



Clause 4.6 Variation Request

Location and Access to
Facilities Development
Standard SEPP (Housing for
Seniors or People with a
Disability) 2004 - Clause 26

54, 56, 58 & 58A Wycombe Road, Neutral Bay

Submitted to North Sydney Council
On Behalf of Cranbrook Care

MAY 2020

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1. EXECUTIVE SUMMARY

The proposal involves the demolition of the existing buildings at 54 and 58 Wycombe Road, the sympathetic adaptation of 56 Wycombe Road and the construction of a three-storey building to provide a residential aged care facility (RACF) with 87 beds which is to integrate with the existing facility at 58A Wycombe Road, Neutral Bay.

This Clause 4.6 variation is to address a variation to Clause 26 relating to location and access to facilities within State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (Seniors SEPP).

This variation to the "location and access to facilities" is prepared on a without prejudice basis in relation to Clause 26. In this case, Clause 26 is achieved by virtue of the fact that residents of the existing and proposed development have access to: *"shops; bank service providers and other retail and commercial services that residents may reasonably require; and, community services and recreational facilities; and, the practice of a general medical practitioner"*. The existing and proposed development incorporates these facilities on-site (with improvements to those facilities in the subject proposal) and therefore the access requirements, both in terms of distances and paths of travel, have been met.

Where external services are required which cannot be delivered on site, then appropriate arrangements are made for accompanied trips. A 12-seater bus located in the basement of the proposed development is available to residents, on call seven days a week and any required off-site trips are organised for residents.

The proposal is for a residential aged care facility and an extension to the existing aged care facility known as Lansdowne Gardens at 58A Wycombe Road. The proposal will incorporate an additional 62 aged care beds to provide an enlarged facility providing a total of 15 beds for dementia-specific care and 72 beds for high care. As confirmed by the proponent, Cranbrook Care, residents would not typically leave the facility unaccompanied as most residents would be physically unable to do so. It is preferable for all necessary services to be provided on site so as to avoid providing any incentive for people with cognitive impairment or other disability to venture beyond the safety of the site and into an environment where risk to their wellbeing may lie. In any case, Cranbrook Care have a duty of care to their residents to ensure assistance is provided if and when they leave the facility.

This request demonstrates compliance with Clause 26 is unreasonable or unnecessary in the circumstances of the proposed development and that there are sufficient environmental planning grounds to justify the variation. The development as a whole satisfies the assumed objectives of the location and access to facilities development standard, as well as the objectives of the R2 Low Density Residential Zone and is in the public interest. Strict adherence to this development standard is therefore unreasonable and unnecessary.

2. INTRODUCTION

This is a formal request that has been prepared in accordance with Clause 4.6 of the North Sydney Local Environmental Plan 2013 to justify a variation to Clause 26(2)(a) relating location and access to facilities of the Seniors SEPP. The objectives of Clause 4.6 are to provide an appropriate degree of flexibility in applying development standards to achieve better outcomes for, and from, development. The variation is in relation to a proposed development application submitted to North Sydney Council for demolition of the existing buildings at 54 and 58 Wycombe Road, the sympathetic adaptation of 56 Wycombe Road and the construction of a three-storey building to provide residential accommodation for seniors (87 beds) which will integrate with the existing RACF at 58A Wycombe Road, Neutral Bay.

The objectives of Clause 4.6 are to provide an appropriate degree of flexibility in applying development standards to achieve better outcomes for, and from, development.

As the following request demonstrates, a better planning outcome would be achieved by exercising the flexibility afforded by Clause 4.6 in the particular circumstances of this application.

This request has been prepared having regard to the Department of Planning and Environment's Guidelines to Varying Development Standards (August 2011) and various relevant decisions in the New South Wales Land and Environment Court and New South Wales Court of Appeal (Court).

Clause 4.6 requires that a consent authority be satisfied of three matters before granting consent to a development that contravenes a development standard (see *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130, *Al Maha Pty Ltd v Huajun Investments Pty Ltd* (2018) 233 LGERA 170; [2018] NSWCA 245) at [23] and *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61 at [76]-[80] and *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 at [31]:

1. That the applicant has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case [clause 4.6(3)(a)];
2. That the applicant has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard [clause 4.6(3)(b)];
3. That 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 [clause 4.6(4)]

This request also addresses the requirement for the concurrence of the Secretary as required by Clause 4.6(4)(b).

3. STANDARD TO BE VARIED

On 2 December 2016 Robson J handed down judgment on *Principal Healthcare Finance Pty Ltd v Ryde City Council* NSWLEC 153 ("*Principal Healthcare*"). The case before the court was the determination of a separate question of law as to whether Clause 26 of the SEPP is a development standard amenable to Clause 4.6 or a prohibition. At paragraphs 77 and 78 of the judgment, His Honour concluded:

77. In light of the above, I find that applying the two-step approach, and having regard to the various approaches that rely upon the identification of essential elements and conditions, cl 26 of SEPP (HSPD) is not a prohibition, but is rather a development standard, and is therefore amenable to cl 4.6 of the Ryde LEP.

78. Therefore my answer to the separate question is that clause 26 of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (NSW) is a development standard amenable to clause 4.6 of the Ryde Local Environmental Plan 2014 (NSW), and is not a prohibition.

This determination was similarly articulated by Senior Commissioner Dixon in *Australian Nursing Home Foundation Limited v Ku-ring-gai Council* [2019] NSWLEC 1205 at [159]-[165].

The standard that is proposed to be varied is the location and access to facilities development standard which is set out in Clause 26 of the Seniors SEPP as follows:

(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 Greater Sydney (Greater Capital City Statistical Area)—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 Greater Sydney (Greater Capital City Statistical Area)—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.

The development standard to be varied is not excluded from the operation of Clause 4.6.

4. EXTENT OF VARIATION

Compliance against Clauses 26(2)(b) and (3) of the SEPP is undertaken below.

(b) in the case of a proposed development on land in a local government area within the Greater Sydney (Greater Capital City Statistical Area)—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

There is a bus stop within 36.5 metres of the site, known as *Wycombe Road at Harriette Street*, which is serviced by the public bus route 225. Access to this bus stop is provided from the existing aged care facility at 58A Wycombe Road via the western footpath of Wycombe Road. There are no proposed changes to vary the entry/exit gate at the existing aged care facility. This entry/exit will continue to be used by residents of the existing and proposed enlarged facility to access the bus stop.

The SEPP does not specify any specific width of the pathway, and only requires the footpath to be suitable to be accessed by an electric wheelchair and/or motorised cart. The proposal meets this requirement of Clause 26(2)(b)(i).

(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

The proposal meets the requirements of Clause 26(b)(ii). Bus route 225 has destination bus stops on Military Road, Neutral Bay and Cremorne with footpath access to the required services listed at Clause 26(1). Return bus trips of the 225 service can stop at the same *Wycombe Road at Harriette Street* bus stop for additional safety and convenience, negating the need for residents to cross Wycombe Road upon returning to the aged care facility. Discussion of the bus services is further discussed in the Access Report Addendum prepared by Mark Relf from Accessibility Solutions and provided at Appendix 1.

