

Clause 4.6 Variation Request

Cumberland Country Golf Club

246-248 Old Prospect Road, Greystanes

Submitted to Department of Planning, Housing and Infrastructure
on behalf of Pariter Cumberland Pty Ltd



'Gura Bulga'

Liz Belanjee Cameron

'Gura Bulga' – translates to Warm Green Country. Representing New South Wales.



'Dagura Buumarri'

Liz Belanjee Cameron

'Dagura Buumarri' – translates to Cold Country. Representing Victoria.



'Gadalung Djarri'

Liz Belanjee Cameron

'Gadalung Djarri' – translates to Hot Red Country. Representing Queensland.

Ethos Urban acknowledges the Traditional Custodians of Country throughout Australia and recognises their continuing connection to land, waters and culture.

We pay our respects to their Elders past, present and emerging.

In supporting the Uluru Statement from the Heart, we walk with Aboriginal and Torres Strait Islander people in a movement of the Australian people for a better future.

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Appendices

Appendix	Author
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X. Access Reports	Purple Apple Access
PP. Draft Operational Management Plan – Accessible Car Parking Spaces	Ethos Urban

1.0 Introduction

1.1 Overview

This Clause 4.6 variation request has been prepared by Ethos Urban on behalf of the applicant for the proposal, Pariter Cumberland Pty Ltd. It is submitted to the Department of Planning, Housing, and Infrastructure (DPHI) in support of a development application (DA) for a State Significant Development Application (SSDA) identified as SSD-64795219.

This SSDA seeks approval for the proposed redevelopment of part of the site for a seniors living village on land at 246-248 Old Prospect Road, Greystanes. The proposal also involves subdivision, a new golf clubhouse facility and golf course upgrade works.

This Clause 4.6 variation request relates to the accessible car parking development standard in Schedule 4, Part 1, Section 4, Subsection 2(c) of the *State Environmental Planning Policy (Housing) 2021* (Housing SEPP).

Part 1 of Schedule 4 of the Housing SEPP relates to 'Standards concerning accessibility and usability for hostels and independent living units' (ILU). This Clause 4.6 variation request provides justification for the provision of 10% accessible parking spaces for each of the ILU buildings, which is in contravention of the Housing SEPP development standard which requires a minimum of 15% accessible parking spaces for ILUs. This development standard was amended in the Housing SEPP on 14th December 2023 as part of a number of changes made to the Housing SEPP that were largely unrelated to the SEPP's Seniors Housing provisions.

This Clause 4.6 variation request should be read in conjunction with the Environmental Impact Statement (EIS) prepared by Ethos Urban dated 16 March 2024.

Clause 4.6 of the *Cumberland Local Environmental Plan 2021* (CLEP 2021) enables the consent authority to grant consent for development even though the development contravenes a development standard imposed by the CLEP 2021 or any other environmental planning instrument, such as the Housing SEPP 2021, in this case. The clause aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.

Clauses 4.6 (3) requires the consent authority to consider a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating that:

- (a) *compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) *there are sufficient environmental planning grounds to justify contravening the development standard.*

The *Environmental Planning and Assessment Regulation 2021* requires a development application for development that proposes to contravene a development standard to be accompanied by a document setting out the grounds on which the applicant seeks to demonstrate the matters in paragraphs (a) and (b).

This applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3).

The consent authority's satisfaction in respect of those matters must be informed by the objectives of clause 4.6, which are to

- (a) *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 clause 4.6 variation request demonstrates that compliance with the carparking development standard is unreasonable and unnecessary in the circumstances and that there are sufficient environmental planning grounds to justify contravention of the standard.

The proposed development demonstrates in summary that:

- **Compliance with the development standard is unreasonable and unnecessary in the circumstances, as:**
 - The underlying objectives or purposes of the standard are achieved

- The lack of a reasonable evidence base for the new 15% fully accessible parking space standard
 - The recent Housing SEPP increase from a 10% to 15% fully accessible car parking spaces requirement has not included any sufficient or reasonable evidence base for the change.
 - The lack of a reasonable evidence base for the new 50% wider parking space standard.
 - The recent introduction of this additional requirement for 50% of car parking spaces has not included any sufficient or reasonable evidence base for the change.
 - The proposal achieves 10% fully accessible spaces is a suitable evidence-based measure provided in the draft SEPP EIE exhibited and applicable to DAs for over 12 months
 - The provision of a 10% fully accessible spaces measure exceeds the provision approved in recent and similar seniors housing developments,
 - The recent SEPP change has not recognised the forward planning of significant development proposals and has not provided for reasonable savings/transition provisions for this substantial change in standards.
- **There are sufficient environmental grounds to justify contravening the standards, as:**
 - The proposal provides a suitable parking solution that balances social, environmental, and economic objectives that underpin the planning for new development.
 - The proposal will meet the needs of the likely demographic of new residents.
 - The future residents are likely to be existing or future members of the golf club, with health and wellness facilities readily available on-site to support active lifestyles and moderating the need for accessible parking spaces.
 - The proposed spaces are well designed and will be safe and suitable to the proposed users.
 - Proposed operational management measures will provide for more flexible and improved use of the accessible car spaces to ensure resident needs are met as they change over time
 - An Operational Management Plan for the seniors village will support an effective and flexible use of the accessible parking spaces provided on-site.
 - *A draft Operational Management Plan – Accessible Car Parking Spaces* has been prepared (see **Appendix PP**) with measures to ensure that the accessible car spaces are allocated according to need rather than being tied to a specific unit. The on-site seniors village management team will ensure the implementation of this Plan.
 - Related travel management initiative of a Village Bus will reduce the need for accessible parking spaces.
 - The seniors village management will provide a village bus on-site for residents, offering an accessible, cost effective and sustainable transport alternative to the private car.

These matters are discussed in detail in **Section 4.0** of this Report. The discussion demonstrates that the accessible car parking standards in the Housing SEPP are unreasonable and unnecessary for ensuring that independent living seniors have suitable accessible parking arrangements to meet their needs.

Further, aligning with the clause 4.6 objectives, the proposed operational arrangements will, firstly, through the Operational Management Plan, provide for more flexible and effective use of the accessible spaces over time; and secondly, through the village bus, provide for enhanced accessibility for all the future seniors village residents. These measures will thus achieve more flexible and better accessibility outcomes all round than would be achieved with strict compliance with the parking standard.

Therefore, the DA may be approved with the variation as proposed in accordance with the flexibility allowed under Clause 4.6 of the CLEP 2021.

