

s47G(1)(a)

17 December 2021

Our Ref: s47G(1)(a)

Your Ref: s47G(1)(a)

Department of Health

BY EMAIL: 90Apharmacy@health.gov.au

Dear Sir/Madam,

Comment on Request for Ministerial Discretion – Bowden, South Australia

We act for the proprietor of s47G(1)(a)

Our client has forwarded to us a letter dated 3 December 2021 from s22 Assistant Director (**Notice of a Request for Ministerial Discretion or Notice**) giving our client an opportunity to comment by Friday, 17 December 2021 in respect of a request made by a pharmacist (**Applicant**) to the Minister for Health, the Hon Greg Hunt MP (**Minister**) for the exercise of the Minister's discretionary power to approve the Applicant to supply pharmaceutical benefit scheme medicines at On the Park West, Ground Floor Corner Site, 13-19 Fourth Street, Bowden SA 5007 (**Proposed Premises**).

On behalf of our client, we submit as follows in this letter (**Comment**):

A. CRITERIA

We acknowledge that in the Notice of a Request for Ministerial Discretion, the writer requested that if our client would like to make a submission, it should be limited to the two criteria outlined earlier in that Notice.

In summary, the two criteria are:

- (a) *the decision of the Secretary to the Department of Health (**Secretary**) will result in a community being left without reasonable access to pharmaceutical benefits supplied by an approved pharmacist; and*
- (b) *it is in the public interest to approve the pharmacist.*

As stated in the Ministerial Discretion Guidelines dated December 2019 (**Guidelines**) we note that:

- *community* means a group of people that, in the opinion of the Minister, constitutes a community; and

s47G(1)(a)

- *reasonable access* in relation to the supply of pharmaceutical benefits supplied by an approved pharmacist, means access that, in the opinion of the Minister is reasonable.

B. OVERVIEW OF COMMENT

With respect to the above two criteria, for the reasons detailed below this Comment submits:

1. The relevant community presently has reasonable access to the supply of PBS medicines; and
2. The approval of the pharmacist's request will not be in the public interest.

C. THE COMMUNITY

What is the relevant community?

- In respect of part 1.3(a) of the Guidelines, the "community" for the purpose of the pharmacist's request (being the community which the Minister ought to be of the opinion is the relevant community for the purpose of its discretionary power), in our client's reasonable view comprises the residents of the three adjoining suburbs of Bowden, Brompton and Hindmarsh (all of which fall within postcode area 5007) and including the residents of the adjacent suburb of Ridleyton (postcode 5008).

(**Relevant Community**) as illustrated on the below map (**Figure 1.1**).

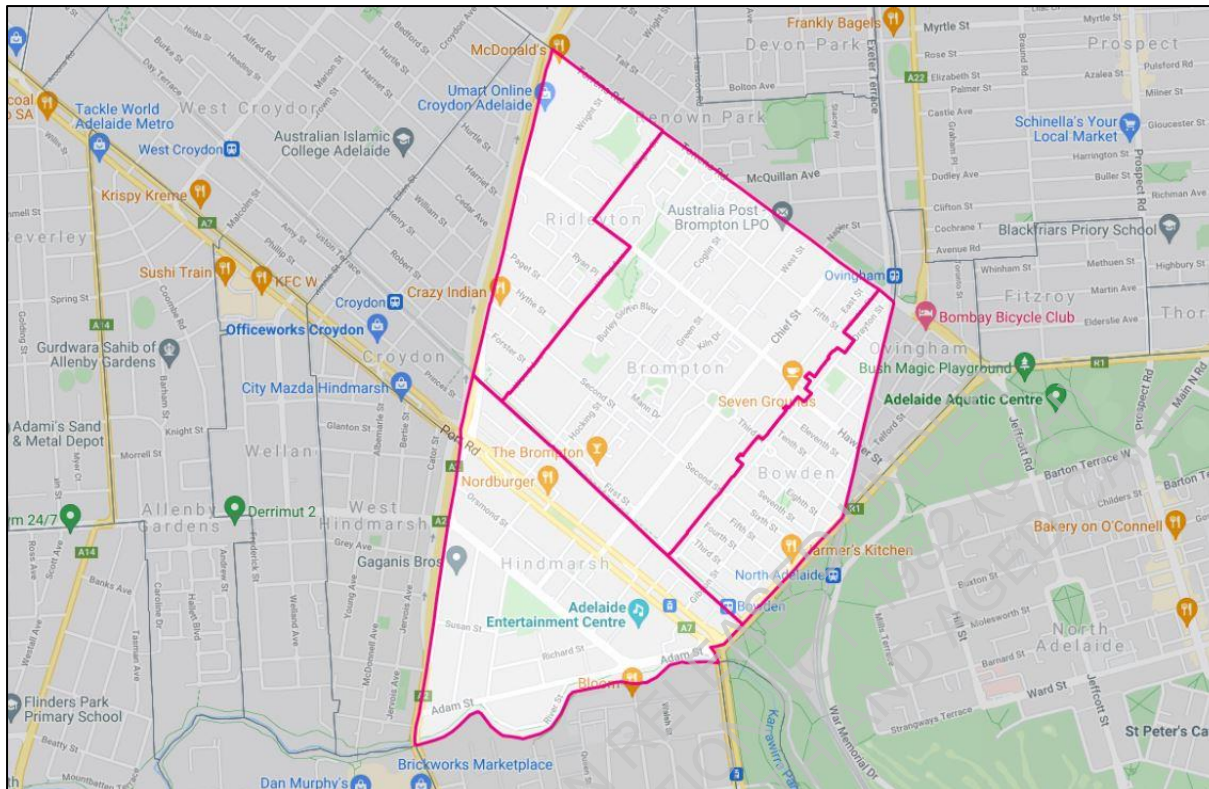
As shown in the below map (**Figure 1.1**):