Route map of the 225 route from the proposed development to local shops and services



Figure 1: Map illustrating the subject site in yellow, bus route 225 in blue and the location of services required by Clause 26(1) illustrated in red

(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),

The proposal meets the requirements of Clause 26(b)(iii). Overall, there are eight (8) services departing the site before noon and twelve (12) return services arriving at the site after noon. There are a further 30 services on Saturday and 25 on Sunday.

(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.**

The proposal does **not** meet the requirements of Clause 26(3). A survey has been undertaken to determine the gradient along the footpath centreline which is provided at Appendix 2. An extract is provided at Figure 2 below. The survey confirms that there are three minor non-compliances with the gradients stipulated in Clause 26(3). These are:

- Gradient of 1 in 9.5 for 7.4 metres - This represents a variation to Clause 26(3)(i) which requires a gradient of no more than 1:12 for a maximum length of 15 metres at a time.
- Gradient of 1 in 6.2 for 1.0 metres - This represents a variation to Clause 26(3)(iii) which requires a gradient of no more than 1:8 for distances of no more than 1.5 metres at a time.
- Gradient of 1 in 10.8 for 6.9 metres - This represents a variation to Clause 26(3)(i) which requires a gradient of no more than 1:12 for a maximum length of 15 metres at a time.

Overall, the grade from the existing gate to the bus stop is non-compliant with Clause 26(3) - The grade is 1:11.2 which is more than the required overall gradient of 1:14.

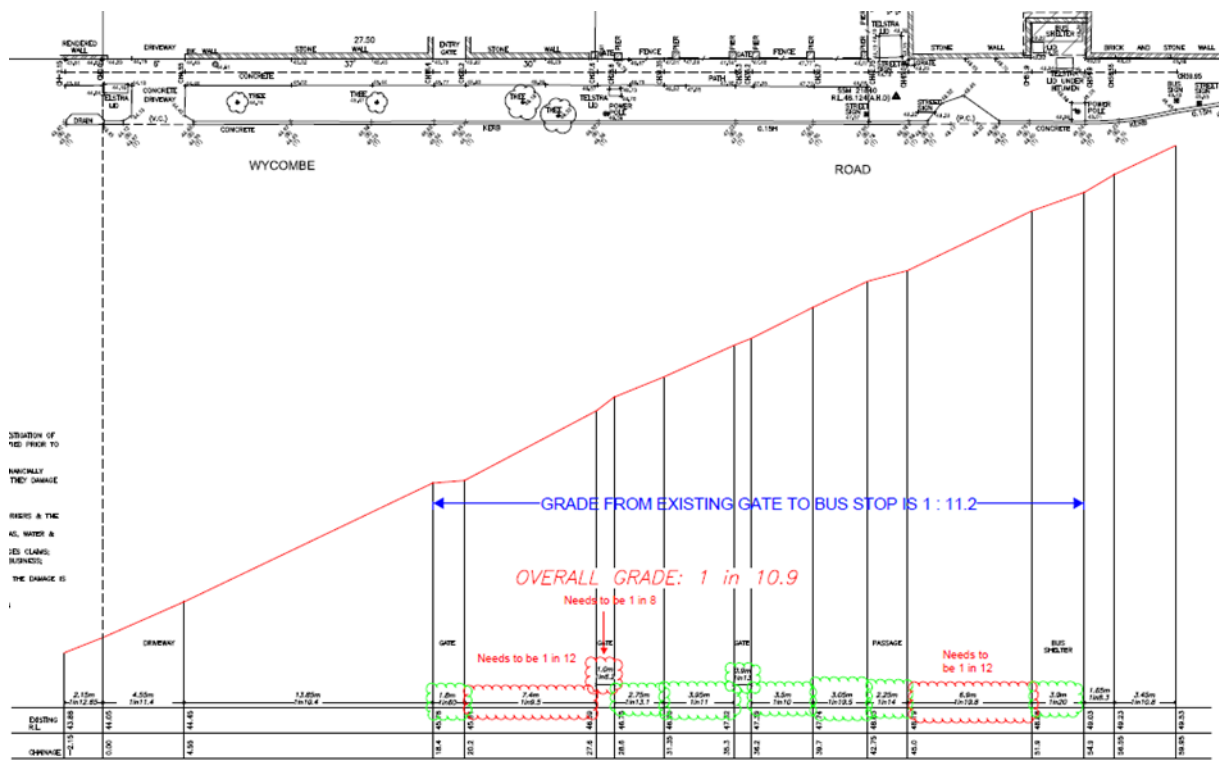


Figure 2: Extract of Survey Showing Section along Footpath Centreline of the Western Side of Wycombe Road (Source: Higgins Surveyors)

5. UNREASONABLE OR UNNECESSARY

In this section it is demonstrated why compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by Clause 4.6(3)(a) of the LEP.

The Court has held that there are at least five different ways, and possibly more, through which an applicant might establish that compliance with a development standard is unreasonable or unnecessary (see *Wehbe v Pittwater Council* [2007] NSWLEC 827).

The five ways of establishing that compliance is unreasonable or unnecessary are:

1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard;
2. The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary;
3. The objective would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable;
4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence the standard is unreasonable and unnecessary; and
5. The zoning of the land is unreasonable or inappropriate

It is sufficient to demonstrate only one of these ways to satisfy clause 4.6(3)(a) (*Wehbe v Pittwater Council* [2007] NSWLEC 827, *Initial Action Pty Limited v Woollahra Municipal Council* [2018] NSWLEC 118 at [22] and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [28]) and *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 at [31].

In this case, it is demonstrated below that Test 1 has been satisfied.

5.1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard.

The Seniors SEPP provides no instruction on the intent of the location and access to facilities requirements in Clause 26 and does not otherwise nominate any objectives to underpin the controls. It is therefore necessary to assume what the purpose of the standard might be, and then to evaluate whether a variation to the control would be consistent with these objectives as well as the Aims of the Policy (Clause 2(1)(a)) as indicated in Section 11 of the SEPP.

It is noted that Clause 14 of the Seniors SEPP outlines the Objectives of Chapter 3 of the policy, which is the relevant chapter that Clause 26 is situated. Clause 14 of the SEPP is shown below:

14 Objective of Chapter

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.

Accordingly, it is assumed that the intent/purpose of the standards under Clause 26 is:

to ensure that the occupants of the Seniors housing development have access to the services and facilities that they would reasonably require and are suited to their relative needs, as well as suitable access to those facilities consistent with the aims of this policy.

