
C12.2	N0325/15 - 9 Dress Circle Road Avalon Beach - Alterations and additions to existing dwelling and construction of a new swimming pool
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Meeting: Sustainable Towns & Villages Committee

Date: 15 February 2016

COMMUNITY STRATEGIC PLAN STRATEGY: Land Use & Development

COMMUNITY STRATEGIC PLAN OBJECTIVE:

- To deliver a comprehensive suite of development controls that improve the liveability of the area

DELIVERY PROGRAM ACTION:

- To provide an effective development assessment and determination process
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1.0 EXECUTIVE SUMMARY

1.1 SUMMARY

The Development Unit at its meeting held on the 21 January 2016 considered the Assessing Officers report (refer **Attachment 1**) for determination of N0325/15 for alterations and additions to existing dwelling and construction of a new swimming pool at 9 Dress Circle Road, Avalon Beach NSW 2107 subject to the draft conditions of consent.

- 1.2 It is a policy requirement of the NSW Department of Planning that applications involving a variation to a development standard of more than 10% be referred to the elected Council for determination.

The assessing officer has indicated within the report that the maximum building height for the subject site is 8.5 metres. The applicant is seeking consent for alterations and additions to the existing dwelling, including a new first floor level. The proposed maximum height of the development is 10.66 metres above the existing ground level. As such, quantitatively, the applicant seeks to vary the development standard by approximately 25.4%.

- 1.3 Discussion in relation to these variations is contained within Section 8.0 (Discussion of Issues) of the Assessing Officer's report.

- 1.4 The Development Unit considered the issues addressed in the Assessing Officer's report and supported the Officer's recommendation for approval subject to the conditions contained in the draft consent.
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2.0 RECOMMENDATION

That Council as the consent authority pursuant to Section 80 of the Environmental Planning and Assessment Act 1979 grant consent to Development Application N0325/15 for Alterations and additions to existing dwelling and construction of a new swimming pool at 9 Dress Circle Road, Avalon Beach NSW 2107 subject to the draft conditions of consent, amended Notice to Applicant of Determination of a Development Application and condition of consent as follows:

Decision:

The Development Application has been determined by the granting consent based on information provided by the applicant in support of the application, including the Statement of Environmental Effects, and in accordance with:

- *Architectural drawings 1749-1 through to 1749-9, all Revision B, all dated 29 December 2015, prepared by J.D Evans and Company;*
- *Landscape Plans Site Plan, JB 15-816-01, Front Garden JB 15-816-03 and Planting Palette JB 15-816-04, all dated 04 August 2015, prepared by Site Design Studios;*
- *Geotechnical Risk Management Report Ref: J0533, dated 03 August 2015, prepared by White Geotechnical Group;*
- *Arboricultural Assessment Report, dated 05 November 2015, prepared by RainTree Consulting.*

As amended in red (shown clouded) or as modified by any conditions of this consent.

Amended Condition C6

Prior to the issue of a Construction Certificate, the architectural drawings and Landscape Plan are to be amended to reflect the following:

- *No works to the south-west of the dwelling are permitted under this development consent. The swimming pool, BBQ and Alfresco area, any landscaping, earthworks, retaining walls, excavation and landfill, terracing and decking within the rear yard is to be deleted.*
- *A minimum of two (2) additional canopy trees are to be provided in the front yard in accordance with condition B11.*

3.0 BACKGROUND

3.1 PURPOSE

To seek endorsement of the Development Unit's recommendation following consideration of Development Application N0325/15 for alterations and additions to existing dwelling and construction of a new swimming pool at 9 Dress Circle Road, Avalon Beach NSW 2107 subject to the draft conditions of consent.

3.2 BACKGROUND

The Development Unit at its meeting held on the 21 January 2016 considered the Development Officer's report (refer **Attachment 1**) for determination of Development Application N0325/15 for alterations and additions to existing dwelling and construction of a new swimming pool at 9 Dress Circle Road, Avalon Beach NSW 2107 subject to the draft conditions of consent.

Despite the large height variation to policy of 25.4% the Development Unit considered that the merits of the application warranted support of the Assessing Officer's recommendation for approval as the non-compliance is a result of the existing garage and ground level of the dwelling. The proposed alterations and additions shall enable the existing dwelling to be extended without detrimental impacts to the built and natural environment or the adjoining properties. (Refer to discussion at Section 8.0 of the Assessing Officer's report)

3.3 POLICY IMPLICATIONS

The NSW Department of Planning requires that applications involving a variation to a development standard of more than 10% be referred to the elected Council for determination.

3.4 RELATED LEGISLATION

Council are the consent authority pursuant to Section 80 of the Environmental Planning and Assessment Act 1979.

3.5 FINANCIAL ISSUES

3.5.1 Budget

No implications unless Council's decision is challenged in the Land and Environment Court.

3.5.2 Resources Implications

No implications.

4.0 KEY ISSUES

- Variation of the Development standard for height
- Other issues as addressed within the assessing officer's report

5.0 ATTACHMENTS

Attachment 1: Assessing Officer's report to the Development Unit meeting of 21 January 2016.

6.0 SUSTAINABILITY ASSESSMENT

The relevant sustainability assessments have been addressed in the attached assessing officer's report.

Report prepared by

Warwick Lawrence

MANAGER, ADMINISTRATION & GOVERNANCE

**SUBJECT: N0325/15 - 9 Dress Circle Road, Avalon Beach NSW 2107 -
Alterations and additions to existing dwelling and
construction of a new swimming pool**

Meeting: Development Unit

Date: 21 January 2016

SUMMARY OF RECOMMENDATION

Consent with Conditions

REPORT PREPARED BY:	Angela Manahan
APPLICATION SUBMITTED ON:	21/08/2015
APPLICATION SUBMITTED BY:	ANDREW GARTH BARLOW TANYA MICHAELA BARLOW
OWNER(S):	ANDREW G BARLOW TANYA M BARLOW

RECOMMENDATION OF DEVELOPMENT OFFICER / PLANNER

That Council as the consent authority pursuant to Section 80 of the Environmental Planning and Assessment Act 1979 grant consent to Development Application N0325/15 for Alterations and additions to existing dwelling and construction of a new swimming pool at 9 Dress Circle Road, Avalon Beach NSW 2107 subject to the draft conditions of consent attached.

Report prepared by
Angela Manahan, Senior Planner

Andrew Pigott
MANAGER, PLANNING & ASSESSMENT

SUBJECT: N0325/15 - 9 DRESS CIRCLE ROAD, AVALON BEACH NSW 2107 Alterations and additions to existing dwelling and construction of a new swimming pool.

Determination Level:

Council

SUMMARY OF RECOMMENDATION

CONSENT WITH CONDITIONS

REPORT PREPARED BY:

Angela Manahan

APPLICATION SUBMITTED ON:

21 August 2015

APPLICATION SUBMITTED BY:

ANDREW AND TANYA BARLOW
9 DRESS CIRCLE ROAD
AVALON BEACH NSW 2107

OWNER(S):

MRS TANYA MICHAELA BARLOW
MR ANDREW GARTH BARLOW

1.0 SITE DETAILS

The site is known as 9 Dress Circle Road, Avalon Beach and has a legal description of Lot 77 in Deposited Plan 11462. The site is regular in shape and has a total area of 1226m². Vehicular and pedestrian access is gained via the 20.115m wide frontage of Dress Circle Road and the site is located on the south-western side of Dress Circle Road. The site experiences a fall of 16.12m from the south-western rear of the site, down towards the north-eastern frontage of the site, with a slope of approximately 26.6%. The site is currently occupied by a single dwelling. The property is surrounded by residential development to the north, east, south and west, primarily being two-storey dwellings. Dress Circle Road Reserve is located adjacent to the site to the north-east.

2.0 PROPOSAL IN DETAIL

The applicant seeks consent for the following works:

- Alterations and additions to the existing dwelling including;
 - New First Floor level, comprising three (3) Bedrooms, Study, En-suite, bathroom, Walk-in Robe and verandah to the north;
 - Internal stair;
 - Internal alterations to the existing Upper Ground Floor level;
 - New Upper Ground Floor level verandah to the north-east;
 - New Lower Floor level porch and Entry Foyer;
- New 1m high front and side fence;
- Construction of a new swimming pool;
- Associated landscaping;
- Associated earthworks and retaining walls.

3.0 STATUTORY AND POLICY CONSIDERATIONS

The site is zoned E4 - Environmental Living under Pittwater Local Environmental Plan 2014. Pursuant to the land use table in Part 2 of this instrument, the proposed development being alterations and additions to the existing dwelling and a swimming pool is permissible with consent.

The following relevant state, regional and local policies and instruments apply:

- Environmental Planning and Assessment Act, 1979 (the Act)
- Environmental Planning and Assessment Regulation 2000 (the Regulation)
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 (SEPP BASIX)
- State Environmental Planning Policy No 71 - Coastal Protection (SEPP 71)
- Pittwater Local Environmental Plan 2014 (PLEP 2014)
 - Acid Sulphate Soils Map - Class 5
 - Biodiversity Map
 - Geotechnical Hazard Map
 - Height of Buildings Map - 8.5m
 - Lot Size Map - 700m²
- Pittwater 21 Development Control Plan (P21 DCP)
 - Avalon Beach Locality
 - Geotechnical Risk Management Policy for Pittwater.

Pittwater 21 DCP identifies the land as being the following:

- Landslip Prone;
- Containing or adjoining Pittwater Spotted Gum Forest.

4.0 BACKGROUND

11 October 2010

Development Application N0485/10 for alterations and additions and a double carport at the subject site was approved by Council. No Construction Certificate has been issued for development consent N0485/10 and it appears this consent has lapsed.

21 August 2015

Development Application N0325/15 was lodged with Council. The application was notified to the adjoining property owners in accordance with Council's policy. The application was referred to Council's Senior Development Engineer and Natural Resources Officer for comments and/or recommendation. The site was inspected on 14/09/2015 and 21/10/2015.

26 October 2015

Additional information was requested to address concerns with the bulk and scale of the development, with particular regards to reducing non-compliance with the height and building envelope, and impacts upon trees.

16 November 2015

Additional information was received, which included an arborist report and amended plans.

5.0 NOTIFICATION

The application was notified to seven (7) adjoining property owners for a period of fourteen (14) days from 26 August through to 09 September 2015 in accordance with Council's Notification Policy. During this time, one (1) submission was received from 16 Plateau Road, Bilgola Plateau.

The submission raised concerns with potential view loss and requested height poles to be erected to determine the height of the proposed development. During the assessment of the application consultation with the objector revealed that he thought it was the property to the south-east of the subject site and as such has no problems with the proposed development. In light of this and given that the proposed amendments result in a lesser impact, re-notification of the amended plans was not considered necessary in this instance.

6.0 ISSUES

- 4.3 Height of Buildings
- 4.6 Exceptions to development standards
- A4.1 Avalon Beach Locality
- B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community
- D1.1 Character as viewed from a public place
- D1.5 Building colours and materials
- D1.11 Building envelope
- D1.16 Fences - Flora and Fauna Conservation Areas
- D1.17 Construction, Retaining walls, terracing and undercroft areas

7.0 COMPLIANCE TABLE

- T - Can the proposal satisfy the technical requirements of the control?
- O - Can the proposal achieve the control outcomes?
- N - Is the control free from objection?

Control	Standard	Proposal	T	O	N
Pittwater Local Environmental Plan 2014					
1.9A Suspension of covenants, agreements and instruments			Y	Y	Y
Zone E4 Environmental Living			Y	Y	Y
4.3 Height of buildings		Maximum height - 10.66m. See clause 4.6 for further discussion.	N	Y	Y
4.6 Exceptions to development standards		See discussion in Section 8.0.	Y	Y	Y

Control	Standard	Proposal	T	O	N
5.9 Preservation of trees or vegetation		See B4.7.	Y	Y	Y
5.10 Heritage conservation			Y	Y	Y
7.1 Acid sulfate soils		<i>Acid Sulphate Region 5.</i>	Y	Y	Y
7.2 Earthworks			Y	Y	Y
7.6 Biodiversity protection		See B4.7.	Y	Y	Y
7.7 Geotechnical hazards			Y	Y	Y
7.10 Essential services			Y	Y	Y
Pittwater 21 Development Control Plan 2014					
3.1 Submission of a Development Application and payment of appropriate fee			Y	Y	Y
3.2 Submission of a Statement of Environmental Effects			Y	Y	Y
3.3 Submission of supporting documentation - Site Plan / Survey Plan / Development Drawings			Y	Y	Y
3.4 Notification			Y	Y	Y
3.5 Building Code of Australia			Y	Y	Y
A1.7 Considerations before consent is granted			Y	Y	Y
A4.1 Avalon Beach Locality		See discussion in Section 8.0.	N	Y	Y
B1.3 Heritage Conservation - General (Amended 14/11/15 See B1.3)			Y	Y	Y
B1.3 Heritage Conservation - General			Y	Y	Y
B1.4 Aboriginal Heritage Significance (Amended 14/11/15 See B1.4)		<i>No apparent issues.</i>	Y	Y	Y
B1.4 Aboriginal Heritage Significance			Y	Y	Y
B3.1 Landslip Hazard			Y	Y	Y
B3.6 Contaminated Land and Potentially Contaminated Land			Y	Y	Y
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community		See discussion in Section 8.0.	N	N	Y
B5.2 Wastewater Disposal (Amended 14/11/15 See PLEP 7.10)			Y	Y	Y
B5.10 Stormwater Discharge into Public Drainage System			Y	Y	Y
B6.3 Off-Street Vehicle Parking Requirements			Y	Y	Y

Control	Standard	Proposal	T	O	N
B6.5 Off-Street Vehicle Parking Requirements - Low Density Residential (Amended 14/11/15 See B6.3)			Y	Y	Y
B8.1 Construction and Demolition - Excavation and Landfill (Amended 14/11/15 See B8.1)			Y	Y	Y
B8.1 Construction and Demolition - Excavation and Landfill			Y	Y	Y
B8.2 Construction and Demolition - Erosion and Sediment Management			Y	Y	Y
B8.5 Construction and Demolition - Works in the Public Domain			Y	Y	Y
C1.1 Landscaping		For comment see B4.7	N	N	Y
C1.2 Safety and Security			Y	Y	Y
C1.3 View Sharing			Y	Y	Y
C1.4 Solar Access			Y	Y	Y
C1.5 Visual Privacy			Y	Y	Y
C1.6 Acoustic Privacy			Y	Y	Y
C1.7 Private Open Space			Y	Y	Y
C1.12 Waste and Recycling Facilities (Amended 14/11/15 See C1.12)			Y	Y	Y
C1.12 Waste and Recycling Facilities			Y	Y	Y
C1.13 Pollution Control			Y	Y	Y
C1.17 Swimming Pool Safety		The proposed swimming pool is not supported. See B4.7 for comment.	-	-	-
C1.23 Eaves			Y	Y	Y
C1.24 Public Road Reserve - Landscaping and Infrastructure		No works are proposed in the road reserve area.	-	-	-
D1.1 Character as viewed from a public place		See clause A4.1 for further discussion.	N	Y	Y
D1.4 Scenic protection - General			Y	Y	Y
D1.5 Building colours and materials		See discussion in Section 8.0.	N	Y	Y
D1.8 Front building line		Minimum Front Building Line - 17.5m	Y	Y	Y

Control	Standard	Proposal	T	O	N
D1.9 Side and rear building line		Minimum Side Building Line - 1m to the south-east and 2.8m to the north-west. Minimum Rear Building Line - 13.2m.	Y	Y	Y
D1.11 Building envelope		See discussion in Section 8.0.	N	Y	Y
D1.14 Landscaped Area - Environmentally Sensitive Land		Minimum Landscaped Area - 60.4% or 740.3m ² (without variations).	Y	Y	Y
D1.16 Fences - Flora and Fauna Conservation Areas		See discussion in Section 8.0.	Y	Y	Y
D1.17 Construction, Retaining walls, terracing and undercroft areas		See discussion in Section 8.0.	Y	Y	Y
State Environmental Planning Policies and other					
SEPP (Building Sustainability Index: BASIX) 2004		BASIX Certificate: A226785_02, dated 20 August 2015.	Y	Y	Y

8.0 DISCUSSION OF ISSUES

4.3 Height of Buildings; and 4.6 Exceptions to development standards

The maximum height of the proposed development shall be 10.66 metres above the existing ground level. Clause 4.3 - Height of Buildings specifies a maximum building height of 8.5m for the subject site and the proposed development is numerically non-compliant with the development standard. As such a Clause 4.6 exception to vary the development standard is required. See assessment of Clause 4.6 in relation to the contravention of the maximum height below.