- major roads and a river naturally designate the boundaries of the area in which the Relevant Community resides;
- the vast majority of the area in which the Relevant Community resides is within a small 1.5km radial area from the Proposed Premises; and
- a golf course and major road creates a real geographical physical barrier which separates the residents of the Relevant Community from the residential area of North Adelaide to the south-east.

We confirm that the total population of the Relevant Community based on the 2016 Census records available from the Australian Bureau of Statistics was 5,807 people, broken down as follows:

- Bowden (postcode 5007) – 911 people;
- Brompton (postcode 5007) – 3,537 people;
- Hindmarsh (postcode 5007) – 231 people;
- Ridleyton (postcode 5008) – 1,128 people;

Figure 1.1



D. REASONABLE ACCESS

All members of the Relevant Community currently have reasonable access to the supply of pharmaceutical benefits. The four existing PBS approved pharmacies operating within the immediate surrounding suburbs of Hindmarsh, Ridleyton, Torrensville and Welland (all of which are located less than 2km straight line from the Proposed Premises) provide the Relevant Community with both reasonable and convenient geographical access to PBS medicines.

Existing Nearby PBS Approved Pharmacies Within 2km

All members of the Relevant Community currently have reasonable access to the supply of pharmaceutical benefits specifically as a result of the four existing nearby PBS approved pharmacies. The following existing nearby PBS approved premises are conveniently all located within a 2km radius of the Proposed Premises (collectively “**Current Nearby Pharmacies**”):

- (i) Hindmarsh Pharmacy, 344 Port Road, Hindmarsh SA 5007 (**Hindmarsh Pharmacy**) which is approximately 1km from the Proposes Premises by straight line distance.

The trading hours of Hindmarsh Pharmacy are:

- Monday to Thursday: 9:00am – 5:30pm
- Friday: 9:00am – 5:00pm
- Saturday: 9:00am – 12:30pm

s47G(1)(a)

Hindmarsh Pharmacy is located within a large medical centre, Hindmarsh Bowden Health, located at 334 Port Road, Hindmarsh SA 5007. We understand that Hindmarsh Bowden Health has 12 full-time equivalent general practitioners which offer general practice services to members of the Relevant Community. This allows the members of the Relevant Community to consume allied health and medical services and obtain PBS medicines from within the one convenient location. Additionally, the large car park at the site allows for easy access to the pharmacy and medical centre by car.

Hindmarsh Bowden Health is the nearest large medical centre for all residents of the Relevant Community, noting in particular that there is no general practitioner with a clinic in the suburb of Bowden (in which the Proposed Premises is located). This means that all members of the Relevant Community who are patients of Hindmarsh Bowden Health (in which Hindmarsh Pharmacy is located) already have reasonable and convenient access to pharmaceutical benefits supplied by a pharmacist.

For those who, for any reason, are unable to travel the short distance to this pharmacy, such members of the Relevant Community may use Hindmarsh Pharmacy's free home delivery services to obtain PBS medicines, with the delivery service being available to all areas within a 5km radius of the pharmacy.

- (ii) Star Discount Chemist Croydon, 191 South Road, Ridleyton SA 5008 (**SDC Croydon**) which is approximately 1.5km away from the Proposed Premises by straight line distance.

The trading hours of SDC Croydon are:

- Monday to Friday: 9:00am – 7:00pm
- Saturday: 9:00am – 5:00pm
- Sunday: 11:00am – 5:00pm

SDC Croydon is located adjacent to a large Foodland supermarket, located at 191 South Road Croydon, Ridleyton SA 5008. There is a large car park on site allowing the Relevant Community convenient and easy access to the pharmacy and supermarket by car. This gives the members of the Relevant Community the opportunity to obtain their PBS medicines at the same time as they undertake their regular (weekly or more frequently) shopping for food, beverages, groceries and other domestic goods.

