



**WRITTEN REQUEST PREPARED PURSUANT TO  
CLAUSE 4.6 OF HORNSBY LOCAL  
ENVIRONMENTAL PLAN 2013 IN RELATION TO A  
VARIATION WHICH IS SOUGHT TO THE  
DEVELOPMENT STANDARD CONTAINED IN  
CLAUSE 26 OF SEPP (HOUSING FOR SENIORS)  
2004**

**Submitted in Support of a Staged Development  
Application for Seniors Housing at No 18 Waitara  
Avenue, Waitara**

**Prepared for  
The Vasey Housing Association NSW**

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## 1. Introduction

This written request has been prepared as part of a Staged Development Application, lodged pursuant to Section 78A of the Environmental Planning and Assessment Act 1979, for the construction of seniors housing and associated works ("the proposal") on land at No 18 Waitara Avenue, Waitara ("the site").

This clause 4.6 request has been prepared in relation to a potential non-compliance with development standards contained in clause 26(2) of SEPP (Housing for Seniors).

In particular the following public transport services which can convey future residents to an appropriate range of shops and services;

- the 434 metre maximum distance from the subject site to the 575 and 594 public bus services on Edgeworth David Avenue; and
- the stairway access to Waitara Railway Station which is 170 metres from the development site; and
- stairway access to the 589 and M60 public bus services on the Pacific Highway, which are approximately 230-370 metres from the development site.

Clause 4.6 allows approval to be granted to a development application where a proposal contravenes a development standard in the LEP, in this instance clause 26 of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004

The 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."*

This written request addresses the requirements of clause 4.6.

Clause 26 of SEPP (Housing for Seniors) 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 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 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 subclause (1), and
- (iii) that is available both to and from the proposed development at least once between 8am and 12pm per day and at least once between 12pm and 6pm each day from Monday to Friday (both days inclusive),

and the gradient along the pathway from the site to the public transport services (and from the public transport services to the facilities and services referred to in subclause (1)) complies with subclause (3), or

(c) in the case of a proposed development on land in a local government area that is not within the 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 subclause (1), and
- (iii) that is available both to and from the proposed development during daylight hours at least once each day from Monday to Friday (both days inclusive),

and the gradient along the pathway from the site to the public transport services (and from the transport services to the facilities and services referred to in subclause (1)) complies with subclause (3).

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

(3) For the purposes of subclause (2) (b) and (c), the overall average gradient along a pathway from the site of the proposed development to the public transport services (and from the transport services to the facilities and services referred to in subclause (1)) is to be no more than 1:14, although the following gradients along the pathway are also acceptable:

- (i) a gradient of no more than 1:12 for slopes for a maximum of 15 metres at a time,
- (ii) a gradient of no more than 1:10 for a maximum length of 5 metres at a time,
- (iii) a gradient of no more than 1:8 for distances of no more than 1.5 metres at a time.

(4) For the purposes of subclause (2):

*(a) a suitable access pathway is a path of travel by means of a sealed footpath or other similar and safe means that is suitable for access by means of an electric wheelchair, motorised cart or the like, and*

*(b) distances that are specified for the purposes of that subclause are to be measured by reference to the length of any such pathway.*

*(5) In this clause:*

**bank service provider** means any bank, credit union or building society or any post office that provides banking services.

## 2. Clause 4.6

Clause 4.6 of Hornsby Local Environmental Plan 2013 provides (in part):

- “(3) *Development consent must not be granted 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 circumstances of the case, and*
  - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*
- (4) Development consent must not be granted for development that contravenes a development standard unless:*
- (a) the consent authority is satisfied that:*
    - i) the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
    - ii) 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, and*
  - (b) the concurrence of the Secretary has been obtained.*
- (5) In deciding whether to grant concurrence, the Secretary must consider:*
- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
  - (b) the public benefit of maintaining the development standard, and*
  - (c) any other matters required to be taken into consideration by the Secretary before granting concurrence.”*

The matters raised above are addressed below in Section 4 of this submission.

