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URBIS

CLAUSE 4.6 VARIATION REQUEST: STANDARDS FOR RE2 ZONE

Tumbi Umbi Retirement
Village

Prepared for

MINGARA LEISURE GROUP PTY LTD

November 2024

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CONTENTS

Introduction	1
Request to Vary the RE2 Zone development standard in section 86 of the Housing SEPP 2021.....	1
Site Description and Surrounding Development	2
Proposed Development.....	6
Planning Instrument, Development Standard and Proposed Variation	8
Justification for the Proposed Variation	12
Disclaimer	15

FIGURES

Figure 1 Location Plan.....	4
Figure 2 Proposed Development.....	4
Figure 3 Mingara Recreation Club (Lot 13 is the large lot indicated in yellow)	5
Figure 4 Liquor licence demarcation – image 1	10
Figure 5 Liquor licence Demarcation – image 2.....	10
Figure 6 Liquor licence demarcation – image 3	11

TABLES

Table 1 Site Description.....	2
Table 2 Development Description	6
Table 3 Development Standard Unreasonable or unnecessary threshold tests	12

INTRODUCTION

This Clause 4.6 Variation Request has been prepared on behalf of Mingara Leisure Group Pty Ltd (**‘the applicant’**) to support a State Significant Development Application (**‘SSDA’**) for the construction, operation and subdivision of a seniors’ living development at 14 Mingara Drive, Tumbi Umbi (**the site**). The site is legally known as Lot 13 in Deposited Plan 120439.*

This request has been drafted considering the Department of Planning and Environment’s *Guide to Varying Development Standards* dated November 2023.

This report has been prepared to establish environmental planning grounds to support the proposed variation in accordance with Clause 4.6 of the Central Coast LEP 2022. It should be reviewed in conjunction with the Environmental Impact Statement (**‘EIS’**) that has been prepared by Urbis Pty Ltd, in addition to other documentation that has been submitted in support of this SSDA.

REQUEST TO VARY THE RE2 ZONE DEVELOPMENT STANDARD IN SECTION 86 OF THE HOUSING SEPP 2021

This Clause 4.6 variation request relates to:

- The RE2 zoned land development standard in Section 86(1)(a) of the *State Environmental Planning Policy (Housing) 2021* (Housing SEPP).
- This request, dated 8 November 2024, relates to SSD-63475709 – Tumbi Umbi Retirement Living Project at 14 Mingara Drive, Tumbi Umbi (on Lot 13 in Deposited Plan 1204397).
- Section 86(1)(a) of the Housing SEPP is the development standard sought to be varied.
- Section 86(a)(i) of the Housing SEPP contains **Development standards for seniors housing—Zones RE2, SP1, SP2 and RU5**.
- Varying the standard that requires that:
 - consent must not be granted for development for the purposes of seniors housing unless the consent authority is satisfied as follows—*
 - (a) for development on land in Zone RE2 Private Recreation—*
 - (i) the development is carried out on land used for the purposes of an existing registered club.*

SITE DESCRIPTION AND SURROUNDING DEVELOPMENT

1. Site Description

The key features of the site are summarised in the following table.

Table 1 Site Description

Feature	Description
Street Address	14 Mingara Drive, Tumbi Umbi
Legal Description	Lot 13 DP1204397
Site Area	29957.5 sqm
Easements and Restrictions	The site being the land west of the existing Mingara Recreation Club has a registered easement defining the site boundaries to the west and south
Site Topography	The site is predominately level with land generally falling from the south west to north east
Vegetation	The site is predominately cleared and contains maintained grass.
Existing Development	The development area is currently vacant open space and is located west of the existing Mingara Recreation Club. The broader Club precinct comprises of the following built elements: ▪ Mingara Recreation Club: located at the centre of the Club site with dedicated parking lot to the northern, eastern and southern side with a total capacity of approx. 782 spaces and accessible via Mingara Drive to the east of the Club. The Club consists of cafes, restaurants, club facilities, fitness/wellness and aquatics centre, and an outdoor bowling green. ▪ Hotel: a 5-storey hotel is located also to the east of the development area, which was approved on 22 May 2023 (DA/935/2022) and under construction. The hotel includes 86 rooms, 11 parking spaces and one loading bay. ▪ Mingara Regional Athletics Centre/ Athletics Track: located to the north of the development area. An existing amenities building is associated with the athletics track. ▪ Childcare centre: a centre based childcare facility is under assessment with the Central Coast Council (DA/1969/2023) which offers placement for 112 children (all daycare age groups), indoor and outdoor play areas and at grade car parking for a minimum of 46 vehicles, located adjacent to the existing bowling greens. ▪ Car Parking: The broader precinct has 791 club spaces and 11 approved hotel spaces. There is a proposal under assessment for the loss of 20 spaces to enable an early learning centre.
Local Context	The surrounding locality is described below: ▪ North: directly north of the development area is the Mingara Athletics Track and associated amenities building. A dam/pond of approx. 1.096ha in size is also located to the north of the development area, next to the Athletics Track. The creek originates from the southern end of the dam/pond and runs along the western side of the development area. Further north of the

