



APPENDIX A

Request to vary *Clause 26 Location and Access to Facilities* under State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 ("*SEPP (Seniors)*") in accordance with Clause 4.6 of Ku-ring-gai Local Environmental Plan 2015



Clause 4.6 – Exceptions to Development Standards

The Objectives of Clause 4.6 of Ku-ring-gai Local Environmental Plan (the LEP) are as follows:

- (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.*

At sub clause (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.”*

Sub-clause (3) includes the requirement that a written request is provided by the applicant that seeks to justify the contravention of the standard.

The written request needs to demonstrate that:

- i. compliance with standard is unreasonable or unnecessary in the circumstances of the case;*
- ii. there are sufficient environmental planning grounds to justify contravening the development standard.*

Before granting consent, the consent authority needs to be satisfied:

- a. that the request made by the applicant adequately addresses those matters at sub clause (3), (items (i) and (ii) above);
- b. that the proposal is within the public interest because:
 - i. it is consistent with the objectives of the particular standard; and,
 - ii. the objectives for development within the zone in which the development is proposed to be carried out.
- c. Concurrence has been obtained from the Secretary.

In deciding whether to grant concurrence, the Secretary must consider:

- i. whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- ii. the public benefit of maintaining the development standard, and*
- iii. any other matters required to be taken into consideration by the Secretary before granting concurrence.*

These matters are considered below with respect to any perceived contravention to *Clause 26 Location and Access to Facilities* under SEPP (Seniors).



This statement (or request) satisfies the first provision of Clause 4.6 in terms of the applicant making a written request to vary a development standard.

Relevant Standard

The development standard to which this Clause 4.6 request seeks to vary is Clause 26 of SEPP (Seniors).

Clause 26 states:

“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 sub clause (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 sub clause (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 Sydney Statistical Division—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 sub clause (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 sub clause (1)) complies with sub clause (3), or

- (c) in the case of a proposed development on land in a local government area that is not within the Sydney Statistical Division—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 sub clause (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 sub clause (1)) complies with sub clause (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 sub clause (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 sub clause (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 sub clause (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 sub clause 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 terms of the application of Clause 26 to the subject site and development, access to facilities or public transport should be available within 400m of the site along a *suitable access pathway*.

The site is located ~562m from Gordon centre, where all services at Clause 26(1) are available, and a similar distance to the nearest bus stop and Gordon train station.

It is the position of the proponent that through the provision of services and facilities within the development that Clause 26 has been satisfied. However, should Council or the consent authority consider otherwise then a variation to the standard would be required to overcome non-compliances with both distance and gradient.

Is the provision a “development standard”?

As per the Memorandum of Advice prepared by C. W. McEwen SC, dated 22 September 2015, which has previously been provided to Council, and the subsequent judgment of Robson J in *Principal Healthcare Finance Pty v Council of the City of Ryde 2016 NSWLEC 153* (“*Principal Healthcare*”), Clause 26 is a *development standard* amendable to clause 4.6 and is not a prohibition.

Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

In *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009, Pearson C found that due to the consistency in language used in SEPP 1 Development Standards and Clause 4.6 that when determining whether compliance with a development standard is unreasonable or unnecessary under Clause 4.6 that the consideration provided in *Wehbe v Pittwater* [2007] NSWLEC 827 (previously applied to SEPP 1) may be of assistance.

It was later confirmed in *Moskovich v Waverley Council* [2016] NSWLEC 1015 (“*Moskovich*”) that the first of the “Wehbe” considerations, (that being the consideration of the objectives of the standard being used to demonstrate how compliance was “unreasonable and unnecessary”), was still valid.

We note that with respect to the degree of variation of development standards under Clause 4.6, *Moskovich*, included a variation of a development standard related to FSR by ~66% made possible by virtue of Clause 4.6, albeit under another planning instrument. The point is that there would not appear to be a numeric restriction as to the extent of any given variation under Clause 4.6.

A common finding of recent case law is that for a Clause 4.6 variation request to succeed that a better planning outcome for and from the development must be achieved as a result of the proposed variation. This is an objective of Clause 4.6.

The reasoning why compliance with the development standard in the circumstances of the proposed development is unreasonable and unnecessary in the current circumstances is set out below.



Does the proposed non-compliance result in a better planning outcome?

