

CLAUSE 4.6 SUBMISSION

CLAUSE 4.6 SUBMISSION RELATING TO THE SITE FRONTAGE STANDARD PRESCRIBED UNDER CLAUSE 40(3) OF SEPP (HOUSING FOR SENIORS OR PEOPLE WITH A DISABILITY) 2004

To accompany a Development Application for Seniors housing development comprising a ninety nine (99) bed Residential Aged Care Facility and associated facilities, site works, parking and landscaping.

At

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Lot 2 DP of 788892



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On Behalf of:

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An independent Christian charity

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1. INTRODUCTION

- 1.1 This is a written request to seek an exception to a development standard by way of a Clause 4.6 submission about a standard for minimum site frontage pursuant to Clause 40(3) State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP Seniors).
- 1.2 This submission accompanies a development application submitted to Lake Macquarie City Council for the construction of a ninety nine (99) bed Residential Aged Care Facility (RACF) with at grade parking, removal of trees and associated landscaping/site works.
- 1.3 The proposed new 99 bed RACF will comprise of individual but linked “houses” each designed specifically to accommodate residents requiring high-care and/or dementia care.
- 1.4 The site is located on the eastern side of Macquarie Road and has a total site area of 5.2ha (5.2393.82m²) and contains a single street frontage of 16.45 metres to Macquarie Road (Refer to Figure 1 & 2). Despite the scale of the site, the street frontage is less than the 20m minimum site frontage development standard pursuant to Clause 40(3) of SEPP Seniors, therefore a variation to the site frontage control is sought in accordance with Clause 4.6 of MLEP .