Again, it is noted that there is no full-line supermarket in the suburb of Bowden (nor butcher, bakery, fruit & vegetable shop etc). This means that all members of the Relevant Community who are regular customers of the Ridleyton Foodland supermarket (which adjoins SDC Croydon) already have convenient and reasonable access to pharmaceutical benefits supplied by a pharmacist.

Furthermore, reasonable access to pharmaceutical benefits supplied by a pharmacist is available to all members of the Relevant Community as SDC Croydon also offers free home delivery of PBS medicines to all areas within a 5km radius of the pharmacy.

- (iii) Chemist King Welland, Shop 6, 53-57 Grange Road, Welland SA 5007 which is approximately located 1.6km from the Proposed Premises by straight line distance (**CK Welland**).

The extensive trading hours of CK Welland are:

- Monday to Friday: 8:30am – 8:00pm
- Saturday to Sunday: 9:00am – 6:00pm

Noting that CK Welland:

- has extensive trading hours totalling 75.5 hours per week; and
- is located within a neighbourhood shopping strip adjacent to convenience stores and eateries, with car parking located outside of the shopping strip, allowing for easy access to the site by car,

all members of the Relevant Community have reasonable access to pharmaceutical benefits supplied by a pharmacist.

- (iv) Direct Chemist Outlet Torrensville, Shop 9-10, Brickworks Marketplace, 2 Ashwin Parade, Torrensville SA 5031 which is located approximately 1.6km from the Proposed Premises by straight line distance (**DCO Torrensville**).

The trading hours of DCO Torrensville are:

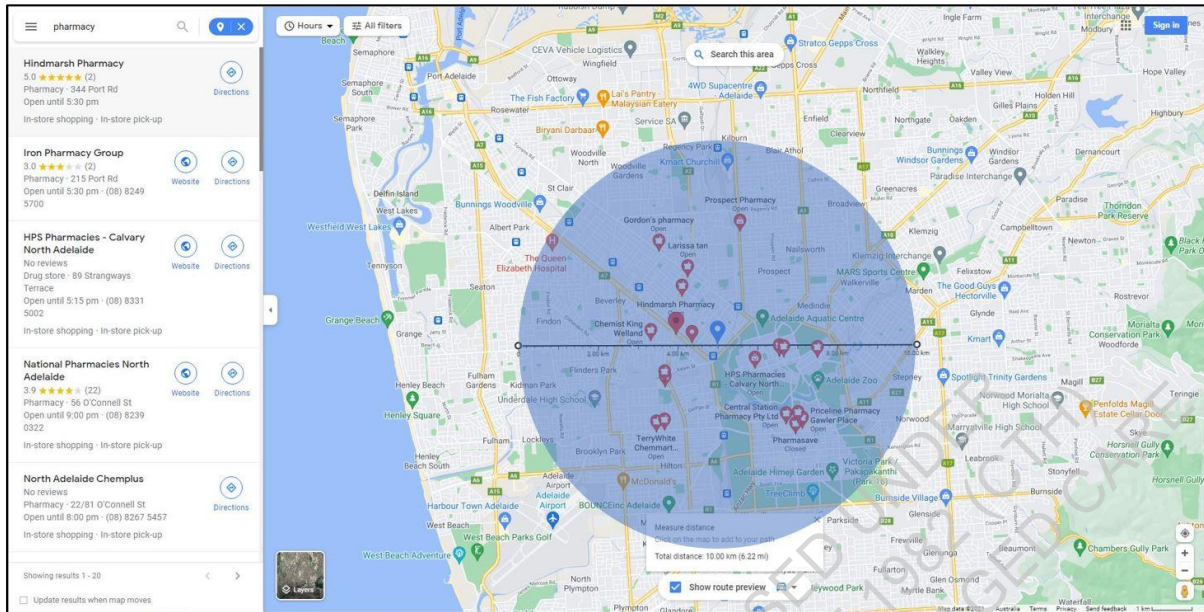
- Monday to Wednesday: 9:00am – 6:00pm
- Thursday: 9:00am – 9:00pm
- Friday: 9:00am – 6:00pm
- Saturday: 9:00am – 5:00pm
- Sunday: 11:00am – 5:00pm

DCO Torrensville is located within Brickworks Marketplace shopping centre located at Corner of South Road and, Ashwin Parade, Torrensville SA 5031, which provides the Relevant Community with commercial and retail offerings (including a large full-line Woolworths supermarket and fellow major tenant Big W, among others). There is a large car park servicing this shopping centre allowing for easy access to the site by car.