The Seniors SEPP does not differentiate between the availability and range of services and facilities which should be available for the different types of seniors housing administered under the SEPP which includes a range of housing types from self-contained dwellings to high-care residential facilities. At Paragraph 51 of *Principal Healthcare Robson J* states:

"Given this, a person living in a residential care facility would likely have different needs to one who is living in a self-contained dwelling. The need to attend shops and other retail and commercial services would likely be more relevant to a person living in a self-contained dwelling, who must prepare their own food, than someone in a residential care facility who has their food prepared by others. Further, the proposed development involves nursing care being available onsite at all times, and many of the people who would reside at the facility would not have the capacity to attend external services independently in any event. As such, it is clear that different categories of seniors housing have different practical requirements, and that the criteria set out in cl 26 of SEPP (HSPD) do not necessarily cater to the needs of the seniors who are likely to use the proposed development. To consider such a provision as essential would therefore defeat the aims of SEPP (HSPD), as it would act to discourage relevant persons from seeking to increase the supply and diversity of senior residences"

At Paragraph 52, the judgement states:

"... properly construed, cl26 does not act to prohibit development. Rather it serves the objective of Ch 3 set out in cl 14 of SEPP (HSPD), which is partly to ensure that "housing is located...in a manner particularly suited to both those seniors who are independent, mobile and active as well as those who are frail". The locational requirements for "independent, mobile and active" seniors, who are more likely to travel to attend shops, banks and other facilities, are naturally different to "those who are frail" and cannot independently visit such locations. As such, whilst the locational criteria in clause 26 of SEPP(HSPD) may be suited to those who reside in self-contained dwellings, they are not necessarily suited to frail persons who reside in residential care facilities"

The proposed development is for a residential aged care facility, which will extend the existing facility located at 58A Wycombe Road, Neutral Bay. The proposal will incorporate an additional 62 aged care beds to provide an enlarged facility providing a total of 15 beds for dementia-specific care and 72 beds for high care

Cranbrook Care is an industry leader of aged care and retirement living residence, owning and managing residencies at Bella Vista, Abbotsford, Neutral Bay and the Central Coast. Cranbrook Care together with Critical Success Solutions have provided input as to the type of services and facilities residents of the proposed aged care facility would reasonably require. This first-hand experience is based on the current needs of residents at their existing facilities, including the facility at 58A Wycombe Road.

As confirmed in the commentary prepared by Critical Success Solutions at Appendix 3, the current aged profile of residents residing at the existing facility on site at 58A Wycombe Road and Cranbrook Care's nearby facility at Manns Avenue is between 68 and 101 years, Specifically, 71% of residents are aged 86 years and over and 42% of residents are aged 91 years and over.

As confirmed in the aged care commentary, most residents require mobility aids and are incapable of independent travel. Over 72% of existing residents have been diagnosed with a cognitive impairment and many suffer with dementia increasing their reliance on others for mobility. Cranbrook Care has a duty of care to their residents to ensure assistance is provided if and when they need to leave the facility.

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

Shops

- A hair and beauty salon will be located on the site;
- A library will be located on the site which will have an array of books and up to date magazines, newspapers and writing materials;
- There will be a technology hub, which will allow residents the use of a computer to facilitate any online shopping. There will also be a Wi-Fi network throughout the building which residents can access and connect their own personal devices;
- Stamps are available upon request from staff who collect any outgoing personal mail as well as deliver incoming personal mail; and
- There is a full commercial kitchen located on-site, with an executive chef and residents will select their meals from a gourmet menu. In addition, there is a morning and afternoon tea service.

Having regard to the type of seniors who will reside in the proposed residential aged care facility, access to other types of shops such as supermarkets, newsagents, post offices, electrical, hardware etc are not reasonably required and generally not physically accessed nor accessed independently by the residents.

Notwithstanding, should a resident request to purchase goods or frequent a service which is not already provided on the site, then arrangements will be made for a staff member to purchase on their behalf or accompany the resident on the private bus to the shop or service provider. The 12-seater bus is provided at call for residents, seven days a week. It provides a superior service to the public bus service as it is located on site, allows residents including those, with wheelchairs and/or walkers etc to board/depart the bus in a secure basement and provides all weather protection.

Bank service providers

Residents will have access to online banking services via the technology hub and/or personal electronic devices connected to the facility's Wi-Fi. Residents are also provided with a telephone in their room which can be used for telephone banking services.

Should a resident request to visit a local bank branch, then arrangements will be made for a staff member to accompany the resident on the private bus to the bank.

Other retail and commercial services residents may reasonably require

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

Based on Cranbrook Care's intimate knowledge of the aged care sector, the following retail and commercial services are considered to be reasonably required by residents and are to be provided on-site:

- Newspapers and Magazines - Newspapers and magazines will be provided in the library. Residents can order newspapers or magazines of their choosing to be delivered to their room daily/weekly/monthly;
- Postal Services - Personal mail is delivered to each room daily and outgoing mail can be sent from the facility via admin staff;
- Telephone and Internet - Each room is provided with a phone and Wi-Fi is provided throughout the facility for use with personal devices. A technology hub will be provided for residents' use;
- Laundry - A commercial laundry will be provided on-site. Laundry is collected from and delivered to resident rooms. Dry cleaning is also available upon request;
- Legal services - Residents can use the phones in their rooms to contact legal services, or use Wi-Fi services and/or the technology hub;
- Chemist - There is a visiting pharmacist who conducts regular visits to the site;
- Online Shopping - This can be undertaken via Wi-Fi or through the technology hub;
- Funeral Services - When a resident passes away, Cranbrook Care will liaise with their chosen funeral service; and
- Tailoring and Altering Services - This is arranged directly through Cranbrook Care.

Should a resident request to purchase goods or frequent a service which is not already provided on the site, then arrangements will be made for a staff member to purchase on their behalf or accompany the resident on the private bus to the shop or service provider. The private bus is provided at call for residents, seven days a week. It provides a superior service to the public bus service as it is located on site, allows residents including those, with wheelchairs and/or walkers etc to board/depart the bus in a secure basement and provides all weather protection.

Community services and recreation facilities

The following community services and recreation facilities which are usually and reasonable required by residents, are to be provided on-site:

- A 12-set Toyota SLWB "Commuter type bus" which is provided on call for residents, seven days a week;
- Worship meetings;

- Library;
- Theatre;
- Gymnasium;
- Arts & Crafts;
- Entertainment;
- Gardening;
- Music;
- Cards and games;
- Hydrotherapy;
- Tea room;
- Hair and beauty salon;
- Private dining room with family/friends;
- Social/ community activities including pets on the lawn, grand children's day, jazz on the green etc.

All services and facilities listed above would be (and are currently) available onsite, with the exception of the hydrotherapy/ aquatic physiotherapy which is available at the Cranbrook Care's nearby facility at 11 Manns Avenue, Neutral Bay. The private bus would take residents to hydrotherapy sessions as required.

Cranbrook Care provides an extensive leisure and lifestyle program for residents. However, should a resident request to frequent a service which is not already provided on the site, then arrangements will be made for a staff member to purchase on their behalf or accompany the resident on the private bus to the shop or service provider. The private bus is provided at call for residents, seven days a week. It provides a superior service to the public bus service as it is located on site, allows residents to board/depart the bus in a secure basement and provides all weather protection.