A better planning outcome for and from the development is achieved as a result of the proposed variation to Clause 26 (a) and/or (b) for the following reasons:

- Without the variation and the flexible application of the development standard the aims of the SEPP, specifically to increase the supply of this specialised type of housing, would not be met;
- the distance of facilities from the development or degree of physical accessibility is not highly relevant in this case and the "planning outcome" would neither be better or worse to any significant degree if the facility/service was 50m away or 1km away because either way the resident would be incapable of independently travelling there due to frailty and due to in-house restrictions which would not allow residents to leave the site unaccompanied. This is done for their own welfare and the peace of mind of their relatives;
- a better planning outcome is achieved by providing all facilities on site as residents may access such facilities without being accompanied. The reliance on external facilities is an inferior outcome as residents would not be able to physically and/or safely access such facilities due to frailty;
- in the event where a particular service or facility is not available on-site, the provision of a private community bus for the use of residents is considered to be a better planning outcome, given the community bus will be available virtually on demand and the bus will be parked in the basement of the development ensuring safe accessible travel to and from the bus. This arrangement is considered to be a better outcome than relying on a public bus within 400m of the site and the prospect of unaccompanied travel by residents.
- the clause 4.6 variation is necessary to address a deficiency in the SEPP in terms of it not differentiating between access to facilities which would reasonably be required by residents in the different housing typologies and the various levels of care which the Policy administers – a deficiency identified in *Principal Healthcare*.

Wehbe sets out five separate ways to demonstrate how compliance with the standard is unreasonable and unnecessary (or how an Objection under SEPP 1 may be considered to be "well-founded") as follows:

- a) the objectives of the standard are achieved notwithstanding non-compliance with the standard;
- b) the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;
- c) the underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;



- d) 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;
- e) 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.

With respect to the tests outlined above from *Wehbe*, we submit that it is unreasonable and unnecessary to strictly comply with Clause 26 for reasons related to (a) and (b), which in this case are intrinsically related to each other due to the nature of the proposed development; the degree of frailty of the future residents; and, their inability to safely access external services independently.

(a) Consistency with the objectives of the standard

Clause 26 does not include any specific objectives.

For the purpose of this Clause 4.6 request it may be reasonably assumed that the objectives are to ensure that the future residents of the development have access to all facilities and services that they would reasonably require.

In terms of the variety of services which the residents may reasonably require, we believe the best authority to answer this question is the proponent – Australian Nursing Home Foundation, who have over 35 years experience in owning and operating culturally appropriate residential care facilities (Burwood 45 beds; Eastwood 46 beds; and, Hurstville 70 beds) and know from firsthand experience what their residents require.

The proposed development will include and have the following services and facilities available to residents:

Shops

- Community shop – the shop will stock items which would reasonably be required by the residents. Stock may include day-to-day items such as toiletries (other than those provided by ANHF); confectionary and snacks; writing materials and postage stamps; and, books, magazines and newspapers, (other than those provided by ANHF). Items could be ordered based on any on-going demand;
- Hair and Beauty Salon – the salon will stock basic beauty products such as make-up, skin cleansers and moisturisers, shampoos and conditioners;
- Café – Whilst residents will be fully catered for in terms of meals, the café will also stock items such as biscuits and snacks for purchase.



In the context of this development other types shops such as: grocers, hardware stores, whitegoods and electrical appliances; and, newsagents are either not required as the service is provided on site or they are services which are not usually or reasonably required by residents.

Should an instance arise that a resident wishes to receive a service or purchase goods which are not available within the development then arrangements may be made to either have a profession visit to provide the given service; for staff to make a purchase on their behalf; or, to accompany the resident on the private community bus to the shop or service provider.

Bank Service Providers

Clause 26 does not stipulate that residents of the proposed development will have access to an actual bank but rather a “*bank service provider*”. A “*bank service provider*” is defined under the SEPP as “*any bank, credit union or building society or any post office that provides banking services*”. This may be interpreted, in our opinion as a bank, or other institution, providing banking services within the development.

To address this provision in terms of gaining the services which would be provided by a bank the proponent has contacted Westpac Healthcare, a division of Westpac Bank, and Balance Aged Care Specialists, who provide a variety of aged care and financial services advice to clients within residential care facilities. Refer to the accompanying letters of commitment from these service providers at Appendix C.

Westpac Healthcare is happy to support the proposed development by the provision of the following banking services:

- Banking Products – PayWay; Mobile EFTPOS and standalone EFTPOS;
- Banking Services – Banking services may be provided to the site either by visitations by mobile bankers or through digital services; and,
- Digital Transaction Solutions – As extracted directly from the accompanying letter: “*Westpac has specifically tailored an aged care transaction banking solution. This transaction banking solution is a “digital wallet” for residents and staff that will enable ANHF to deliver services to its residents and staff, allowing them to pay for these services via closed loop payment technology.*”

Balance Aged Care Specialists will be happy to visit residents at the facility to provide aged care and financial services advice related to:

- Aged Care Advice;
- Aged Care Options;
- Aged Care Support;
- Financial Advice;
- Property Management;
- Project Management; and,



- Pension Advice and ongoing administration of a pension.