Consideration of Variation to development standard:

The applicant seeks to vary a development standard which requires the application of Clause 4.6 – Exceptions to development standards. Clause 4.6 (3) states:

Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

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

The applicant has submitted a written statement to support why compliance with the development standard is unreasonable and unnecessary and justification for the request to vary the standard. Clause 4.6 (4) states:

Development consent must not be granted for development that contravenes a development standard unless:

- (a) the consent authority is satisfied that:*

- (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
- (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) *the concurrence of the Director-General has been obtained.*

Council's assessment of the Clause 4.6 variation request is as follows:

Development Standard to be Varied

Pittwater Local Environmental Plan 2014 Clause 4.3 – Height of Buildings states:

"The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map."

The maximum building height for the subject site is 8.5 metres. The applicant seeks consent for alterations and additions to the existing dwelling, including a new first floor level. The proposed maximum height of the development is 10.66 metres above the existing ground level. As such quantitatively, the applicant seeks to vary the development standard by approximately 25.4%.

Objectives of the Development Standard

The objectives of Clause 4.3 – Height of Buildings are as follows:

- (a) *to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,*
- (b) *to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
- (c) *to minimise any overshadowing of neighbouring properties,*
- (d) *to allow for the reasonable sharing of views,*
- (e) *to encourage buildings that are designed to respond sensitively to the natural topography,*
- (f) *to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.*

Is compliance with the development standard unreasonable or unnecessary in the circumstances of this case

The submitted Clause 4.6 request seeks to establish that requiring compliance with the development standard is in this instance unreasonable or unnecessary because the non-compliance will ensure that the visual continuity of the streetscape is maintained with specific regards to the front setback, it shall not adversely impact the visual appearance of the development as viewed from the public domain and shall not cause any unreasonable impacts upon the adjoining properties. The variation request seeks to establish that the proposed development meets the objectives of development standard 4.3 – Height of Buildings and clause 4.6 – Exceptions to development standards.

The objectives of Clause 4.3 – Height of Buildings in PLEP 2014 are addressed as follows:

- The existing dwelling is largely one-storey with the garage located partially in-ground within the undercroft area, as such the existing development is a one-two storey dwelling. The proposed first floor level has been setback from the front alignment of the lower levels to minimise the appearance of the upper storey. Furthermore, the extension of the verandah to the north-east shall assist in minimising the appearance of the garage located on the lower floor level, which is located partially in-ground, and recessed approximately 3.5 metres

behind the verandah. The resultant dwelling shall be two-three storeys, however it is considered that the development shall not readily appear as a three-storey dwelling given its distance from the street and protruding architectural elements on the front elevation. The site exceeds the minimum landscaped area and it is recommended that additional canopy trees are provided within the front yard to further assist in blending the development into the natural environment. It is considered that the proposed development shall remain a dwelling within a landscaped setting, consistent with the desired character of the Avalon Beach locality.

- The adjoining properties are primarily one-two storey dwellings. The front north-eastern roof ridge shall be sited approximately 1.5 metres higher than the neighbour's roof to the south-east and shall be approximately 2.2 metres higher than the maximum height of the existing dwelling on the subject site. Given that the proposed first floor has been setback from the lower levels, the bulk and scale has been minimised and it is considered that the proposed height increase shall not be domineering in consideration of the adjoining properties and the existing streetscape. The generous front building line combined with the existing and proposed landscaping shall further ensure that the bulk and scale of the development is minimised. As such the proposed development is not considered to be incompatible with the height and scale of the surrounding development.
- The proposed development is fully compliant with clause C1.3 View Sharing and clause C1.4 Solar Access of P21 DCP and it is considered that the proposal shall not result in any unreasonable impacts upon the adjoining properties with regards to solar access and view loss. The proposal is not considered to impact upon views from the public domain.
- The proposed landscaping and earthworks in the rear yard are not supported and do not form part of this application. The proposed alterations and additions to the existing dwelling do not require any excavation or fill and as such the proposed development is considered to respond sensitively to the natural topography of the site.
- The subject site is not located within a heritage conservation area or within the immediate vicinity of any heritage items and it is considered that the proposed development shall not adversely impact heritage significance in the Avalon Beach locality. The proposal is largely consistent with Council's built form controls, with particular regards to setbacks and landscaped area. Subject to the deletion of the swimming pool and associated earthworks and landscaping, the proposed development will not require the removal of any significant trees and shall not result in any detrimental impacts upon the natural environment. Furthermore, it is recommended that additional canopy trees are planted within the front yard, being a minimum of two (2) additional trees. It is considered that the proposed development will not cause any adverse visual impacts on the natural environment, heritage consideration areas or heritage items.

The proposed development is considered to be consistent with the objectives of the E4 zone under clause 2.1 of PLEP 2014 which aims to provide low-impact residential development, integrated with the landform and landscape.

It has been demonstrated above that whilst the proposal does not comply with the development standard, it succeeds in achieving the objectives of the control. However, in consideration of *Four2Five Pty Limited v Ashfield Council* [2015] NSWLEC it is also necessary to demonstrate that there are particular circumstances to the site which justify contravening the development standard.

While the development standard is not said to be abandoned or destroyed by Council's actions in departing from the standard, it should be noted that that an approval was granted under development consent N0485/10 for a first floor level which also breached the maximum height limit

of 8.5 metres, when the height limit was a development control not a development standard. The proposed development is largely consistent with the approved first floor level under N0485/10, with regards to the size and scale of the upper level, and is approximately 0.5 metres lower than the maximum roof ridge previously approved by Council.

The non-compliance is a result of the existing garage on the lower floor level which is partially located below natural ground level. Strict compliance with the height development standard would require deletion of the proposed first floor level or relocation of the level towards the rear of the site, or alternatively the proposed additions located at the lower or ground floor levels. It is considered highly likely that an extension to the rear of the property would impact upon the existing trees within the rear yard, as indicated in the submitted Arborist report with regards to the proposed works in the rear of the site. Extension to the lower floor level would require excavation or alternatively the addition to be located to the front of the dwelling. It is considered that any substantial addition to the front of the property would adversely affect the visual impact of the existing streetscape, with the south-western side of Dress Circle Road characterised by dwellings with significant front setbacks and large landscaped areas within the front of the sites. As such it is considered that a compliant design could result in a development that is inconsistent with the existing streetscape and the surrounding properties, or have an adverse impact upon the natural environment and existing trees, inconsistent with the objectives of clause 4.3 – Height of Buildings.

The site is constraint by the location of the existing development, established front building line and existing trees. It is the circumstances of the siting of the existing dwelling, and in particular the existing garage, that results in a variation to the maximum building height. In consideration of the site circumstances and the previous approval granted by Council, strict compliance with the development standard is considered unnecessary and unreasonable in this particular instance.

Is there sufficient environmental planning grounds to justify contravening the development standard

The following reasons are considered to be sufficient environmental planning grounds to vary the height of building development standard:

- Throughout the process of the assessment, the proposal was amended to minimise the extent of non-compliance with the maximum 8.5 metre height limit by reducing the size of the first floor level and providing a larger setback to the front of the dwelling, where the existing ground level is at its lowest point. Due to the existing garage on the lower floor level, full compliance with the maximum 8.5 metre height limit is considered to be unachievable without deletion of a significant portion of the proposed first floor. The proposed first floor addition allows for the development to maintain the characteristics of the front building line established within the streetscape of Dress Circle Road, being large setbacks with houses located to the centre/rear of the sites. Furthermore, the new addition is located entirely over the existing building footprint, ensuring there is no adverse impact to the natural environment;
- The proposed development is largely consistent with the scale and height of the development approved under development consent N0485/10;
- The variation satisfies the objectives of Clause 4.3 – Height of Buildings and the objectives of the E4 zone under Clause 2.1 of PLEP 2014;
- The proposed development is fully compliant with Council's built form controls relating to setbacks and landscaped area, with only a minor breach of the building envelope, and the existing and proposed planting shall visually reduce the built form. As such the development shall not be inconsistent with the scale of surrounding developments and the existing streetscape;
- The variation will not result in any adverse impacts upon the surrounding built and natural environment;

- The variation will not result in any unreasonable impacts upon the adjoining properties with regards to visual impact, solar access, visual privacy and view loss.

Is the proposed development in the public interest

The proposed development is considered to be in the public interest if it is consistent with the objectives of the development standard and the objectives of the E4 zone. As discussed above, the assessment has found that the proposed development is consistent with objectives of both clause 4.3 – Height of Buildings and the E4 zoning.

Is contravention of the development standard justified

Clause 4.6 (1) outlines the objectives of the Clause:

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

The above assessment provides justification for the variation of Clause 4.3 – Height of Buildings by demonstrating that in this instance compliance with the development standard is unreasonable or unnecessary and there are sufficient environmental planning grounds to warrant variation of the development standard. It is considered that strict compliance of the development standard in this instance would be inconsistent with the objectives of Clause 4.6 as it would not allow for the flexible application of development standards where it is demonstrated that the development standard is unreasonable or unnecessary and there are sufficient environmental planning grounds to justify contravening the development standard.

In this regard, it is considered that the variation request is justified and well founded.

Conclusion

As discussed above, the non-compliance is in response to the existing garage and ground level of the dwelling. The proposed alterations and additions shall enable the existing dwelling to be extended without detrimental impacts to the built and natural environment or the adjoining properties. Council is satisfied that the exception to the development standard is justified and is of the opinion that granting of consent to the development application is consistent with the aims of Clause 4.6 as it allows for an appropriate degree of flexibility to development standards. Furthermore, the assessment has found that strict application of the development standard would be unreasonable and unnecessary given that the development will readily achieve the local planning objectives for the site.

A4.1 Avalon Beach Locality; and D1.1 Character as viewed from a public place

The desired character of the Avalon Beach locality requires that:

“The locality will remain primarily a low-density residential area with dwelling houses a maximum of two storeys in any one place in a landscaped setting, integrated with the landform and landscape.” and

“A balance will be achieved between maintaining the landforms, landscapes and other features of the natural environment, and the development of land.”

The proposed development shall be a maximum of three (3) storeys in any one place. However, this

is due to the slope of the site, falling south-west to north-east, and the existing garage which is located on the lower ground level. It is noted that with the exception of the area above the garage, the dwelling is a maximum of two (2) storeys in any one place. As such the dwelling shall predominantly be a maximum of two (2) storeys. The architectural design of the front façade proposes the first floor level to be setback with the garage also recessed to minimise the visual appearance of the three storeys. The proposal does not require the removal of any significant trees or vegetation, with no excavation or fill proposed. As such the development shall not impact upon the existing landform, landscape or natural environment. The proposed development maintains the desired character of houses being set back from the street and the proposal shall remain a dwelling within a landscaped setting. As such it is considered that the proposed development is consistent with the desired character of the Avalon Beach locality.

Furthermore, the proposal provides various design elements including verandahs and projecting built form elements to articulate the front façade. The generous front setback and recommendation for additional canopy trees allows for the built form to be secondary to landscaping and it is considered that the proposed development shall not dominate the streetscape. As such the proposal is also consistent with the outcomes of clause D1.1 of P21 DCP.

B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community

Council's Natural Environment Officer provided the following comments in regards to the proposed development:

The property contains a modified landscape which slopes up from the road and contains several native canopy trees of which the species are remnant of Pittwater Spotted Gum Forest. The proposed works include alterations and addition to the existing dwelling and construction of a pool in the rear yard. An arborist report has been submitted (rainTree consulting, August 2010) which is five years old and does not provide an accurate assessment the submitted plans against the existing trees on site. Therefore before the application can be further assessed an updated arborist report is required to be submitted which shows assessment of the submitted plans (J.D. Evans and Company, 1749-1 to 11, 14/7/2015) with existing trees on site.

A new arborist report has been submitted (rainTree consulting, 5 November 2015) which assesses seventeen (17) trees potentially impacted by the proposed works. None have been proposed for removal however the report states that due to the large incursion into the TPZ and SRZ of Trees 12, 13, 15, 16 and 16A they are likely to decline in health as a result. This is not acceptable as all trees were found to be in good health and condition with very high landscape significance. Therefore these proposed works in their current form cannot be supported.

*A landscape plan has been submitted (SiteDesign Studios, 15-816 Rev A, 4/8/15) which proposes a selection of native and exotic trees, shrubs and ground covers. One (1) species is not appropriate and must be removed as it is a listed noxious weed – *Raphiolepis* 'oriental pearl'. Therefore prior to issue of the Construction Certificate an amended landscape plan is required to be submitted which shows removal of *Raphiolepis* 'Oriental Pearl' and replacement with a locally native species chosen from the list provided in the Native Gardening booklet available on the Council website.*

The submitted Arborist report indicates that the proposed works within the rear yard, being the swimming pool, barbeque area and associated landscaping, terracing, excavation, fill and retaining walls, is likely to have an adverse impact upon the existing trees. Given that these trees are all determined to be in good health and condition removal of the trees is not supported. In light of the Arborist report, it is considered that these works within the rear will detrimentally impact upon the existing trees and as such cannot be supported. Therefore it is recommended that all works associated with the swimming pool, barbeque area and landscaping to the rear of the dwelling are deleted from the application. A condition of consent shall be applied to state that no works are permitted within the rear yard and no approval is permitted for these works under the development

consent. A further condition of consent which requires the architectural drawings to be amended to delete all reference to these works shall also be applied.

With regards to the proposed alterations and additions to the dwelling and works within the front yard. The Arborist report confirms that the proposed alterations and additions shall have minimal impacts upon the trees within the front portion of the site and raises no concerns with the retention of trees within these areas. As such it is considered that the proposed alterations and additions and the front fence are acceptable as they shall not result in any adverse impacts upon the existing trees. One (1) tree is required to be removed to accommodate the proposed alterations and additions, however this is an exempt species and can be removed without consent. As such the proposed alterations and additions to the dwelling and front fence are supported. It is also recommended that a minimum of two (2) additional canopy trees are planted within the front yard to assist in screening the development from the public domain and soften the visual impact of the development.

D1.5 Building colours and materials

The applicant proposes the following colour scheme for the proposed development;

Roof - "Charcoal Chintz"
Walls - Colorbond "Dune"

"Charcoal Chintz" is considered to be dark and earthy and compliant with the control. "Dune" is a light colour and not considered to be dark and earthy, therefore should the application be approved a condition of consent is recommended to amend the rendered wall colour to a darker tone to maintain consistency with the control.

D1.11 Building envelope

The original proposal resulted in a significant breach of the prescribed building envelope on the eastern and western elevations as a result of the proposed first floor level. Concern was raised with regards to the size of the first floor level and it was considered that the proposal did not minimise the bulk and scale of the built form. Amended plans were received which reduced the overall size and scale of the first floor level and increased the building setbacks to the side and front boundaries to minimise the breach of the building envelope.