The practice of a general medical practitioner

There are a number of general medical practitioners (GP) who have visiting rights at Cranbrook Care Facilities. Where possible, a resident's existing GP would continue to treat the resident on-site, otherwise a resident may elect to be seen by one of the visiting GPs. Cranbrook Care also have agreements with dentists, optometrists, podiatrists and pharmacists to visit existing facilities regularly.

The proposed treatment rooms would be used for all allied health practitioner consultations including physiotherapy, podiatry, massage and aromatherapy sessions.

Private community bus

A 12 seat Toyota SLWB "Commuter" type bus is currently provided to the existing facility and will be maintained for the proposed extension of that facility. The private bus will be permanently located within the basement of the proposed facility (when not in use). This is currently not possible so the proposal results in an improvement to the current acceptable position in terms of accessibility. To access the bus, residents will enter the basement via the lift by an accompanying staff member. Residents will be accompanied to the parked vehicle and assisted onto the bus. The bus will depart and return to the secure basement of the proposed facility.

The private bus will be on call for residents, seven days a week. It provides a superior service to the public bus service as it is located on site, allows residents including those, with wheelchairs and/or walkers etc to board/depart the bus in a secure basement and provides all weather protection.

Having regard to the above, strict compliance with Clause 26 is unreasonable and unnecessary in the circumstances of this case since the objectives of the development standard are achieved notwithstanding the proposed variation (Test 1 under Wehbe). The services and facilities provided on-site including a private community bus available to residents as required and with as much greater frequency and convenience than the public transport achieves the underlying objective of the standard in Clause 26.

The underlying object of the standard is also achieved by the provision on site of access to an abundance of services and facilities, as well as access to the community bus. It is therefore

unreasonable or unnecessary to require strict compliance with the locational requirement in Clause 26 in the circumstances of this case where the underlying objective of the standard is met.

The proposal is for an extension to an existing residential aged care facility and there are and will continue to be a high proportion of frail residents who are unable to access facilities and services independently, even if a public bus was available to take them to local services within 400 metres of the site in accordance with Clause 26. Such services would not be accessible by future residents due to their fragility and inability to travel independently on public transport. In short, they would not use the public bus. Additionally, the communal bus in any event will be available to residents when required to access services and facilities outside the site.

In accordance with the decision in *Wehbe v Pittwater Council* [2007] NSWLEC 827, *Initial Action Pty Limited v Woollahra Municipal Council* [2018] NSWLEC 118, *Al Maha Pty Ltd v Huajun Investments Pty Ltd* (2018) 233 LGERA 170; [2018] NSWCA 245, *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 and *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112, therefore, compliance with Clause 26 is demonstrated to be unreasonable or unnecessary and the requirements of Clause 4.6(3)(a) have been met on this way alone.

6. SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS

In *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 118, Preston CJ observed that in order for there to be 'sufficient' environmental planning grounds to justify a written request under Clause 4.6 to contravene a development standard, the focus must be on the aspect or element of the development that contravenes the development standard, not on the development as a whole.

Similarly, in *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112, Clay AC stated the state of satisfaction that compliance is "unreasonable or unnecessary" and that there are "sufficient environmental planning grounds" to justify the contravention must be reached only by reference to the Clause 4.6 request. Whilst the evidence in the proceedings can assist in understanding the request and in considering the adequacy of the request, it cannot supplement what is in the request.

In *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, Pain J observed that it is within the discretion of the consent authority to consider whether the environmental planning grounds relied on are particular to the circumstances of the proposed development on the particular site.

The proposed development seeks to extend the existing residential aged care facility which operates from the site at 58A Wycombe Road, Neutral Bay.

The environmental planning grounds to justify the departure of the name standard are as follows:

- All services and facilities reasonably required by the 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. These services are already provided from the existing facility, of which this proposal is an extension thereto.
- It is preferable, in the circumstances of the case, for services to be provided on site so as to avoid providing any incentive for people with cognitive impairment or other disability to venture beyond the safety of the site, and into an environment where risk to their wellbeing may lie.
- A 12-seater bus will be available to residents and accompanied trips will be organised to external facilities and external service providers. The 12-seater private bus can access the basement to provide level and equitable access for all residents. The proposal allows the existing bus to be able to be stored on site which results in an improvement to the operation of the existing facility.;
- There will be no external impacts on surrounding properties or public infrastructure from the non-compliance, including no additional demands on the local public bus services as a result of the private bus.
- Providing services and facilities on the site is likely to alleviate, if not wholly remove, external impacts on surrounding properties and public infrastructure by ensuring that the particular needs of residents with severe or profound disability are met without the need to leave the care found in the residential aged care facility and its grounds.
- 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 resident which is a concept acknowledged in *Principal Healthcare*.

7. PUBLIC INTEREST

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. This is required by clause 4.6(4)(a)(ii) of the LEP.

In section 5 it was demonstrated that the proposed development overall achieves the objectives of the development standard notwithstanding the variation of the development standard.

The table below considers whether the proposal is also consistent with the objectives of the zone.

Table 1: Consistency with Zone Objectives.

Objectives of Zone R2 Low Density Residential	Discussion
<i>To provide for the housing needs of the community within a low-density residential environment.</i>	<p>The proposed development is consistent with this objective and the contravention of the development standard does not result in any inconsistency with this objective. The proposal responds to the identified need for seniors housing within the locality. The proposal will enable the expansion of the existing RACF at 58A Wycombe Road to provide an additional 62 beds (in total 87 beds) within an appropriate and sympathetic built form which is compatible with the existing low density residential environment.</p> <p>The proposed development will present as two storeys to Wycombe Road with the third storey setback, consistent with the height of the two storey buildings at 58A Wycombe Road and 56 Wycombe Road, due to the fall in the slope and the pitched roof profile of these buildings. The proposal will maintain the current relationship to the street and adjoining low density residential environment.</p> <p>To respond to the low density residential environment, the built form is broken down along Wycombe Road. The built form is set behind and around the heritage item and appears as two additional segments interspersed between the existing RACF and the heritage item. The resulting form is a modulated façade that follows the natural fine grain rhythm of the existing built form character.</p> <p>The proposed development includes extensive landscaping along its site boundaries and throughout the site to contribute positively to the locality and the street's landscape quality.</p> <p>In May 2019 Council successfully sought an exemption from the Seniors Housing SEPP to enable development applications for seniors housing in Heritage Conservation Areas to be lodged. The Seniors Housing SEPP was subsequently amended in August 2019.</p> <p>The contravention of this development standard does not affect the site's consistency with this provision.</p>
<i>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i>	<p>The proposed development is consistent with this objective as the proposal is for a RACF designed to cater for the needs of the growing ageing population. As identified by Council, there is an identified acute shortage of seniors</p>

