

Access to Services - DA 2019/0409 - Lot 1113 Oxford Falls Road Frenchs Forest

Introduction

The self care dwellings proposed under DA 2019/0409 at Lot 1113 Oxford Falls Road Frenchs Forest (the '**Site**') is approximately 450 to 500 metres walking distance from inbound and outbound bus stops for State Transit Service 136 between Chatswood and Manly near the corner of Iris Street and Patanga Road. The proposal also incorporates a private community bus for the use of residents.

The Relevant Planning Controls

Clause 40 of the *Warringah Local Environmental Plan 2000* (NSW) (the '**WLEP**') addresses support services for seniors housing as follows:

40 Housing for Older People or People with Disabilities

Support Services

Development for the purpose of housing for older people or people with disabilities must provide residents with adequate access to:

- (a) shops, banks 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.

Access is adequate only if:

- (a) the facilities and services referred to above are located at a distance of not more than 400 metres from the site of the proposed development, or
- (b) 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
 - (ii) that will take those residents to a place that is located at a distance of not more than 400 metres from the relevant facilities or services, and
 - (iii) that is available both to and from the proposed development during daylight hours at least once per day from Monday to Friday (both days inclusive).

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Clause 40 of the *WLEP* sits in Part 4 of the *WLEP* entitled 'General Principles of Development Control'.

Clause 12 of the *WLEP* provides as follows:

12 What matters are considered before consent is granted?

(1) Before granting consent for development the consent authority must be satisfied that the development is consistent with:

- (a) any relevant general principles of development control in Part 4, and
- (b) any relevant State environmental planning policy described in Schedule 5 (State policies).

(2) Before granting consent for development, the consent authority must be satisfied that the development will comply with:

- (a) the relevant requirements made by Parts 2 and 3, and

(b) development standards for the development set out in the Locality Statement for the locality in which the development will be carried out.

It can be seen the provision in clause 12(1)(a) of the *WLEP* requires consistency with clause 40 of the *WLEP*. Clause 12(2)(b) of the *WLEP* requires compliance with development standards set out in the relevant locality statement.

If the provisions of cl 40 of the *WLEP* were development standards, then justification for a variation of those standards could be provided under cl 20 of the *WLEP*. There is no variation for development standard clause of the type found in clause 4.6 of the standard instrument and clause 5(1) of the *WLEP* excludes the operation of SEPP 1 to the area to which the *WLEP* applies. Clause 20 provides as follows:

20 Can development be approved if it does not comply with a development standard?

(1) Notwithstanding clause 12 (2) (b), consent may be granted to proposed development even if the development does not comply with one or more development standards, provided the resulting development is consistent with the general principles of development control, the desired future character of the locality and any relevant State environmental planning policy.

(2) In localities A2, A4, A5, A7, B2, B9, C8 and C10, the minimum area per dwelling required by the housing density standard is deemed to be the minimum allotment size for allotments created by subdivision.

(3) Where consent is granted for development that does not comply with one or more development standards, the Council is to ensure that the circumstances of the case and reasons for granting consent (in such a way that does not comply with the development standards) are included in a public register of such consents.

(4) This clause does not apply in relation to a development standard relating to maximum building height established by the Building Heights Map within the Dee Why Town Centre Locality Statement (E21).

While it does not appear that the provisions in clause 40 of the *WLEP* are development standards, the extent necessary, the following justification is provided for the purposes of clause 20 of the *WLEP* for the variation of the distance to transport services from 400m to up to 500m. In addition, the justification serves to demonstrate consistency with clause 40 of the *WLEP* and with the principle of development described in clause 20 of the *WLEP*.

Justification

In the context of the *WLEP*, the transport service is not required to be a public transport service and as such, the private community bus to be provided on the site that operates in the manner (in excess of that) specified in clause 40(b) of the *WLEP* strictly satisfies the description of adequate access in clause 40 of the *WLEP*.

Whilst not applicable to this application, it can be seen that such an arrangement would more than adequately satisfy the requirements of clause 43 'Transport services to local centres' of the Seniors Housing SEPP, which applies to land adjoining land zoned primarily for urban purposes.

Adding further to the adequacy of access under Clause 40, is that residents of the development will have access to a public transport service with the following attributes:

- There are inbound and outbound bus stops for State Transit Service 136 between Chatswood and Manly near the corner of Iris Street and Patanga Road at a walking distance of approximately 450 to 500 metres from the site.
- Route 136 is wheelchair accessible and operates multiple services daily to major centres and facilities such as Forestway Shopping Centre, Northern Beaches Hospital, Dee Why, Chatswood and Manly.
- Whilst footpaths are limited in the general area, the applicant will accept a condition to construct a footpath and suitable pedestrian crossings to Council's specifications along the full length of this route (that will marginally add to the trip distance but still be approximately 500 metres).
- The additional 100 metres walking distance is unlikely to represent a hinderance to most residents who are likely to seek to utilise public transport. Given the development is for self contained dwellings, most residents are expected to have a reasonable level of mobility and independence. Residents mobile and confident enough to walk 400 metres are unlikely to be discouraged to extend their journey by another 100 metres. For those with lesser mobility or confidence or in adverse weather conditions, the private community bus provides a more than adequate (and indeed a superior) transport option.
- Whilst not a requirement under the WLEP, the gradient of the walking route has been determined to be relatively gentle, with an overall average gradient of less than 1:14 (consistent with the gradient requirements in Clause 26 of the Seniors SEPP).

Conclusion

The provisions under clause 40 of the *WLEP* do not appear to be development standards and accordingly a variation under clause 20 of the *WLEP* is not required with respect to access to services in order for the development to be approved. Nevertheless, the above justification is provided to the extent it is required and also to demonstrate consistency with clause 40 of the *WLEP* and also with the principle of development described in clause 20 of the *WLEP*.

The consent authority can reasonably be satisfied that the development provides residents with adequate access to the services and facilities prescribed in clause 40 of the *WLEP* and that the 400 – 500m distance to the bus stops is justified.