Feature	Description
	development area comprises of land zoned E4 General Industrial and R2 Low Density Residential. ▪ East: directly east of the development area is the Mingara Recreation Club and associated parking lot. A recently approved hotel (DA/935/2022) is located also to the east of the development area. Further to the east, there are retail establishments (such as MacDonald's, Hungry Jacks, KFC and Dominos) along Mingara Drive, situated adjacent to the Mingara Recreation Club. Area across Mingara Drive comprises of land zoned E1 Local Centre (accommodating automobile related services) and R2 Low Density Residential. ▪ South: directly south of the development area is the Glengara Retirement Village zoned R2 Low Density Residential. Development to the south range from one-to-two storeys in height. The Mingara Medical Centre is located approximately 390m south-east of the development area. ▪ West: a creek and associated vegetation is located directly west of the development area. The distance between the creek and development area ranges between 24m-30m. The Glengara Retirement Village is located further west which comprising of one-to-two storey residential apartments accommodation and single-storey dwellings with pitched roofs. Further west of the Glengara Retirement Village comprises of one-to-two storey developments and heavily vegetated areas zoned C4 Environmental Living
Infrastructure and Access Network	The site is proximate to a range of existing public and private infrastructure, which provide a high-amenity context for the proposed development. The following infrastructure are immediate to the site: ▪ Road Network: - Wyong Road as a classified road runs along the north of the Club. Mingara Drive is an arterial road and runs along the east of the Club. Other key road in the local area of Tumby Umbi include Tumby Road and Central Coast Highway. The site is integrated with the regional road network. ▪ Public Transportation: - Several bus stops are located along Wyong Road ▪ Health and Education Infrastructure: - Retail/shopping ▪ Pedestrian and vehicular access to the site from the local road network is available from Wyong Road and Mingara Drive. Internal pedestrian connectivity within the broader site is proposed to be improved

The works proposed by the SSDA will be confined within the western portion of the site that is referenced in this report as:

- **Tumby Umbi Retirement Village** – bounded by the blue outline in Figure 1 below and the area of the proposed seniors housing including subdivision boundary
- **Development site** – bounded by the red outline in Figure 1 below and encompasses all works that form part of the SSDA, namely the Retirement Village and drainage easement embellishment works