The proposed development (as amended) still results in a breach of the building envelope. While the first floor level has been reduced in size it is still considered to be excessive and it is considered that it could be reduced further without impacting the amenity of the occupants. In particular the main area of non-compliance is a result of a proposed study on the first floor level which protrudes out from the main bulk of the first floor. It is considered that if the study was deleted the non-compliance with the building envelope would be minimal, being primarily the verandah roof and a minor portion of the dwelling roof, and the first floor level would be reduced in scale to an acceptable level. Therefore it is recommended that the first floor study be deleted and amended plans provided prior to the issue of a construction certificate, the external wall of the first floor level is to be a minimum of 4 metres from the south-eastern side boundary. It is also recommended that additional canopy trees are planted within the front yard to soften the visual impact of the development as viewed from the street. Subject to the above recommended it is considered that the bulk and scale of the built form is minimised, and that the proposal shall respond to the spatial characteristics of the surrounding built and natural environment. As such, subject to the recommended amendments, the proposed development is considered to be consistent with the outcomes of clause D1.11 and the Avalon Beach locality and the minor non-compliance with the building envelope is supported.

D1.16 Fences - Flora and Fauna Conservation Areas

The applicant seeks consent to construct a 1m high front and side fence within the front setback area. The fence is to be a metal palisade fence with masonry pillars. Clause D1.16 requires that fences within the front setback area are constructed of open, see-through, dark-coloured materials and a maximum of 1m in height. The proposed fence is consistent with the clause, however should the application be approved a condition of consent is recommended to ensure the fence is a dark tone.

D1.17 Construction, Retaining walls, terracing and undercroft areas

The proposal includes new terrace areas to the rear of the property which requires varying degrees of cut and fill. The proposed terracing is considered to be inconsistent with clause D1.17 which aims to minimise retaining walls and terracing for the provision of outdoor entertaining areas. Furthermore, the submitted Arborist report raises concerns with regards to potential damage/decline of trees as a result of these works. As such the proposed landscape works are not supported and it is recommended that the pool and associated landscaping/terracing is deleted from the application.

9.0 CONCLUSION

The Development Application has been assessed in accordance with the provisions of Section 79C of the Environmental Planning and Assessment Act 1979, Pittwater Local Environmental Plan, Pittwater 21 Development Control Plan and other relevant policies as listed at item 3.0.

The assessment of the application has demonstrated that the proposal results in non-compliance with Council's requirements relating to height and building envelope. The encroachments of the height and building envelope have been determined as being acceptable as they shall not result in any significant adverse impacts. Despite the non-compliances, the overall built form of the development is largely consistent with the prescribed built form controls and the proposal is considered to be consistent with the outcomes of each clause and the desired character of the Avalon Beach locality. The proposal is permissible within the E4 - Environmental Living zone as defined by Pittwater Local Environmental Plan 2014. The development application is supported by a clause 4.6 variation which is well founded and in consideration of the siting of the existing dwelling compliance with clause 4.3 - Height of Buildings in this instance is considered to be unreasonable and unnecessary.

The proposal is considered to be consistent with the relevant statutory and policy controls and outcomes. The impacts of the alterations and additions has been addressed and considered to result in an acceptable impact subject to the recommended conditions. Accordingly, the application is recommended for approval.

RECOMMENDATION OF DEVELOPMENT OFFICER / PLANNER

That Council as the consent authority pursuant to Section 80 of the Environmental Planning and Assessment Act 1979 grant consent to Development Application N0325/15 for alterations and additions to the existing dwelling and construction of a new swimming pool at 9 Dress Circle Road, Avalon Beach subject to the conditions of consent.

It is noted that the proposed development seeks to vary development standard Clause 4.3 Height of

Buildings by approximately 25.4% and therefore the application will be required to be determined by Council.

Report prepared by

Angela Manahan
SENIOR PLANNER

Date: 21 January 2016

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**CONSENT NO: N0325/15
ENVIRONMENTAL PLANNING & ASSESSMENT ACT, 1979 (AS AMENDED)
NOTICE TO APPLICANT OF DETERMINATION
OF A DEVELOPMENT APPLICATION**

Applicant's Name and Address:
ANDREW AND TANYA BARLOW
9 DRESS CIRCLE ROAD
AVALON BEACH NSW 2107

Being the applicant in respect of Development Application No N0325/15

Pursuant to section 80(1) of the Act, notice is hereby given of the determination by Pittwater Council, as the consent authority, of Development Application No **N0325/15** for:

Alterations and additions to existing dwelling and construction of a new swimming pool.

At: : 9 DRESS CIRCLE ROAD, AVALON BEACH NSW 2107 (Lot 77 DP 11462)

Decision:

The Development Application has been determined by the granting of consent based on information provided by the applicant in support of the application, including the Statement of Environmental Effects, and in accordance with

- **Architectural drawings 1749-1 through to 1749-9, all Revision A, all dated 09 November 2015, prepared by J.D. Evans and Company;**
- **Landscape Plans Site Plan, JB 15-816-01, Front Garden JB 15-816-03 and Planting Palette JB 15-816-04, all dated 04 August 2015, prepared by Site Design Studios;**
- **Geotechnical Risk Management Report Ref: J0533, dated 03 August 2015, prepared by White Geotechnical Group;**
- **Arboricultural Assessment Report, dated 05 November 2015, prepared by RainTree Consulting.**

as amended in red (shown clouded) or as modified by any conditions of this consent.

The reason for the imposition of the attached conditions is to ensure that the development consented to is carried out in such a manner as to achieve the objectives of the Environmental Planning and Assessment Act 1979 (as amended), pursuant to section 5(a) of the Act, having regard to the relevant matters for consideration contained in section 79C of the Act and the Environmental Planning Instruments applying to the land, as well as section 80A of the Act which authorises the imposing of the consent conditions.

Endorsement of date of consent _____

Mark Ferguson
GENERAL MANAGER
Per:

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Conditions of Approval

This consent is not an approval to commence building work. The works associated with this consent can only commence following the issue of the Construction Certificate.

Note: Persons having the benefit of development consent may appoint either a council or an accredited certifier as the principal certifying authority for the development or for the purpose of issuing certificates under Part 4A of the Environmental Planning and Assessment Act. When considering engaging an accredited certifier a person should contact the relevant accreditation body to ensure that the person is appropriately certified and authorised to act in respect of the development.

A. Prescribed Conditions:

1. All works are to be carried out in accordance with the requirements of the Building Code of Australia.
2. In the case of residential building work for which the Home Building Act 1989 requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.
3. A sign must be erected in a prominent position onsite only showing:
 1. the name, address and telephone number of the Principal Certifying Authority for the work, and
 2. the name of the principal contractor or the person responsible for the works and a telephone number on which that person may be contacted outside working hours, and
 3. that unauthorised entry to the work site is prohibited.The sign must to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
4. Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
 1. in the case of work for which a principal contractor is required to be appointed:
 - i. The name and licence number of the principal contractor, and
 - ii. The name of the insurer by which the work is insured under Part 6 of that Act.
 2. in the case of work to be done by an owner-builder:
 - i. The name of the owner-builder, and
 - ii. If the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.
 3. If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under a or b above becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information
5. If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause (2) becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to

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which the work relates (not being the Council) has given the Council written notice of the updated information.

6. This approval/consent relates only to the new work nominated on the approved consent plans and does not approve or regularise any existing buildings or structures within the property boundaries or within Council's road reserve.
7. Any building work in relation to the development consent is to be carried out in accordance with the requirements of the Building Code of Australia.

B. Matters to be incorporated into the development and maintained over the life of the development:

1. The following works located within the rear yard to the south-west of the dwelling (as identified in Landscape Plan JB 15-816-01 and JB 15-816-02, dated 04 August 2015, prepared by Site Design Studios) are not approved under this development consent and are to be deleted from the architectural and landscape drawings:
 - Swimming pool;
 - Terracing of the lawn area;
 - BBQ and Alfresco area;
 - Alterations or extension to the existing steps;
 - Any associated earthworks, retaining walls, excavation or landfill, decking or terracing.

No works are approved in the area to the south-west of the dwelling.

2. The First Floor level of the dwelling shall maintain a minimum setback from the south-eastern external wall to the south-eastern boundary of 4 metres and a minimum setback from the north-western external wall to the north western boundary of 4.3 metres.
3. If any Aboriginal Engravings or Relics are unearthed all work is to cease immediately and the Aboriginal Heritage Office (AHO) and Office of Environment and Heritage (OEH) are to be notified.
4. The recommendation of the risk assessment required to manage the hazards as identified in Geotechnical Report prepared by White Geotechnical Group are to be incorporated into the construction plans.
5. Prior to the completion of works, all declared noxious weeds are to be removed/controlled in accordance with the Noxious Weeds Act 1993. Environmental weeds are to be removed and controlled. Refer to Pittwater Council website http://www.pittwater.nsw.gov.au/environment/noxious_weeds for noxious/environmental weed lists.
6. No environmental weeds are to be planted on the site. Refer to Pittwater Council website www.pittwater.nsw.gov.au/environment/noxious_weeds for environmental weed lists.
7. Any new fencing (with the exception of swimming pool fencing) is to be made passable to native wildlife. Hole dimensions are to be a minimum of 150mm wide x 100mm high at ground level spaced at 6 metre intervals.

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8. Domestic pet animals are to be kept from entering wildlife habitat areas at all times. Dogs and cats are to be kept in an enclosed area or on a leash such that they cannot enter areas of bushland or foreshore, unrestrained, on the site or on surrounding properties or reserves. Ferrets and rabbits are to be kept in a locked hutch/run at all times.
9. Any vegetation planted onsite outside approved landscape zones is to be consistent with:
 - . Species listed in the Ecological Sustainability Plan or Bushland Management Plan (if applicable)
 - a. Species listed from the Endangered Ecological Community
 - b. Locally native species growing onsite and/or selected from the list pertaining to the vegetation community growing in the locality as per the vegetation mapping and Native Plants for Your Garden available on the Pittwater Council website
http://www.pittwater.nsw.gov.au/environment/species_lists
10. No building materials or other materials are to be placed on Bushland vegetation. Sediment is not to leave the site or enter areas of Bushland vegetation, and the appropriate sediment fencing is to be installed.
11. At least two (2) canopy trees are to be provided in the front yard (in addition to those already existing), which at maturity will achieve a canopy height greater than 8.5 metres, to visually reduce the height, bulk and scale of the building. Species selection is to incorporate locally native species. This screen planting is to be retained over the life of the development and replaced if they should die or be destroyed or removed.
12. In accordance with Pittwater Council's DCP Control B4.22 Protection of Trees and Bushland Vegetation, all existing trees as indicated in the Survey Plan and/or approved Landscape Plan shall be retained except where Council's prior written consent has been obtained, for trees that stand within the envelope of approved development areas and removal is approved through an arborist report. For all other tree issues not related to a development application, applications must be made to Council's Tree Management Officers.
13. No water pollution shall result from the operation of any plant or equipment or activity carried out.
14. Noise from the operation of any plant or equipment at the premises shall comply with the noise provisions of the Protection of the Environment Operations Act, 1997.
15. No odour nuisance to the public or any adjoining premises, shall be created by the operation of any plant or equipment or any procedure carried out at the premises.
16. No emissions causing air pollution shall be created by the operation of any plant equipment or any procedure carried out at the premise.
17. New electrical connections are to be carried out using underground cabling.
18. Materials and colour schemes are to be in accordance with the sample scheme approved by Council, being "Charcoal Chintz" for the roof. Colorbond "Dune" is not acceptable for the external walls which is to be a dark and earthy tone.
19. The front and side fencing within the front setback area is to have a maximum height of 1 metre above existing ground level and shall be finished in a dark tone.

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20. The commitments identified in the BASIX Certificate and on the plans or specifications are to be fulfilled and maintained for the life of the development.

C. Matters to be satisfied prior to the issue of the Construction Certificate:

Note: All outstanding matters referred to in this section are to be submitted to the accredited certifier together. Incomplete Construction Certificate applications / details cannot be accepted.

1. Submission of construction plans and specifications and documentation which are consistent with the approved Development Consent plans, the requirements of Building Code of Australia and satisfy all conditions shown in Part B above are to be submitted to the Principal Certifying Authority.
2. The Principal Certifying Authority must be provided with a copy of plans that a Quick Check agent/Sydney Water has stamped before the issue of any Construction Certificate.
3. The person having the benefit of this consent is required to notify the Principal Certifying Authority to ensure that the following critical stage inspections are undertaken, as required under clause 162A(4) of the Environmental Planning and Assessment Regulation 2000:
 1. after excavation for, and prior to the placement of, any footings, and
 2. prior to pouring any in-situ reinforced concrete building element, and
 3. prior to covering of the framework for any floor, wall, roof or other building element, and
 4. prior to covering waterproofing in any wet areas, and
 5. prior to covering any stormwater drainage connections, and
 6. after building work has been completed and prior to any occupation certificate being issues in relation to the building.

To allow a Principal Certifying Authority to carry out critical stage inspections, at least 48 hours notice must be given before building work is commenced and prior to further work being undertaken.

4. Construction works approved by this consent must not commence until:
 1. Construction Certificate has been issued by a Principal Certifying Authority
 2. a Principal Certifying Authority has been appointed and Council has been notified in writing of the appointment, and
 3. at least 2 days notice, in writing has been given to Council of the intention to commence work.
5. Structural Engineering details relating to the alterations and additions are to be submitted to the Accredited Certifier or Council prior to release of the Construction Certificate. Each plan/sheet is to be signed by a qualified practising Structural Engineer with corporate membership of the Institute of Engineers Australia (M.I.E), or who is eligible to become a corporate member and has appropriate experience and competence in the related field.

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6. Prior to the issue of a Construction Certificate, the architectural drawings and Landscape Plan are to be amended to reflect the following:
 - No works to the south-west of the dwelling are permitted under this development consent. The swimming pool, BBQ and Alfresco area, and any landscaping, earthworks, retaining walls, excavation or landfill, terracing and decking within the rear yard is to be deleted;
 - The first floor level Study is to be deleted and the First Floor Plan is to be amended to provide a minimum setback from the external wall of the dwelling to the south-eastern side boundary of 4 metres.
 - A minimum of two (2) additional canopy trees are to be provided in the front yard in accordance with condition B11.
 7. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier.
 8. Drainage plans including specifications and details showing the site stormwater management are to be submitted to the Accredited Certifier with the Construction Certificate application. Such details are to be accompanied by a certificate from (as appropriate) either a Licensed plumber or qualified practicing Civil Engineer with corporate membership of the Institute of Engineers Australia (M.I.E), or who is eligible to become a Corporate member and has appropriate experience and competence in the related field, that the stormwater management system complies with the requirements of section 3.1.2 Drainage of the Building Code of Australia Housing Provision and AS/NZS 3500.3.2 - Stormwater Drainage. The details shall include disposal of site stormwater (if the site is in a known slip area the stormwater disposal system must comply with the recommendations of a Geotechnical Engineers Report).
- Note: Where Council is the Principal Certifying Authority 3 sets of plans/specifications are to be submitted.
9. Civil engineering details of the proposed excavation/landfill are to be submitted to the Accredited Certifier or Council with the Construction Certificate application. Each plan/sheet is to be signed by a qualified practising Civil Engineer who has corporate membership of the Institution of Engineers Australia (M.I.E) or who is eligible to become a corporate member and has appropriate experience and competence in the related field.
 10. External glazing must be of low glare and reflectivity. The reflectivity index (expressed as a percentage of the reflected light falling upon any surface) of all external glazing is to have a maximum reflectivity index of 25%. Written confirmation of the reflectivity index of the material is to be submitted with the Construction Certificate. (Note: the reflectivity index of glazing elements can be obtained from glazing manufacturers. Glass with mirrored or reflective foil finishes is unlikely to achieve compliance with this requirement. This is to ensure that excessive glare or reflectivity nuisance from glazing does not occur as a result of the development)
- Roofing materials must be of low glare and reflectivity. Details of finished external surface materials, including colours and textures must be provided to the Certifying Authority.
11. The finished surface materials, including colours and texture of any building, shall be dark and earthy tones. Colorbond "Dune" is considered to be too light and not dark and earthy, the colour for the external walls is to be amended to a dark and earthy tone. A satisfactory

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specification which achieves this shall be submitted to the Accredited Certifier or Council with the Construction Certificate application in the form of a Schedule of Finishes.

