



**WRITTEN REQUEST PREPARED PURSUANT TO
CLAUSE 4.6 OF PARRAMATTA LOCAL
ENVIRONMENTAL PLAN 2011 IN RELATION TO A
VARIATION WHICH IS SOUGHT OF THE HEIGHT
DEVELOPMENT STANDARDS IN CLAUSE 40 OF
HOUSING FOR SENIORS SEPP**

**Submitted in Support of a Development Application
for a Residential Aged Care Facility at Toongabbie
Sports Club**

Wentworth Avenue, Toongabbie, NSW, 2146

**Prepared for
Opal Aged Care**

**by
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Job 16-050
Toongabbie RACF Clause 4 6 Request.docx
August 2016

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1. Introduction

This written request has been prepared as part of a Development Application ("DA") for a Residential Aged Care Facility ("the proposal") at the Toongabbie Sports Club site, Nos. 4-10 Wentworth Avenue and No. 12 Station Road, Toongabbie ("the site").

Pursuant to Clause 40 of the *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* ("HSSEPP"), that part of the site that is zoned R3 Residential (the eastern part of the site) is subject to a development standard being a maximum height limit of 8m for buildings in zones where residential flat buildings are not permitted and where a building located in the rear 25% area of the site must not exceed 1 storey in height.

The proposed development has a maximum height of 13.4m falling to 10.2m at the north eastern end of the building adjoining residential properties. In addition, part of the building is located in the rear 25% area of the site. This contravenes the height provisions of Clause 40(4)(a),(b) and (c) of HSSEPP.

Clause 40(4) states:

(4) Height in zones where residential flat buildings are not permitted

If the development is proposed in a residential zone where residential flat buildings are not permitted:

(a) the height of all buildings in the proposed development must be 8 metres or less, and

Note. Development consent for development for the purposes of seniors housing cannot be refused on the ground of the height of the housing if all of the proposed buildings are 8 metres or less in height. See clauses 48 (a), 49 (a) and 50 (a).

(b) a building that is adjacent to a boundary of the site (being the site, not only of that particular development, but also of any other associated development to which this Policy applies) must be not more than 2 storeys in height, and

Note. The purpose of this paragraph is to avoid an abrupt change in the scale of development in the streetscape.

(c) a building located in the rear 25% area of the site must not exceed 1 storey in height.

Lots 6, 7, 8 and 9 are zoned R3 Medium Density Residential under the *Parramatta Local Environmental Plan 2011* ("PLEP 2011") and part Lot 30 is zoned RE2 Private Recreation under the LEP. Residential flat buildings are not permitted in these zones.

Clause 4.6 allows approval to be granted to a development application where a proposal contravenes a development standard in the LEP. However, in this case, development consent for the proposal is sought under the provisions of HSSEPP. As SEPP 1 – 'Development Standards' does not apply to land within Parramatta (pursuant to Clause 1.9 of the LEP), the following variation request to Clause 40 of HSSEPP will be lodged under Clause 4.6 of PLEP 2011.

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.

2. Clause 4.6

Clause 4.6 (2-5) of PLEP 2011 provides:

- “(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.*
- (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 Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

Compliance with the height development standards under HSSEPP including the maximum building height of 8m, the 2 storey and single storey height limit for a building within the rear 25% area of the site, is unreasonable and unnecessary in the circumstances of this case for the following reasons:

- The development will be visually attractive and sympathetic to the existing and emerging character of the area;
- The development will maintain the neighbourhood amenity and character of the local area;
- The development is four storeys in height which is consistent with the neighbouring development to the south;
- The development reflects the desired future character of the area as reflected in Council's exhibited strategic planning documents;
- The development has an attractive and appropriate presentation to the street;
- The bulk and scale of the building is considered appropriate as outlined in the Statement of Environmental Effects accompanying the development application;
- The site is of sufficient size to accommodate the proposed development;
- The proposed RACF will meet an important social need in providing aged care services in the local community.

Compliance with the development standard is therefore unreasonable and unnecessary given the circumstances of this case.

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

The contravention of the above height development standards is justified on environmental planning grounds specific to this development for the following reasons:-

- The bulk and scale of the proposal is compatible with the neighbouring development to the south and is considered consistent with the desired future character of the area;
- The proposed building setbacks have been designed to reduce perceived bulk and overshadowing, and the form and configuration of the proposal is sympathetic to the land form;
- The proposed building ranges from 3 to 4 storeys in height with the lower height portion of the building located adjacent to neighbouring properties to the east. In

addition, the incorporation of a contemporary materials palette, the retention of existing tree plantings and the provision of new landscaping will enhance the visual aesthetics of the proposed building;

- Buffer tree and shrub planting is proposed along the northern and southern boundaries of the site as well as new multi layered tree, shrub, and groundcover planting adjacent to car park and driveway, maintaining privacy to properties adjacent to the site as well as future residents of the RACF;
- A contemporary palette of materials will be utilised including the use of face brickwork, glazed brickwork, facing brick tile, aluminium windows and doors, coloured cladding panels, sunshade elements, powder-coated balustrading and concrete roofing. This will contribute to the modulation of the building façade;
- It is anticipated that there will be no negative bulk and scale impacts as a consequence of the proposal;
- The building will result in an appropriate relationship to adjoining development;
- It is considered that there will be no significant adverse amenity impacts arising from the non-compliance in relation to overlooking, obstruction of light or air, obstruction of views or any other such impacts on nearby residential properties; and
- It is considered that the overshadowing impacts of the development are acceptable.