Figure 1 Location Plan



Figure 2 Proposed Development

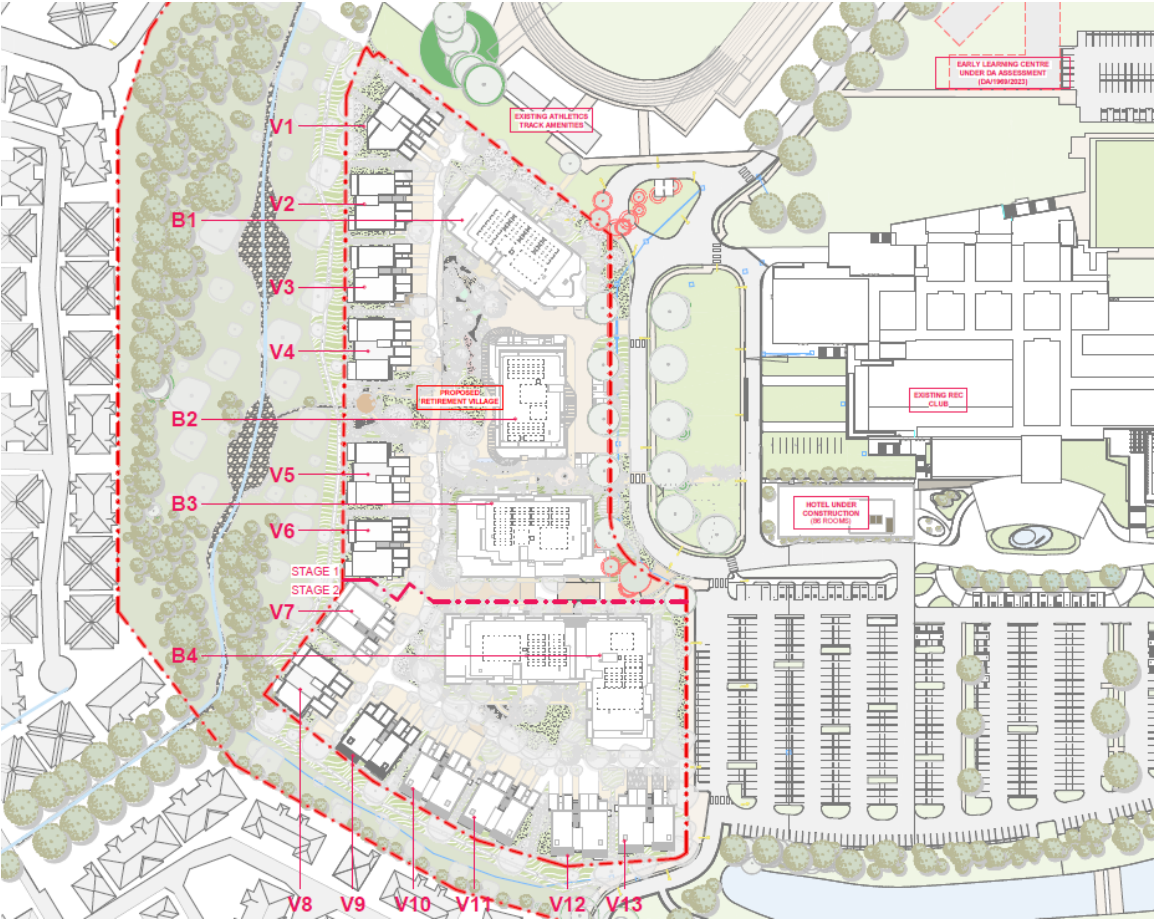


Figure 3 Mingara Recreation Club (Lot 13 is the large lot indicated in yellow)



Component of the existing registered club/ Mingara Recreation Club	Lot reference
The main club building consisting of cafes, restaurants, club facilities, fitness/wellness and aquatic centre	Lot 1 and 2 DP 1010532
An outdoor bowling green to the north of the club building owned and operated by MRC	Lot 13 DP 1204397
Dedicated registered club car parking lot to the northern, eastern and southern side with a total capacity of approx. 782 spaces and accessible via Mingara Drive to the east.	Lot 13 DP 1204397
Hotel: a 5-storey hotel under construction owned and operated by MRC.	Lot 13 DP 1204397
Mingara Regional Athletics Centre/ Athletics Track	Lot 71 DP1011971
Childcare centre (under assessment)	Lot 13 DP 1204397
Loading dock	Lot 13 DP 1204397
Porte cochere	
Access driveway/footpaths/internal roads used by MRC members	

PROPOSED DEVELOPMENT

2. Proposed Development

The SSDA seeks consent for site preparation works, construction of seniors housing development and land subdivision. Further, the western and southern portion of the development area has an interface with a drainage easement which is proposed to be improved and embellished.

A summary of the key features and details of the proposed development (including land use and works) is provided in the table below (with additional details in the Environmental Impact Assessment prepared by Urbis):