Figure 1 – Aerial Photo of site with Frontage to Macquarie Road

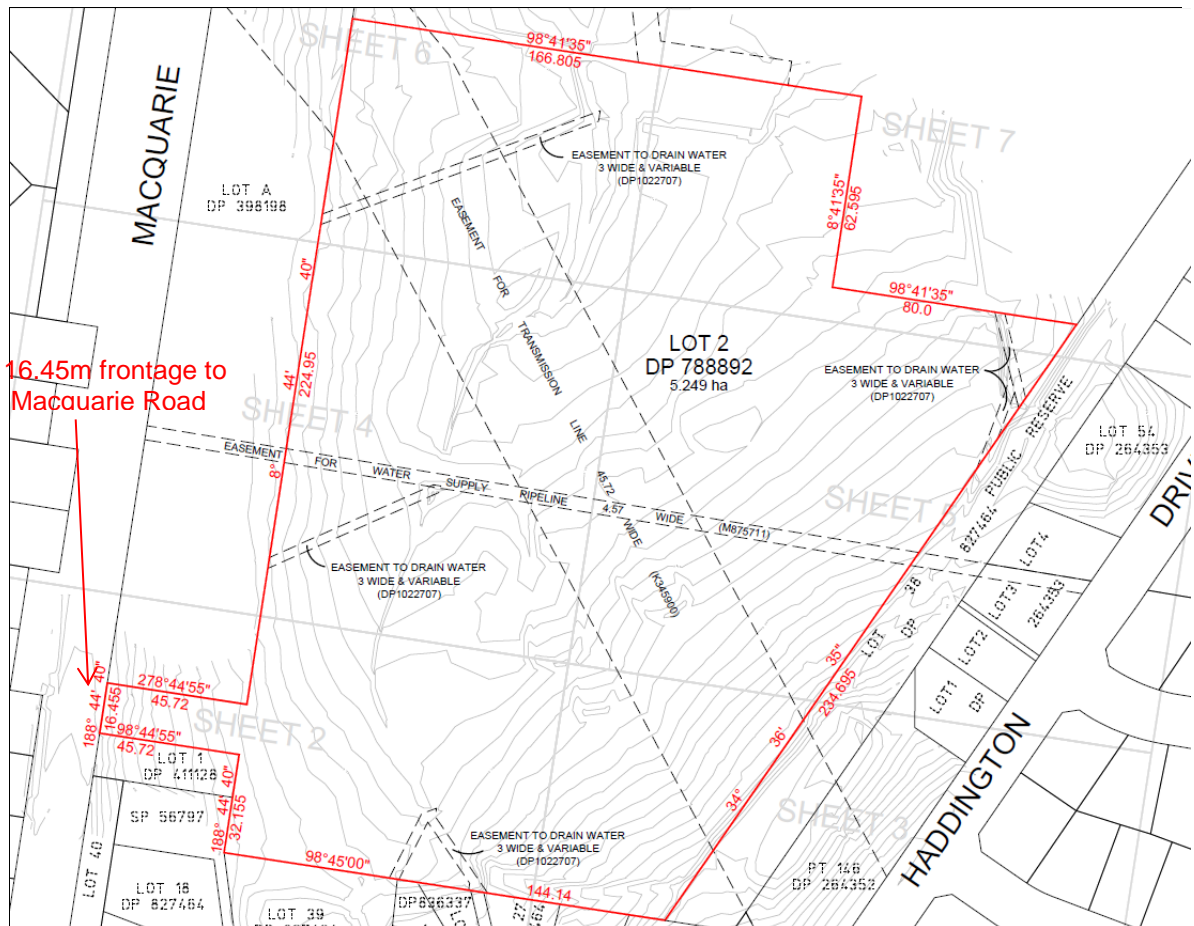


Figure 2 – Extract from Survey Plan illustrating Frontage to Macquarie Road

- 1.5 This statement has been prepared in accordance with the NSW Department of Planning and Infrastructure (DP&I) guideline for varying development standards.

2. PRINCIPLES FOR CLAUSE 4.6 SUBMISSIONS

- 2.1 The decision of Justice Lloyd in *Winten v North Sydney* identifies the principles for which a submission seeking a variation to a development standard must be made, and these are as follows:
- Is the planning control in question a development standard?
 - If so, what is the underlying object or purpose of the standard?
 - Is compliance with the standard consistent with the aims of the policy, and in particular, does compliance with the standard tend to hinder the attainment of the objects specified in s 5(a)(i) and (ii) of the Environmental Planning & Assessment Act 1979?
 - Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case? (A related question is: would a development which complies with the standard be unreasonable or unnecessary?)
 - Is the objection well founded?

The above principles are addressed in detail in the following sections.

3. IS THE PLANNING CONTROL IN QUESTION A DEVELOPMENT STANDARD

- 3.1 The planning control in question is the Site Frontage standard as set out in Clause 40(3) of the State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP Seniors). The Clause states the following:

“Clause 40 Development standards—minimum sizes and building height

(3) Site frontage

The site frontage must be at least 20 metres wide measured at the building line.”

- 3.2 As this Clause 4.6 submission relates to a departure from the numerical standard for minimum site frontage width, it is considered that Clause 40(3) of the SEPP Seniors is a development standard and not a 'prohibition' in respect of development.

Development Standards has the following definition under Section 4(1) of the EP&A Act:

“development standards means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:

(amongst others)

(c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,

(emphasis added).”

- 3.3 As this Clause 4.6 submission relates to a departure from the numerical standard for minimum site frontage width, it is considered that Clause 40(3) of the SEPP Seniors is a development standard and not a 'prohibition' in respect of development.

The 20m site frontage control is marginally greater than the site frontage width of 16.45m. The scale, shape and size of the site being 5.25ha in area is considered appropriate for the development proposal which covers a marginal portion of the site area and includes over 86% landscaped area. The proposal is not inconsistent with its adjoining context and it is noted that the Lake Macquarie Local Environment Plan does not stipulate a minimum allotment frontage width.

The 16.45 entry width for the access to the site provides more than adequate width for the necessary roadway and footpath into the facility. Given the purpose of the facility the entry access is likely to be a 6.20 metre wide roadway with kerbs and channels and a 3 metre wide footpath on the southern side of the access way. The seniors Housing or RACF will not be a high traffic generator so the proposed access road will cater for it quite easily and with the footpath on the southern side the conflict between vehicles and pedestrians will be minimised. The access arrangements will leave space for landscaping along each boundary of the strip so the impacts on neighbouring properties will be minimised.

Therefore based on the drawing information submitted with this DA, the design of the development demonstrates that the site layout, the accessway and built form seeks to integrate well with the adjacent development, will not create any adverse impacts on the adjoining neighbours and is an appropriate response to topography and shape of the site.

- 3.4 For the reasons set out above and in the following responses, the proposed departure from the development standard is well founded. The stated objective of the development standard can be achieved despite non-compliance with the standards in Clause 40(3) of SEPP Seniors.

Specifically the development seeks to ensure there is no abrupt change in the character of the streetscape. As such, this Clause 4.6 submission is consistent with the first of the alternative methods outlined by Preston CJ in *Wehbe* to demonstrate that a Clause 4.6 Submission is well founded.