12. Plans and details demonstrating that the commitments identified in the BASIX Certificate that apply to the construction certificate or complying development plans and specifications are fulfilled.

D. Matters to be satisfied prior to the commencement of works and maintained during the works:

Note: It is an offence to commence works prior to issue of a Construction Certificate.

1. The hours of construction are restricted to between the hours of 7.00am and 5.00pm Monday - Friday and 7.00am to 1.00pm on Saturdays. No works are to be carried out on Sundays or Public Holidays. Internal building work may be carried out at any time outside these hours, subject to noise emissions from the building or works not being audible at any adjoining boundary.

Note: This condition does not apply in relation to Crown building work that is certified, in accordance with Section 116G of the Act, to comply with the technical provisions of the States building laws.

2. Any proposed demolition works shall be carried out in accordance with the requirements of AS2601-2001 The Demolition of Structures.

Amongst others, precautions to be taken shall include compliance with the requirements of the WorkCover Authority of New South Wales, including but not limited to:

1. Protection of site workers and the general public.
2. Erection of hoardings where appropriate.
3. Asbestos handling and disposal where applicable.
4. Any disused service connections shall be capped off.

Council is to be given 48 hours written notice of the destination/s of any excavation or demolition material. The disposal of refuse is to be to an approved waste disposal depot.

3. A stamped copy of the approved plans is to be kept on the site at all times, during construction.
4. All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with appropriate professional standards.
5. The site must be fenced throughout demolition and/or excavation and must comply with WorkCover New South Wales requirements and be a minimum of 1.8m in height.
6. Where excavations extend below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation must preserve and protect the building from damage and, if necessary, underpin and support the adjoining building in an approved manner.

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7. Temporary sedimentation and erosion controls are to be constructed prior to commencement of any work to eliminate the discharge of sediment from the site.
8. Sedimentation and erosion controls are to be effectively maintained at all times during the course of construction and shall not be removed until the site has been stabilised or landscaped to the Principal Certifying Authority's satisfaction.
9. Adequate measures shall be undertaken to remove clay from vehicles leaving the site so as to maintain public roads in a clean condition.
10. Personnel with appropriate training, or demonstrated knowledge and experience in erosion and sediment control shall be responsible for supervising the installation and maintenance of approved erosion and sediment control measures – during and after construction and until the site has been restored to the satisfaction of council.
11. No works are to be carried out in Council's Road Reserve without the written approval of the Council.
Note: Separate approval is required for access driveways, paths, connections to underground services (stormwater, gas, sewer, electricity, etc.), and landscaping works within Council's Road Reserve.
12. No skip bins or materials are to be stored on Council's Road Reserve.
13. A clearly legible *Site Management Sign* is to be erected and maintained throughout the course of the works. The sign is to be centrally located on the main street frontage of the site and is to clearly state in legible lettering the following:
 1. The builder's name, builder's telephone contact number both during work hours and after hours.
 2. That no works are to be carried out in Council's Road Reserve without prior application and approval of a Road Opening Permit from Council.
 3. That a Road Opening Permit issued by Council must be obtained for any road openings or excavation within Council's Road Reserve associated with development of the site, including stormwater drainage, water, sewer, electricity, gas and communication connections. During the course of the road opening works the Road Opening Permit must be visibly displayed at the site.
 4. That no skip bins or materials are to be stored on Council's Road Reserve.
 5. That the contact number for Pittwater Council for permits is 9970 1111.
14. Demolition works must be carried out in compliance with WorkCovers *Short Guide to Working with Asbestos Cement* and Australian Standard AS 2601 2001 *The Demolition of Structures*. The site must be provided with a sign containing the words **DANGER ASBESTOS REMOVAL IN PROGRESS** measuring not less than 400mm x 300mm and be erected in a prominent visible position on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos cement has been removed from the site and disposed to a lawful waste disposal facility.
All asbestos laden waste, including flat, corrugated or profiled asbestos cement sheets must be disposed of at a lawful waste disposal facility. Upon completion of tipping operations the applicant must lodge to the Principal Certifying Authority, all receipts issued by the receiving tip as evidence of proper disposal.
Adjoining property owners are to be given at least seven (7) days notice in writing of the intention to disturb and remove asbestos from the development site.

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E. Matters to be satisfied prior to the issue of Occupation Certificate:

Note: Prior to the issue of an Occupation Certificate the principal certifying authority is to ensure that Council's assets, including road, kerb and gutter and drainage facilities adjacent or near to the site have not been damaged as a result of the works. Where such damage has occurred, it is to be repaired to Council's written satisfaction prior to the issue of an Occupation Certificate or suitable arrangements put in place to effect those repairs at a future date to Council's written satisfaction. Should this process not be followed, Council will pursue action against the principal accredited certifier in relation to the recovery of costs to effect such works.

Note: It is an offence to occupy the building or part thereof to which this consent relates prior to the issue of an Occupation Certificate.

1. An Occupation Certificate application stating that the development complies with the Development Consent, the requirements of the Building Code of Australia and that a Construction Certificate has been issued must be obtained before the building is occupied or on completion of the construction work approved by this Development Consent.
2. All existing and /or proposed dwellings/sole occupancy units are to have approved hard-wired smoke alarms installed and maintained over the life of the development. All hard-wired smoke alarms are to be Australian Standard compliant and must be installed and certified by any appropriately qualified electrician prior to the issue of any Occupation Certificate.
3. Prior to issue of the Occupation Certificate, Form 3 of the Geotechnical Risk Management Policy (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier.
4. The stormwater drainage system must be constructed and completed in accordance with the approved design and relevant Australian Standards.

A plan showing pipe locations and diameters of the stormwater drainage system, together with certification by a Licensed Plumber or qualified practicing Civil Engineer that the drainage system has been constructed in accordance with the approved design and relevant Australian Standards must be provided.

5. Restoration of all damaged public infrastructure caused as a result of the development to Council's satisfaction. Council's written approval that all restorations have been completed satisfactorily must be obtained and provided to the Private Certifying Authority with the Occupation Certificate application.
6. Street numbers are to be affixed so that they are clearly displayed and visible from a public place.
7. Certification is to be provided that the commitments identified in the BASIX Certificate have been fulfilled.

G. Advice:

1. Failure to comply with the relevant provisions of the *Environmental Planning and Assessment Act, 1979* (as amended) and/or the conditions of this Development Consent may result in the serving of penalty notices (on-the-spot fines) under the summary offences provisions of the

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above legislation or legal action through the Land and Environment Court, again pursuant to the above legislation.

2. Dial before you dig: Prior to excavation the applicant is advised to contact Australia's National Referral Service for Information on Underground Pipes and Cables telephone 1100 or www.1100.com.au
3. It is the Project Managers responsibility to ensure that all of the Component Certificates/certification issued during the course of the project are lodged with the Principal Certifying Authority. Failure to comply with the conditions of approval or lodge the Component Certificates/certification will prevent the Principal Certifying Authority issuing an Occupation Certificate.
4. In accordance with Section 95(1) of the EPA Act 1979, this development consent lapses 5 years after the date from which this consent operates if the development is not commenced.
5. To ascertain the date upon which a consent operates, refer to Section 83 of the *Environmental Planning and Assessment Act, 1979* (as amended).
6. Should any of the determination not be acceptable, you are entitled to request reconsideration under Section 82A of the Environmental Planning and Assessment Act, 1979. Such request to Council must be made in writing, together with appropriate fees as advised at the time of lodgement of such request, within 6 months of the determination.
7. If you are dissatisfied with this decision, Section 97 of the Environmental Planning and Assessment Act, 1979, gives you a right of appeal to the Land and Environment Court within 6 months of the date of endorsement of this Consent.
8. The approved plans must be submitted to a Sydney Water Quick Check agent or Customer Centre to determine whether the development will affect Sydney Waters sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met. The approved plans will be appropriately stamped. For Quick Check agent details please refer to the web site at www.sydneywater.com.au then see Building Developing and Plumbing then Quick Check, or telephone 13 20 92.
9. This approval does not prejudice any action in respect of upgrading the building pursuant to the provisions of the Section 121B of the *Environmental Planning and Assessment (Amendment) Act, 1997*.

LOCALITY MAP



NOTIFICATION PLAN

C12.3	N0085/14 - 39 Cabbage Tree Road Bayview - Construction of 2 dwellings under SEPP Housing for Seniors or People with a Disability 2004 and strata subdivision into two lots
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Meeting: Sustainable Towns and Village Committee

Date: 15 February 2016

COMMUNITY STRATEGIC PLAN STRATEGY: Land Use & Development

COMMUNITY STRATEGIC PLAN OBJECTIVE:

- To deliver a comprehensive suite of development controls that improve the liveability of the area

DELIVERY PROGRAM ACTION:

- To provide an effective development assessment and determination process
-

1.0 EXECUTIVE SUMMARY

1.1 SUMMARY

The Sustainable Towns and Village Committee at its meeting held on 20 April 2015 considered the Assessing Officer's report for refusal of Development Application N0085/14 for construction of 2 dwellings under SEPP Housing for Seniors or People with a Disability 2004 and strata subdivision into two lots at 39 Cabbage Tree Road Bayview.

The Committee resolved that the recommendation of the Development Unit not be endorsed and that the application be deferred to allow for:

1. *the applicant to provide written evidence in regards to the provision of self care services, and*
2. *Council to obtain legal advice on that provided by Staunton and Co Barristers on permissibility and the servicing management proposal*

In accordance with this recommendation, the applicant provided a response in relation to the request for written evidence in regards to the provision of self care services. This was then referred to Council's solicitors for advice. Council's solicitors advised that the draft service management plan and draft service agreement were not acceptable. This was communicated to the applicant who subsequently provided revised documentation. This revised documentation was provided to Council's solicitors who advised that the documentation was not acceptable (**see confidential Attachment**).

The Development Unit at its meeting held on 26 November 2015 considered the Assessing Officer's updated report (**see Attachment 1**). The Development Unit supported the Officer's recommendation for refusal of the application.

2.0 RECOMMENDATION

That Council as the consent authority pursuant to Section 80 of the Environmental Planning and Assessment Act 1979 refuse Development Application N0085/14 for construction of 2 dwellings under SEPP Housing for Seniors or People with a Disability 2004 and strata-subdivision into two lots at 39 Cabbage Tree Road, Bayview NSW 2104 for the reasons outlined in the draft refusal notice attached.

3.0 BACKGROUND

3.1 PURPOSE

To report this application back to Council following deferral from the Sustainable Towns and Villages Committee on 20 April 2015 and to subsequently seek endorsement of the Development Unit's recommendation for refusal following consideration of Development Application N0085/14 for construction of 2 dwellings under SEPP Housing for Seniors or People with a Disability 2004 and strata subdivision into two lots at 39 Cabbage Tree Road Bayview.

3.2 BACKGROUND

The Sustainable Towns and Village Committee at its meeting held on 20 April 2015 considered the Assessing Officer's report for refusal of Development Application N0085/14 for construction of 2 dwellings under SEPP Housing for Seniors or People with a Disability 2004 and strata subdivision into two lots at 39 Cabbage Tree Road Bayview.

The Committee resolved that the recommendation of the Development Unit not be endorsed and that the application be deferred to allow for:

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In accordance with this recommendation, the applicant provided a response in relation to the request for written evidence in regards to the provision of self care services. This was then referred to Council's solicitors for advice. Council's solicitors advised that the draft service management plan and draft service agreement were not acceptable. This was communicated to the applicant who subsequently provided revised documentation. This revised documentation was provided to Council's solicitors who advised that the documentation was not acceptable (**see confidential Appendix**).

The Development Unit at its meeting held on 26 November 2015 considered the Assessing Officer's updated report (**see Attachment 1**). The Development Unit supported the Officer's recommendation for refusal of the application.

3.3 POLICY IMPLICATIONS

Nil.

3.4 RELATED LEGISLATION

- Council are the consent authority pursuant to Section 80 of the Environmental Planning and Assessment Act 1979.
- SEPP (Housing for Seniors or People with a Disability) 2004

3.5 FINANCIAL ISSUES

3.5.1 Budget

- No implications on Council's budget unless Council is required to defend its decision in the Land and Environment Court.

3.5.2 Resources Implications

- No implications.

4.0 KEY ISSUES

- The main assessment issues are contained within Section 3 of the assessing officer's report.

5.0 ATTACHMENTS / TABLED DOCUMENTS

Attachment 1 to the Report - Assessing Officer's report to the Development Unit meeting held on 26 November 2015.

Confidential Appendix 1 to the Agenda - Legal Advice

6.0 SUSTAINABILITY ASSESSMENT

The relevant sustainability assessments have been addressed in the attached report.

Report prepared by

Andrew Pigott
MANAGER, PLANNING & ASSESSMENT

SUBJECT: N0085/14 - 39 Cabbage Tree Road Bayview - Construction of 2 dwellings under SEPP Housing for Seniors or People with a Disability 2004 and strata subdivision into two lots

Meeting: Development Unit

Date: 26 November 2015

SUMMARY OF RECOMMENDATION

Refusal

REPORT PREPARED BY:	Gordon Edgar
APPLICATION SUBMITTED ON:	31/03/2014
APPLICATION SUBMITTED BY:	JANINE ELIZABETH CRAWFORD
OWNER(S):	JANINE E CRAWFORD

RECOMMENDATION OF DEVELOPMENT OFFICER / PLANNER

That Council as the consent authority pursuant to Section 80 of the Environmental Planning and Assessment Act 1979 refuse Development Application N0085/14 for construction of 2 dwellings under SEPP Housing for Seniors or People with a Disability 2004 and strata-subdivision into two lots at 39 Cabbage Tree Road, Bayview NSW 2104 for the reasons outlined in the draft refusal notice attached.

Report prepared by
Gordon Edgar, Executive Planner

Andrew Pigott
MANAGER, PLANNING & ASSESSMENT

SUBJECT: N0085/14 - 39 CABBAGE TREE ROAD, BAYVIEW NSW 2104
construction of 2 dwellings under SEPP Housing for Seniors or People with
a Disability 2004 and strata-subdivision into two lots

Determination Level: **Development Unit:** **26 November 2015**

SUMMARY OF REFUSAL
RECOMMENDATION:

REPORT PREPARED BY: Gordon Edgar

APPLICATION 31 March 2014
SUBMITTED ON:

APPLICATION Janine Crawford
SUBMITTED BY: 239 Lower Plateau Road
 Bilgola Plateau NSW 2107

OWNER(S): MRS JANINE ELIZABETH CRAWFORD

PREVIOUSLY DEFERRED MATTER

This report is based upon the original assessment report with revisions in bold to assist in identifying additional assessment and changes from the original report.

This Application was previously considered by Council's Development Unit meeting on 26 February 2015. The following resolution was made at that time:

"That the recommendation of the Development Officer not be endorsed and Development Application N0085/14 for construction of two dwellings under SEPP Housing for Seniors or People with a Disability 2004 and strata-subdivision into two lots at 39 Cabbage Tree Road Bayview be deferred until the next Development Unit Meeting to allow the Development Unit to consider additional information and legal advice submitted by the applicant at the meeting."