Objectives of Zone R2 Low Density Residential	Discussion
	<p>housing, specifically residential aged care facilities within the LGA.</p> <p>In May 2019 Council successfully sought an exemption from the Seniors Housing SEPP to enable development applications for seniors housing in Heritage Conservation Areas to be lodged. The Seniors Housing SEPP was subsequently amended in August 2019.</p> <p>In their report to Council, Council officers confirmed the shortfall of seniors housing in the LGA and the need for additional purpose built accommodation:</p> <p><i>“The last time, in 2014, Council surveyed residential aged care places in North Sydney it found the shortfall was 242 beds (the largest shortfall for LGAs in the whole of our aged care region). The shortfall is now reportedly 312 places.</i></p> <p><i>Council can allow itself the opportunity to examine, by considering the proposed DA, the potential for adding much needed aged care places for our residents. The mechanism for allowing this is to seek an exemption from the Amendment to the Seniors Housing SEPP.</i></p> <p><i>Such an Application, if successful, would do no more than return the situation to how it was in January 2019”.</i></p> <p>The proposed development will enable the logical extension and enlargement of an established RACF across the adjoining three lots. Cranbrook Care have advised that the current waiting list for residential aged care places at the Lansdowne Gardens facility was 18 as at 1 February 2019. The proposal would greatly assist in meeting current demand and will provide approximately three years’ worth of the LGA’s demand for residential aged care places in a modern, purpose-built facility. Specifically, the proposal would meet the demands of a large pool of people who have the resources and the required needs to enter into a private facility.</p> <p>The contravention of this development standard does not affect the site’s consistency with this provision.</p>
<p><i>To encourage development of sites for low density housing, including dual occupancies, if such development does not compromise the amenity of the surrounding area or the natural or cultural heritage of the area.</i></p>	<p>The proposed contravention of the standard does not affect consistency with this objective.</p> <p>Council has successfully sought an exemption from the Seniors Housing SEPP to enable development applications for seniors housing in Heritage Conservation Areas to be lodged.</p> <p>The proposal is consistent with Council’s LEP and DCP controls relating to heritage conservation, character and amenity controls. Specifically, the built form relative to the Kurraba Point Heritage Conservation Area and the existing heritage item on the site have been maintained at an appropriate height and scale.</p>

Objectives of Zone R2 Low Density Residential	Discussion
<i>To ensure that a high level of residential amenity is achieved and maintained.</i>	The contravention of the development standard does not result in an inconsistency with this objective. The proposed development will provide 87 aged care beds in a modern, purpose-built facility with excellent levels of amenity for residents. The proposal will provide an integrated development across the site allowing for level floor plates which are required for the operation of the RACF as well as for the amenity of residents.

As demonstrated in Table 1, the proposal is consistent with the objectives of the zone and in Section 5 it was demonstrated that the proposal is consistent with the objectives of the development standard. According to clause 4.6(4)(a)(ii), therefore, the proposal is in the public interest.

8. STATE OR REGIONAL ENVIRONMENTAL PLANNING

This section considers whether contravention of the development standard raises any matter of significance for State or regional environmental planning, the public benefit of maintaining the development standard, and any other matters required to be taken into consideration by the Secretary before granting concurrence required by clause 4.6(5).

There is no identified outcome which would be prejudicial to planning matters of state or regional significance that would result as a consequence of varying the development standard as proposed by this application.

As demonstrated already, the proposal is consistent with the objectives of the zone and the objectives of the development standard and in our opinion, there are no additional matters which would indicate there is any public benefit of maintaining the development standard in the circumstances of this application.

Finally, there are no other matters required to be taken into consideration by the Secretary before granting concurrence.

9. CONCLUSION

This submission requests a variation, under Clause 4.6 of the *North Sydney Local Environmental Plan 2013*, to Clause 26 of the Seniors SEPP relating to location and access to facilities and demonstrates that:

- Compliance with the development standard would be unreasonable and unnecessary in the circumstances of this development;
- The development achieves the objectives of the development standard notwithstanding non-compliance with the standard and is consistent with the objectives of the R2 Low Density Residential zone.
- There are sufficient environmental planning grounds to justify the contravention;

The consent authority can be satisfied to the above and that the development achieves the objectives of the development standard and is consistent with the objectives of the R2 Zone notwithstanding non-compliance with Clause 26 of the Seniors SEPP and is therefore in the public interest.

The concurrence of the Secretary can be assumed in accordance with Planning Circular PS 18-003.

On this basis, therefore, it is appropriate to exercise the flexibility provided by Clause 4.6 in the circumstances of this application.

ACCESS REPORT ADDENDUM

54-58 & 58A WYCOMBE ROAD NEUTRAL BAY

16th April 2020

This report has been prepared to provide further information regarding access to bus services to access shops and services as required by Clause 26 of the Housing for Seniors Policy.

The development application seeks to expand the existing Lansdowne Gardens 25 bed residential care facility located at 58A Wycombe Road with the addition of 62 beds for a total of 87 bed facility.

With respect to the requirement of providing access to shops and services for residents clause 26 of the SEPP Housing for Seniors policy sets out various requirements regarding access to bus services in terms of frequencies, destinations and footpath gradients which has been reported in an earlier report dated 18th June 2019.

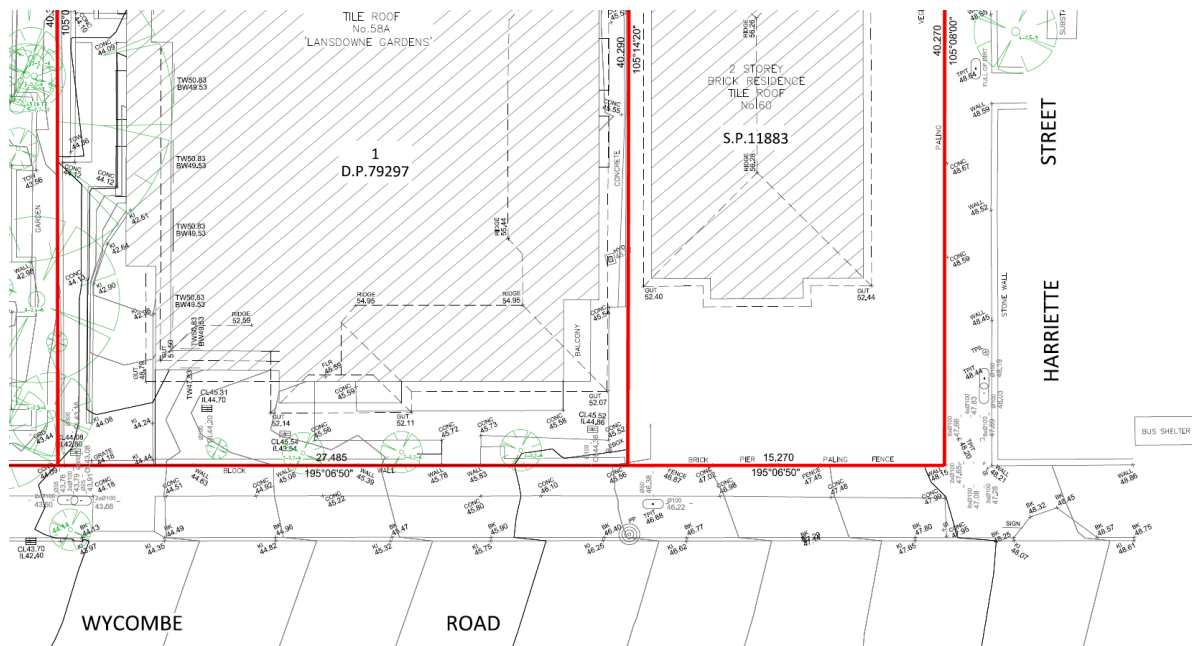
The important features of this development are:

- The exceptionally close proximity to a bus stop on Wycombe Road approximately 40 metres from the subject site which is serviced by the public bus route 225 which has destination bus stops on Military Road, Neutral Bay and Cremorne with footpath access to shops and services. See attached map.
- Return bus trips of route 225 service can stop at the same bus stop for additional safety and convenience negating the need to cross the road.