### **3. Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case and are there sufficient planning grounds to justify contravening the standard?**

#### **3.1 Extent of non-compliance**

SEPP (Housing for Seniors) requires a public transport service that is located at not more than 400 metres from the site of the proposed development and the distance is accessible by means of a suitable access pathway that is accessible by a motorised wheelchair or scooter.

Surveys have been undertaken that confirm that the site of the proposed development is 398 metres from a bus stop on the southern side of Edgeworth David Avenue and 434 metres from the bus stop on the northern side of Edgeworth David Avenue. Access across Edgeworth David Avenue to the east bound bus stop is via a signalised intersection.

Bus route 575 operating between Hornsby and Macquarie University uses these stops and provides a frequency of service to Hornsby that complies with clause 26(2)(b)(iii) of the SEPP (Housing for Seniors).

Further, the gradients along the pathway from the site to these bus stops provide very gradual slopes which are generally 1:20 or less which easily complies with clause 26(3) of the SEPP (Housing for Seniors).

The bus service to Hornsby complies with the 400-metre standard. The return journey does not comply with the 400-metre standard. The extent of non-compliance is 8.5%.

In addition to the provision of wheelchair accessible bus services the site is located with 170 metres of Waitara Railway Station and 230 to 370 metres to public bus services on the Pacific Highway to the south of the development site which are accessed via stairways within the railway station.

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

The proposed development does not comply with the development standard contained in clause 26(2)(b) of the SEPP (Housing for Seniors) as outlined above.

There is no specifically stated purpose or object of the development standards expressed in Clause 26. However, it can be inferred that the object of the standard is to ensure that residents have access to all facilities and services they reasonably require by means that are appropriate. It is considered that the development meets the objectives of the controls. The SEPP applies to all land in NSW zoned for urban purposes or adjoining land zoned for urban purposes. It seeks to encourage the provision of housing for seniors in areas where this form of housing is not otherwise permissible. The site is located at Waitara in an area that is highly urbanised and that cannot be considered to be isolated, or an excessive distance from facilities and services or transport to those services.

Further, the objectives of the standard can be derived from the terms of Chapter 3 including the objectives contain in clause 14 which states that the objective of this chapter is:

*...to create opportunities for the development of housing that is located and designed in a manner particularly suited to both those seniors who are independent, mobile and*

*active as well as those who are frail, and other people with a disability regardless of their age.*

Strict compliance with Clause 26(2)(b) of the SEPP (Housing for Seniors) is unreasonable and unnecessary in the circumstances of the case for the following reasons. These reasons address the underlying objectives of the standard and shows that these objectives are met.

**Proximity to Waitara Station, Pacific Highway bus services and retail/commercial, community and recreation centres**

The site is 170 metres from the Waitara Station platforms which provides a high level of train services to metropolitan Sydney. Currently there is no lift access to the platforms and consequently this access does not fully comply with the requirements of clause 26 of the SEPP. Never the less it provides a high level of access to public transport for those residents who are ambulant and can walk up the stairway to access the train services. It is apparent that Waitara Railway Station is programmed for an "accessibility upgrade" that will include lift access.

Additional bus services are available on the Pacific Highway on the other side of the station. These facilities will cater for some of the needs of the development.

Westfields Hornsby is located some 850 metres from the site for those residents who are more active. Hornsby is relatively close to the site making it accessible by bus, walking, car and other forms of transport such as taxi, shared car use and the like.

The Waitara centre has a limited range of facilities that would meet needs of residents including the Magpies Waitara Club providing a range of entertainment and recreational facilities, the soon to be completed Police Citizens Youth Club, and recreational spaces.

**Minor degree of non-compliance**

The degree of non-compliance is considered minor and less than 10%. The additional distance is required to cross the street at the signalised intersection.

**Services to be provided on site**

Of relevance to the need to leave the site to access various services is the range of services to be provided on site. This includes rooms to be used by doctors and other allied health practitioners who will visit the site to provide services to residents. This will be managed by Vasey and the operators of the village.