If a visit to an actual bank is required then the resident may be accompanied to the bank in the private community bus as required. The private community bus will be available to residents as required and with much greater frequency and convenience than the public transport standards in cl.26(2)(b)(iii).

Other retail and commercial services that residents may reasonably require

Clause 26 provides that residents of a proposed development must also have access to 'other retail and commercial services' that residents may reasonably require.

The following retail and commercial services, which the proponent believes would be usually and reasonably required by residents, are to be provided on-site:

- Newspapers and magazines;
- Postal services;
- Telephone and internet;
- Laundry;
- Legal services;
- Chemist – some non-prescription items usually available at chemists may be on offer in the community shop, such as non-medicinal items like mouth wash or lozenges, for example. Non-prescription medicinal items, such as Panadol, will be handled by nursing staff. Prescriptions will be given to a visiting pharmacist, John Lieu B.Pharm MPS (PHA0001046650) of North Strathfield Pharmacy, or will be taken to a chemist outside of the site by staff who will return with the medicines or the chemist will deliver medicines on an on-going basis.

It should be noted that many prescriptions will be repeats and may routinely be ordered and filled. Whilst the actual chemist is not located within the site, the service, as would reasonably be required by the residents, will be available;

- Online shopping – residents will have access to the internet and may utilise online shopping services and have items delivered to the site;
- Funeral services – Galaxy Funerals are happy to discuss and make any such arrangements with residents;
- Tailoring and Alterations – Smart Fit are happy to visit residents to measure them for clothes or alter clothes.

Should an instance arise that a resident wishes to receive a service or purchase goods which are not available within the development then arrangements may be made to either have a professional visit to provide the given service; for staff to make a purchase on their behalf; or, to accompany the resident on the private community bus to the shop or service provider. The private community bus will be available to residents as required and with much greater frequency and convenience than the public transport standards in cl.26(2)(b)(iii).



Community services and recreational facilities

The following Community services and recreational facilities, which the proponent believes would be usually and reasonably required by residents, are to be provided on-site:

- A 21 seater community bus for resident outings;
- Worship meetings and activities – Christian Praise and Workshop service; Australian Love and Kindness Association (Buddhism); Evangelical Free Church of Australia;
- Library;
- Theatre;
- Gymnasium;
- Arts and Crafts Tutorials;
- Entertainment – Chinese Leisure Learning Centre; Chinese Opera;
- Tai Chi;
- Yoga;
- Gardening;
- High quality landscaped areas for passive relaxation and walking.

Refer to the accompanying list of committed service providers at Appendix C.

Liaison with government agencies such as Centrelink or Council are from the experience of the proponent usually handled by family members where it is usual practice for residents to appoint a power of attorney and enduring guardian to deal with various aspects of their care and needs.

If a particular community service or recreational facility is unavailable on-site and service providers are unable to attend the site then arrangements may be made to accompany the resident on the private community bus to the community service provider or in the case of a recreational facility perhaps as a group outing.

The practice of a general medical practitioner

Neither the SEPP nor the LEP include a definition for a “*practice*” as required by cl.26(1)(c) of the SEPP when referring to the practice of a general medical practitioner. The Macquarie Dictionary defines “practice” as:

- “...
6. *the exercise of a profession or occupation, especially law or medicine.*
7. *the business of a professional person: a doctor with a large practice*”

Therefore, the ability of a general practitioner to exercise their profession or carry out their business utilising the facilities provided onsite satisfies this requirement.

In addition to the practice of a general medical practitioner, the following health services are to be provided on-site:



- Geriatricians;
- Dieticians;
- Occupational Therapist/Rehabilitation counsellor;
- Optometrists;
- Pharmacist;
- Podiatrist;
- Registered Music Therapist;
- Dentist.

These services are not required under the SEPP but are provided by ANHF for the benefit of residents.

Refer to the accompanying list of committed service providers at Appendix C.

Where external services are required which cannot be delivered on-site then appropriate arrangements will be made for accompanied trips either by the private community bus or by ambulance.