1.2 Legal Guidance

The Land and Environment Court has established a set of factors to guide assessment of whether a variation to development standards should be approved. The original approach was set out in the judgment of Justice Lloyd in *Winten Property Group Ltd v North Sydney Council* [2001] 130 LGERA 79 at 89 in relation to variations lodged under State Environmental Planning Policy 1 – Development Standards (SEPP 1).

This approach was later rephrased by Chief Justice Preston, in the decision of *Wehbe v Pittwater Council* [2007] NSWLEC 827 (Wehbe). While these cases referred to the former SEPP 1, the analysis remains relevant to the application of Clause 4.6(3)(a). Further guidance on Clause 4.6 of the Standard Instrument has been provided by the Land and Environment Court in a number of decisions, including:

- *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118;
- *Turland v Wingecarribee Shire Council* [2018] NSWLEC 1511;
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009;
- *Micaul Holdings Pty Limited v Randwick City Council* [2015] NSWLEC 1386; and
- *Moskovich v Waverley Council* [2016] NSWLEC 1015.

In accordance with the above requirements, this Clause 4.6 variation request:

- Identifies the site and proposed development (**Section 2.0**);
- Identifies the development standard to be varied (**Section 3.0**);
- Establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (**Section 4.0**); and
- Demonstrates there are sufficient environmental planning grounds to justify the contravention (**Section 5.0**).

2.0 Site and Proposed Development

2.1 Site Description

The Cumberland County Golf Club site is inclusive of the following lots:

- Lot 1 DP 201991
- Lots 13-26 DP 17546
- Lot 2 DP 545201
- Lot 20 DP 243734
- Lots 28-38 DP 17461
- Lot 46 DP 242898.

The Cumberland Golf Club is located on the south side of Old Prospect Road in Greystanes, being 246-248 Old Prospect Road, approximately 225 metres west of Cumberland Road. It has frontage and road access to Old Prospect Road of approximately 440 metres, frontage to Brighton Street to the west of approximately 766 metres and frontage to Whalans Road to the south of approximately 373 metres. The Golf club site is approximately 38 ha and is identified in **Figure 1** below.

The Golf course, while undulating as is typical of a golf course, falls from East to West and South to North. The extended golf course is largely exotic managed grassland with some areas to the southern part of the site containing Cumberland Shale Plain Woodland.

The proposed Seniors Housing Development site (**the Site**) is situated within the Cumberland Golf course land and is approximately 3.8 ha in area (37,375 square metres). The site has an extensive southern boundary to the golf course, providing golf course views. The site's eastern boundary borders the rears of residential development that faces Kootingal Street. The site's southern portion of the eastern boundary borders Kunyal Place.

The site is an irregular shape and is currently characterised by maintained lawns and mature trees as part of the golf course use including two greens, one including its fairway and a practice putting green area. The trees are predominantly located at the site's northern boundary to Old Prospect Road. In the site's northeastern corner is the existing Cumberland Country Golf Club, associated car parking areas and sheds to support the ongoing care and maintenance of the Golf Course.

The Golf course itself and two bodies of water are located south of the site boundary, as well as two further bodies of water along the western Golf Course boundary. A site aerial is provided in **Figure 1** below.



Figure 1 Site Aerial

Source: Nearmap/Ethos Urban

2.2 Existing Development

The proposed development area is located at the northern end of the golf course with 440m frontage to Old Prospect Road. The area is currently occupied by the first fairway, the clubhouse, parking, and the practice range. The Cumberland Country Golf Club is a successful member-orientated club with a 72-par championship golf course on approximately 38 hectares. The Club was founded 86 years ago and has a current membership of 2,600 (which comprises approximately 1,200 golfer and 1,400 social members, 85 of which are juniors). The Club provides a safe and friendly environment for all members and visitors alike. A high proportion of members live in the Greystanes and surrounding areas. Specifically, of the 2,600 members, 1,340 live within a 5km radius and 1,760 live within a 10km radius).

The club is an important community facility that supports golfers of all ages and generations, from 5 to 80+ years. It also supports community and recreation services such as a Junior Academy with over 50 junior members. Additionally, it plays an important role as a community hub for local residents. Furthermore, the clubhouse also supports regular visitors for nearby residential care facilities (nursing homes) and provides an important role as an Emergency Evacuation Centre for these nearby nursing homes. The existing club facilities were built in the 1960s and are aging and experiencing high and increasing maintenance costs. The facilities need significant investment to upgrade and provide modern facilities that meet user needs and expectations including a lift and other accessibility improvements. The proposed development seeks to renew and revitalise the Cumberland Golf Club site and provides for the club's long-term viability.

2.3 Description of the Proposed Development

The Applicant (Pariter Cumberland Pty Ltd) is seeking development consent under 'Division 4.7 – Stage Significant Development' of the EP&A Act for the redevelopment of part of the Cumberland Golf Course located at 246-248 Old Prospect Road, Greystanes for the purpose of seniors housing.

Specifically, this SSDA seeks approval for:

- Subdivision, proposing 4x lots, which include consolidating the golf course onto 1 lot, seniors housing (2x lots) and golf club facilities (1x lot).
- Site preparation and excavation works, including demolition of the clubhouse and remediation works.
- Construction of a new golf clubhouse and ancillary facilities and parking areas as well as reconfiguration of the existing golf course to maintain an 18-hole course.
- Construction of a seniors housing development comprising a total of six independent living unit buildings accommodating 234 units and a residential care facility accommodating 38 beds and ancillary café, health, wellness, and consulting rooms.
- Construction of a temporary display/sales suite and signage.
- Construction of new private internal roads and parking.
- Landscaping and associated public domain works.
- Extension and augmentation of physical infrastructure and utilities as required.

The proposed development will be undertaken in accordance with the Architectural Drawings prepared by Marchese Partners (**Appendix B** of the EIS) and the Landscape Drawings prepared by Taylor Brammer (**Appendix H** of the EIS).

2.3.1 Objectives of the Development

The proposal seeks to renew and revitalise the Cumberland Golf Club site by reconfiguring the golf course, providing a new clubhouse to meet member's expectations and redeveloping part of the site for a seniors housing development. The objectives of the proposed development are to:

- Provide a seamlessly integrated seniors housing development comprising ILUs and RCF where residents are able to age in place with continuum of care.
- Provide a great golf and social experience for members and residents is provided.
- Allow the golf course and clubhouse to remain operational.
- Promote an active lifestyle for seniors.
- Create a high-quality place through world class urban design and architectural quality.
- Provide building design innovation that meets modern day standards of seniors living; and
- Create inclusive, high amenity places to optimise community interaction.

