a Seniors Living development on the site without adequate regard to the quality of access provided to the bus stop and the overall degree of compliance for the complete return journey (to and from the bus stop). Allowing the flexible application of the development standard in this instance is not only reasonable but also desirable given the development meets the aims of the SEPP HSPD to increase the supply and diversity of residences that meet the needs of seniors or people with a disability, make efficient use of existing infrastructure and services and is of a good design.

Residents have access to some local services at the North Avalon shops within 230-250 metres of the subject site. Banking and shopping services are also increasingly available online which reduces the frequency a resident will need to travel for these basic services. Residents will not be completely reliant on bus services to access all necessary services.

On the basis of the above, it has been demonstrated that there are sufficient environmental planning grounds to justify the proposed height non-compliance in this instance.

1.7 Clause 4.6(4)(a)(i) consent authority satisfied that this written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3)

Clause 4.6(4)(a)(i) states that development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3).

These matters are comprehensively addressed above in this written request with reference to the five-part test described in *Wehbe v Pittwater Council* [2007] NSWLEC 827 for consideration of whether compliance with a development standard is unreasonable or unnecessary in the circumstances of the case. In addition, the establishment of environmental planning grounds is provided, with reference to the matters specific to the proposal and site, sufficient to justify contravening the development standard.

1.8 Clause 4.6(4)(a)(ii) consent authority satisfied that the proposal is in the public interest because it is consistent with the zone and development standard objectives

Clause 4.6(4)(a)(ii) states that development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the proposed development will be 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.

Objective of the Development Standard

The proposal’s consistency with the objectives of the development standard have been addressed in detail in this clause 4.6 request.

Objectives of the Zone

Clause 4.6(4) also requires consideration of the relevant zone objectives. The site is located within the R2 Low Density Residential zone.

The objectives of the R2 Low Density Residential zone are:

- To provide for the housing needs of the community within a low-density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To provide for a limited range of other land uses of a low intensity and scale, compatible with surrounding land uses.

The proposed development increases the supply and diversity of housing for seniors and people with a disability in an accessible location.

The design of the development has been based on a thorough analysis of the site and surrounding area. The scale, setbacks, quantum of landscaping, internal layout and materials and finishes of the development are compatible with or responsive to the particular features of the adjoining sites and surrounding development.

In this regard the development is appropriate within the low-density residential environment in which it is located and is consistent with the objectives of the R2 zone.

1.9 Objectives of Clause 4.6

The specific objectives of 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.

As demonstrated above the proposal is consistent with the objectives of the zone and the objectives of Clause 26(2)(b)(ii) notwithstanding the proposed variation to the standard limiting the distance to the bus stop for the bus stop on the western side of Barrenjoey Road.

Requiring strict compliance with the standard would prevent the development of housing for seniors or people with a disability occurring on the site without adequate regard being given to:

- the relatively gradual and consistent gradient of the route to the bus stops which is not as difficult or tiring as it may otherwise be despite the additional distance to be walked on the return journey;
- the compliance with the standard for the complete return journey (to and from the bus stop) when measured from the western boundary,
- the measures taken to improve the streetscape presentation of the development by providing a central pedestrian entry to the site rather than an entry purely at the point closest to the bus stops.

Allowing the flexible application of the development standard in this instance is not only reasonable but also desirable given the development meets the aims of the SEPP HSPD to increase the supply and diversity of residences that meet the needs of seniors or people with a disability, make efficient use of existing infrastructure and services and is of a good design.

Accordingly, it is considered that the consent authority can be satisfied that the proposal meets objective 1(b) of Clause 4.6 in that allowing flexibility in relation to the development standard and will achieve a better outcome in this instance.

1.10 Conclusion

Strict compliance with the development standard for the required distance to the bus stop contained within clause 26(2)(b)(ii) of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 has been found to be unreasonable and unnecessary in the circumstances of the case. In addition, there are sufficient environmental planning grounds to justify the variation. Finally, the proposed variation is in the public interest because it is consistent with the objectives of the standard and the zone. In this regard it is reasonable and appropriate to vary the standard to the extent proposed.