The matter was reconsidered by Council's Development Unit at its meeting of 12 March 2015 where it was resolved that the recommendation of the development officer for the refusal of the Application be adopted.

As there was councillor interest registered on this matter, the Application was then referred to the Council meeting of 20 April 2015. Earlier on the same day, the Applicant provided new legal advice concerning what would be acceptable evidence to demonstrate that future residents of the development would have reasonable access to services for the lifetime of the development but staff did not have adequate time to assess this advice prior to the meeting.

The Applicant's legal advice stated that the onus was upon the Applicant to provide a 'servicing management plan' and demonstrate how the provision of these services will continue for the lifetime of the development. No such servicing management plan or other evidence had ever been provided in support of the Application.

Council resolved the following:

"That the recommendation of the Development Officer not be endorsed and Development Application N0085/14 for construction of 2 dwellings under SEPP Housing for Seniors of People with a Disability 2004 and strata subdivision into two lots at 39 Cabbage Tree Road, Bayview, NSW 2104, be deferred to allow for:

1. *the applicant to provide written evidence in regards to the provision of self care services, and*
2. *Council to obtain legal advice on that provided by Staunton and Co Barristers on permissibility and the servicing management proposal.”*

Written evidence in the form of a draft service management plan and draft service agreement was provided to Council by the Applicant's town planning consultant on 9 July 2015 and this was referred to Council's solicitors for legal advice.

Council's solicitors advised that the submitted draft service management plan and draft service agreement were NOT acceptable and this was communicated to the Applicant on 9 September 2015. Revised serviced documents were requested with details regarding the reasons why the previous documents were not acceptable.

In response to Council's advice, a Service Management Head Agreement dated 13 October 2015 ("Revised Agreement") was submitted to Council on behalf of the Applicant by a new town planning and legal consultant on 15 October 2015. This new information was referred to Council's solicitors for legal advice. Council's legal advice was received on 12 November 2015 and is summarised as follows:

- The proposed serviced self-care housing development is inconsistent with the serviced self-care housing contemplated under SEPP (HSPD).
- In particular, the objective set out in cl.2(2)(c) of SEPP(HSPD) ensuring that applicants provide support services continuously to the disabled residents of the development is not met by the proposal. The Revised Agreement provides insufficient surety as to the provision of services.
- The Applicant intends to sell the development and pass on their obligations to the purchasers but any future owner is under no legal obligation to agree to be bound under the terms of the Revised Agreement (ie under a novated Agreement).
- Under the terms of the Revised Agreement, the only person with recourse against the Applicant (or any future purchaser who may agree, but are not obligated, to be bound by a novated Agreement) is the Service Provider (ie not the disabled future residents).
- The Revised Agreement contemplates that the Applicant (or possibly a future purchaser) will create a by-law which will enshrine the salient provisions of the Revised Agreement in relation to the provision of services. The creation of the by-law relies upon the Applicant (or future purchaser, if they agree) performing their obligations under clause 4 of the Revised Agreement. This does not provide sufficient certainty that the services will be provided to the disabled future residents.

- Only disabled persons are permitted to live in the development. They may also be owner/occupiers, responsible for enforcing the by-laws and ultimately being required to provide services to themselves.
- It is doubtful whether a covenant could be lawfully used to provide certainty about the provision of services.
- The 'survival clause' (ie clause 15) does not provide sufficient certainty for the ongoing provision of services to the disabled residents for the lifetime of the development if the Revised Agreement is terminated as there is a likelihood that one or both parties will fail to perform their responsibilities under the Revised Agreement. Court proceedings would be the only method to compel them to perform their responsibilities with success of such proceedings being doubtful.
- There is no provision for a situation where the Service Provider becomes insolvent.
- The 'caveat clause' (clause 5.3) is ineffective as the Council does not have a caveatable interest.

Given the above advice, it is evident that the provisions of clauses 2(2)(c) (aim of Policy), 13(3) (definition of serviced self-care housing) and, 42 (serviced self-care housing service requirements) of SEPP (HSPD) cannot be adequately covered by a contract or service agreement with sufficient certainty for Council that these obligations for the uninterrupted provision of services to the future disabled residents of the subject development for the lifetime of the development will actually occur, as required.

If it does not occur at any time, the development becomes prohibited development as this is the only form of permissible residential development possible on the Site. The failure to adequately meet the requirements of these clauses in SEPP (HSPD) is a recommended reason for refusal.

1.0 SITE DETAILS

The subject site is known as 39 Cabbage Tree Road, Bayview. It has a legal description of Lot 2 in DP 531960. It is located on the southern side of Cabbage Tree Road. It is triangular in shape with a frontage of 77.23m to Cabbage Tree Road. Both its south-eastern and south-western boundaries adjoin Bayview Golf Course.

The Site has a total area of 980.1sqm. The Site is vacant and has an almost continuous line of casuarinas lining the front boundary and in a clump in the middle of the Site. In addition, there are some eucalyptus trees in the western and southern corners. The Site is relatively flat. Adjacent to the south-eastern boundary is a small creek which encroaches into the Site at its southern corner. There is also an open drainage channel running within the road reservation down the eastern half of the road frontage to the Site.

The Site is surrounded by Bayview Golf Course to the south-east and south-west. The maintenance depot for the golf course adjoins the Site to the south-west. A perforated metal fence aligns the common boundary between the Site and the maintenance depot.

There is no street kerb or footpath on the southern side of this portion of Cabbage Tree Road.

On the opposite side of Cabbage Tree Road from the Site is residential development dominated by single dwelling-houses of one and 2 storeys. To the north-east on the opposite side of Cabbage Tree Road is the Aveo Bayview Gardens which provide assisted living apartments and independent living units.

2.0 PROPOSAL IN DETAIL

It is proposed to construct a new 2 storey attached dual occupancy building on the Site under the provisions of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 ('SEPP (HSPD)').

The proposed dual occupancy building is triangular in shape, consistent with the shape of the Site. It is supported on piers in order to meet minimum flood planning level requirements with the finished floor levels of Level 1 being approximately 1.5m above natural ground level. On-site parking for 4 vehicles (including 2 disabled) is provided on level 1 and is centrally located in the building, thus providing separation between the two units. The carport is located behind automatic sliding timber screen doors and is open at the rear. A suspended driveway connects the garage area with the street.

Proposed Unit 1 is a single level smaller unit located on the western side of the building and containing a kitchen, dining room, main bedroom & ensuite, study, living room and associated outdoor open space decking. Unit 1 is proposed to be an adaptable dwelling.

Proposed Unit 2 is a 2 storey masionette style unit with the kitchen, dining room, laundry, WC, study, a bedroom, ensuite, living room and outdoor open space decked areas on Level 1 and 2 bedrooms, a work room ensuite, bathroom and two separate roof terraces on Level 2. It should be noted that the Level 2 plan incorrectly nominates this level as being part of Unit 1 when it should be part of Unit 2.

A centrally located pedestrian entry ramp is proposed adjacent to the driveway. A new street kerb and 1500mm wide foot path is proposed at the Site frontage in the road reservation although the plans are indistinct in relation to the actual extent of the new kerb and footpath. It would appear from the "Proposed Footpath" plan that the new kerb and footpath is only proposed for the western half of the street frontage of the Site. In order to achieve a continuously accessible path of travel between the development and the bus stop on the north-eastern side of Annam Road, a new foot path is proposed on the western half of the street frontage of the Site to connect to an existing pedestrian refuge crossing facility in Cabbage Tree Road to the west of the Site, then utilising the existing footpath on the northern side of Cabbage Tree Road and extending it from the junction of Cabbage Tree Road and Annam Road to continue along the south-western side of Annam Road and provide new ramps to allow mobility impaired people to cross Annam Road and access the bus stop.

It is also proposed to subdivide the dual occupancy development into 2 strata lots.

3.0 STATUTORY AND POLICY CONSIDERATIONS

The following relevant state, regional and local policies and instruments apply:

- Environmental Planning and Assessment Act, 1979 (‘**the EPA Act**’)
- Environmental Planning and Assessment Regulation 2000 (‘**the Regulation**’)
- State Environmental Planning Policy No 1 - Development Standards (‘**SEPP 1**’)
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 (‘**SEPP BASIX**’)
- State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (‘**SEPP (HSPD)**’) - Refer to permissibility discussion below.
- Pittwater Local Environmental Plan 1993 (‘**PLEP 1993**’)
- Pittwater Local Environmental Plan 2014 (‘**PLEP 2014**’) - site is zoned RE2 Private Recreation - residential flat buildings are prohibited in this zone, contrary to the current provisions of PLEP 1993. This would result in the proposed development also being prohibited. Refer to section 3.3 for detailed discussion.
- Pittwater 21 Development Control Plan (‘**Pittwater 21 DCP**’): Mona Vale Locality; Flood Risk Management Policy for Development in Pittwater.

3.1 State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004 (‘SEPP (HSPD)’)

3.1.1 Application of SEPP (HSPD)

The Application is for a dual occupancy development under the provisions of SEPP (HSPD). This Policy applies to the subject land by virtue of clause 4 of this planning instrument, which states the following:

“4. Land to which this Policy applies

(1) General

This Policy applies to land within New South Wales that is land that is zoned primarily for urban purposes or land that adjoins land zoned primarily for urban purposes, but only if:

- (a) *development for any of the following is permitted on the land:*
 - (i) *dwelling-houses,*
 - (ii) *residential flat buildings,*
 - (iii) *hospitals,*

- (iv) *development of a kind identified in respect of land zoned as special uses, including (but not limited to) churches, convents, educational establishments, schools and seminaries, or*
- (b) *the land is being used for the purposes of an existing registered club."*

Planner's Comment

The Site is not considered to be land zoned primarily for urban purposes as it has a 6(b) Private Recreation zoning, in which PLEP 1993 does not permit uses that could be considered to be primarily urban purposes. The Site is not considered to be land used for the purposes of an existing registered club either currently or even historically as there is no information before Council currently to suggest that this land was ever used in association with the adjoining golf club. The Statement of Environmental Effects confirms the following regarding the Site on Page 7:

"The allotment is current (sic) vacant being a residual lot created from the subdivision of a larger residential zoned parcel to enable the construction of Cabbage Tree Road. Given the history of this particular parcel, which has always been privately owned, is somewhat anomolous..."

The Site is considered to be land adjoining land zoned primarily for urban purposes as "adjoining" includes land on the opposite side of Cabbage Tree Road, which is zoned Residential 2(a) under PLEP 1993 in which dwelling-houses are permissible.

Given the above, it is considered that SEPP (HSPD) applies to the subject site.

3.1.1a Aims of SEPP(HSPD)

Clause 2 of SEPP(HSPD) sets out the aims of the policy as follows:

- "2(1) This Policy aims to encourage the provision of housing (including residential care facilities) that will:**
 - (a) increase the supply and diversity of residences that meet the needs of seniors or people with a disability, and**
 - (b) make efficient use of existing infrastructure and services, and**
 - (c) be of good design.**
- (2) These aims are achieved by:**

- (a) *setting aside local planning controls that would prevent the development of housing for seniors or people with a disability that meets the development criteria and standards specified in this Policy, and*
- (b) *setting out design principles that should be followed to achieve built form that responds to the characteristics of its site and form, and*
- (c) *ensuring that applicants provide support services for seniors or people with a disability for developments on land adjoining land zoned primarily for urban purposes.”*

Aim 2(2)(c) above is highly relevant to the assessment of the subject proposal as it makes it very clear that the responsibility for the provision of the required services for serviced self-care development lies with the Applicant. In this regard, refer to relevant assessment of the Revised Agreement at the front of this report under the “Previously Deferred Matter” section of this report.

On the basis of legal advice on the most recently submitted Revised Agreement for the provision of services, it is concluded that the Applicant cannot reliably, reasonably or effectively pass on their responsibilities under the aim of the SEPP to the future purchasers of the proposed development, as proposed. This is a reason for refusal.

3.1.2 Serviced Self-Care Housing

Objections raise concern regarding the permissibility of the development. Clause 17 of SEPP (HSPD) states the following:

“17 Development on land adjoining land zoned primarily for urban purposes

- (1) *Subject to subclause (2), a consent authority must not consent to a development application made pursuant to this Chapter to carry out development on land that adjoins land zoned primarily for urban purposes unless the proposed development is for the purpose of any of the following:*
 - (a) *A hostel,*
 - (b) *A residential care facility,*
 - (c) *Serviced self-care housing.*
- (2) *A consent authority must not consent to a development application made pursuant to this Chapter to carry out development for the purposes of serviced self-care housing on land that adjoins land zoned primarily for urban purposes unless the consent authority is satisfied that the housing will be provided:*

- (a) For people with a disability, or
- (b) In combination with a residential care facility, or
- (c) As a retirement village (within the meaning of the Retirement Villages Act 1999).

Note: Clause 13(3) defines **serviced self-care housing** as a seniors housing that consists of self-contained dwellings where meals, cleaning services, personal care and nursing care are available on site. Clause 42 also requires the consent authority to be satisfied that residents of such housing have reasonable access to services. Clause 42 also provides that if services are limited to those provided under Government provided or funded community based care packages, this does not constitute reasonable access to services.”

Clause 13(3) of the SEPP(HSPD) defines “serviced self-care housing” as follows:

*“In this Policy, **serviced self-care housing** is seniors housing that consists of self-contained dwellings where the following services are available on the site: meals, cleaning services, personal care, nursing care.”*

In response to Clause 17(1), the Applicant has advised that the proposed dual occupancy development has been proposed as “serviced self-care housing.” Noting the above definition of this form of housing and the nature of the proposal – that being a one-off attached dual occupancy comprising 2 units and on-site parking, it was questioned during the assessment process as to how exactly the provision of meals, cleaning, personal care and nursing services are going to be able to be provided “on the site” **by the Applicant and for the lifetime of the development.**

Subsequent legal advice to Council has confirmed that the required services are not necessarily required to be sourced from a location “on the site.”

A relevant Land and Environment Court decision regarding the provision of the requisite services for serviced self care housing is the judgement by Cowdroy J in *Information Gateways v Hornsby Shire Council [2005]* as follows:

“26. The key requirement of the SLSEPP is that the servicing arrangements should be “part of the development.” The development application should therefore contain a similar level of detail in respect of the services as it does in respect of the physical elements of the proposal, such as the construction of buildings or the placement of roads. The applicant has failed to provide adequate information

concerning servicing and the Court accepts the council's alternative submission.

*27. While the Court accepts that it would be unreasonable to require the applicant to provide a signed contract with a service provider for a development that has not yet been approved, letters to the effect that a service provider is able to provide services are insufficient. To be satisfied in respect of cl.2(1), 15 and 74 of the SLSEPP, the consent authority requires evidence that a particular service provider **will** provide the services, that the detailed terms under which the services are to be provided have been agreed, and that the services will be provided **for the life of the development**. The consent authority therefore requires:*

- Draft contracts with service providers together with evidence that both parties agree to terms of the draft contract;*
- A servicing management plan that will be part of the consent and that provides for the continuation of the services for the life of the development. For proposals to be subdivided under the Community Land Development Act 1989, a Community Management Statement under s.5 of the Act would fulfil this requirement.*

28. The conditions proposed by the applicant leave the servicing arrangements to be determined at a time after the consent is issued. The servicing arrangements comprise an essential ingredient of the development. In their absence, the development would be prohibited. The Court must be satisfied of the servicing arrangements when the application is determined. The application cannot therefore be approved in its current form."