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

There is an absence of significant environmental harm associated with the non-compliance of the proposal with the height development standards.

3.3 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 as 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 standards

There is no specifically stated purpose or object expressed in Clause 40(4) of the HSSEPP. The note to Clause 40(4)(b) states:

Note. The purpose of this paragraph is to avoid an abrupt change in the scale of development in the streetscape.

It can be assumed that the objective of the height and rear 25% area standard is to minimise amenity impacts of overshadowing and overlooking on adjoining detached dwellings and their private open space and to maintain a low scale residential form.

It is difficult to define and identify the rear 25% area of this site given the shape of the site and the underlying objectives of the control. In our view this control is intended for smaller sites in a residential context.

The rear 25% area is taken to be the area defined by a line parallel to the street frontage boundary within which 25% of the site area is contained.

It is noted that the site has a frontage to Wentworth Avenue. The rear 25% area of the site adjoins the Toongabbie Sports Club site.

The relationship of the proposed development to the street can be seen from the elevation drawings. The combination of articulated façade, building separation to the street frontage and building setback result in a change of scale that is acceptable and not inconsistent with character of the streetscape.

It is considered that there will be no significant adverse amenity impacts arising from the proposal in relation to overlooking, obstruction of light or air, obstruction of views or any other such impacts on nearby residential properties.

Privacy impacts on the existing 2 storey dwelling house along the eastern boundary and the 3-6 storey apartments along the southern boundary have been mitigated by means of a large setback, existing and proposed vegetation, orientation of windows and the potential for screening of window openings.

The development would result in additional overshadowing. However the orientation of the site and buildings and the location of adjoining development results in a development that maintains reasonable solar access to adjoining residential properties. In mid-winter, the property to the east would receive good solar access in the morning and begin to be affected by overshadowing in the afternoon. The apartments to the south would be affected by overshadowing in the morning (mid-winter) and would receive good solar access in the afternoon. In mid-summer, the proposed development would not impact on solar access in relation to either properties to the south and east.

It is considered that the overshadowing impacts of the development are acceptable.

Future residents of the proposed RACF will experience excellent amenity with level access to communal areas on each floor and also access to the ground floor courtyards via paved walking paths. The proposed courtyards include landscaped gardens and have seating areas for resting and contemplation.

The objection to the standards Clause 40(4) is well founded for the following reasons:

- the development is appropriate in this location;
- the development does not undermine the underlying objectives of the standard;
- the non-compliance does not result in any significant adverse environmental impacts on the amenity of the surrounding area in general, or on the amenity of nearby residential properties in particular; and
- the scale of the proposal, notwithstanding the non-compliance, is compatible with the desired future character of the area and is appropriate in the current context.

4.2 Consistency with the objectives of the zone

The site is located within the R3 Medium Density Residential and RE2 Private Recreation zone under PLEP 2011.

The objectives of the R3 Medium Density Residential zone are as follows:-

"To provide for the housing needs of the community within a medium density residential environment.

To provide a variety of housing types within a medium density residential environment.

To enable other land uses that provide facilities or services to meet the day to day needs of residents.

To provide opportunities for people to carry out a reasonable range of activities from their homes if such activities will not adversely affect the amenity of the neighbourhood.

To allow for a range of community facilities to be provided to serve the needs of residents, workers and visitors in residential neighbourhoods."

The objectives of the RE2 Private Recreation zone are as follows:-

"To enable land to be used for private open space or recreational purposes.

To provide a range of recreational settings and activities and compatible land uses.

To protect and enhance the natural environment for recreational purposes.

To identify privately owned land used for the purpose of providing private recreation, or for major sporting and entertainment facilities which serve the needs of the local population and of the wider Sydney region."

The proposal is consistent with the above objectives, in that:-

- the site is in a location appropriate for development of this type;
- the proposal will provide for aged care health related infrastructure and services;

- the proposal will provide a high quality aged care facility that meets the needs of the community;
- the proposal will provide a development that is compatible with the amenity of the site and with the adjoining area; and
- the site is located within walking distance of public transport and local shops.

Seniors housing is prohibited in the RE2 Private Recreation zoned part of the site. Notwithstanding the provisions of the LEP, a residential care facility is permissible with consent in a RE2 Private Recreation zone under State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.

A site compatibility certificate was approved on 16 August 2016 which now permits development on the site for the purposes of seniors housing with development consent.

The density of proposed development is higher than that would otherwise be permitted in the R3 zone. However the location of the site in the context of the nearby shops, Toongabbie train station and given the mixed residential forms in the locality (including the neighbouring six storey apartments), this density is considered appropriate.

5. Conclusion

Compliance with the height development standards in clause 40(4) of the *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* is both unreasonable and unnecessary in the circumstances of the proposed RACF at the Toongabbie Sports Club site, Nos. 4-10 Wentworth Avenue and No. 12 Station Road, Toongabbie.

There are sufficient environmental planning grounds to justify the non-compliance, and the proposal is in the public interest because it is consistent with the objectives of both the height standard and the zoning of the land under the Parramatta LEP 2011.

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