3.0 Development Standard to be Varied

3.1 Schedule 4 Part 1 Section 4 Subsection 2(c)

This Clause 4.6 variation request seeks to justify contravention of the development standard set out in Schedule 4, Part 1, Section 4, Subsection 2(c) of the Housing SEPP 2021. Subsection 2(c) outlines the development standards for car parking for all hostels and independent living units development.

It states that for developments requiring 8 or more parking spaces provided in a common area for use by occupants:

- (i) at least 15% of the parking spaces must comply with AS/NZS 2890.6, and
- (ii) 50% of parking spaces to be at least 3.2m wide and have a level surface with a maximum gradient of 1:40 in any direction (or comply with AS/NZS 2890.6).

The SEPP permits the spaces to comply with Commonwealth Disability (Access to Premises – Buildings) Standards 2010 (Premises Standards). AS/NZS 2890.6 prescribes the requirements for the provision of off-street parking facilities for people with disabilities during new building works and is referenced in the BCA and Premises Standards. The standards are as follows:

- Angled parking spaces are to be 2400mm wide x 5400mm long.
 - A 2400mm wide x 5400mm long shared area is to be provided on one side of accessible angle parking space.
- Parallel parking spaces are to be not less than 3200mm wide x 7800mm long.
 - A shared area adjacent to the non-trafficked side of the dedicated parallel parking space is to be not less than 1600mm wide by 7800 mm long.
- The car parking areas are to comprise a firm plane surface with a gradient not exceeding 1:40 in any direction (or 1:33 if a bitumen surface and the area is outdoors).

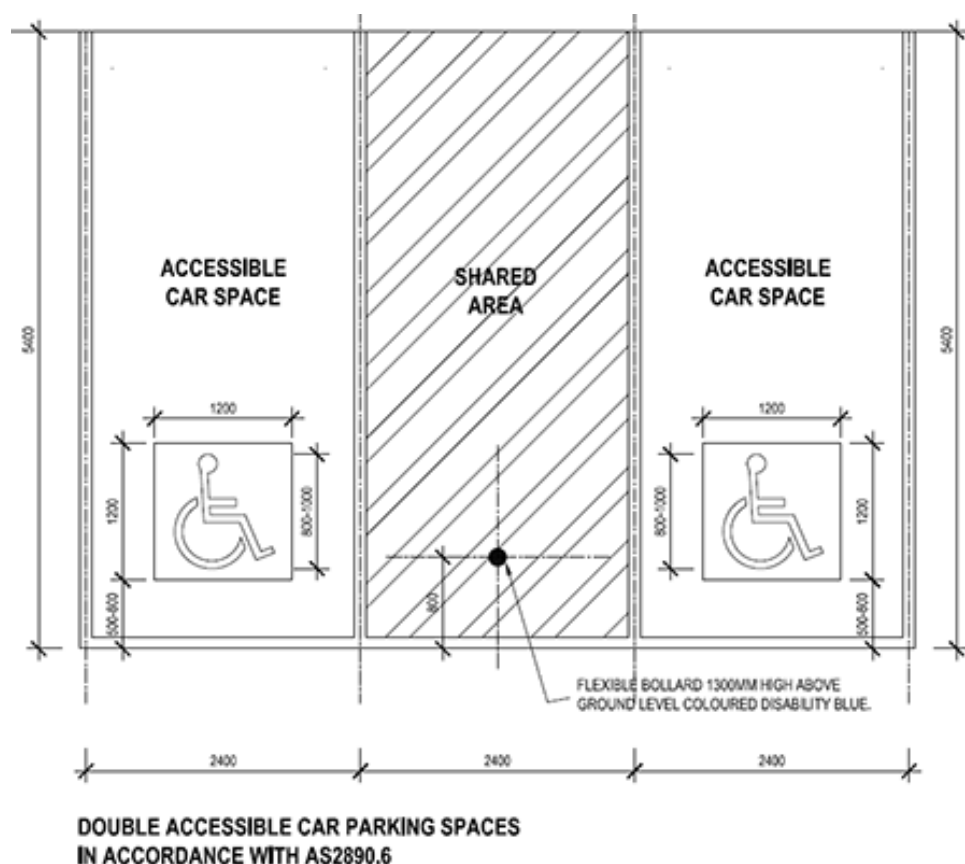


Figure 2 Illustration of the AS/NZS 2890.6 Parallel Parking standard

Source: Equal Access

3.2 Proposed Car Parking Provision

The proposed variation is limited to the lower ground level of ILU Buildings A, B, C, D, E and F.

The proposal provides **512** car parking spaces, consisting of the following:

- **276** x Independent Living Unit resident spaces
 - 30 x of the ILU resident spaces are fully accessible (2400mm parking bay with a shared 2400mm space and another 2400mm parking space).
 - 6 x of the ILU resident spaces are wider (3.2 metres wide or comply with AS/NZS 2890)
 - 240 x of the residents spaces are standard dimensions of 2.4–2.6 metres and 5.4 metres long

Spaces in other parts of the site (which are subject to separate standards):

- **11** x spaces for use by Residential Care Facility (RCF) and
- **5** x spaces for use by ancillary commercial uses staff/visitors
- **220** x spaces for the Golf Clubhouse staff and visitors

As shown in **Table 1** below, the proposed number of accessible spaces is consistent with the previously required 10% accessible spaces under the Housing SEPP proposed amendment (i.e. the November 2022 draft EIE which was a matter for DA consideration for more than 12 months till 14 December 2023)

Table 1 Proposed Car Parking Provision

ILUs (Lower Ground) Car Parking Provision	Required	Proposed	No. of fully accessible spaces (AS/NZS 2890.6 - 2.4m wide space and 2.4m wide shared zone)		No. of wider spaces (min 3.2m)	
Building A*	37.5	38			0	
Building B*	56	56	15*	10.2%	0	
Building C*	51.5	52			0	
Building D**	51	51	6**	11.7%	0	
Building E	44	44	5	11.3%	3	8.5%
Building F	34.5	35	4	11.4%	3	8.7%
Total of car spaces for ILU residents	274.5	276	30	10.8%	6	2.2%

*Buildings A, B and C are serviced by a combined common car parking area

**Inclusive of 1 additional street parking spaces servicing Building D



Figure 3 Proposed Accessible Parking Spaces

3.3 Is the Planning Control a Development Standard?

Section 85(1) of the Housing SEPP (emphasis underlined) states that:

“development consent must not be granted for development for the purposes of a hostel or an independent living unit unless the hostel or independent living unit complies with the relevant standards specified in Schedule 4”.