Provision has been made in the design of the ground floor for a convenience store on the ground floor level, a resident's cinema hairdresser, consulting suites, meeting rooms and multi-purpose rooms for resident activities. Details will be provided as part of the subsequent DA.

The managers of the facility, being a not for profit operation, would be present on site to monitor resident needs and provide or arrange support as required. This includes access to home care and support and access to public transport in the form of taxis, lift sharing.

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

The contravention of the access to transport services development standards is justified on environmental planning grounds specific to this development for the following reasons:

- The development is in an area that is generally accessible and suitable for higher density housing;



- The development includes ancillary spaces on the ground floor that will provide some facilities and services for residents;
- The development involves the removal of dated and substandard seniors housing and its replacement with improved housing and additional housing to meet the needs of seniors;
- The development facilitates an increase in the provision of important seniors housing in the area which has a significant social benefit.

The proposal is considered to be entirely consistent with the objectives and requirements of relevant planning instruments and development standards and will result in no significant adverse environmental planning impacts. The inherent characteristics of the site, including its size, nature of surrounding development and proximity to centres and to facilities and services, make the proposal eminently suitable and entirely justifiable on environmental planning grounds.

There is a complete absence of environmental harm associated with the minor non-compliance of the proposal with the distance to public transport standard.

### **3.4 Has this written request adequately addressed the matters required to be demonstrated by sub-clause (3)?**

It is considered that the development adequately addressed the matters set out in Clause 4.6(3) as required by Clause 4.6(4)(a)(i).

## 4. Is the development in the public interest?

Clause 4.6(4)(a)(ii) specifies that a development will be in the public interest if it is consistent with the objectives of particular development standards and the objectives for development within the zone in which the development is proposed to be carried out.

It is considered that the development will be in the public interest for the following reasons.

### 4.1 Consistency with the objectives of the development standard

This is discussed in Section 3.2 above.

### 4.2 Consistency with the objectives of the SEPP (Housing for Seniors)

Clause 2 of SEPP (Housing for Seniors) sets out the aims of the Policy:

*(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.*

Development consent is sought under clause 15 of Chapter 3 of the SEPP (Housing for Seniors).

Clause 14 states that the objective of this chapter is which is *...to create opportunities for the development of housing that is located and designed in a manner particularly suited to both those seniors who are independent, mobile and active as well as those who are frail, and other people with a disability regardless of their age.*

For the reasons outlined in Section 3.2 above, it is considered that the development is both well design and well located such that it is capable of meeting the needs of seniors who are independent, mobile and active as well as those who are frail, and other people with a disability regardless of their age.

It is considered that the development is consistent with the objectives of the standards and the Policy.

#### **4.3 Consistency with the objectives of the zone**

The site is located within the R4 Zone (High Density Residential).

Objectives for the R4 Zone are:

- *“To provide for the housing needs of the community within a high density residential environment.*
- *To provide a variety of housing types within a high density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.”*

The development is consistent with the objectives for development within Zone R4 in that:

- it continues to provide for the housing needs of the community through the provision of appropriately designed seniors housing;
- it broadens the range of housing choice in Hornsby;
- it comprises seniors housing with ancillary services to meet the needs of residents.

It is considered that the development is consistent with the objectives of the zone.

## **5. Conclusion**

Having regard to the above, it can be concluded that the proposed non-compliance does not undermine or frustrate the underlying objective of the standard. The non-compliance also gives rise to no significant adverse environmental impacts. It is also considered that the additional 34 metres to a bus stop causes no adverse impact upon future residents of the development. Furthermore the future upgrade of Waitara Station to include lifts will facilitate total compliance and enhanced environment for all within the precinct.

On the grounds stated above, it is considered that strict compliance with the development standard is unreasonable and unnecessary in the circumstances of the case.

Further, consistently with the objectives of clause 4.6, it is considered that strict adherence to the development standards for this development is not warranted and relaxing the standards results in a better development.