View from the site to the bus stops

- As the proposed development is an extension of the Lansdowne Gardens residential care facility the residents would utilise the existing entry and footpath as the route to the bus stop.
- The **topography** of footpath route to the bus stop on Wycombe Road near the intersection of Harriette Street has been surveyed and indicates the general slope of Wycombe Road varies from 1:12 to 1:8 over the 40 metre distance between the site and bus stop adjacent to Harriette Street. I have checked the survey plan onsite using a digital smart level to verify the abovementioned gradients.



- The available gradients of 1:12 to 1:8 and are consistent with clause 26(3)(i)(ii)(iii) of the SEPP HS and given the relatively short 40 metre distance to the bus stop which has a rest shelter it is my opinion there is suitable access as intended by the SEPP HS.
- **Frequencies** – As reported previously Route 225 Services – Neutral Bay to Cremorne & Return provides 31 services daily Monday to Friday, which includes 8 services departing at 8.15am, 8.45am, 9.15am, 9.45am, 10.15am, 10.45am, 11.15am, 11.45am; and;
- 12 return trips arriving at the site 12.30pm, 13.00pm, 13.30pm, 14.00pm, 14.30pm, 15.00pm, 15.30pm, 16.00pm, 16.30pm, 17.00pm, 17.30pm, 18.00pm.
- Overall, there are 8 services departing the site before noon and 12 return services arriving at the site after noon to comply with clause 26(2)(b) of the SEPP HS. There are a further 30 services on Saturday and 25 on Sunday.
- **Supplementary bus services** - In addition to the public transport service the existing Lansdowne Gardens residential care facility provides a bus service that regularly conveys residents to local shops and services, which is ideal for residents who have limitations in independently using public transport. The 12 seater bus can provide 7 day a week door to door personalised transport for residents with carer supports to ensure safer travel which is far superior to public transport.

In summary it is evident that;

- There are existing footpaths from the subject site that enable appropriate pedestrian access

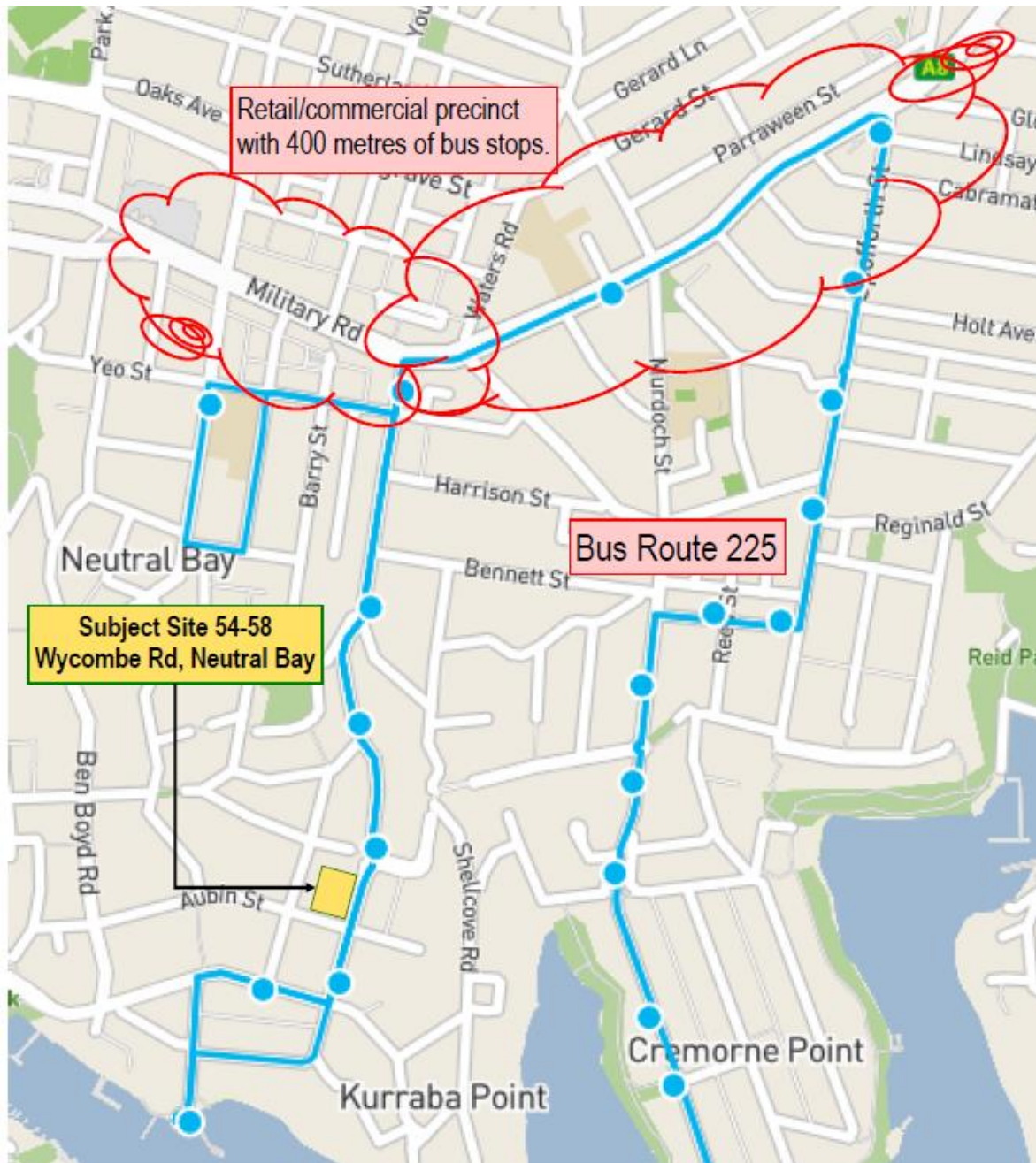
to the public bus transport service 225 in accordance with clauses 26(2)(3)(4) and 38(i) of the SEPP HS which travel to a range of shopping centres at Neutral Bay and Cremorne that provide a comprehensive range of services to readily satisfy clauses 26(1) and 26(5) of the SEPP HS.