Under Schedule 4, Part 1, Section 4 Subsection 2(c), standards are provided for private car accommodation as follows:

(2) If parking spaces associated with a class 1, 2 or 3 building under the Building Code of Australia are provided in a common area for use by occupants who are seniors or people with a disability, the following applies—

(c) for a group of 8 or more parking spaces—

(i) at least 15% of the parking spaces must comply with AS/NZS 2890.6, and

(ii) at least 50% of the parking spaces must—

(A) comply with AS/NZS 2890.6, or

(B) be at least 3.2m wide and have a level surface with a maximum gradient of 1:40 in any direction.

As detailed above, consent must not be granted to a development for the purposes of an ILU unless it complies with the relevant standards specified in Schedule 4. Under Schedule 4, Part 1, Section 4 Subsection 2(c) of the Housing SEPP 2021, the development standards are prescribed for private car accommodation.

4.0 Justification for Contravention of the Development Standard

Clause 4.6(3) of the CLEP 2021 provides that:

4.6 Exceptions to development standards

- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that:*
- (a) *compliance with the development standard is unreasonable or unnecessary in the circumstances, and*
 - (b) *there are sufficient environmental planning grounds to justify the contravention of the development standard.*

Assistance on the approach to justifying a contravention to a development standard is also to be taken from the applicable decisions of the NSW Land and Environment Court in:

1. *Wehbe v Pittwater Council [2007] NSW LEC 827 (Wehbe);*
2. *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009 (Four2Five);*
3. *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118 (Initial Action)*

The relevant matters contained in Housing SEPP, with respect to the Car Parking development standard relevant to independent living units (ILUs), are each addressed below, including with regard to these decisions.

4.1 Clause 4.6(3)(a): Compliance With The Development Standard Is Unreasonable Or Unnecessary In The Circumstances

In *Wehbe*, Preston CJ of the Land and Environment Court provided relevant assistance by identifying five traditional ways in which a variation to a development standard had been shown as unreasonable or unnecessary. However, it was not suggested that the types of ways were a closed class.

While *Wehbe* related to objections made pursuant to *State Environmental Planning Policy No. 1 – Development Standards* (SEPP 1), the analysis can be of assistance to variations made under clause 4.6 where subclause 4.6(3)(a) uses similar language to clause 6 of SEPP 1 (see *Four2Five* at [61] and [62]).

As the language used in subclause 4.6(3)(a) of the CLEP 2021 is essentially the same as the language used in clause 6 of SEPP 1, the principles contained in *Wehbe* are of assistance to this clause 4.6 variation request.

The five methods outlined in *Wehbe* include:

- The objectives of the standard are achieved notwithstanding non-compliance with the standard (**First Method**).
- The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (**Second Method**).
- The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (**Third Method**).
- The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (**Fourth Method**).
- The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (**Fifth Method**).

This Clause 4.6 variation request establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the proposed development because the objectives of the standard are achieved and accordingly justifies the variation to the private car accommodation development standard pursuant to the **First Method**.

This was re-affirmed by the Chief Judge in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 at [16]-[17]. Similarly, in *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 at [34], the Chief Judge held that ‘establishing that the development would not cause environmental harm and is consistent with the objectives of the development standards is an established means of demonstrating that compliance with the development standard is unreasonable or unnecessary’.

4.1.1 The underlying objectives or purposes of the development standard are met

There are no stated objectives in Part 5 or Section 85 or Schedule 4 of the Housing SEPP, being those parts of the SEPP that are specifically related to Seniors Housing provision and related to the accessible car parking provision. As such, the objectives of the development standards are to be inferred.

Part 1 of the Schedule 4 of the Housing SEPP. Schedule 4 is titled “Standards applying to hostels and independent living units”.

Schedule 4, Part 1, Section 4 Subsection 2(c) states the following (**emphasis added**):

(2) If parking spaces associated with a class 1, 2 or 3 building under the Building Code of Australia are provided in a common area for use by occupants who are seniors or people with a disability, the following applies—

(c) for a group of 8 or more parking spaces—

(i) at least 15% of the parking spaces must comply with AS/NZS 2890.6, and

(ii) at least 50% of the parking spaces must—

(A) comply with AS/NZS 2890.6, or

(B) be at least 3.2m wide and have a level surface with a maximum gradient of 1:40 in any direction.

The inferred objective of the development standards contained in Schedule 4 Section 4 Subsection 2(c) of the Housing SEPP is considered to be to ensure that access to private car accommodation reflects the resident mobility profile and the design and functionality of the Independent Living Units.

Inferred Objective of Subsection 2(c)(i) and (ii): to ensure that access to private car accommodation reflects the resident mobility profile and the design and functionality of independent living units.

The proposal provides for ILU car parking spaces, consisting of the following:

- **276** x Independent Living Unit resident spaces
 - 30 x of the ILU resident spaces are fully accessible (2400mm parking bay with a shared 2400mm space and another 2400mm parking space).
 - 6 x of the ILU resident spaces are wider (3.2 metres wide or comply with AS/NZS 2890)
 - 240 x of the residents spaces are standard dimensions of 2.4–2.6 metres and 5.4 metres long

The proposed development will provide 30 car spaces that are fully accessible, with 10.8% provided across all six (6) ILU buildings. This achieves the previous requirement for 10% accessible spaces within each building

The development is achieving the provision of accessible spaces in each of the buildings reflecting the mobility profile of anticipated residents (as discussed further in 4.2.4 below), and the spaces are well designed, safe and suitable to the future residents (as discuss further in 4.2.5 below)

4.1.2 The lack of a reasonable evidence base for the new 15% fully accessible parking space standard - The recent Housing SEPP increase from a 10% to 15% fully accessible car parking spaces requirement has not included any sufficient or reasonable evidence base for the change.

The increase in the requirement for the provision of accessible parking within Independent Living Unit developments from 5% (pre-2022) to 10% (from Nov 2022 to Dec 2023) and most recently to 15% (from 14th Dec 2023) accessibility requirement has not been supported or explained by any substantial or reasonable evidence base for the change.

In 2020, the Department of Planning, Industry and Environment (DPIE now DPHI) sought feedback through the exhibition of an Explanation of Intended Effect (EIE) for the development of a new Housing Diversity SEPP (July 2020). The new SEPP would seek to provide a single, comprehensive instrument consolidate the Seniors or People with a Disability SEPP (SEPP Seniors), the Affordable Rental Housing SEPP and SEPP 70.

Several national built environment and urban development institutions made direct submissions in response to the proposed changes and provided a series of recommendations that were based in industry consensus. The key issue with the accessibility car parking provisions was the uncertainty and confusion that the standards were specifying both 5% and 100% as the required fully accessible parking spaces standard for hostels and self-contained dwellings for people with a disability.