4. WHAT IS THE UNDERLYING OBJECTIVE OR PURPOSE OF THE STANDARD

- 4.1 SEPP Seniors does not contain specific objectives for the site frontage development standard. In the absence of specific objectives it is reasonable to assume that they relate to preservation of amenity for adjoining residents (privacy, solar access, outlook and views), as well as avoidance of an abrupt change in the scale of development in the streetscape.
- 4.2 Furthermore, the objectives of the development standards in Clause 40(3) of SEPP Seniors can be understood in the Department of Planning and Infrastructure Seniors Living Policy for Urban Design Guidelines as follows:

Built form

- *Locate the bulk of the development towards the front of the site to maximise the number of dwellings with a frontage to a public street.*
- *Design and orient dwellings to respond to environmental conditions*
- *Orient dwellings to maximise solar access to principle living and open space areas; and*
- *Locate dwellings to buffer quiet areas within the development.*

Streetscape Character

New developments achieve a harmonious fit with the existing or desired future street character. The design objectives in relation to streetscape character are:

- *Minimise impact and enhance existing characteristics*
- *New developments should be designed so the built form, front and side setbacks, trees, planting and front fences is designed and scaled appropriately in relation to the existing streetscape*
- *Minimise dominance of car parks and driveway entries to the streetscape*
- *Provide a high level of entries and passive surveillance to the street.*

While the Seniors Living Policy for Urban Design Guidelines (Seniors Living Policy) does not apply to an aged care facility (only in-fill seniors housing) , the proposal is considered to satisfy the stated objectives of the Seniors Living Policy in that the proposed buildings are well setback from the side, rear and front boundaries, and existing and proposed planting and privacy screening treatments are provided along the side boundaries. It is considered that a reduced frontage will not cause traffic implications or an overbearing outcome.

The impact on the amenity of the adjoining residents is reasonable and will not impact upon neighbouring developments as summarised below:

Privacy and Amenity

- Neighbouring privacy will not be unreasonably affected.
- Buildings are well articulated and screened.
- Landscaping and planting is well integrated into the village and access to it.
- The proposal will not give rise to significant overlooking concerns due to the significant distance of adjacent development being substantive and the 1-2 storey height of the buildings.

Solar access

- Shadow impact is comparable with existing development.
- In midwinter, adjoining dwellings will enjoy unrestricted solar access.
- There is no overshadowing of internal living spaces.

Outlook

- The proposal will not impact upon existing outlooks.
- Sightlines to the development from the adjoining southern dwelling houses will be retained.

Views

- There are no views (public or private) over the site affected.

- 4.3 In summary, the underlying objectives of the minimum frontage development standard is to manage the scale of any future built form in order to mitigate any adverse impacts to the character and amenity of the surrounding area.

5. IS COMPLIANCE WITH THE DEVELOPMENT STANDARD CONSISTENT WITH THE AIMS OF THE POLICY, AND IN PARTICULAR DOES COMPLIANCE WITH THE DEVELOPMENT STANDARD TEND TO HINDER THE ATTAINMENT OF THE OBJECTS SPECIFIED IN SECTION 5(A)(I) AND (II) OF THE EP&A ACT.

- 5.1 The proposed development is consistent with the aims and objects of sections 5(A)(i) and (ii) of the EP&A Act, which provides as follows:

3 Aims, objectives etc

This Policy provides flexibility in the application of planning controls operating by virtue of development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in section 5 (a) (i) and (ii) of the Act.

The objects specified in Section 5(a)(i) and (ii) are:

5 Objects

The objects of this Act are:

(a) to encourage:

- (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,*

- 5.2 Non-Compliance with the Site Frontage development standard would not hinder the attainment of the objects of section 5(a)(i) and (ii) of the Act which are to encourage development that promotes the social and economic welfare of the community and a better environment, and to promote and co-ordinate orderly and economic use and development of land.
 - 5.3 The proposed development represents an orderly and economic use of the land. The natural environmental qualities of the land are not jeopardised. Strict compliance with site frontage standard would not result in discernible benefits to the residential amenity of future occupants to the site or the adjoining properties. It is also noted that the proposal in its current form provides significant public benefit in the form of much needed seniors housing for high care and/or dementia care residents.
 - 5.4 Strict compliance with the 20m site frontage width requirement would not be possible without amalgamation with an adjacent site to increase the site frontage boundary length which would be unnecessary given the 5ha area of the main portion of the site being occupied by the proposed RACF buildings.
 - 5.5 Given the above points and the consistency of the proposal with the assumed objectives of the standard, compliance with the standard would tend to hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the EPA Act as it would increase the impacts of the proposal.
6. Clause 4.6(4)(ii) provides the requirements for a test to see if the proposed development is consistent with the “*objectives for development within the zone in which the development is proposed to be carried out*”.