This means that all members of the Relevant Community who are regular customers of the Woolworths supermarket or other retailers at Brickworks Marketplace (in which centre DCO Torrensville is also a tenant) already have convenient and reasonable access to pharmaceutical benefits supplied by a pharmacist from this one convenient location.

In addition, it is worth noting that there are at least 12 additional existing PBS approved premises within a short 5km radius of the Proposed Premises, as illustrated in **Figure 1.2** below. This distribution of pharmacies illustrates a significant concentration of PBS approved pharmacies in a close proximity to the Proposed Premises, that ensure reasonable access to PBS medicines is presently available both to the Relevant Community and residents located within immediate surrounding area.

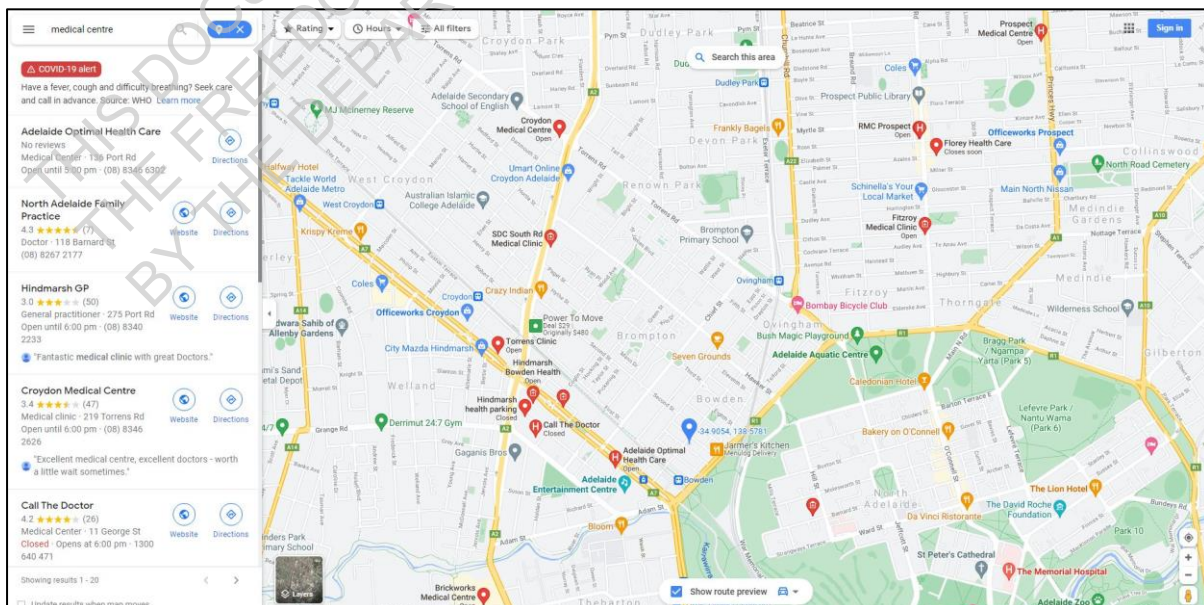
Figure 1.2



Specifically, the residents of Hindmarsh and Ridleyton already have reasonable access to PBS medicines by reason of the Current Nearby Pharmacies. Whilst there are currently no PBS approved pharmacies operating within the suburbs of Bowden and Brompton, the Current Nearby Pharmacies also clearly service and provide reasonable access to PBS medicines to residents of Bowden and Brompton for the following reasons:

- (i) There are no medical centres currently operating within the suburbs of Bowden or Brompton, as illustrated in **Figure 1.3** below. In order for the residents of Bowden or Brompton to access medical services they must travel to medical centres operating within their surrounding suburbs, such as the abovementioned large medical centre trading as Hindmarsh Bowden Health, which conveniently has its own PBS approved pharmacy (Hindmarsh Pharmacy) operating from within the centre.