The Seniors Housing sector including industry bodies and operators provided detailed submissions on this and other seniors housing issues. The Urban Development Institute Australia (UDIA) wrote a submission in response to the EIE (July 2020) and made several comments on parking requirements for different diverse housing typologies and specifically for resident parking for Seniors Housing developments. The submission made the following comments about the reduction of the parking provisions:

- *Under Clause 49(d), resident parking requirements should be reduced if a share car is provided.*
- *Under Clause 50(h)(ii) Parking requirements which also require the use of accessible spaces for all units mean that most Urban Seniors developments build basements way larger than adjoining residential developments and this significantly impacts viability. Parking reductions for share cars should be provided. E.g. reduction of up to 10 spaces for every share car provided.*

The submission emphasised that the interpretation of 100% of parking spaces for ILU dwellings being accessible was excessive with the extra space required ultimately affecting the viability of the typologies and disregarding the mobility needs of the average generally active residents in ILU developments.

A submission was also made by the Australian Institute of Architects (Institute), the peak body for the architectural profession in Australia with over 12,000 across Australia and overseas. AIA NSW Submission emphasised that while *'there are clear cases where car parking is vital and necessary... (they) also understand that mandating large numbers of car park spaces to development is counter to both principles of sustainability and affordability.* In Appendix A of their submission, they reference there was lack of clarity around the percentage of accessible spaces require as to whether the reference 100% standard or 5% in accordance with the Australian Disability Standards also referenced. Further that the provision of all spaces as accessible was *'not required in previous iterations of the SEPP and is not required in practice (in accordance with the Australian Disability Standards)'*

This had resulted in confusion and a lack of consistency in the application of this development standard. The result was a lack of consistency and clarity on the accessibility requirements and inconstant outcomes for seniors or others living with a disability in seniors housing developments.

In November 2022, an Explanation of Intended Effect (EIE) was released by the Department of Planning, Housing, and Infrastructure (DPHI) which sought to clarify the previously conflicting standard proposing the following standard:

"10% of the total number of car parking spaces (or at least one space if there are fewer than 10 spaces) must be designed to enable the width of the spaces to be increased to 3.8 metres"

The standard was the result of several rounds of public consultations and industry forums, and evidence-based reports and was widely supported by the seniors housing sector as reasonable for providing for accessible parking needs.

As such this draft measure was a matter for consideration in Seniors Housing DAs since November 2022 given its exhibition status from that timeframe.

Hence it was adopted as the agreed design approach for the Cumberland Golf Course redevelopment project which started in 2022, as it provided clear parking requirements and was anticipated to be imminently gazetted in the SEPP. On 14th December 2023, additional revisions to the Housing SEPP were released without consultation and in contradiction to the parking requirements set out in the initial November 2022 EIE, with the SEPP now requiring:

at least 15% of the parking spaces must comply with AS/NZS 2890.6, and (ii) at least 50% of the parking spaces must—(A) comply with AS/NZS 2890.6, or (B) be at least 3.2m wide and have a level surface with a maximum gradient of 1:40 in any direction.

The newly gazetted standard has now been implemented without explanation or any reasoning to base the changes. It is not supported by any objectives, principles or other clear direction or guidance as to its application.

The draft EIE standard as exhibited in November 2022, had been recognised by the Seniors Housing sector as a suitable and reasonable measure, as is noted by the applicant's Accessibility Consultants (**Appendix X** of the EIS documentation). The new standard is not supported publicly by any data or evidence base as to why ILUs require this further increase in provision of the accessible spaces.

4.1.3 The recent introduction of an additional 50% requirement for wider car spaces (3.2 m) has not included a reasonable evidence based for the change

Aforementioned, the recent Housing SEPP amendment (14th Dec 2023) replaced the exhibited EIE standard. The recent changes also introduced a new standard for wider spaces which was not mentioned in the previous EIE (Nov 2022 or July 2020).

The now gazetted standard requires 50% of spaces to be a minimum 3.2m wide (rather than the standard 2.4m). Notably this has not been supported by any explanation or evidence base from relevant Traffic, Accessibility or Building Code of Australia technical consultants or the Seniors Housing industry or broader community.

State Government advice on recent SEPP changes

During the finalisation of this development application, between lodgement of the draft SSDA for the Test of Adequacy review (on 22nd December 2023) and formal SSDA lodgement (March 2024), additional clarification was sought from the DPHI Housing Policy Team on 28 February 2023 in relation to any evidence base underlying the recent changes.

DPHI stated that the changes sought to *'better reflect parking space needs and resident mobility requirements for Seniors Housing'* and that car parking space requirements were *'consistent with the Liveable Housing Design guideline'*. It states that this standard for wider spaces was *'less onerous than meeting the Australian Standard'* and sought to *'provide a more balanced approach to parking widths for ILU developments'*. Further that the standard was developed in consultation with an access consultant and older people and incorporated EIE feedback. (However, it is noted that the EIE feedback would not have specifically addressed wider spaces provision as it was not publicly exhibited).

It is noted that the Liveable Housing Design Guide does not contain any specific car park space recommendations and notes only that development is to comply with Schedule 4 of the Housing SEPP and National Construction Code. Thus, the Guide merely supports the development standards of Schedule 4, and any amendments that may be made to these standards over time. Therefore, this does not appear reasonable given the substantial change in standards from 5% (2021) to 10% (2022) to the 15% (2023) figures and the additionally introduced 50% figure.

It is noted that an access consultant had been consulted, however it was not noted if that consultant had expertise and understanding of independent seniors living development circumstances.

While it is also appreciated that DPHI gained feedback from consulting older people, again the detail is lacking and only that they support additional space for accessing their car. It is noted that residents of the ILUs will typically use standard car spaces in most other locations they drive to including shopping centres or villages, local restaurants, and medical facilities which.

4.1.4 The Proposal Achieves 10% Accessible Spaces Which Remains An Acceptable Evidence-Based Measure Consistent With The Housing SEPP EIE (2022-2023)

An Accessibility Report has been prepared by Purple Apple Access (dated 11 March 2024) as part of EIS documentation. Purple Apple Access was engaged by the Applicant to provide access consulting in late 2022, with the pre-DA drawings provided in December 2022 and subsequent updated drawings provided in November 2023. Due to its clarity and purpose the EIE (Nov 2022) was the agreed approach was adopted early in the design process for the review of the ILU parking for this development.

Further under BCA Volume 1 Part D4D6, a minimum compliance for provision of accessible parking for different building classes. Whilst it has no accessible parking requirements for a class 2 building, each class of building has a rate of accessible parking bays no greater than 2% of proposed parking to which both the exhibited changes and gazetted SEPP changes significantly exceed.