Should an instance arise that a resident wishes to receive a service or purchase goods which are not available within the development then arrangements may be made to other have a profession visit to provide a service; for staff to make a purchase on their behalf; or, to accompany the resident on the private community bus to the shop or service provider.

Private community bus

We are of the opinion that the reliance on a community bus service is an entirely acceptable outcome and is consistent with Clause 26(2)(c) of the SEPP where seniors housing developments outside of the Sydney metropolitan area need only rely on a transport service not a public transport service. The site is of course within the Sydney metropolitan area which if Clause 26 is strictly applied requires a public transport service within 400m of the site where all services and facilities are not provided. Our point is if a community bus is an acceptable solution outside of the Sydney metropolitan area why can one not be relied upon with the Sydney metropolitan area, particularly in these circumstances where residents will be incapable of using public transport services.

The provision of private community bus for residents is considered to be a superior outcome to relying on a public bus service as the community bus will be available to residents virtually on demand in excess of the minimum requirements of the SEPP in terms of the frequency of the service.

Furthermore, Clause 26 requires that a "*suitable access pathway*" is provided in terms of access. This is defined as "*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...*"

By having the private community bus parked in the basement in close proximity from the lift the objective of providing a suitable and safe access pathway is ensured, which we submit may not be case even for a



technically compliant public bus service located some distance from the site due to the frailty of residents who will be unable to safely travel independently.

The provision of these services and facilities within the proposed development or by arranging accompanied outings for residents requiring external services is considered to fully satisfy the adopted objectives of the development standard.

(b) The underlying objective or purpose of the standard is not relevant to the development

Whilst the underlying objective or purpose of the standard is relevant to the development, the actual development standard which attempts to achieve the objectives are not relevant and in this case are considered to be counterproductive. In other words, we are of the view that the development standard does not facilitate the achievement of the objectives.

The purpose of the proposed development is to care for people who are no longer capable of taking adequate care of themselves and in this case, are not capable of independent living and travel.

It is a policy of ANHF (the care provider and proponent) that any independent seniors who wish to gain access to the facility and expect to undertake independent travel or visit local shops, for example, will not be eligible for admission.

This is a secure residential care facility where a high proportion of residents will be frail and who for safety reasons will not be able to leave the site unaccompanied. In these circumstances, any requirement to provide independent access for residents to local facilities is not relevant.

Even if access to a public transport service and local services was within 400m of the site in accordance with the SEPP, such services would not be accessible by the future residents due to their frailty and inability to safely travel independently.

We therefore submit that strict compliance with Clause 26 is unreasonable and unnecessary in the circumstances of this case for reasons related to the first 2 of the tests provided in *Wehbe*.

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

Any perceived variation to Clause 26 of the SEPP under Clause 4.6 is considered to be justified on the following environmental planning grounds:

- All services and facilities reasonably required by residents will be available within the facility, or where external services are required which cannot be delivered on-site then appropriate arrangements will be made for accompanied trips;
- A communal 21 seater bus will be available to residents and accompanied trips will be organised to external services as required;



- Any non-compliance with the standard and the provision of services within the development does not result in any significant adverse environmental impacts on surrounding properties or the locality. The facilities and services provided on-site are designed so as not to impact on neighbouring residents.

The provision of services within the development will result in less traffic generation;

The kitchen and laundry services will be located underground where any impacts on neighbouring properties may be satisfactorily mitigated;

- Without the application of Clause 4.6, any perceived non-compliance with Clause 26 may have the effect of being determinative and may be fatal to the delivery of this important facility in terms of the significant social, housing and care benefits it will introduce.
- The proposed development, which is consistent with all other related planning policy, is an instance where a variation to the standard is considered to be entirely justified.
- The proposed development fully satisfies the underlying intent of Clause 26 which is to provide appropriate services and facilities to residents taking into account the type of housing proposed and the level of independence of the residents which is a concept acknowledged in *Principal Healthcare Finance Pty Ltd v City of Ryde Council*.
- The proposed variation to the standard will result in a better planning outcome for those reasons outlined above;
- The proposed development is considered to be consistent with Objects of the Act which, as relevant to this proposal, are:

“(a) to encourage:

- 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,*
- the promotion and co-ordination of the orderly and economic use and development of land,...*
- the provision and maintenance of affordable housing,”*

The proposed development will make a significant contribution to the availability of this specialised type of accommodation within the Council area and will promote the social well-being of the community.

The availability of such accommodation and care alternatives, will allow existing aged residents within the area to address their care needs, and vacate their past homes which are often larger than necessary. The follow-on effect of this movement is the freeing up of dwellings onto the real estate and rental markets, adding to supply and improving housing affordability, an issue of State significance.