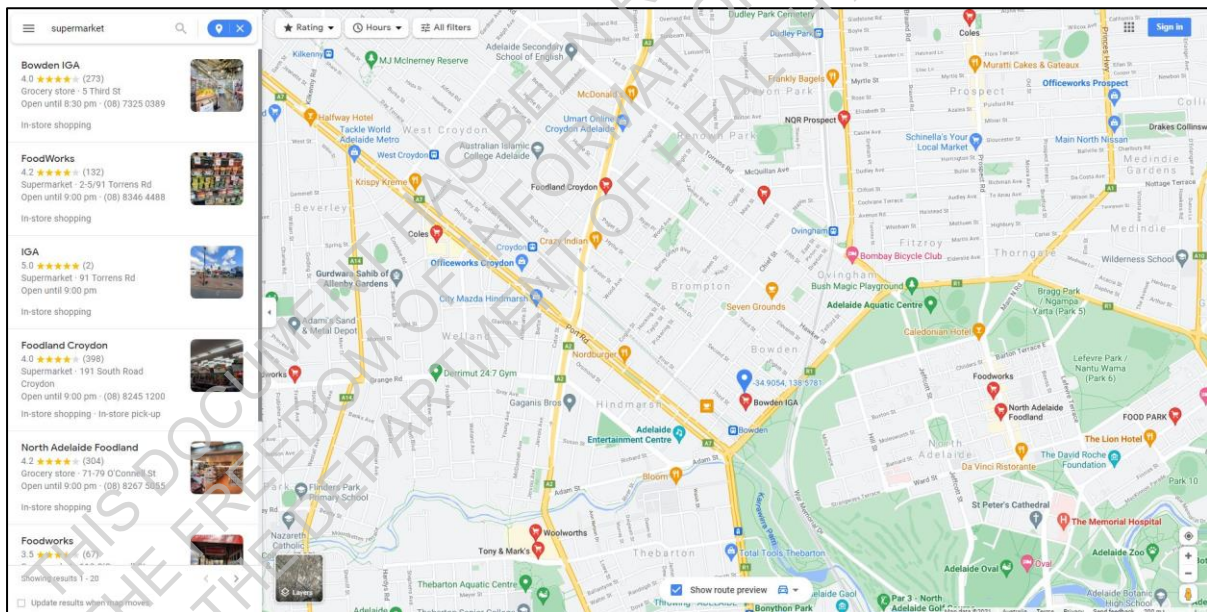
Figure 1.3



s47G(1)(a)

- (ii) There are currently only two small grocery stores operating within the suburbs of Bowden and Brompton, as illustrated in **Figure 1.4** below. These grocery stores are not considered sufficient to meet the weekly shopping needs of the residents of Bowden and Brompton for the following reasons:
- The grocery store in Bowden is a small convenience-store IGA, whilst the grocery store in Brompton is a similar type small FoodWorks. The stock supplied from these sites are limited in nature, being more focused on convenience items, as a consequence of their small physical store size. Accordingly, all residents of Bowden or Brompton would expectedly undertake their regular (weekly or more frequently) shopping for food, beverages, groceries and other domestic goods to meet their regular needs at the abovementioned nearby large full-line Woolworths supermarket at Brickworks Marketplace or Croydon Foodland supermarket.
 - There is limited parking available at both IGA Bowden and FoodWorks Brompton. The IGA only offers on street parking to its customers, whilst there is only a small car park outside of the FoodWorks for customers to use. As such, it is submitted that those local residents who need to drive would travel to the nearby Brickworks Marketplace Woolworths or Croydon Foodland supermarkets with extensive car parking facilities both of which have PBS pharmacies located very close by as outline above.

Figure 1.4



- (iii) As can be seen in **Figure 1.4** above, the main road of Park Terrace forms the boundary line for the suburb of Bowden, with parklands and the North Adelaide Golf course being directly adjacent to the main road. The parklands and golf course act as significant barriers inhibiting the residents of Bowden and Brompton from travelling freely into Northern Adelaide in order to access PBS approved pharmacies. By reason of these barriers, the residents are clearly more likely to travel a short distance conveniently to the Current Nearby Pharmacies in order to obtain access to PBS medicines.
- (iv) According to the 2016 Census records available from the Australian Bureau of Statistics, and as illustrated in Figure 1.5 and 1.6 below, the average motor vehicles

s47G(1)(a)

per dwelling in Bowden is 1.1, and 1.4 in Brompton. As such, each household within these suburbs has access on average to at least 1 motor vehicle which they may use to travel to the Current Nearby Pharmacies in order to access PBS medicines.