4.1.5 The Provision of 10% Fully Accessible Spaces Measure exceeds the provision in Recent and Similar Seniors Housing Development Approvals

Similar seniors housing proposals that are proposing to collocate with golf course sites have been approved recently with lower and yet reasonable accessible parking numbers.

The redevelopment of the Chatswood Golf Leisure Resort gained approval on 21 July 2021 for the construction of a new 4 storey golf clubhouse, 106 self-care seniors dwellings, and 3 levels of car parking. The development was approved to provided 147 parking spaces for the ILUs, including 10 fully accessible parking spaces for independent living residents, (6.8%). The Accessibility Report prepared by Funktion (dated 29.05.2020) that the parking provision was 'more than adequate considering that only 4.4% of people with a disability in Australia use a wheelchair (Australian Bureau of Statistics (ABS) 2016, 4430.0 - Survey of Disability, Ageing and Carers 2015)'.

In 2022, Mirvac sought approval to redevelop the Oatlands Golf Course which was approved by the NSW Land and Environment Court [Mirvac Residential (NSW) Developments Pty Ltd v City of Parramatta Council] (LEC ref: 2023/00099244) in 2023. The development sought to construction seven (7) buildings (of 3 to 8 storeys) containing 155 independent living units for the purposes of seniors housing (including people with a disability); construction and operation of a new registered club (Oatlands Golf Club).

The development proposed 405 car parking spaces over 2 basement levels (200 club and 205 residential spaces); and landscaping and ancillary facilities. Of 205 spaces, 147 were dedicated to the Independent Living Units with 9 spaces being accessible (3.8 width). This resulted in 6% of the provided parking for the ILUs being accessible. Determined only as of 23 October 2023, the development achieved the reasonable and evidence based previous standard of 5% under the Seniors Housing SEPP.

4.1.6 The Recent Dec 2023 SEPP Change Has Not Recognised The Importance Of Forward Planning For Significant Development Proposals Through Reasonable Savings/Transition Provisions for This Substantial Change

It is noted in the Accessibility Report (**Appendix X** of the EIS documentation) and aforementioned that the recent changes did not include any grace or transition period for projects that were well advanced in design at the end of 2023.

As noted above, this development project commenced in early 2022 over the last 2 years a complex concept design/masterplan process has been undertaken with extensive consultation with the relevant consent authorities and government agencies. The proponent has consulted twice with Cumberland City Council and also consulted in two State Design Review Panel meetings, resulting in several changes to the masterplan design. This consultation is fully documented within the EIS and detailed in the Consultation Outcomes Report. The accessible parking provision at 10% was not queried

On the 22 December 2023, the draft development application was lodged to the Department of Planning, Housing, and Infrastructure for Test of Adequacy. The 14th December 2023 SEPP changes did not include savings or transition provisions which should have been an essential part of ensuring that significantly advanced development proposals can reasonably progress and have a reasonable degree of certainty in the planning framework underlying the investment decisions to progress with major housing and cultural/recreation facilities.

4.1.7 Conclusion on clause 4.6(3)(a)

Compliance with the development standard is unreasonable and unnecessary in the circumstances, as:

- the underlying objectives or purposes of the standard are achieved
- Lack of a reasonable evidence base for the new 15% fully accessible parking space standard - The recent Housing SEPP increase from a 10% to 15% fully accessible car parking spaces requirement has not included any sufficient nor reasonable evidence base for the change.
- Lack of a sound evidence base for the new 50% wider parking space standard The recent introduction of an additional 50% requirement for wider car parking spaces has not included any sufficient nor reasonable evidence base for the change
- The proposal achieves 10% fully accessible spaces which was an acceptable evidence-based measure consistent with the draft SEPP EIE exhibited and applicable to DAs for over 12 months,
- Provision of 10% Fully Accessible Spaces Measure exceeds the provision in Recent and Similar Seniors Housing Development Approvals
- The recent SEPP change has not recognised the forward planning of significant development proposals and has not provided for reasonable savings/transition provisions

4.2 Clause 4.6(3)(b): Environmental Planning Grounds To Justify Contravening The Development Standard

Clause 4.6(3)(b) of the CLEP 2021 requires the consent authority to be satisfied the applicant has demonstrated that there are sufficient environmental planning grounds to justify the contravention. The focus is on the aspect of the development that contravenes the development standard, not the development as a whole. Therefore, the environmental planning grounds advanced in the written request must justify the contravention of the development standard and not simply promote the benefits of carrying out the development as a whole (*Initial Action* at [24]).

In *Four2Five*, the Court found that the environmental planning grounds advanced by the applicant in a Clause 4.6 variation request must be particular to the circumstances of the proposed development on that site at [60]. In this instance the relevant aspect of the development is the proposed number of accessible spaces that result in the undersupply compared to the development standard.

There are sufficient environmental planning grounds to justify contravention of private car accommodation development standard in this specific instance, as described below.

4.2.1 The proposal provides a suitable parking solution that balances social, environmental, and economic objectives that underpin the planning for new seniors housing development

The Proposal is consistent with the Objects Of The EP&A Act

In *Initial Action*, the Court stated that the phrase “environmental planning grounds” is not defined but would refer to grounds that relate to the subject matter, scope, and purpose of the EP&A Act, including the objects in section 1.3 of the Act. While this does not necessarily require that the proposed development should be consistent with the objects of the Act, nevertheless, as set out in **Table 2** we consider the proposed development is broadly consistent with each object, notwithstanding the proposed variation of the private car accommodation development standard.

Table 2 Assessment of consistency of the proposed development with the Objects of the EP&A Act

Object	Comment
(a) to promote the social and economic welfare of the community and a better environment by the proper management, development, and conservation of the State’s natural and other resources	<p>If the development was to comply with the new accessibility parking development standard while still providing for meeting the total number of spaces, being 276 spaces, an additional minimum of 620 sqm would be required to accommodate the 15% fully accessible and 50% wider spaces with a residual 35% standard spaces.</p> <p>This would have implications for increased undercroft area to be provided and for increased hard stand areas, with potential reductions in the site’s existing open spaces including golf course, communal areas and landscaping</p> <p>Retaining the proposed 10% provision for the development will mean less excavation and/or extension into the diverse range of outdoor spaces proposed, which might be quantified in terms of:</p> <ul style="list-style-type: none"> the volume of material that would not need to be excavated. the number of truck movements that would be avoided. the CO2 emissions that would be avoided. <p>In this regard, the following statutory planning goals are furthered by the proposed contravention:</p> <ul style="list-style-type: none"> Section 1.3(a) of the EP&A Act: ‘to promote the social and economic welfare of the community and a better environment by the proper management and conservation of the State’s resources’. Section 1.3(b) of the EP&A Act: ‘to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment’. Section 1.3(e) of the EP&A Act: ‘to protect the environment...’ Section 1.3(g) of the EP&A Act: ‘to promote good design ...’