Table 2 Development Description

Key Element	Description
Site Preparation and earthworks	Site establishment works, including minor excavation and tree removal and earthworks
Demolition	Removal of the existing road turning head to the south of the Athletics facility and at grade parking
Tree removal	Removal of perimeter trees to the north of the development site and south east
Built form construction and Operation	Construction and operation of: ▪ Thirteen (13) villa buildings, housing four (4) independent living units in each ▪ Three (3) multi storey independent living unit (ILU) buildings of: - Building 1 – undercroft car parking, 5 levels of 2-bed and 3-bed ILUs - Building 3 - undercroft car parking, 6 levels of -bed and 3-bed ILUs - Building 4 - undercroft car parking, 5 levels of -bed and 3-bed ILUs ▪ One (1) mixed high care and ILU building (Building 2) of: - Undercroft car parking, communal/amenities level at ground with 3 levels of high care suites and 3 levels of ILUs - The building will include communal facilities including a café, residential lounge, multi-function spaces, consultation/therapy rooms, library, and staff/admin areas. • Provision of 219 x 2-bed and 3-bed independent living units and 39 aged care suites
Residential Unit Breakdown	39 residential aged care beds 219 independent living units (ILUs) in 2-3 bedroom configurations
Parking Spaces	296 residential spaces (incl 82 accessible spaces as per the Australian Standard and 147 spaces that are wider in dimension of 3.2m)
Staffing	Total 15 staff for RCF, including: 1 x Village Manager 1 x Reception 1 x Clinical Director 1 x Registered Nurse 4 x Personal care workers 2 x Kitchen 1 x Diversional Therapy 1 x Physio Aide 2 x Cleaners 1 x Facilities Management Noting no appointed RCF operator

Key Element	Description
Landscaping	Private, passive and communal open space, landscaping and perimeter and internal pedestrian pathways
Subdivision	Subdivision of the land and two stage construction
Western and southern easement	Embellishment and enhancement of the western and southern drainage easement through planting, waterway improvement and ongoing management through the Vegetation Management Plan

PLANNING INSTRUMENT, DEVELOPMENT STANDARD AND PROPOSED VARIATION

3. What is the planning instrument you are seeking to vary?

This Clause 4.6 variation request is seeking to vary the RE2 zone development standard within the *State Environmental Planning Policy (Housing) 2021 (Housing SEPP)*, relevant to seniors housing “on land used for the purposes of an existing registered club”.

4. What is the site’s zoning?

The site is zoned RE2 Private Recreation under the *Central Coast Local Environmental Plan 2022 (CCLEP)*. Further Schedule 1 – Additional Permitted uses of the CCLEP has a site-specific provision under Clause 18 stating,

“18 Use of certain land at Mingara Drive, Tumbi Umbi

(1) *This clause applies to the following land at Tumbi Umbi, identified as “Mingara Recreation Club” on the Additional Permitted Uses Map—*

(a) *Lot 13, DP 1204397,*

(b) *Lot 71, DP 1011971,*

(c) *Lots 1 and 2, DP 1010532,*

(d) *Lot 721, DP 1184902.*

(2) *Development for the purposes of centre-based child care facilities and health services facilities is permitted with development consent.*

(3) *Development for the following purposes is permitted with development consent if the development is integrated with an existing registered club—*

(a) *hotel or motel accommodation,*

(b) *seniors housing,*

(c) *serviced apartments”.*

The proposed development is permissible with consent under the CCLEP and the Housing SEPP. The RE2 zone objectives allow for a range of recreational settings and activities as well as compatible land uses.

The CCLEP permits a range of land uses including seniors housing on any parcel that forms part of the Mingara Recreation Club, including Lot 13.

5. What is the development standard to be varied?

This Clause 4.6 variation request relates to the RE2 zone development standard under Section 86(1)(a) of the *State Environmental Planning Policy (Housing) 2021 (Housing SEPP)*. The relevant provision is highlighted in **bold** below:

“86 Development standards for seniors housing—Zones RE2, SP1, SP2 and RU5

(1) *Development consent must not be granted for development for the purposes of seniors housing unless the consent authority is satisfied as follows—*

(a) for development on land in Zone RE2 Private Recreation—

(i) the development is carried out on land used for the purposes of an existing registered club, and

(ii) the land adjoins land in a prescribed zone,

(b) for development on land in Zone SP1 Special Purpose or Zone SP2 Infrastructure—

- (i) *development for the purposes of a place of public worship, an educational establishment, a hospital or seniors housing is permitted on the land, and*
- (ii) *the land adjoins land in a prescribed zone,*
- (c) *for development on land in Zone RU5 Village—*
 - (i) *the development is carried out on land within 50km of a 24-hour health services facility, and*
 - (ii) *the land is serviced by reticulated water and sewerage.*
- (d) *(Repealed)*
- (2) *Nothing in this section prevents a consent authority from granting development consent for development for the purposes of seniors housing on land on which development for the purposes of seniors housing is permitted under another environmental planning instrument.*
- (3) *(Repealed)*”.

Section 86(1)(a) refers to land zoned RE2 Private Recreation and used for the purposes of an existing registered club and is therefore applicable to the proposed development.

The provision calls up the definition of a registered club, as being:

registered club means a club that holds a club licence under the [Liquor Act 2007](#).