Figure 1.5

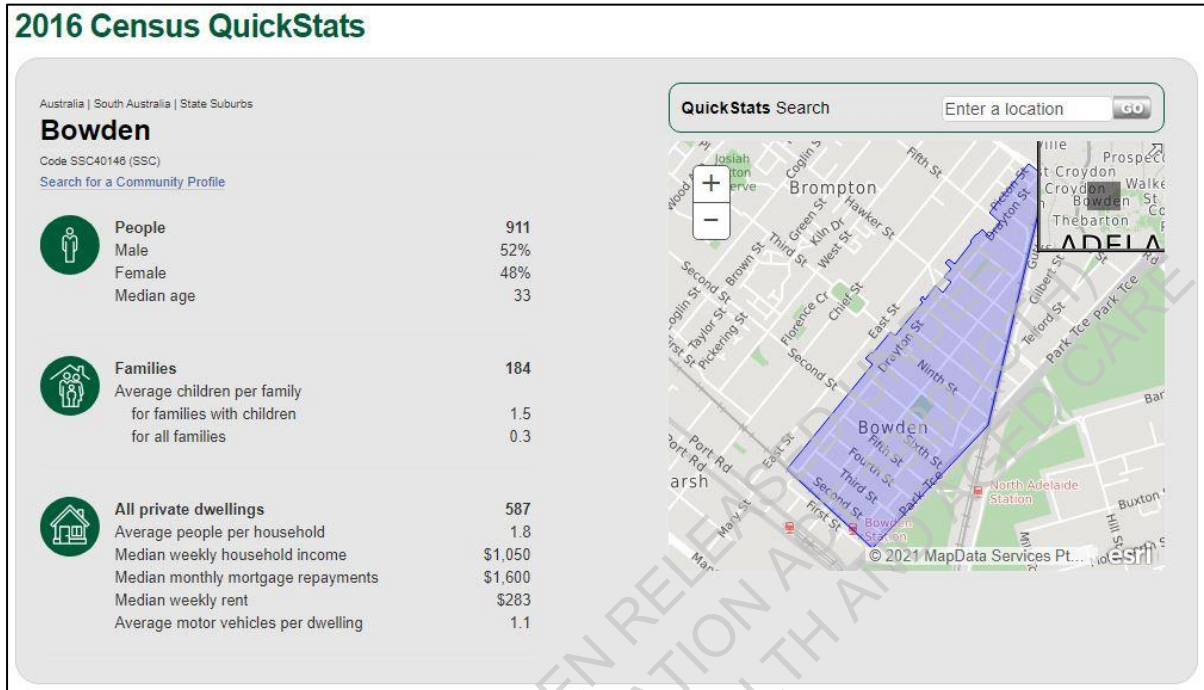
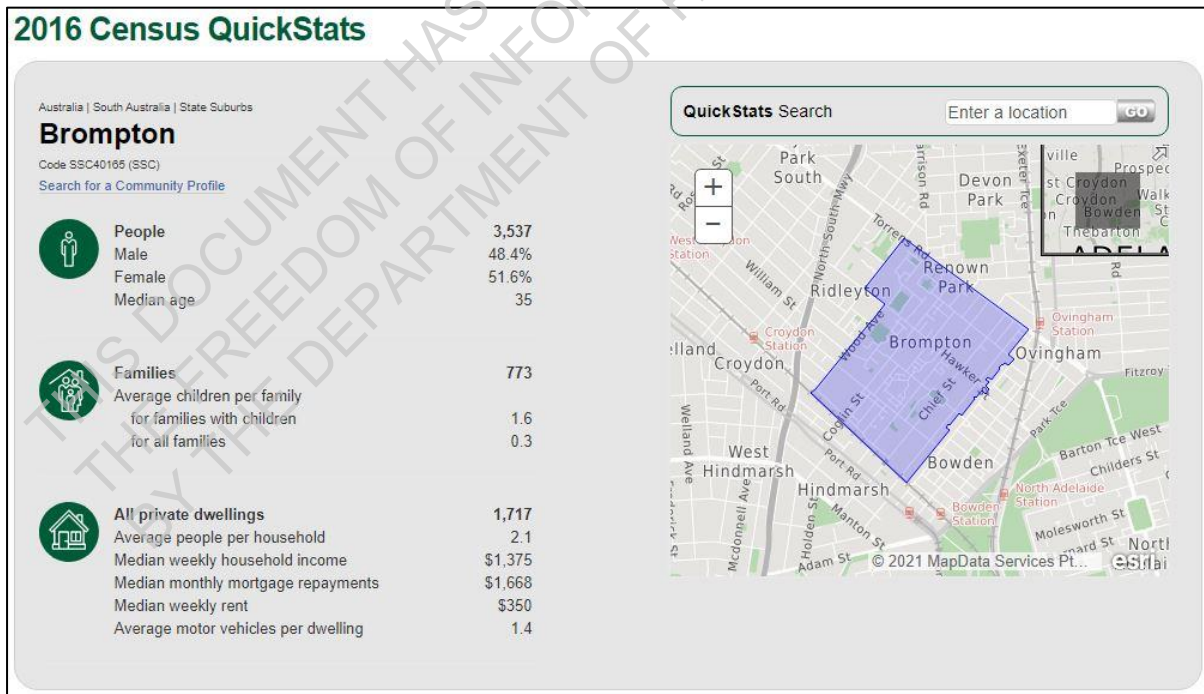