Object	Comment
(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment	Addressed above.
(c) to promote the orderly and economic use and development of land	<p>The proposed design has undergone extensive design evolution and revision to balance the competing demands of the different proposed land uses of the Golf Course and Seniors Development.</p> <p>The Seniors Development occupies 3.8 ha (37,375 square metres) of a 38-hectare site. Hence it occupies 10% of the site area, seeking to minimise its impact on the ongoing operation of the golf course and enable its future occupants access to a plethora of green open space for passive and active recreation.</p> <p>The Independent Living Unit Buildings provide for 10% fully accessible parking within each building on the lower ground level. This is designed to ensure the buildings sit within the slope of the land and balance the car parking spaces and building footprint with providing for landscaping and open space across the remainder of the site, and minimise use of golf course land.</p>
(d) to promote the delivery and maintenance of affordable housing	<p>The proposed development seeks to provide seniors housing for the growing number of older Australians.</p> <p>The Property Council of Australia's report Shared care: Delivering greater home care efficiencies for consumers, providers, and government states that the currently planned 18,000 retirement units (as of December 2023) has the potential to reduce the housing gap by 18 per cent. Further if an additional 49,000 retirement units were built to maintain current market penetration, it could reduce Australia's housing shortage by 67 per cent. This would have the flow on effect of freeing up homes for younger people.</p> <p>As such the proposed development contributes to the delivery of diverse housing including affordable for people across their life cycles.</p> <p>Further as mentioned in the AIA NSW Submission discussed in Section 4.1, '<i>mandating large numbers of car park spaces to development is counter to both principles of sustainability and affordability</i>' for such complex development which usually comprise a mix of land uses.</p> <p>It should be recognised that substantial costs linked with underground or structured parking represent and in most cases one of the most expensive components of residential let alone more complex seniors housing development. These savings can then be transferred to residents, helping to reduce housing expenses promote affordable housing.</p>
(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities, and their habitats	Addressed above.
(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage)	Addressed above.
(g) to promote good design and amenity of the built environment	<p>Addressed above.</p> <p>The proposed design employs an approach that seeks to balance the natural asset of the Cumberland Golf course and ensure residents of the Independent Living Units have enough spaces within and around their dwellings.</p>

Object	Comment
	The ILU development occupies 3.8 hectares (10%) of the existing 38-hectare Cumberland Golf course. The design seeks to maintain usability of the golf course for members and still ensure new residents have access to opportunities for active and passive recreation and optimise their health and wellbeing as they age

4.2.2 The Proposal is consistent with the Objectives/Principles of Housing SEPP 2021

The principles of the State Environmental Planning Policy (Housing) 2021 are as follows—

- (a) *enabling the development of diverse housing types, including purpose-built rental housing,*
- (b) *encouraging the development of housing that will meet the needs of more vulnerable members of the community, including very low to moderate income households, seniors, and people with a disability,*
- (c) *ensuring new housing development provides residents with a reasonable level of amenity,*
- (d) *promoting the planning and delivery of housing in locations where it will make good use of existing and planned infrastructure and services,*
- (e) *minimising adverse climate and environmental impacts of new housing development,*
- (f) *reinforcing the importance of designing housing in a way that reflects and enhances its locality,*
- (g) *supporting short-term rental accommodation as a home-sharing activity and contributor to local economies, while managing the social and environmental impacts from this use,*
- (h) *mitigating the loss of existing affordable rental housing.*

The proposed development seeks to diversify the housing typology offering within Cumberland LGA through the development of both independent living units and the residential care facilities.

It seeks to accommodate the needs of seniors who may be the more vulnerable members of the communities. It does this providing for a well-designed seniors community with facilities that allow for seniors to remain living in their local community as their needs change and remain active both physically and socially, through the co-location of on-site communal, health and wellness amenities.

The social offering on-site includes indoor and outdoor spaces for interaction, supporting social inclusion. The health and wellbeing amenities include indoor features such as a heated pool and gym, alongside outdoor spaces like a bowling area and walking paths, offering diverse recreational activities.

The development also provides residents with the easy opportunity to make good use of the existing 38-hectare golf course, which contributes to the high level of amenity.

Finally, the development employs numerous sustainability initiatives to ensure adverse climate and environmental impacts of new housing development are minimised.

A range of sustainability initiatives across the site spanning energy efficiency, thermal performance, indoor environment quality, waste management and comfort.

4.2.3 The Proposal Is Consistent With The RE2 Zone Objectives Of Cumberland LEP

Under the Cumberland LEP 2021, the following objectives in RE2 Private Recreation zones:

- *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.*

The key LEP objectives for this zone are to provide for a range of recreational settings and activities and compatible land uses and to protect and enhance the natural environment for recreation purposes. The new clubhouse (defined as a registered club) and the proposed subdivision are permissible under the Cumberland LEP 2021.

The colocation of seniors housing with the golf course facilities supports healthy lifestyles for residents and a good synergy for the shared use of facilities. This supports people remaining active and having less health incidences, issues and costs over time, and (as discussed below) this supports seniors to remain active and healthy as they age.

4.2.4 The Proposal Will Meet The Needs Of The Likely Demographics Of New Residents,

The Cumberland Golf Club recognises that many future residents of this proposed development will be drawn from its 10km locality, as is the experience with seniors housing providers.

As the Social Impact Assessment notes (**Appendix T** of the EIS documentation), the local demographics within 10km of the site is older than the broader Cumberland community and supports the future development, which will draw on the local community catchment.

With almost 70% of its 2,600 members living within 10km of the golf club site, it is also anticipated that many future residents will likely be existing members of the golf club, and other local residents will be attracted to this location to enjoy the golf course recreation facilities in their senior years.

This has informed the planning and design of the project, which includes health and wellness facilities to support and promote people continuing to participate in golf and enjoy active lifestyles as seniors living residents. In addition to the ready access to the golf course, the proposed on-site health and wellness facilities will include indoor facilities including heated pool and gym as well as outdoor spaces including bowling area, walking paths, for a range of recreation opportunities.

The Club has advised that its membership comprises:

- The average age of club members is **58.8 years old**
- **65%** of club members are aged over **55 years old**
- **42%** of club members are aged over **65 years old**

The Cumberland Golf Club's proposal is designed with a clear understanding of the target demographics, preferences and needs. With an average age of 58.8 years among club members and a significant portion of membership being over 55 (approx. 1577 members) and over 65 (approx. 1043 members), the golf and social community is vibrant, active, and values a lifestyle that includes physical activity and social engagement. This demographic profile suggests a community that, while aging, is not predominantly in need of extensive accessible parking facilities.