The very purpose of the proposed development is to cater for persons who are incapable of safe independent access to services which Clause 26 seeks to provide. By hindering the development by strictly imposing a development standard which is not relevant to this particular proposal would be inconsistent with the objects of the Act in terms of the “*co-ordination of the orderly and economic use and development of land.*”

The Public Interest

Under Clause 4.6 the public interest is considered to be satisfied where it can be demonstrated that the proposed development is consistent with the objectives of the development standard and the zone within which the site is located.

Consistency with the objectives of the standard

The proposed development is considered to be entirely consistent with the underlying objectives of the development standards at Clause 26. Refer to discussion above.

Consistency with the zone objectives

The site is zoned *R2 Low Density Residential* under the LEP.

The objectives of the 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 housing that is compatible with the existing environmental and built character of Ku-ring-gai”

The proposed development supports and is consistent with the zone objectives for the following reasons:

- The proposed development includes the retention and adaptive re-use of one of the three existing dwellings;
- The majority of the new development is setback behind the front setback of the retained building;
- The form of the new buildings are consistent with the existing built form in terms of the two-storey construction with pitched roofs, albeit low pitched roofs to assist in mitigating any perceived massing issues;
- The proposed development is orientated to be perpendicular to the street and maintains the prevailing low density street rhythm;
- The side walls of the development are satisfactorily modulated and articulated to minimise potential massing impacts associated with the length of walls to be consistent with the articulation requirements for a dwelling house under the related Development Control Plan;



- No significant adverse impacts will be introduced on vegetation of significant biodiversity and ecological value. On the contrary, the core area at the rear of the site will be improved and retained in perpetuity by way of covenant and a Vegetation Plan of Management.
- Significant trees including a cedar tree in front of 25 Bushlands Avenue and the line of jacaranda street trees will be retained and protected during construction thereby protecting the streetscape landscaping qualities of the site; and,
- The garden setting of the development is consistent with the R2 zone context.

Any perceived contravention to Clause 26 does not hinder the ability for the proposal to achieve the objectives of the zone.

The proposed development is considered to be in the public interest because, in accordance with Clause 4.6, it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed.

We further consider the development, including any variation to Clause 26, to be entirely within the public interest given that there are now approximately 353,800 Australians living with dementia, with 1.2 million people involved in their care. In less than 5 years this figure is estimated to increase to 400,000 and will be close to 900,000 by 2050.

As the demand for such facilities continually grows the provisions of the SEPP will continue to be relied upon in terms of setting aside local planning instruments that would otherwise prohibit such development and like the current proposal may continually need to be considered on merit in terms of strict compliance with development standards such as access to facilities due to the decreasing availability of sites which strictly meet such criteria.

This is not to say that the development standard should be ignored, but rather it should be applied with flexibility with a focus on achieving the principal aims of the SEPP by delivering this type of housing but also by carefully considering the level of services and methods of access the future residents would practically require.

Matters of significance for State or regional environmental planning

The proposed development is consistent with *A Plan for Growing Sydney* and the *North Subregion Draft Subregional Strategy* in terms of responding to the high demand identified for this type of housing.

Again, the availability of such accommodation and care alternatives, will allow existing aged residents within the area to address their care needs, and vacate their past homes, which are often larger than necessary. The follow-on effect of this movement is the free up of dwellings onto the real estate and rental markets, adding to supply and improving housing affordability, an issue of State significance.

The provision of housing for our ageing population is not just a State and Regional planning issue but a National issue.



The public benefit of maintaining the development standard

Whilst it is our contention that the proposal complies with Clause 26, if Council or the consent authority conclude otherwise we submit that there is no significant public benefit in maintaining strict compliance with the development standard in the specific circumstances of this case.

Any proposed variation made under Clause 4.6 pertains to the circumstances of this case only and is justified on the basis of this particular residential care facility by virtue of the higher care needs of its residents and the provision of services and facilities on-site, in addition to the private community bus which may be relied upon should an occasion arise where a resident requires access to a facility or service outside of the site, and would not lead to a precedent which could be interpreted as a general change to planning policy as warned against in *Wehbe*.

Conclusion

Strict compliance with Clause 26 of the SEPP is considered to be unreasonable and unnecessary in the circumstances of this case.

Subject to the concurrence of this Clause 4.6 variation request by the Secretary, or as otherwise delegated, the proposed development satisfactorily addresses Clause 26 of the SEPP, and consent may be granted.