Figure 1.6



- (v) The 2016 Census records available from the Australian Bureau of Statistics also clearly reveal that for the suburbs of Bowden and Brompton, the respective resident percentages of children below 15 years and elderly people 65 years plus are much lower than the South Australian State average (see Figures 1.7 and 1.8

s47G(1)(a)

below). In particular, the last 2 lines in Figure 1.7 confirm that children aged between 0 and 14 made up 8.7% while people aged 65 years and older made up 8.1% of the Bowden population. By comparison the South Australian population percentages in Figure 1.7 for combined age bands 0-14 years and 65 years plus are respectively 17.5% and 18.2% (i.e. each being approximately double that of Bowden). With respect to Brompton, the last 2 lines in Figure 1.8 confirm that children aged between 0 and 14 made up 8.7% while people aged 65 years and older made up 16.3% of Brompton's population. By comparison the South Australian population percentages in Figure 1.8 for combined age bands 0-14 years and 65 years plus are respectively 17.5% and 18.2% (i.e. again, much higher than that of Brompton). In summary, these population statistics irrefutably demonstrate that with respect to both suburbs of Bowden and Brompton there are no unique circumstances (i.e. such as an unusually large elderly or young children/family population subset group) which could be relied upon to suggest a need for an additional PBS approved pharmacy at the Proposed Premises. Rather, given their above population profiles Bowden and Brompton residents are physically capable and readily able to travel a very short distance to the Current Nearby Pharmacies which provides these Relevant Community members reasonable access to PBS medicines.

Figure 1.7

Age	Bowden	%	South Australia	%	Australia	%
Median age	33	--	40	--	38	--
0-4 years	30	3.3	97,072	5.8	1,464,779	6.3
5-9 years	25	2.7	100,466	6.0	1,502,646	6.4
10-14 years	24	2.6	95,461	5.7	1,397,183	6.0
15-19 years	43	4.7	100,686	6.0	1,421,595	6.1
20-24 years	103	11.3	107,986	6.4	1,566,793	6.7
25-29 years	157	17.3	107,361	6.4	1,664,602	7.1
30-34 years	94	10.3	110,751	6.6	1,703,847	7.3
35-39 years	65	7.1	102,818	6.1	1,561,679	6.7
40-44 years	67	7.4	106,650	6.4	1,583,257	6.8
45-49 years	56	6.2	113,619	6.8	1,581,455	6.8
50-54 years	65	7.1	113,272	6.8	1,523,551	6.5
55-59 years	50	5.5	111,896	6.7	1,454,332	6.2
60-64 years	57	6.3	102,028	6.1	1,299,397	5.6
65-69 years	31	3.4	96,286	5.7	1,188,999	5.1
70-74 years	13	1.4	72,563	4.3	887,716	3.8
75-79 years	12	1.3	53,885	3.2	652,657	2.8
80-84 years	6	0.7	39,374	2.3	460,549	2.0
85 years and over	12	1.3	44,479	2.7	486,842	2.1

The median age of people in Bowden (State Suburbs) was 33 years. Children aged 0 - 14 years made up 8.7% of the population and people aged 65 years and over made up 8.1% of the population.
View the data quality statement for Age (AGEP)

Figure 1.8

Age	Brompton	%	South Australia	%	Australia	%
Median age	35	--	40	--	38	--
0-4 years	143	4.0	97,072	5.8	1,464,779	6.3
5-9 years	83	2.3	100,466	6.0	1,502,646	6.4
10-14 years	82	2.3	95,461	5.7	1,397,183	6.0
15-19 years	119	3.4	100,686	6.0	1,421,595	6.1
20-24 years	433	12.3	107,986	6.4	1,566,793	6.7
25-29 years	475	13.4	107,361	6.4	1,664,602	7.1
30-34 years	407	11.5	110,751	6.6	1,703,847	7.3
35-39 years	245	6.9	102,818	6.1	1,561,679	6.7
40-44 years	194	5.5	106,650	6.4	1,583,257	6.8
45-49 years	203	5.7	113,619	6.8	1,581,455	6.8
50-54 years	186	5.3	113,272	6.8	1,523,551	6.5
55-59 years	200	5.7	111,896	6.7	1,454,332	6.2
60-64 years	186	5.3	102,028	6.1	1,299,397	5.6
65-69 years	121	3.4	96,286	5.7	1,188,999	5.1
70-74 years	81	2.3	72,563	4.3	887,716	3.8
75-79 years	84	2.4	53,885	3.2	652,657	2.8
80-84 years	89	2.5	39,374	2.3	460,549	2.0
85 years and over	201	5.7	44,479	2.7	486,842	2.1

The median age of people in Brompton (State Suburbs) was 35 years. Children aged 0 - 14 years made up 8.7% of the population and people aged 65 years and over made up 16.3% of the population.