The objectives for development within the R2 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 encourage development that is sympathetic to the scenic, aesthetic and cultural heritage qualities of the built and natural environment.

The proposed seniors housing development that is a permissible development in the zone, is consistent with the zones objectives and indeed will further the zones objectives.

7. IS COMPLIANCE WITH THE DEVELOPMENT STANDARD UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE;

7.1 Strict application of the site frontage development standard is considered to be unreasonable and unnecessary in the current circumstance for the following reasons:

- The proposed development will not result in any inconsistency with the underlying objectives of the development standard which is to preservation of amenity for adjoining residents (privacy, solar access, outlook and views), as well as avoidance of an abrupt change in the scale of development in the streetscape. The main buildings are in fact confined to the main 5ha parcel setback from the street frontage so that the only street presence is the entry walls and roadway/paths. Refer to Landscape Plan extracts below;



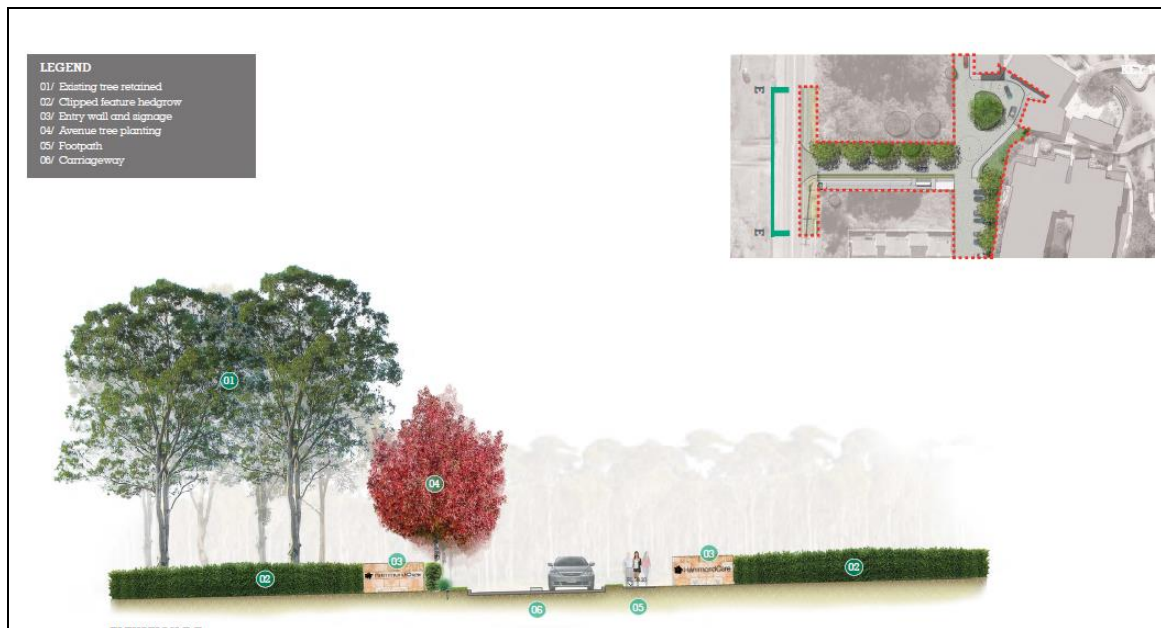


Figure 1 Landscape Plan extracts showing Landscape Scheme in plan and at the site entry

- The proposed development does not result in a development that is significantly out of context with the scale and nature of development in the area and as envisaged by the planning controls;
- The proposal results in a departure of 3.55m from the 20m minimum site frontage;
- The development is not overbearing nor an overdevelopment due to the site size being substantive - 5.25ha / and having an total FSR of 0.12:1, and buildings are well setback from boundaries to ensure appropriate separation as such the built form is appropriate to the height, bulk and scale of its adjoining context, and generous separations between onsite and adjacent neighbouring property buildings replicate the scale and density of the existing built forms in the area;
- The proposed development will be consistent with the stated aims of SEPP Seniors;
- The design of the development/village/buildings are a good contextual fit within the established character of the area;
- There will be no traffic implications as a result of a reduced frontage width as the 16.45m width can readily accommodate the proposed 6.2m wide 2-way entry driveway and footpath; and
- The development will contribute to the quality and identity of the area both when viewed from the adjoining residential sites and from Macquarie Road.