The above land use definition draws reference to club licence under the Liquor Act 2007.

The existing registered club, the Mingara Recreation Club:

- Has a Certificate of Registration under the *Registered Clubs Act 1976*
- Has a club liquor licence under the Liquor Act 2007 (LIQ300245764) issued by the Liquor and Gaming NSW. The Club has held a licence ongoing since 17 July 1979. There is an accompanying approved plan that spatially defines the area of the licence, namely the ‘current licence boundary’ and the ‘existing non-restricted area’. See *extracted demarcation figures 4, 5 and 6 below*. Further the licence also states that the applicable premises as being Mingara Recreation Club with the address of “Mingara Drive, Tumby Umbi”.

The area of the liquor licence is limited to a portion of the Mingara Recreation Club landholding, namely the existing Club built form and adjoining bowling club (which notably is the same allotment as the proposed seniors housing).

For abundance of caution this Clause 4.6 has been prepared as the seniors housing falls outside that part of Lot 13 subject to the club Liquor Licence.

Figure 4 Liquor licence demarcation – image 1

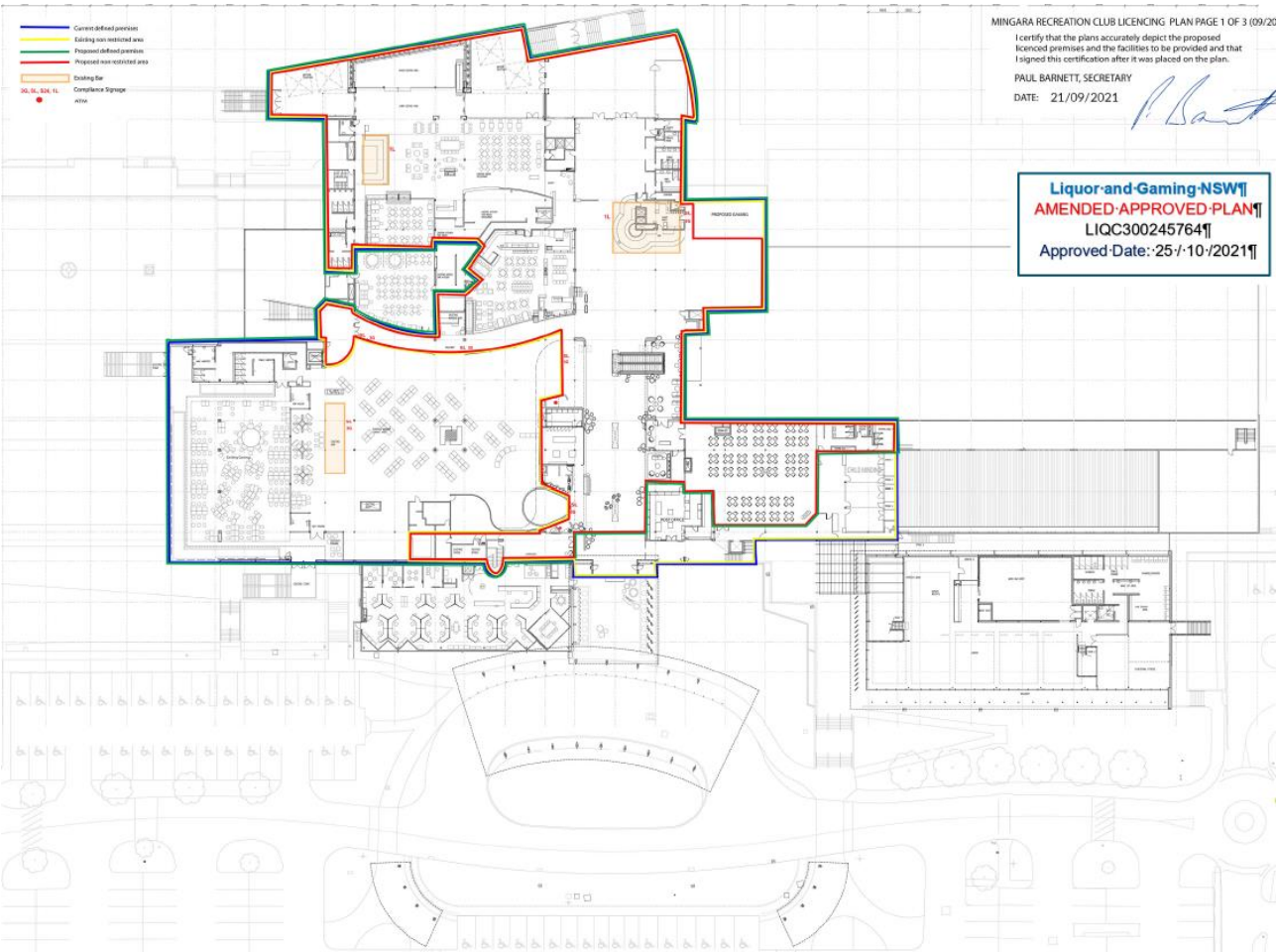
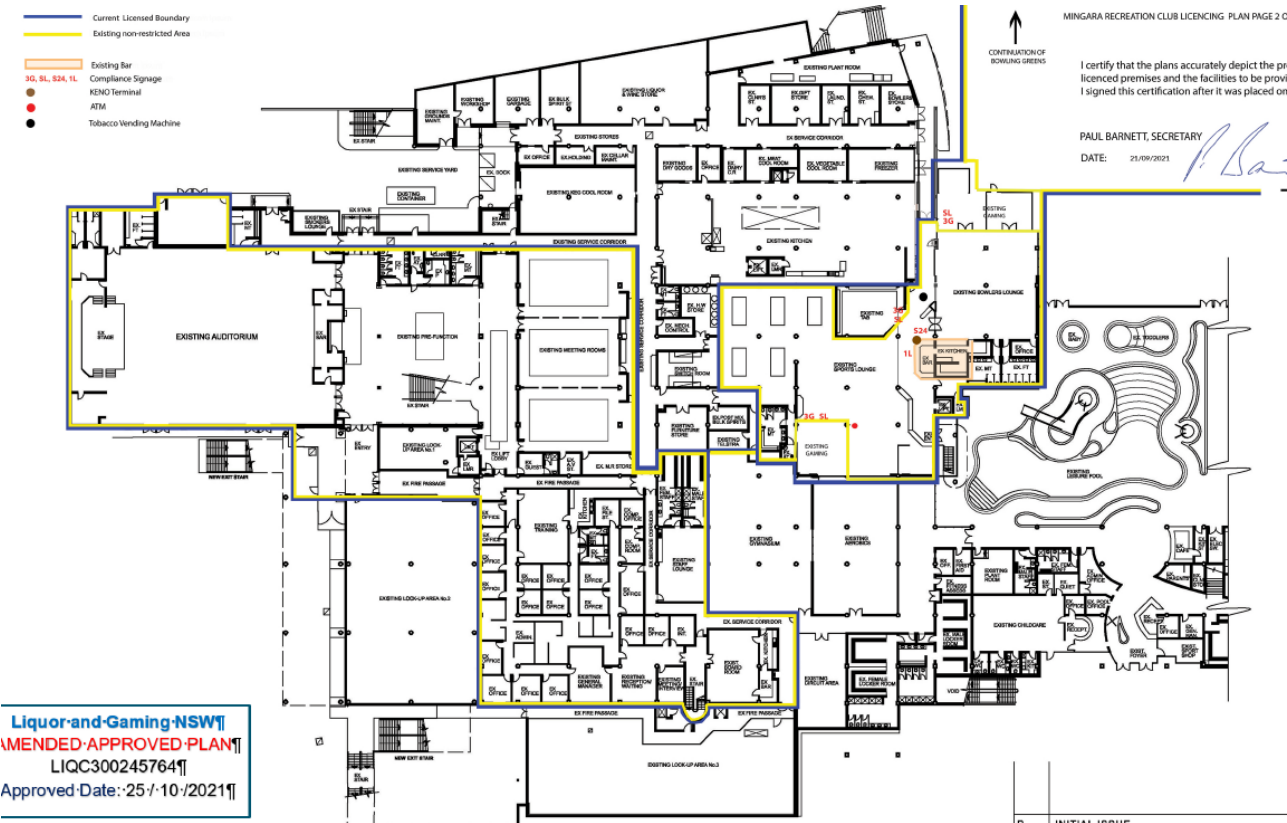


Figure 5 Liquor licence Demarcation – image 2



Liquor and Gaming NSW
AMENDED APPROVED PLAN
 LIQC300245764
 Approved Date: 25/10/2021

EXISTING ATHLETICS TRACK

HYONG ROAD

EXISTING BOWLING GREENS

REFER PAGE 2 OF 3
 FOR CONTINUATION
 OF DERIVED PREMISES
 AT THIS LEVEL

MINGARA RECREATION CLUB
 EXISTING BUILDING

NEW TERRACE

EXISTING CAR PARK

EXISTING GARDEN

EXISTING CAR PARK

EXISTING CAR PARK

MINGARA DRIVE

SITE PLAN
 1:1000

The development standard is a non-numeric development standard.