[View the data quality statement for Age \(AGEP\)](#)

Based on its 2016 total population as set out in section C. above, we note the current “approved pharmacy to population” ratio for the Relevant Community is:

- 1:2,904 counting only Hindmarsh Pharmacy and SDC Croydon being the two closest pharmacies to the Proposed Premises (nb: if the Proposed Premises was approved this ratio would drop to 1:1,936);
- 1:1,936 counting only Hindmarsh Pharmacy, SDC Croydon and also DCO Torrensville (nb: if the Proposed Premises was approved this ratio would drop to 1:1,452); and
- 1:1,452 counting all Current Nearby Pharmacies (nb: if the Proposed Premises was approved this ratio would drop to 1:1,161).

Each of the above “excluding the Proposed Premises” ratios are already significantly lower than the “approved pharmacy to population” ratios as at 30/6/20 for the two largest States of Australia (which collectively represent over 57% of the 2016 total Australian population) being Victoria (1:4,2257) and New South Wales (1:3,915) which evidences that the Current Nearby Pharmacies already clearly provide the Relevant Community with reasonable access to PBS medicines.

Obviously, if the Proposed Premises was approved by the Minister, the disparity between the “approved pharmacy to population” ratio for the Relevant Community as set out in the above 3 bullet points and the respective ratios for Victoria and NSW becomes even greater (e.g. in the third bullet point the ratio drops to an extremely low 1:1,161).

In summary, the above information clearly highlights that the Relevant Community is both close to and has easy access to a significant number of existing PBS approved premises, with no significant barriers (e.g. major highways, canyons, train lines, rivers) being present which inhibit such access to the Current Nearby Pharmacies. In addition to the easy geographical access to PBS medicines, the residents of Bowden and Brompton already have to travel a short distance out of their respective suburbs in order to obtain access to medical services and large supermarkets which are more capable of meeting their everyday needs.

Accordingly, it is clear that the Relevant Community already has reasonable access to PBS medicines (both with respect to geographical and opening times) and comprehensive health services by way of the abovementioned existing pharmacies and medical clinics/centres. As a result, the Relevant Community is presently not left without reasonable access to PBS medicines supplied by an approved pharmacist.

E. THE PROPOSED PREMISES

On the basis of our client's knowledge of the PBS needs of the Relevant Community and having regard to the significant number of existing PBS approved pharmacies which provide the Relevant Community with reasonable access to PBS medicines, it is contended that the pharmacist's request for ministerial discretion does not relate to any unique circumstances, nor has the decision to reject the previous application under the Pharmacy Location Rules left a community without reasonable access to PBS medicines being supplied by an approved pharmacist.

Our client's contention is demonstrated by the following:

- (a) the Proposed Premises is within 5km by radial distance of no less than **16** existing PBS approved pharmacies (noting that the opening hours of these existing PBS pharmacies cover all trading hours of the abovementioned medical clinics and large supermarkets which are utilised by the Relevant Community). That is, the Proposed Premises is not in an isolated area or some other area inaccessible to all of the nearby PBS approved pharmacies where one could in any way contend there is a present unmet need by the Relevant Community for reasonable access to PBS medicines;
- (b) the Current Nearby Pharmacies (all within a short 2km radius of the Proposed Premises) already clearly provide the Relevant Community with convenient and reasonable access to PBS medicines.

Lastly, it is worth noting that there is no designated public car park adjacent to or nearby to the Proposed Premises. Should the PBS approval be granted the Relevant Community would have to utilise the limited on-street car parking available within the vicinity of the Proposed Premises (see **Figure 1.9** and **2.1** for images illustrating the limited parking available). As such, even if the pharmacy were to operate from the Proposed Premises, the Relevant Community are likely to continue to travel to other PBS pharmacies within the surrounding suburbs which offer more adequate car parking facilities.

Figure 1.9



Figure 2.1



F. CONCLUSION

By way of summary:

1. the Relevant Community is not a community without reasonable access to the supply of PBS medicines (noting nearby existing pharmacies collectively provide the Relevant Community with reasonable access to PBS medicines during the trading hours of local medical clinics and large supermarkets); and
2. the approval of the applicant pharmacist's request will not be in the public interest. As set out above, the existing 16 PBS approved pharmacies within a 5km radius of the Proposed Premises have proven to be continuously able to provide the Relevant Community with reasonable access to PBS medicines. Given these compelling numerical facts, the public interest undoubtedly favours the consistent application of the Pharmacy Location Rules.

s47G(1)(a)

On the basis of the information provided in this Comment, the Minister ought to be satisfied that the criteria for a request for Ministerial discretion has not been achieved.

We look forward to receiving confirmation of the outcome of the Minister's determination.

Yours faithfully,

s47G(1)(a)

s47F

Partner

Email: s47F

Direct Line: s47F

THIS DOCUMENT HAS BEEN RELEASED UNDER
THE FREEDOM OF INFORMATION ACT 1982 (CTH)
BY THE DEPARTMENT OF HEALTH AND AGED CARE

s47G(1)(a)