Furthermore, the Department of Planning's "Guidelines for the use of Clause 4.6 State that:

As numerical standards are often a crude reflection of intent, a development which departs from the standard may in some circumstances achieve the underlying purpose of the standard as much as one which complies. In many cases the variation will be numerically small and in other cases it may be numerically large, but nevertheless be consistent with the purpose of the standard...

In deciding whether to consent to development application the council should test whether the proposed development is consistent with the state, regional or local planning objectives for the locality and in particular the underlying objective of the standard. If the development is not only consistent with the underlying purposes of the standard, but also with the broader planning objectives of the locality, strict compliance with the standard would be unnecessary or unreasonable.

The variation of the development standard will:

- Not result in any inconsistency with the underlying purpose of the development standard which is to ensure that the site frontage width of the development is not antipathetic to its surrounds. In this case, the buildings are fully compliant with the other SEPP Seniors development standards and importantly, noncompliance will not result in any abrupt change in the streetscape cause traffic implications, nor result in environmental impacts by way of overlooking, overshadowing or noise generation;
- Not undermine the state planning objectives to provide seniors housing on sites with the required 1000m² site area and which are deemed suitable key criteria for this type of seniors accommodation.

The variation of the development standard will promote a use in an urban area which supports existing urban housing; and the concept of “ageing in a local community” by locating seniors housing in an area that requires further supply. In this regard, the development is consistent with the state and regional objectives for this form of development. It is considered that strict application of this standard is unreasonable and unnecessary in this circumstance given the site constraints which limit increasing the frontage without amalgamation of an adjacent property. Having regard to above, it is requested that the control under Clause 40(3) of the SEPP Seniors be varied in this instance to permit the proposed development. Notwithstanding the non-compliance, it is considered that the proposal satisfies the stated objectives and underlying objectives of the control.

8. IS THE OBJECTION WELL FOUNDED

8.1 The proposed departure from the site frontage development standard is well founded. The objectives of the standard are achieved notwithstanding non-compliance with the standards under Clause 40(3) of the SEPP Seniors. The proposed variation of 3.55m will not hinder the achievement of the objectives for the following reasons:

- The proposal is consistent and compatible with the surrounding low density residential development
- The proposal will accommodate dementia care accommodation in a compatible built form to that of the adjacent and surrounding development
- The proposed deviation from the standard will not cause traffic implications; ambulance and mini-bus movements are easily accommodated within the 6.2m driveway.
- The development is well setback from neighbouring southern and northern property boundaries and will not result in an overbearing development when viewed from Macquarie Road.

9. CONCLUSION

This Clause 4.6 submission demonstrates that Council can be satisfied that the proposed variation to the site frontage development standard contained within SEPP Seniors is justified.

The key reasons are:

- Non-compliance will not hinder the achievement of the objects and purpose of the Environmental Planning and Assessment Act 1979.
- The objection is well founded as the assumed objectives of the site frontage standard are achieved notwithstanding the proposal's non-compliance;
- The site is of significant scale being 5.2ha in area and only has an FSR of 0.12:1;
- The proposal only results in a departure of 3.55m from the 20m minimum site frontage and still provides sufficient width for the access roadway, footpath and landscaping;

- Strict compliance with the 20m site frontage width would require amalgamation with an adjacent site to increase the site frontage boundary length which would be unnecessary given the significant size of the overall site where the buildings are to occur;
- Variation will not result in any significant adverse impacts on the amenity of the neighbouring residential dwellings, in terms of views, wind, solar access and privacy;
- The proposal is not an inappropriate scale of development fronting Macquarie Road;
- Approval of the development would not result in an undesirable precedent;
- The proposal provides a social benefit by facilitating increased dementia specific aged care housing.

Strict application of the development standard in this instance has been demonstrated to be both unreasonable and unnecessary. Refusal of the development application on the basis that the development does not comply with the development standard in clause 40(3) in question is not warranted, particularly as it achieves the stated underlying objectives of the standard. The standard relating to site frontage under Clause 40(3) SEPP Seniors should be varied and this Clause 4.6 Submission should be supported.