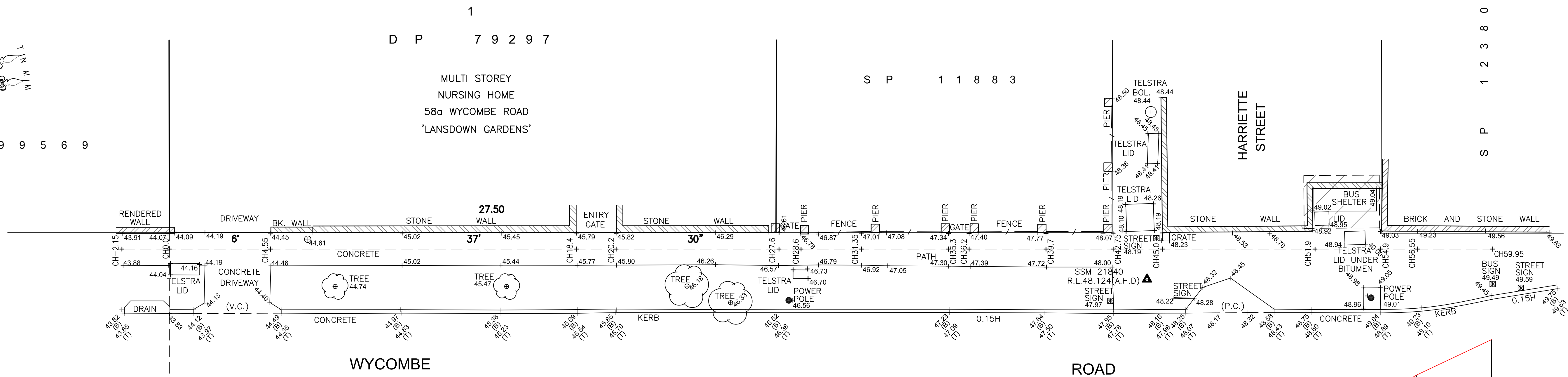
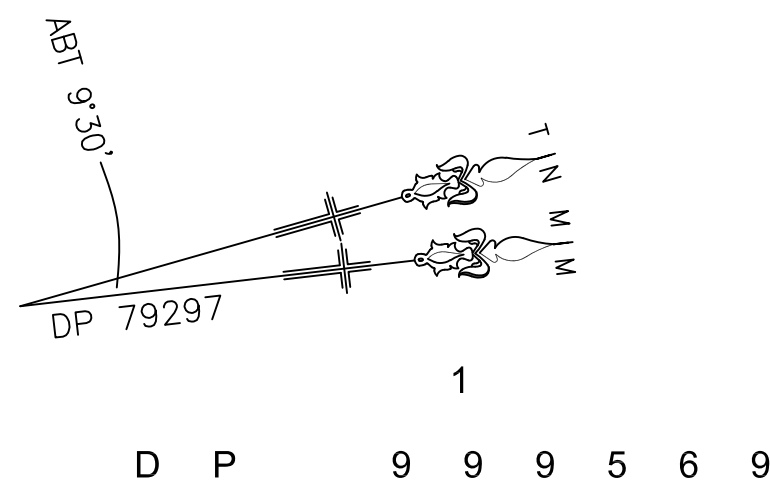
- Bus service 225 operates 7 days a week with a suitable frequency of services that comply with clause 26(2)(b) of the SEPP HS.
- That the supplementary onsite bus provides an ideal compliment to the public bus service to accommodate the needs of residents within a supported environment of the residential care facility.



Mark Relf
Access Consultant (ACAA)

Route map of the 225 route from the proposed development to local shops and services





NO INVESTIGATION OF UNDERGROUND NO INVESTIGATION OF UNDERGROUND AUTHORITIES SHOULD BE NOTIFIED PRIOR TO ANY EXCAVATION ON OR NEAR THE SITE.

DEVELOPERS & EXCAVATORS MAY BE HELD FINANCIALLY RESPONSIBLE BY THE ASSET OWNER SHOULD THEY DAMAGE UNDERGROUND NETWORKS.

- CARELESS DIGGING CAN:
- CAUSE DEATH OR SERIOUS INJURY TO WORKERS & THE GENERAL PUBLIC;
 - INCONVENIENCE USERS OF ELECTRICITY, GAS, WATER & COMMUNICATIONS;
 - LEAD TO CRIMINAL PROSECUTION & DAMAGES CLAIMS;
 - CAUSE EXPENSIVE FINANCIAL LOSSES TO BUSINESS;
 - CUT OFF EMERGENCY SERVICES;
 - DELAY PROJECT COMPLETION TIMES WHILE THE DAMAGE IS REPAIRED;

MINIMIZE YOUR RISK & DIAL BEFORE YOU DIG
TELEPHONE: 1100

GRADE FROM EXISTING GATE TO BUS STOP IS 1 : 11.2

OVERALL GRADE: 1 in 10.9

Needs to be 1 in 8

Needs to be 1 in 12

Needs to be 1 in 12

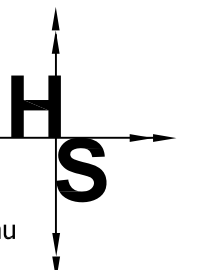
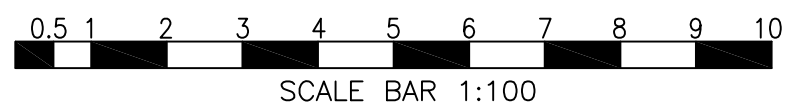
NOTES:

1. TITLE BEARINGS AND DIMENSIONS ARE SHOWN. BOUNDARY REDEFINITION HAS NOT BEEN UNDERTAKEN
 2. ORIGIN OF LEVELS: SSM 21840 – R.L. 48.124 (A.H.D.) (L.I.C. 2019)
 3. SITE COMPRISES LOT 1 D.P. 79297
 4. SITE AREA 1113.0m² BY TITLE DIMENSIONS
 5. UNDERGROUND SERVICES HAVE NOT BEEN INVESTIGATED.
 6. (G) DENOTES GUTTER LEVEL
- (T) DENOTES TOP LEVEL OF KERB

SECTION ALONG FOOTPATH CENTRELINE OF THE WESTERN SIDE OF WYCOMBE ROAD

HORIZONTAL SCALE 1:100
VERTICAL SCALE 1:20

ISSUE	DATE	AMENDMENT	TITLE: PLAN SHOWING SELECTED DETAIL AND GRADIENT CALCULATIONS ALONG WESTERN FOOTPATH OF WYCOMBE ROAD TO THE NEAREST BUS STOP	LGA: NORTH SYDNEY	REFERENCE: 28762	A.B.N. 39 003 853 094 LEVEL 3, SUITE 3.01 26 RIDGE STREET NORTH SYDNEY PO BOX 1269 QVB SYDNEY 1230
			CLIENT : CRANBROOK CARE RACF	DATE: 16-04-20	SHEET 1	PH +61 2 9264 8044 FAX +61 2 9267 5468 admin@higginsurveyors.com.au
			SCALE (@ A1) 1:100	DATUM : AHD	SURVEYOR: RH/JH	



Prepared by **Fleur Hannen, Managing Director of Critical Success Solutions**

Hannen Consulting Pty Ltd T/A Critical Success Solutions, ABN 36 088 469 407, ACN 088 469 407

Access to Public Transport and Services

Entry into Residential Aged Care

Residential aged care provides care within a supported accommodation setting for those older people whose care needs can no longer be met within their own homes.