Given that the Applicant's planning consultant has quoted the paragraphs of the Information Gateways decision that immediately preceded the above paragraphs in their submission, it is reasonable to assume that they must have also read paragraphs 26-28 of that same judgement but have elected not to provide any draft servicing contract or draft servicing management plan. Instead, they have requested that Council rely on the imposition of a deferred commencement condition to address the issue. There is no valid reason why Council should not take the same approach as the Land and Environment Court in this regard as the servicing arrangements comprise an essential ingredient of the development. In the absence of such servicing arrangements the development would be prohibited.

Furthermore, the development is proposed to be subdivided by strata title. This ultimately means that the current Applicant or developer is unlikely to have much involvement in the future management of the development once both strata units are sold. The future Body Corporate of this dual occupancy (ie the disabled unit owners themselves) is likely to bear the ongoing responsibility of the provision of services and the use of the development in accordance with the terms of the Consent, not

the Applicant. This responsibility falling back onto the future residents themselves would defeat the purpose of serviced self-care housing.

Pursuant to clause 17(2) of SEPP (HSPD), only people with a disability would be permitted to reside in the dual occupancy development. Clause 9 of SEPP (HSPD) defines people with a disability as follows:

*“In this Policy, **people with a disability** are people of any age who have, either permanently or for an extended period of time, one or more impairments, limitations or activity restrictions that substantially affect their capacity to participate in everyday life.”*

The restriction that only people with a disability may reside in the proposed development may significantly enhance the possibility that the future residents could be heavily dependent on the required services including the availability of meals, cleaning services, personal care and nursing care on the site. How would the Applicant be effectively bound to provide such services for the life of the development, which could be 40 years? Even if a legally binding agreement or contract were to be created binding an individual or a company to such a responsibility, there are many foreseeable problems that are likely to arise with such a responsibility if it were to apply for such a long period of time. Companies may fold over time and applying a 40 year obligation on individuals would seem impractical and overly onerous. Yet such a requirement would need to be applied for the development to be legitimately permissible and provide the required services which the future disabled residents should reasonably expect.

The above discussion is indicative that the development does not constitute a legitimate serviced self-care housing development under SEPP (HSPD) It is therefore prohibited development. It is not considered to be appropriate to be relying on conditions of consent to ensure that the development meets the relevant definition for the development type for which application has been made. This must be demonstrated in the application itself. From the above discussion, it is considered that it is not possible for a stand-alone dual occupancy development to meet the requirements relating to the provision of services on the site for serviced self-care housing.

The Applicant has sought to address this concern by submitting the Revised Agreement between the Applicant and a nominated service provider. In regard to the question of whether this Revised Agreement demonstrates that there is reasonable certainty that the requisite services can and will be provided by the Applicant and for the lifetime of the development, this is considered at the front of this report under the “Previously Deferred Matter” heading. It is concluded that Council does not have sufficient certainty, based upon the information submitted, that the requisite services can and will be provided continuously and for the lifetime of the

development. It is evident that a legal contract or agreement does not resolve this issue in this instance.

This is a recommended reason for refusal.

For the above reasons, it is not considered that the Applicant has demonstrated sufficiently that the proposed development is consistent with the definition of service self-care housing under clause 13(3) of SEPP (HSPD), nor is it considered that the development satisfies clause 17(1)(c) of SEPP (HSPD). These are recommended reasons for refusal.

3.1.3 Future Resident Restrictions and Strata Subdivision

Clause 17(2) of SEPP (HSPD) restricts future residents of the development to only people with a disability. This restriction could be achieved via an appropriate condition of consent, should the development be approved.

Clause 21 would permit the subdivision of the development. It is proposed to subdivide the development into 2 strata lots.

3.1.4 Site Compatibility Certificate

Clause 24 of SEPP (HSPD) stipulates that certain development on land adjoining land zoned primarily for urban purposes must have a site compatibility certificate. This requirement does not apply to dual occupancy development however and, for the purposes of this clause, the development is considered to be dual occupancy development, thus not requiring a site compatibility certificate.

3.1.5 Accessibility

Objections have raised concern that the development does not meet the access requirements under SEPP (HSPD).

Clause 26(2)(b) of SEPP (HSPD) requires that the Site be located not more than 400m by a suitable access pathway from a public transport service that would take future residents of the development to a location not more than 400m by a suitable access pathway from facilities and services including:

- (a) shops, bank service providers and other retail and commercial services that residents may reasonably require, and
- (b) community services and recreation facilities, and
- (c) the practice of a general medical practitioner.

The proposal involves constructing a new footpath to link the pedestrian access to the building to an existing pedestrian crossing refuge on Cabbage Tree Road, just to the west of the Site, utilizing the existing footpath on the northern side of Cabbage Tree Road and extending this

footpath down Annam Road to connect with the existing bus stop on the north-eastern side of Annam Road. This bus stop is approximately 215m from the Site and the 155 service to Mona Vale, Narrabeen, Collaroy, Dee Why, Warringah Mall and Manly, where the requisite facilities and services are available. The SEPP requires at least 1 bus service to these destinations between 8am and Midday and 1 bus service between Midday and 6pm Mondays to Fridays. The 155 service has 4 services in the stipulated morning period and 6 services in the afternoon period.

Based upon the information submitted with the Application, it would appear that the new footpath proposed in the road reserve of Cabbage Tree Road and Annam Road would be able to comply with the gradient and other relevant requirements which could also be conditioned, should the development be approved.

Clause 28 of the SEPP requires water and sewer connection to the Site. This infrastructure is available and a Section 73 Certificate from Sydney Water will be required to be obtained as a condition of consent.

As the proposal is for a dual occupancy development, Clause 29 of the SEPP does not apply.

The development site is considered to meet all of the relevant locational requirements of the SEPP under Part 2 of Chapter 3.

3.1.6 Design Requirements

Clause 31 of SEPP(HSPD) only applies to infill self-care housing on land zoned primarily for urban purposes and is not a relevant consideration with respect to the subject application.

Clause 32 of SEPP(HSPD) requires that Council have regard for the design principles in Division 2 (ie in cl.33). These design principles are as follows:

'The proposed development should:

- (a) recognise the desirable elements of the location's current character (or, in the case of a precinct undergoing transition, where described in local planning controls, the desired future character) so that new buildings contribute to the quality and identity of the area, and*
- (b) retain, complement and sensitively harmonise with any heritage conservation areas in the vicinity and any relevant heritage items that are identified in a local environmental plan, and*
- (c) maintain reasonable neighbourhood amenity and appropriate residential character by:*
 - i) providing building setbacks to reduce bulk and overshadowing, and*

- ii) *using building form and siting that relates to the site's land form, and*
- iii) *adopting building heights at the street frontage that are compatible in scale with adjacent development, and*
- iv) *considering, where buildings are located on the boundary, the impact of the boundary walls on neighbours, and*
- (d) *be designed such that the front building of the development is set back in sympathy with, but not necessarily the same as, the existing building line, and*
- (e) *embody planting that is in sympathy with, but not necessarily the same as, other planting in the streetscape, and*
- (f) *retain, wherever reasonable, major existing trees, and*
- (g) *be designed so that no building is constructed in a riparian zone."*

In relation to the desirable elements of the character, streetscape and identity of the area around the Site, the following comments were received from Council's Reserves and Recreation section:

"Streetscape Character

The streetscape character of Cabbage Tree Road consists of a visual dominance of canopy trees to both sides of the road.

In close proximity, under the canopy trees, continuous open space occurs along the southern alignment, whilst residential development occurs only on the northern alignment. This arrangement provides a unique visual and physical streetscape character.

Proposed Development within Southern Alignment of Cabbage Tree Road

Any residential development within the southern alignment will alter the existing dominant streetscape character of continuous open space (golf course) with canopy trees, and will therefore exhibit a poor and disrupted amenity to the streetscape. This is visually and physically not desirable in the context of the Cabbage Tree Road streetscape domain."

Concern was raised with the town planning consultant for the Applicant that the bulk and scale of the development was such that it was out of character with the surrounding open landscaped setting of the golf course and general streetscape character of the southern side of Cabbage Tree Road.

The Applicant provided additional information in response to this concern in October 2014. In this response, reference has been made to the Land and Environment Court Planning Principle in the matter of Project Venture Developments v Pittwater Council [2005] NSWLEC 191. In this judgment, Senior Commissioner Roseth found the following:

- “22. *There are many dictionary definitions of compatible. The most apposite meaning in an urban design context is capable of existing together in harmony. Compatibility is thus different to sameness. It is generally accepted that buildings can exist together in harmony without having the same density, scale, appearance, though as the difference in these attributes increases harmony is harder to achieve....*
24. *Where compatibility between a building and its surroundings is desirable, its 2 major aspects are physical impact and visual impact. In order to test whether a proposal is compatible with its context, two questions should be asked.*
- *Are the proposal's physical impacts on surrounding development acceptable? The physical impacts include constraints on the development potential of surrounding sites.*
 - *Is the proposal's appearance in harmony with the buildings around it and the character of the street?”*

The Applicant has argued that the physical impact of the development are restricted to minor overshadowing of the adjoining golf course and that there is no significant adverse view loss, privacy impact or visual bulk impacts to golf course users. It is agreed that the physical impacts could not be considered to be significant or so unacceptable such that they would warrant refusal of the application.

As for the visual appearance of the development in its setting, the Applicant has argued that the development has been designed to be viewed from all sides and would have the appearance of a ‘pavilion in the park’. It is noted that the development does display good design merit and a high quality of finishes and materials that assist it in being visually in harmony with its surroundings. From Cabbage Tree Road, it would be significantly screened by existing thick vegetation at the site frontage. Whilst it may well be a single building in an open landscaped setting it would not be so out of place as to not potentially be construed as a golf clubhouse surrounded by treed fairways. There are also buildings in the adjoining golf course maintenance depot that are visible in its vicinity.

Thus, notwithstanding the comments by Council's Reserves and Recreation section, the streetscape and visual impact of the development is not considered to be a defensible reason to refuse the development.

Clause 34 relates to visual and acoustic privacy. As discussed elsewhere in the body of this report, the Bayview Golf Course has objected to the development stating that the proposed dual occupancy use conflicts with the adjoining golf course use and that the day to day operations of the golf course will cause visual and acoustic privacy

impacts for the future residents of the development. The design of the building has addressed these issues where possible.

As discussed under side setbacks, the separation between these adjoining land uses is fairly minimal and could have been greater to alleviate potential conflicts between these uses but this is not considered to be sufficient reason to refuse the development.

Clause 35 stipulates that adequate daylight be achieved to main living areas and private open space and that site planning and dwelling design reduce energy use and make the best practical use of natural ventilation and solar heating and lighting by locating the windows of living and dining areas in a northerly direction. As stated under C1.4, the provision of windows on the front and northern elevation is minimal and highlight windows could be added to the kitchen and ensuite of Unit 1 to enhance natural ventilation and light. These issues could be conditioned.

Clause 36 relates to the need to control the impacts of stormwater runoff and the development is considered to address this issue.

Clause 37 relates to crime prevention and it is considered that more could be done in the design of the proposal to enhance security including designing a method by which pedestrian and vehicular access to the units is controlled and secured by residents via intercoms, having the front doors of the units visible from the street or having a more formalised common pedestrian door that is not a part of the garage door and enabling the residents to view approaching visitors from within their dwellings. Such matters could be conditioned.

Clause 38 relates to accessibility - the development is considered to comply with relevant access requirements. Objections raise concern that the development is not accessible as the footpath to be relied upon within the public domain for access to the bus stop and service centre is liable to flooding. Council's Catchment Management and Climate Change section have examined the flooding issue as it relates to the development and have not raised any objections on flooding grounds as the flood issues can be resolved by the imposition of conditions which include, for instance, the formulation of a Flood Emergency Response Plan that includes an evacuation plan. Many areas of the public domain are liable to flooding during peak storm events and it is assumed that disabled people as well as able bodied people would avoid traversing an inundated area within the public domain at such times.

Clause 39 states that the development should be provided with waste facilities which maximise recycling by the provision of appropriate facilities. This could be conditioned.

3.1.7 Development Standards to be Complied With

Clause 40 of the SEPP (HSPD) sets a minimum site size of 1,000sqm. The development does not comply with this standard with a site area of 980.1sqm and a SEPP 1 Objection has been submitted to this development standard. Refer to assessment of SEPP 1 Objection.

Clause 40 also sets a minimum frontage of 20m which the Site complies with.

3.1.8 Development on Land Adjoining Land Zoned Primarily for Urban Purposes

As discussed earlier in section 3.1.1, the subject site is only able to be developed in accordance with the requirements of SEPP (HSPD) only by virtue of the fact that it is considered to be land adjoining land zoned primarily for urban purposes. Part 5 of Chapter 3 of the SEPP (HSPD) sets out a number of requirements applicable to land adjoining land zoned primarily for urban purposes as follows.

Clause 42 requires that Council must be satisfied by written evidence that the residents of the proposed development will have reasonable access to:

- Home delivered meals;
- Personal care and home nursing, and
- assistance with housework

This clause goes on to stipulate that, if the services referred to above are limited to services provided by government community based programs this does not constitute reasonable access.

In response to this requirement, the Statement of Environmental Effects states the following:

"We confirm that the development will have appropriate access to necessary support services as detailed in the accompanying access report."

The Access Report referred to does not deal with the requisite provision of home-based services of home delivered meals, personal care, home nursing and assistance with housework in any way whatsoever. It addresses the site locational requirements in clause 26 of reasonable access to a bus stop to allow residents to access a local centre with shops, bank services, community services and a general medical practitioner.

The lack of adequate written evidence in the Application to demonstrate that residents of the development will have reasonable access to the required home-based services was raised with the town planning consultant for the Applicant and their response is detailed under section 3.1.2 of this report. This response merely states that such a requirement

could be conditioned and quotes a Land and Environment Court judgement in which the relevant judgement actually rejects the reliance upon a condition to satisfy this requirement as being inappropriate in the circumstances.

Council requires a greater level of certainty, prior to issuing consent, that the services will ultimately be provided and for the life of the development, particularly as only people with a disability will be permitted to live in the proposed development. Such people are more likely to require home-based support services and should reasonably expect that a proposed “serviced self-care” development would provide reasonable access to such services for as long as they need them and for the lifetime of the development.

As discussed earlier in this report under the “Previously Deferred Matter” section of this report, the Application does not satisfy clause 42 of SEPP (HSPD) and this is a recommended reason for refusal.

Clause 43 requires that serviced self-care housing must have access to a bus carrying at least 10 passengers that will transport them to a local centre with shops, banks, commercial services, community services and the practice of a general medical practitioner.

The submitted Accessibility report demonstrates compliance with the requirements of clause 43.

Clause 44 of the SEPP (HSPD) states the following:

“44. A consent authority must be satisfied that any facility or service provided as part of a proposed development to be carried out on land adjoining land zoned primarily for urban purposes will be available to residents when housing is ready for occupation. In the case of staged development, the facilities or services may be provided proportionately according to the number of residents in each stage.”

This clause implies that the home-based services required for serviced self-care development are intended to be located on the site and be a part of a larger development.

In response to this, the Applicant merely confirms that the entire development will be completed prior to occupation. As none of the required services are actually incorporated in the works proposed, this confirmation does absolutely nothing in terms of satisfying the requirements of clause 44.

Again, it would appear that the Applicant would be relying upon a condition to be imposed upon an off-site service provider who has not been nominated and who has not agreed to anything at this point of time and may well not wish to agree to an extended period of time, such as

the likely 40 year life of the development. As demonstrated earlier in this report, this is not considered to be an acceptable way to address this requirement, particularly when there is great uncertainty as to who the condition should be requiring to provide the services and how or if this responsibility is transferred over the life of the development.