The development's objective is to provide a place not only for residents to live; but it's a place to thrive. The inclusion of health and wellness facilities, such as a heated pool, gym, bowling area, and walking paths, alongside direct access to the golf course, is a testament to the golf club's commitment to promoting an active lifestyle.

In November 2023, the Retirement Living Council commissioned a report from the PCA titled the Better Housing for Better Health Report: The Care and Cost Effectiveness of retirement living Report of which on a summary of the findings are published. Additionally, in December 2023, PCA also published the *Shared care: Delivering greater home care efficiencies or consumers, providers, and government*. The findings of both reports support the club's stance, that seniors living in villages tend to have better health and live well longer compared to the general population. The report states:

- 'residents are up to 15 per cent more active when living in a retirement village' and 'residents are 20 per cent less likely to require hospitalisation when living in a retirement village'.

This suggests a lower necessity for accessible parking spaces, as the future residents are generally likely to be more mobile and active. Further the Better Housing for Better Health report found that 'residents can see delayed entry into aged care when living in a retirement village'. Therefore, seniors living in villages have better health outcomes, leading more active lives. As such this standard for parking should be applied more flexibility to this proposal which seeks to attract residents seeks to live an active and healthy lifestyle.

4.2.5 The proposed car spaces are well designed, safe and suitable to the proposed users

The proposed design has been in development for over 2 years and has been reviewed over two State Design Review Panels over 2023 and submitted for Test of Adequacy with no concerns raised over the parking provision. The proposed design provides for the accessible spaces to be well located within the parking areas for ease of access to users when driving and when accessing the building from car park lifts.

As noted in the Australian Institute of Architects (Institute) to the Housing SEPP EIE from 2022, the peak body for the architectural profession in Australia, the AIA NSW Submission emphasised that while *'there are clear cases where car parking is vital and necessary... (they) also understand that mandating large numbers of car park spaces to development is counter to both principles of sustainability and affordability.*

4.2.6 Proposed operational management measures will provide for more flexible and improved use of the accessible car spaces to ensure resident needs are met as they change over time – Operational Management Plan for use of the Accessible Parking Spaces, and Village Bus

Operational Management Plan – Accessible Parking Spaces

In addition to the above discussions, the applicant is also proposed to implement an Operational Management Plan for the Accessible Parking Spaces to ensure that the 10% of fully accessible spaces are effectively utilised and will, in effect, provide for an improved availability of accessible spaces for the seniors residents than would be achievable by simply complying with the 15% standard.

A draft Operational management plan has been prepared (**Appendix PP**). These operational initiatives have been proposed and endorsed by both the Access and Transport consultants for this project, noting that these will ensure greater effectiveness in the use of the proposed spaces. With an ongoing village management presence at the seniors housing village, this will ensure implementation of this Plan. Management measures can be easily initiated and implemented on an ongoing basis to ensure that the accessible spaces are always allocated to a resident that needs the accessibility space rather than being tied to a specific unit. This will provide flexibility for the accessibility spaces to be optimised in their use for those most in need of such spaces.

This Operational Plan will include the village management providing ongoing and up to date information and advice for residents on the alternative opportunities for accessible travel options than use of the private car.

4.2.7 Related travel management initiative of a Village Bus will reduce the need for accessible parking spaces.

Proposed operational management measures will include the village management provision of a village bus on-site for residents, offering an accessible, cost effective and sustainable transport option. The village bus (see indicative examples in Figure 4 below) will be available to all seniors living residents on-site for their trip needs e.g. shopping. This provides a cost-effective, safe and sociable alternative for residents rather than the use of a private car and supports an environmentally and socially sustainability approach to accessibility for the village community.





Figure 4: Indicative Village Bus providing for accessible travel

4.2.8 Conclusion on clause 4.6(3)(b)

For the reasons outlined in the table above, there are sufficient environmental planning grounds to justify the contravention of the private car accommodation development standards, as:

- The proposal provides a suitable parking solution that balances social, environmental, and economic objectives that underpin the planning for new seniors housing development, including:
 - The proposal is consistent with the objects of the EP& A Act
 - The proposal is consistent with the RE2 Zone objectives of the Cumberland LEP
- The proposal will meet the needs of the likely demographics of new residents,
- The proposed spaces are well designed, safe and suitable to the proposed users
- Proposed operational management measures will provide for more flexible and improved use of the accessible car spaces to ensure resident needs are met as they change over time – this includes an Operational Management Plan for use of the Accessible Spaces and a Village Bus.

5.0 Conclusion

The assessment above demonstrates that compliance with the accessible car parking standard now referred as the Schedule 4 Car Parking development standards contained in State Environmental Planning Policy (Housing) 2021 is unreasonable and unnecessary in the circumstances and that there are sufficient environmental planning grounds to justify the contravention. It is considered that the variation allows for the orderly and economic use of the land in an appropriate manner, whilst also allows for a better outcome in planning terms.

This Clause 4.6 variation demonstrates that, notwithstanding the non-compliance with the private car accommodation development standard, the proposed development:

- Compliance with the development standard would be unreasonable and unnecessary, because:
 - Lack of a reasonable evidence base for the new 15% fully accessible parking space standard - The recent Housing SEPP increase from a 10% to 15% fully accessible car parking spaces requirement has not included any sufficient nor reasonable evidence base for the change.
 - Lack of a sound evidence base for the new 50% wider parking space standard The recent introduction of an additional 50% requirement for wider car parking spaces has not included any sufficient nor reasonable evidence base for the change

- the proposal achieves 10% fully accessible spaces which was an acceptable evidence-based measure consistent with the draft SEPP EIE exhibited and applicable to DAs for over 12 months,
- The recent SEPP change has not recognised the forward planning of significant development proposals and has not provided for reasonable savings/transition provisions
- There are sufficient environmental planning grounds to justify the contravention, including:
 - The proposal is consistent with the objects of the EP& A Act
 - The proposal is consistent with the RE2 Zone objectives of the Cumberland LEP
 - The proposal will meet the needs of the likely demographics of new residents,
 - The proposed spaces are well designed, safe and suitable to the proposed users
 - Proposed operational management measures will provide for more flexible and improved use of the accessible car spaces to ensure resident needs are met as they change over time

Therefore, the consent authority can be satisfied that this Clause 4.6 Variation Request has demonstrated the matters in clause 4.6(3) of the CLEP 2921 and may grant development consent notwithstanding the contravention of the private car accommodation development standard.