Not applicable.

Not applicable

Not relevant

JUSTIFICATION FOR THE PROPOSED VARIATION

10. How is compliance with the development standard unreasonable or unnecessary in the circumstances of the particular case?

There are 5 tests to determine that compliance with a development standard may be demonstrated to be unreasonable or unnecessary (as transposed in items a to e in Table 3 below). An applicant must satisfy at least one of these tests. In relation to the proposed variation, Table 3 addresses the second and third of these tests which are considered relevant in this instance.

Table 3 Development Standard Unreasonable or unnecessary threshold tests

Key Questions	Response
a) Are the objectives of the development standard achieved notwithstanding the non-compliance?	Not relied upon. There are no stated objectives of this development standard
b) Are the underlying objectives or purpose of the development standard not relevant to the development? (Give details if applicable)	Yes. The “purpose” of the standard is to enable the provision of seniors housing to be developed in conjunction with existing registered clubs, and whereby often registered clubs are located in the RE2 zoned land. This has been a long established policy of Government given the potential for these uses to co-locate on the same land. Section 92 of the Housing SEPP includes provisions that must be satisfied by consent authorities prior to the granting of consents that aim to mitigate any potential conflicts between the senior housing and club uses in terms of amenity and potential social impacts associated with gaming harm. Section 92 further prescribes a separation of the club from residential land uses including entrances and other design measures to mitigate impact recognising the physical separation of the end outcome. Further Section 90 also permits and allows for subdivision of the land on which the development for seniors housing is to occur and in effect enables a separation of the club and seniors land, essentially confirming that co location (and alignment of the liquor licence) is not a pre requisite. The physical separation and urban design / architectural response of the seniors’ housing proposal has been the subject of SDRP review and in this instance delivers an outcome that can satisfy the merit considerations embodied in Section 92. As such the requirement that the seniors housing only occur on the same land as that contained in the liquor Licence is not relevant in this instance.
c) Would the underlying objective or purpose be defeated or thwarted if compliance was required? (Give details if applicable)	No. If the seniors housing is to be sited on the land subject to the club Liquor Licence, this would result in a substantial redevelopment of the existing registered club and a complete redesign of the proposal. This is not contemplated as the current proposal satisfies the merit test under Section 92. As stated above the underlying purpose is to facilitate seniors housing on existing registered club land, and is further intended by the standards in Section 92. By virtue of the existing controls and the arrangement of a range of activities on various lots, including Lot 13, it is deemed inappropriate to strictly comply. The proposal represents a better outcome and design response addressing land use compatibility, that would otherwise be achieved if strict compliance was required, that is, placement of seniors only on the liquor licence mapped land.
(d) Has the development standard been virtually abandoned or destroyed by the	Not relied upon

Key Questions	Response
<i>council's own actions in granting consents departing from the standard?</i>	
<i>e) Is the zoning of the land unreasonable or inappropriate so that the development standard is also unreasonable or unnecessary?</i>	Not relied upon

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

There are sufficient environmental planning grounds to justify contravening the development standard, given the following:

Consistent with the purpose of the development standard

- The purpose of the development standard is to facilitate the provision of seniors housing on RE2 Private Recreation land, developed in conjunction with existing registered clubs. The proposal is consistent with the purpose of the development standard and it is appropriate to vary the standard in this instance to apply to land beyond that of the demarcated liquor licence. It is noted that the liquor licence does also include part of Lot 13 (over the bowling green), which is the same allotment as the seniors housing.
- The proposal aligns with the development standard's purpose in that it will facilitate seniors housing on existing registered club land which is more aptly interpreted as being land beyond the liquor licence. By extension the standard is also aiming to facilitate amenities and services offered by a registered club in close proximity to seniors housing. A registered club land use comprises more than the service of liquor and the Mingara Recreation Club comprises multiple services, amenities and activities. The club is likely to be an attractor to the incoming seniors housing residents who seek the increased amenity and services that the Club and its facilities offer such as health (including pool/hydrotherapy), wellness and food offerings and entertainment options.
- The Housing SEPP further recognises the relationship between the land uses through land subdivision under Section 90 and also in Section 92, which includes measures to mitigate any conflicts in terms of amenity and potential gaming harm. Section 92 further prescribes considerations for the registered club and residential land uses to ensure compatibility including separation of entrances and other design measures to mitigate potential impact recognising the physical separation of the end outcome. The proposed design satisfies the merit test under Section 92 as has accordingly designed and sited the buildings are purportedly positioned to be separated from the Club and orientated to the north, south and west where possible. The siting of the retirement village is distinct and separate and is not immediately adjoining the registered club. A large physical separation from the club is proposed. Limiting the development to only land by which a mapped liquor licence applies is not in alignment with the purpose of the provision and would result in a complete redevelopment of the existing registered club.

Applicable existing registered club land and Central Coast LEP

The proposal is located on land in a prescribed zone under the Housing SEPP (RE2 Private Recreation) and the site is used and managed by the Mingara Recreation Club (MRC). The 'Mingara Recreation Club' is the entity for the Certificate of Registration for a registered club and the Liquor Licence. The Mingara Recreation Club precinct includes the following lots, which are prescribed under Clause 18(1) of the CCLEP:

- (a) Lot 13, DP 1204397,
- (b) Lot 71, DP 1011971,
- (c) Lots 1 and 2, DP 1010532,

Whilst the Liquor Licence only relates to a portion of the club land as shown in Figures 4, 5 and 6, given this is where the built form of licensed premises is located, a broader precinct is known as the Mingara Recreation Club, including the development site for seniors housing (Lot 13). Further, the development site is located on the same lot as the Mingara Recreation Club carpark, bowling greens (which is licensed under

the Liquor Act), services and a number of amenities buildings. Schedule 1 Section 18 of the CCLEP2022 identifies all five lots as being part of the “Mingara Recreation Club” and includes the seniors housing lot.

The development site (by which the seniors housing is proposed) is located on Lot 13, DP 1204397, which is undoubtedly land used for Mingara Recreation Club or rather is *“land used for the purposes of an existing registered club”*. Mingara Recreation Club requires the use of Lot 13 to undertake the full extent of its existing business operations as evident in the table at Figure 3 above.

SUMMARY

The “purpose” of the standard is to enable the provision of seniors housing to be developed in conjunction with existing registered clubs, and whereby often registered clubs are located in the RE2 zoned land. Of note:

- The development lot, proposed for seniors housing (lot 13), is land used for the purposes of Mingara Recreation Club / existing registered club. Lot 13 is currently used for existing registered club purposes and has obtained development consents for the club use over the years. Lot 13 also forms part of the club liquor licence, recognising the subject ‘land’ is used by the existing registered club.
- The CCLEP describes the above mentioned four lots (i.e. Lot 13 in DP 1204397, Lot 71 in DP 1011971 and Lots 1 and 2 in DP 1010532) as comprising the “Mingara Recreation Club” giving rise to the argument that the entire precinct forms part of the existing registered club, inclusive of the proposed seniors housing land.
- The terminology of *“land used for the purposes of an existing registered club”* within Section 86 of the Housing SEPP is also tied and relevantly applicable in Section 92. The physical separation and urban design / architectural response of the seniors’ housing proposal has been the subject of SDRP review and in this instance delivers an outcome that can satisfy the merit considerations embodied in Section 92. As such the requirement that the seniors housing can only occur on the same land as that contained in the Liquor Licence is not relevant in this instance.

The overarching purpose of the development standard is met through facilitating seniors housing on land used for an existing registered club.

In conclusion, there are sufficient environmental planning grounds to justify the non-compliance of the development standard.

12. Is there any other relevant information relating to justifying a variation of the development standard? (If required)

It is noted that the preparation of this Clause 4.6 has been prepared as an abundance of caution as the seniors housing falls outside that part of Lot 13 subject to the club Liquor Licence.

It is further noted that under Section 86(2) of the Housing SEPP, states, *“Nothing in this section prevents a consent authority from granting development consent for development for the purposes of seniors housing on land on which development for the purposes of seniors housing is permitted under another environmental planning instrument”*. Importantly seniors housing is permissible under Clause 18(3)(b) of the CCLEP.

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