When a potential resident is considering moving into a Residential Aged Care Facility (RACF) they first need to undertake a free assessment by an Aged Care Assessment Team (ACAT). This assessment considers the current situation of the person seeking entry into an aged care home and whether they are eligible to receive government-subsidised aged care services.

During the ACAT assessment, the team member (usually a trained nurse, social worker or other health care professional) will talk to the resident about how they are managing in their day-to-day life. The ACAT member will also discuss the resident's medical history with the resident's family doctor. The ACAT member will discuss the resident's general state of health and specific health conditions to determine how much and what type of help the resident needs. They will discuss whether support would enable the resident to remain in his/her own home or whether they may be better supported in a RACF.

Once the ACAT assessment has been completed, the potential resident will receive a letter letting them know if they have been approved as eligible for Australian Government subsidised aged care services; the type of services they are eligible for and approved to receive; as well as the reasons why.

The ACAT assessment process effectively prevents active, mobile and independent seniors from being admitted into residential aged care.

Mobility Experiences of Cranbrook Care Residents

Lansdowne Gardens on Wycombe is accessible via a bus stop that is around a one-minute walk (66m) and provides access to a local shopping and services hub (1km away). This hub includes a range of services including grocery stores, chemists, post office, doctor's clinics and a community centre.

While public transport is readily accessible, it is **high-likely** that other means of transport will be utilised by the residents of the RACF when required. This assessment is based on the following current resident profile information:

- The age of residents in Lansdowne Gardens on Wycombe and Lansdowne Gardens on Manns Avenue is between 68 and 101 years, with 71% of residents 86 years and over and 42% of residents 91 years and over.
- All residents have been assessed by a physiotherapist and the **overwhelming majority of residents are not able to walk long distances** or board a public bus safely without assistance.
- Most residents require mobility aids (walking frames, walking sticks, wheelchairs) and are **incapable of independent travel**.
- 19% of residents are non-ambulant (not able to walk about).

- 72% of residents have been diagnosed with a **cognitive impairment** and many suffer with dementia increasing their reliance on others for mobility.
- Residents will have access to a dedicated minibus for group activities or for other transportation requirements. The minibus has a seating capacity of 12. A larger bus is also available for transport to activities involving more than 20 people.

I understand that since Cranbrook Care has owned the Lansdowne Gardens on Wycombe, there have been **no complaints** in relation to access to transportation.

Services Provided in the Residential Aged Care Facility

As residents grow older, they often require more help with day-to-day tasks or require treatment for complex health care needs. Many people who are admitted to RACFs require a higher level of nursing care including:

- personal care such as dressing, grooming, going to the toilet
- 24-hour specialised nursing care such as wound care, catheter care, etc.

Of the residents admitted to Lansdowne Gardens on Mann's Avenue and Lansdowne Gardens on Wycombe in the past 12 months, 55.56% were assessed as high for Activities of Daily Living (ADL) 44.44% as medium. 44.44% were assessed as high in terms of complex care needs and 33.33% as medium.

Of all current residents at Lansdowne Gardens on Mann's Avenue and Lansdowne Gardens on Wycombe, 54.76% have been assessed as high for Activities of Daily Living and 57.14% as high in terms of complex care needs. None of the residents is low in terms of ADL and only 9.52% have been assessed as low in terms of complex care needs.

Information from the ACFI profile for Lansdowne Gardens indicates that the RACF is above the average for the industry, with more high-care than the average across Australia.

High-level care means care is provided either by a Registered Nurse, or under the supervision of a Registered Nurse, on a 24 hour/day basis to people who need almost complete assistance with most activities of daily living.

Nursing care is combined with accommodation, support services (cleaning, laundry and meals), activities of daily living (help with dressing, eating, toileting, bathing and moving around), and allied health services (such as physiotherapy, occupational therapy, recreation therapy and podiatry).

The **proposed development** will include and have the following services and facilities available to Residents reducing the requirement to access services outside the RACF:

- **Community shop** – the shop will stock items that would reasonably be required by residents. Stock may include day-to-day items such as toiletries (other than those provided by Cranbrook Care); confectionary and snacks; writing materials and postage stamps; and books, magazines and newspapers (other than those provided by Cranbrook Care). Other items could be ordered based on any specific requirements or on-going demand.
- **Salon** – the salon will stock basic beauty products such as skin cleansers and moisturisers, shampoos and conditioners.
- **Café / Tea Room** – Whilst residents will be fully catered for in terms of meals, the café will also stock items such as biscuits and snacks.

In the context of this development, other types of shops such as grocers, hardware stores, whitegoods, and electrical appliances are not usually required by residents as these services are provided on site.

Access to Services Not Provided in the RACF

Should an instance arise where a resident wishes to receive a service or purchase goods that are not available within the RACF, then arrangements may be made to have a service provider visit the RACF to provide the service; staff will make a purchase on behalf of the resident; or staff will accompany the resident on the 12-seater private bus to the shop or service provider.

It is my experience that residents of RACFs are often incapable of many of the tasks associated with independent living and often frail, suffer mobility issues, and experience cognitive issues. These conditions make unassisted travel; the use of public transport; shopping; or attending to personal needs such as visiting health professionals, banking, etc. extremely difficult if not impossible. The convenience and flexibility of the mini bus available at Lansdowne Gardens is likely to be preferable to residents that the existing public transport options near the site.

Also, contact with government agencies such as Centrelink, Council or banking institutions is usually handled by the family members of residents. Electronic banking and online shopping services will nevertheless be available to residents via the internet.

If a visit to a bank is required, however, then the resident would be accompanied to the bank in the private community bus or another suitable form of transport. It is also common practice for residents to appoint a power of attorney and enduring guardian to deal with various aspects of their care and needs, negating the need to personally attend such services.

If a 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 mini-bus to the community service provider or in the case of a recreational facility, as a group outing.

A general **medical practitioner** will visit the RACF regularly and will provide medical services as required. They will arrange specialist services as needed. The following **health service practitioners** will also be providing services on-site or via telehealth:

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

Summary

As the author of this submission, and as the Managing Director of Critical Success Solutions, I have over 30 years of experience in the health and aged care sectors, during which time I have held various senior positions including CEO, General Manager Operations, and Managing Director. I have expertise in areas of clinical governance, quality management, and operational business systems. My qualifications include a Master of Business Administration (HR specialty), Bachelor of Health Science (Nursing), Diploma of Work Health Safety, and Diploma of Company Directors.

I can assure the Planning Panel that Cranbrook Care delivers a very high standard of aged care above the standards required by the Aged Care Quality and Safety Commission. They also facilitate access to other services not provided on-site in a timely and effective manner at their existing facilities. They ensure that facility buses and staff accompany residents where requested or arrange for family members to be available to assist the resident.

Cranbrook Care also conducts regular surveys of their residents, family members of residents, and staff in relation to the care provided to residents as well as the quality of services that they provide.