3.1.9 Development Standards that cannot be used as grounds to refuse consent

Clause 46 stipulates that nothing in this part permits the granting of consent to a development application if the consent authority is satisfied that the proposed development does not demonstrate that adequate regard has been given to the principles set out in Division 2 of Part 3. The development has been assessed as being acceptable in this regard, as detailed in section 3.1.6.

The development standards in clause 50 that, if met, cannot be used as grounds to refuse consent, are set out in the table below.

Control Type	Standard	Proposed	Comment
Height	8m maximum	< 8m	Complies
FSR	0.5:1	0.28:1	Complies
Landscaped Area	30% Minimum	51.3%	Complies
Deep Soil Area	15% Minimum	51.3%	Complies
Solar Access	3hrs minimum in Midwinter	Achieved	Complies
Private Open Space	10sqm minimum per unit	Achieved	Complies
Parking	2 spaces required	4 spaces provided	Complies

3.2 State Environmental Planning Policy No.1 – Development Standards (SEPP 1)

Objections have raised concern that the Site does not comply with the minimum lot size of 1,000sqm.

An objection under SEPP 1 has been submitted in support of the subject application. The SEPP 1 Objection is in relation to the development standard in clause 40(2) of SEPP (HSPD) which stipulates that a consent authority must not consent to a development application for seniors housing development unless the size of the site is 1,000sqm.

This SEPP 1 Objection is not considered to be well-founded primarily due to the findings in this report relating to permissibility under SEPP (HSPD). Earlier in this report it has been established that the proposed development of a dual occupancy development that does not provide sufficient on-site services for meals, cleaning, personal care and nursing care cannot be considered to be a legitimate 'serviced self-care housing' development. Consequently, it is prohibited development.

It is considered that the constraints created by the lack of sufficient site area directly affect the inability to provide required on-site services. The Site is also constrained in terms of its irregular shape and the fact that it is flood prone.

Clearly, the provisions in SEPP (HSPD) that enable development on 6(b) zoned land were never formulated for the development of a block of land of such a limited size and with site shape and flood hazard constraints. The 1,000sqm is a minimum site size and it should not be presumed that this site size would necessarily be sufficient to develop a constrained site in accordance with all of the other relevant provisions of the SEPP (HSPD).

In such circumstances, it cannot be legitimately argued that requiring numerical compliance with a minimum site size development standard is "unreasonable or unnecessary". Not only is it considered that strict enforcement of this development standard is necessary but, it is also considered that, in order to meet the on-site service requirements for 'serviced self-care housing' it is likely that a considerable larger development site than 1,000sqm would most likely be required in order to make it a viable **serviced self-care housing** development in terms of the **reliable and ongoing** provision of on-site services **by the Applicant and for the lifetime of the development**.

Given the above, the SEPP 1 Objection is not considered to be well-founded and is not supported. The non-compliance with the minimum site area development standard and unacceptability of the SEPP 1 Objection is recommended as a reason for refusal.

3.3 Pittwater Local Environmental Plan 2014 (PLEP 2014)

Whilst PLEP 1993 is the applicable planning instrument against which the Application must be assessed, PLEP 2014 must also be taken into account as it was a draft environmental planning instrument at the time of the lodgement of the Application.

In this regard, the Site is zoned RE2 Private Recreation under PLEP 2014. In this zone under this instrument residential flat buildings are not permissible development under any circumstances. Consequently, the provisions of SEPP (HSPD) would not apply to the Site and the

proposed development would be prohibited. As PLEP 2014 articulates the future planning intent for the use of the Site it is relevant to take this into account in the assessment of the subject application. The proposal is clearly contrary to the future land use intent for the Site, as expressed in PLEP 2014. This is a recommended reason for refusal.

3.4 Pittwater Local Environmental Plan 1993 (PLEP 1993)

The site is zoned 6(b) Private Recreation under Pittwater LEP 1993. Pursuant to Clause 9 of this instrument, permissible uses within this zone include the following:

"Advertisements; boarding houses, dwelling houses, group buildings or residential flat buildings required for use or occupation by persons employed in connection with a purpose permissible under this heading; commercial premises or industries required in connection with a purpose permissible under this heading; helipads; recreation areas; utility installations."

The above permissible uses do not include the proposed dual occupancy development (not used by persons employed in connection with a use permissible in the 6(b) zone). The permissibility of the development is by virtue of the provisions of SEPP (HSPD), as discussed in detail above in section 3.1 of this report.

Other applicable provisions of PLEP 1993 are addressed in the Compliance Table below.

4.0 BACKGROUND

Development Application N0045/12 for the construction of an attached dual occupancy on the Site under the provisions of State Environmental Planning Policy (Affordable Rental Housing) 2009 was refused by Council's Development Unit on 27 June 2013 for the following reason:

"1. The development site is not located within an area that is consistent with the definition of "accessible area" and consequently, pursuant to clause 10(2) of SEPP ARH, Division 1 of Part 2 of this planning instrument is not applicable and affordable housing is prohibited development on this site."

The subject development application was lodged on 31 March 2014.

In phone conversations with the Applicant's town planner in August 2014, Council's Executive Planner expressed concern over the proposed reliance of the development proposal on the imposition of a deferred commencement condition that demonstrated that the serviced self-care services required to be provided in a development of this nature would be provided for the lifetime of the development and whether these services needed to be sourced "on the Site" as well as provided onsite.

On 16th and 17 September 2014, Council's Executive Planner requested additional information of the Applicant via email which included evidence to substantiate that the development was a legitimate serviced self-care seniors housing development as well as justification for reduced setbacks, site area, bulk and scale and a consideration of the draft LEP provisions.

The Applicant's town planning consultant provided additional information responding to these issues on 15 October 2014. This response again continued to propose to rely upon the imposition of a deferred commencement condition requiring written evidence demonstrating that the required services can be provided. This additional information was the subject of the assessment contained in the body of this report.

Refer to the "Previously Deferred Matter" section at the very front of this report for further history concerning the consideration of this matter.

5.0 NOTIFICATION

9 neighbouring property owners were notified of the development application during a 14 day notification process between 8 April 2014 and 9 May 2014. As a result of this notification process, 4 objections were received. The issues raised in the objections are covered in the body of this report.

Revised Service Management Head Agreement

All previous objectors were notified of the receipt of the revised service management agreement detail and this information was posted on Council's website for viewing. The notification period was between 4 November 2015 and 18 November 2015. Previous objectors maintained their objections to the development and questioned the adequacy of the revised service management head agreement. This is discussed in more detail at the front of this report under "Previously Deferred Matter."

6.0 ISSUES

- **Pittwater Local Environmental Plan 2014 (refer to section 3.3 of this report)**
- 3.1 Submission of a Development Application and payment of appropriate fee
- A1.7 Considerations before consent is granted
- A4.9 Mona Vale Locality
- B3.5 Acid Sulphate Soils
- B3.19 Flood Hazard - Flood Category 1 - High Hazard - Other Development
- B4.13 Freshwater Wetlands (non Endangered Ecological Communities)
- B6.6 Off-Street Vehicle Parking Requirements - All Development other than Dwelling Houses, Secondary Dwelling and Dual Occupancy
- B6.10 Transport and Traffic Management - All Development other than Dwelling Houses, Secondary Dwelling and Dual Occupancy
- B8.6 Construction and Demolition - Traffic Management Plan
- C1.4 Solar Access
- C1.9 Adaptable Housing and Accessibility
- **C1.21 SEPP (Housing for Seniors or People with a Disability) 2004 (refer to section 3.1 of this report)**
- D9.1 Character as viewed from a public place
- D9.7 Side and rear building line

7.0 COMPLIANCE TABLE

- T - Can the proposal satisfy the technical requirements of the control?
- O - Can the proposal achieve the control outcomes?
- N - Is the control free from objection?

Control	Standard	Proposal	T	O	N
Pittwater Local Environmental Plan 1993					
33. Preservation of trees or vegetation			Y	Y	Y
39. Suspension of covenants, etc.			-	-	-
46. Provision of adequate water and sewerage services			Y	Y	Y
5 Consideration of certain applications			-	-	-
Pittwater 21 Development Control Plan					
3.1 Submission of a Development Application and payment of appropriate fee		See comment below.	N	Y	Y
3.2 Submission of a Statement of Environmental Effects			Y	Y	Y
3.3 Submission of supporting documentation - Site Plan / Survey Plan / Development Drawings			Y	Y	Y
3.4 Notification			Y	Y	Y
3.5 Building Code of Australia			Y	Y	Y
3.6 State Environment Planning Policies (SEPPs) and Sydney Regional Environmental Policies (SREPs)			-	-	-
6.2 Section 94 Contributions - Open Space Bushland and Recreation		S.94 Open space contribution = \$18,000	Y	Y	Y

Control	Standard	Proposal	T	O	N
6.3 Section 94 Contributions - Public Library Services		S.94 Library Contribution = \$4,000	Y	Y	Y
6.4 Section 94 Contributions - Community Service Facilities		S.94 Community Services Contribution = \$7,000	Y	Y	Y
6.5 Section 94 Contributions - Village Streetscapes		S.94 Village Streetscape contribution = \$10,000	Y	Y	Y
A1.7 Considerations before consent is granted		Refer to discussion below regarding objection issue of potential conflict of adjoining land uses.	Y	Y	N
A4.9 Mona Vale Locality		Refer below for detailed discussion.	Y	Y	N
B1.3 Heritage Conservation - General			-	-	-
B1.4 Aboriginal Heritage Significance		No apparent issues.	Y	Y	Y
B3.5 Acid Sulphate Soils		Refer to comment below.	Y	Y	Y
B3.6 Contaminated Land and Potentially Contaminated Land			Y	Y	Y
B3.19 Flood Hazard - Flood Category 1 - High Hazard - Other Development		Objections have raised flood impact and human safety concerns due to flooding. These issues are discussed in detail below.	Y	Y	N
B3.23 Climate Change (Sea Level Rise and Increased Rainfall Volume)			Y	Y	Y
B4.13 Freshwater Wetlands (non Endangered Ecological Communities)		Refer to comment below in discussion section.	Y	Y	Y
B4.14 Development in the Vicinity of Wetlands		For comment see B4.13	Y	Y	Y
B5.2 Wastewater Disposal			Y	Y	Y
B5.4 Stormwater Harvesting			Y	Y	Y

Control	Standard	Proposal	T	O	N
B5.9 Stormwater Management - Water Quality - Other than Dwelling House, Dual Occupancy and Secondary Dwellings			Y	Y	Y
B5.10 Stormwater Discharge into Public Drainage System			Y	Y	Y
B6.2 Access Driveways and Works on the Public Road Reserve- All Development other than Dwelling Houses, Secondary Dwelling and Dual Occupancy			Y	Y	Y
B6.4 Internal Driveways - All Development other than Dwelling Houses, Secondary Dwelling and Dual Occupancy			Y	Y	Y
B6.6 Off-Street Vehicle Parking Requirements - All Development other than Dwelling Houses, Secondary Dwelling and Dual Occupancy	2 spaces required	4 spaces provided. Objections raised concern over parking provision. Refer to discussion below.	Y	Y	N
B6.10 Transport and Traffic Management - All Development other than Dwelling Houses, Secondary Dwelling and Dual Occupancy		Refer to discussion below.	Y	Y	N
B8.2 Construction and Demolition - Erosion and Sediment Management			Y	Y	Y
B8.3 Construction and Demolition - Waste Minimisation			Y	Y	Y
B8.4 Construction and Demolition - Site Fencing and Security			Y	Y	Y
B8.5 Construction and Demolition - Works in the Public Domain			Y	Y	Y

Control	Standard	Proposal	T	O	N
B8.6 Construction and Demolition - Traffic Management Plan		Refer to discussion below.	Y	Y	N
C1.1 Landscaping		For comment see B4.13	Y	Y	Y
C1.2 Safety and Security			Y	Y	Y
C1.3 View Sharing			Y	Y	Y
C1.4 Solar Access		Refer to discussion below for solar access assessment.	Y	Y	Y
C1.5 Visual Privacy			Y	Y	Y
C1.6 Acoustic Privacy			Y	Y	Y
C1.9 Adaptable Housing and Accessibility		Refer to discussion below.	Y	Y	N
C1.10 Building Facades			Y	Y	Y
C1.12 Waste and Recycling Facilities			Y	Y	Y
C1.13 Pollution Control			Y	Y	Y
C1.15 Storage Facilities	A lockable storage area of minimum 8 cubic metres per dwelling shall be provided. This may form part of a carport or garage.	Storage areas are not shown on the plans however, it is considered that this provision could be conditioned, should the development be approved.	N	Y	Y
C1.20 Undergrounding of Utility Services			Y	Y	Y
C1.21 SEPP (Housing for Seniors or People with a Disability) 2004		Objections have raised concern regarding the compliance of the development with the provisions of SEPP(HSPD). Refer to section 3.1 of this report for full assessment.	N	N	N
C1.23 Eaves			Y	Y	Y
C1.24 Public Road Reserve - Landscaping and Infrastructure			Y	Y	Y

Control	Standard	Proposal	T	O	N
D9.1 Character as viewed from a public place	Relevant controls include: Minimise bulk/scale; parking structures must not be dominant feature when viewed from public place; parking structures behind the front building line and be no greater than 50% of lot frontage, or 7.5 metres, whichever is lesser.	Objections have raised concern over the visual impact of the development on the character of the locality and the streetscape. This is discussed below in relation to the provisions of section D9.1 of the DCP.	N	Y	N
D9.2 Scenic protection - General			Y	Y	Y
D9.3 Building colours and materials			Y	Y	Y
D9.4 Height - General	Maximum building height permitted is 8.5m. A permitted variation is 8m above the Flood Planning Level.	Less than 8m.	Y	Y	Y
D9.6 Front building line	Required minimum front building setback for 6(b) zoned land is based upon a merit assessment.	The proposal has a predominant front building setback of 6.5m from the street. This is appropriate for a residential building. There are some minor projections which add to the articulation of the front elevation of the building and do not have any adverse impacts.	Y	Y	Y
D9.7 Side and rear building line	Technically, there are no side or rear setback provisions for 6(b) zoned land. As a guide, the dual occupancy setback provisions area are side setbacks of 1m and 2.5m and a rear setback of 6.5m.	Objections have raised concern over the adequacy of the proposed setbacks. Refer below for detailed discussion of the performance of the development against side and rear setback controls and outcomes.	Y	Y	N
D9.12 Fences - General		No new fencing proposed.	-	-	-
State Environmental Planning Policies and other EPI's					

Control	Standard	Proposal	T	O	N
SEPP (Housing for Seniors or People with a Disability) 2004		Refer to C1.12 and Section 3.1 of this report for detailed considerations of the development against the requirements of SEPP(HSPD).	N	N	N

8.0 DISCUSSION OF ISSUES

3.1 Submission of a Development Application and payment of an appropriate fee

The Application contains owners consent from the owner of 39 Cabbage Tree Road, however, it does not appear that owner's consent has been formally supplied by Council for the footpath and kerbside works proposed in the road reservations of Cabbage Tree Road and Annam Road. Assuming that a satisfactory design is achievable to Council specifications, it is not considered that there would be any serious impediment in obtaining owners consent.

Consequently, it is considered that this matter could be conditioned, should the development be approved.

A1.7 Considerations before consent is granted

Potential Conflict between Adjoining Land Uses

The golf course has raised concern over the potential conflict between the existing golf course use and proposed residential use of the subject development. It raises concern over the lack of separation of the building from common boundaries with the golf course and the possible impacts of errant golf balls, noise from the maintenance yard and the noise and dust generated from the operation of heavy machinery on the fairway adjacent to the development site. Potential visual privacy impacts on future residents are also raised as well as the visual impact of the development when viewed from the golf course and potential diversion of flood waters.

It is agreed that there is potential for conflicts to occur between these adjoining land uses from time to time which is undesirable but it is not considered that this conflict is so significant as to warrant refusal of the Application.

The current RE2 Private Recreation zoning of the Site under PLEP 2014 would prohibit medium density residential development in the future. These issues are discussed elsewhere in the body of this report.

The golf course has requested that, should the development be approved, Council impose conditions that require indemnities to be

recorded on the title of the land that indemnifies the golf club from any damages caused by errant golf balls or by the day to day operations of the golf course and its maintenance yard. It also requests that chain wire fencing be provided along unfenced boundaries at the expense of the developer.

The Application is not recommended for approval however, should it be approved, the fencing may be able to be conditioned but the indemnity is not considered to be a reasonable condition and it would be a matter of "buyer beware" for future purchasers of a unit in a development immediately adjacent to a golf course and its maintenance yard.

Cost of Development

An objection raises concern that the estimated cost of the development is likely to be much higher. It is agreed that \$655,000 does appear to be quite low for a development of this size although it is not considered reasonable to raise issue with this at this stage given that the recommendation is for refusal.

Risk to Council in Approving Non-Complying Development Application

An objection has raised concern that, if Council approved this non-compliant development application, it is at risk of legal action against the consequences of such a decision. The Application is recommended for refusal but even if it were to be approved, it is not agreed that this perceived risk should prevent Council from approving a non-complying development application if Council should consider that the application has sufficient merit notwithstanding the non-compliance.

Risk of Precedent

An objection has raised concern that, if approved, the development will set a dangerous precedent that may lead to other seniors development occurring on 6(b) / RE2 zoned land. It is not considered that this would warrant refusal of the application as each application would need to be assessed on its merits.

A4.9 Mona Vale Locality

Objections raise concern that the development is not consistent with the character of the locality and desired future character.

Relevant provisions within the desired future character for the Mona Vale Locality are as follows:

"Existing residential areas will remain primarily low-density with dwelling houses a maximum of two storeys in any one place in a landscaped setting, integrated with the landform and landscape.....Any dual occupancy dwellings will be located on the

valley floor and lower slopes that has less tree canopy coverage, species and habitat diversity and fewer other constraints to development....

...Future development is to be located so as to be supported by adequate infrastructure, including roads, water and sewerage facilities, and public transport.

Future development will maintain a height limit below the tree canopy and minimise bulk and scale. Existing and new native vegetation, including canopy trees, will be integrated with the development. Contemporary buildings will utilise facade modulation and/or incorporate shade elements, such as pergolas, verandahs and the like. Building colours and materials will harmonise with the natural environment.Development will be designed to be safe from hazards.....

...A balance will be achieved between maintaining the landforms, landscapes and other features of the natural environment, and the development of land. As far as possible, the locally native tree canopy and vegetation will be retained and enhanced to assist development blending into the natural environment, and to enhance wildlife corridors...

Vehicular, pedestrian and cycle access within and through the locality will be maintained and upgraded. Improved public transport, pedestrian accessibility and amenity, carparking and an efficient surrounding local network will support the commercial centre, moving people in and out of the locality in the most efficient manner...."

Given the very general nature of the above desired future character, the development is not considered to be inconsistent with this desired future character to any unreasonable degree.

B3.5 Acid Sulphate Soils

Council's Natural Resources officer has advised the following:

"The property is mapped as Acid Sulphate Region 2. The following condition is to be applied to the consent:

Prior to the issue of the Construction Certificate the applicant is to carry out an investigation to determine whether acid sulphate soils are present in the area to be excavated. If the investigation reveals acid sulphate soils are present, an acid sulphate soils management plan addressing management of acid sulphate soils during and following excavation is to be prepared by a suitably qualified consultant and submitted for approval prior to the release of the construction certificate."

B3.19 Flood Hazard - Flood Category 1 - High Hazard - Other Development

Flooding has been raised as a concern in objections.

Councils Catchment Management Unit have reviewed the proposal and advised the following:

“The proposed development is classified as Flood Category 1 – High Hazard based on:

The draft Mona Vale / Bayview Floodplain Risk Management Study (Cardno, 2008) identifying the site as being located within a floodway, affected by high hazard and likely to be impacted by climate change.

The development being proposed as a Senior Living development in the Statement of Environmental Effects, and consequently is considered a Special Flood Protection Development.

The proposed development is assessed under B3.23 Climate Change (Sea Level Rise and Increased Rainfall Volume) as the proposal intensifies the number of dwellings within the floodplain from existing conditions.

The flood levels incorporating climate change for the site are:

- *1%AEP at 2.4mAHD*
- *Flood Planning Level at 2.9mAHD*
- *Probable Maximum Flood at 2.9mAHD*

Floor Levels

The plans and the Flood Risk Report state a floor level of 3.3m AHD which meet the 2.9mAHD minimum floor level

Impacts to Flood Storage

The Flood Risk Report states the underside of the dwellings is to be kept clear and regularly checked. A condition is necessary to ensure the building is constructed on piers and the underside of the building remains clear with no perimeter wall fencing.

Impacts of Floodway

The proposed development does not address the original concern of developing within a floodway and its impact on residents and visitors to the property. Conditions are required to ensure the

structural integrity of building piers to withstand the hydraulic forces of floodwaters and debris, and to manage the use of the land and subsequent flood risk to current ground level.

Flood Compatible Materials, Electrical Equipment and Storage of Hazardous Goods

The Flood Risk Report states flood compatible materials will be used up to the FPL. Electronic equipment and hazardous materials will be placed above FPL.

Structural Integrity

The Flood Risk Report states the building will be structurally sound up to the FPL or PMF level, if this is to be used for emergency response.

Flood Emergency Response

The Flood Risk Report has stated the requirements for evacuation but does not specifically mention the actions of residents for this building in the event of an emergency. A condition is required to ensure that a Flood Emergency Response Plan is prepared. This Plan should state evacuation is the preferred method of emergency response and the residents are suitably advised of the arrangements.

Car Parking

The plans show the proposed garages are to be at a height of 3.3m AHD, which is set above the FPL and meeting the minimum floor level requirements.

Intensification

Consideration of the increased impact of climate change on flood levels have been incorporated into the floor levels of the proposed development."

B4.13 Freshwater Wetlands (non Endangered Ecological Communities)

Council's Natural Resources Officer has provided the following comment:

"The property is currently vacant and consists of two (2) dominant species of canopy tree (Casuarina glauca and Swamp Mahogany) and grassy ground cover. The proposed works include construction of an affordable rental housing development containing two dwellings and strata subdivision. An arborist report has been

supplied (Urban Forestry Australia, December 2011) and identifies seventy (70) trees on site. All are locally native. Twenty-four (24) trees have been identified for removal. Of these, two (2) of these are in poor health and are not suitable for retention and one (1) is an immature specimen (Swamp Mahogany) which has been recommended for removal and replacement on site.

Twenty-one (21) of these trees fall within the building footprint (mostly semi-mature Casuarina specimens) and require removal to allow for development of site. All recommendations outlined in the arborist report are acceptable and the arborist report approved. A landscape plan has been provided (Trish Dobson, DWG 1124, 24/2/14) which allows for retention of native trees as recommended in the arborist report. The plan also includes a range of native shrubs and grasses which will aid screening from the road and increase visual amenity of the site. This landscape plan is approved.

There are no further natural resource issues.”

B6.6 Off-Street Vehicle Parking Requirements - All Development other than Dwelling Houses, Secondary Dwelling and Dual Occupancy

Concern has been raised over the adequacy of the proposed off-street parking and where visitors would park given restricted parking in Cabbage Tree Road. Clause 50(h)(i) of the SEPP(HSPD) prevents Council from refusing the development due to lack of parking if it provides 0.5 spaces per bedroom. A total of 4 bedrooms are proposed and the development will be providing 4 car spaces. This exceeds the minimum requirement of 2 spaces in the SEPP. Consequently, Council cannot refuse the development on parking grounds.

B6.10 Transport and Traffic Management - All Development other than Dwelling Houses, Secondary Dwelling and Dual Occupancy

Objections have raised concern over the impact of the development and associated kerb and guttering and footpath construction on safety and traffic in Cabbage Tree Road.

Council's Development Engineer has not raised any objection to the proposal on traffic impact and safety grounds.

It is considered that the proposed works to provide formalised kerb and guttering across the site frontage and additional footpaths in the road reserve of Cabbage Tree Road and Annam Road would improve safety and accessibility for pedestrians, should the development be approved.

B8.6 Construction and Demolition - Traffic Management Plan

Concern has been raised by objections regarding the potential traffic impacts of the development during the construction phase. This issue could be addressed with a condition requiring the submission of a construction traffic management plan prior to the commencement of works.

C1.4 Solar Access

Internal solar access to the living areas is marginal but compliant.

It is appreciated that the proposed 2 windows on the front elevation of the building are both large and projecting design features however, it is considered that the provision of just 2 windows on the northern or front elevation of the development is a lost opportunity in terms of optimising internal access to natural light as well as opportunities to articulate the front elevation of the building and facilitate residents being able to observe visitors as they approach without opening their door. The south-western elevation of Unit 1 has no windows. It is considered that the provision of highlight windows to the south-western elevation of Unit 1 would provide improved access to natural light and natural ventilation to the kitchen and the ensuite of this unit.

It is acknowledged however, that the lack of windows may be a design response to minimise noise issues generated from the adjacent golf course maintenance yard.

C1.9 Adaptable Housing and Accessibility

Objections have raised concern over the accessibility of the development. The Application is supported by an access report prepared by a qualified consultant which confirms that the proposal meets the access requirements of the DCP. Both units have been designed to be adaptable dwellings.

D9.1 Character as viewed from a public place

Objections raise concern that the development will have a detrimental impact on the amenity and outlook of residential properties on the opposite side of Cabbage Tree Road that currently have an outlook over the Site. It is not agreed that the development would have a visual impact that would be so substantive as to be considered to warrant refusal of the application for this reason. Existing thick screen vegetation along the Cabbage Tree Road frontage is substantially retained and will provide good screening and softening of the building when viewed from the street.

The controls of section D9.1 require that the bulk and scale of development be minimised and that garages not be the dominant site feature when viewed from a public place. The bulk and scale is considered to be reasonably minimised noting that the floor levels

needed to be elevated to meet flooding requirements. The maximum height of the development is compliant.

One concern in terms of the appearance of the development from the street is that the proposed central location of the garage, the 11m wide opening in the front elevation for the parking area as well as the suspended driveway structure will make the garaging component of this building prominent when viewed from the street. The front doors of the units will not be visible in the front elevation and there does not appear to be any pedestrian door that is visually distinct or separate from the sliding timber screen garage door to give the development a human scale and sense of address. The idea that pedestrians must enter the units via the car park is not considered to be consistent with the intent of the controls in section D9.1 of the DCP.

It is considered that a relatively minor amendment could be made to the front elevation detail to incorporate a clearly marked or separate pedestrian entry to the building to give the development a sense of address and human scale. This issue could be addressed with a condition of consent, should the development be approved.

D9.7 Side and Rear Building Line

Objections raise concern that the development does not include a rear building setback.

Section D9.7 of the DCP does not envisage development on 6(b) zoned land and, consequently, sets no specific side or rear setback requirements for such development. Consequently, the setbacks can only be assessed on merit.

The proposal includes a 1.2m setback to the south-western boundary and a 2.5m setback to the north-eastern boundary. The triangular shape of the development site leaves it open to debate as to whether these boundaries should be considered to be side boundaries or rear boundaries. The design of the building treats these boundaries as side boundaries and, if this premise is accepted, the development would be numerically compliant with controls that would normally apply to dual occupancy development.

Outdoor open spaces have been located at the eastern and western ends of the building so that views from these spaces are not necessarily primarily directed over the adjoining golf course. It is arguable, however, that, at least to some degree, Unit 2 is 'borrowing its amenity' and landscaped outlook from its living room and outdoor open space from the adjoining landscaped grounds of the golf course, which is setback just 2.5m from this building that is elevated on piers.

Thus, the proposed side setbacks are considered to be marginal but not so insufficient as to warrant refusal of this application for this reason.

9.0 REVISED CONCLUSION RESPONDING TO ADDITIONAL INFORMATION

The Development Application has been assessed in accordance with the provisions of Section 79C of the Environmental Planning and Assessment Act 1979, Pittwater Local Environmental Plan 1993, Pittwater 21 Development Control Plan, State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004 and other relevant policies and planning instruments, as listed under section 3.0.

A comprehensive assessment of the proposal against the many requirements and provisions of SEPP (HSPD). Given that the Site is zoned 6(b) under PLEP 1993, the development can only be considered to be permissible as 'serviced self-care' seniors housing. Furthermore, it can only be occupied by people with a disability.

Central to the concept of serviced self-care housing is the reasonable access to residents of services providing meals, cleaning services, personal care and nursing care on the site. Government or community funded care services based off-site are not acceptable under the terms of the SEPP as it is not considered that there would be reasonable access by the residents to these services even though they may well be entitled to such services.

Clause 44 of the SEPP (HSPD) stipulates that Council must be satisfied by written evidence that the residents will have reasonable access to the required on-site services. Land and Environment Court caselaw (Information Gateways v Hornsby Council) referred to and quoted by the Applicant's town planners details what this written evidence should entail and that it should be provided prior to granting consent and that the reliance on conditions of consent requiring details of the services to be provided at a later date is not appropriate.

The Applicant has been given multiple opportunities to provide written evidence to give Council sufficient certainty that the on-site services are able to be provided for the lifetime of the development. **Unfortunately, the Applicant has not been able to address this concern in a satisfactory or acceptable manner.**

The small, stand-alone nature of the proposed development is considered to be a contributory element to the risk and doubt that exists over whether this proposal will always be used as a legitimate serviced self-care housing development for its lifetime without becoming a prohibited development at some stage, simply by virtue of the servicing arrangements ceasing or being neglected over time for one reason or another. The servicing commitment must be for the lifetime of the development and this would be unlikely to occur given the likely period this may involve of approximately 40 years and the fact that contracts or agreements would apply to nominated

individuals or companies that may not be in existence for this lengthy time period. Any period during which the required services could not be provided or cease to be provided would render the development prohibited and disadvantage the disabled residents within the development.

The development is also proposed to be subdivided by strata title. Thus, once the strata units are sold, the responsibility of the ongoing management of the development would fall on the future Body Corporate rather than the Applicant. **The recently submitted Revised Agreement relies upon the insertion of the servicing obligations into the strata by-laws which could potentially result in a future disabled owner/occupier being responsible for the provision of their own services and this would be contrary to Aim 2(2)(c) of SEPP(HSPD).**

Even though the SEPP does not prohibit dual occupancy development from being serviced self-care housing, it would appear that the concept of 'serviced self-care housing' was never really intended to apply to stand alone dual occupancy development that is not of a sufficient scale to justify the provision of services on the site. It is more likely that, **at this scale**, it is intended to be an additional alternate form of independent seniors housing to supplement a larger aged care facility or retirement village that already provides such services on the site and provides a range of accommodation for seniors of varying levels of independence and with varying needs for assistance with independent living.

It is still considered that the limited size of this development has a direct influence on the inability of this development to incorporate **the reliable and uninterrupted provision of** on-site services which is why it is not considered that any SEPP 1 variation to the minimum site area for seniors housing of 1,000sqm should be supported **as it has not been demonstrated that a variation in this instance will result in a better planning outcome than strict enforcement of the development standard.** It is likely that a much larger site area than 1,000sqm is necessary to effectively provide serviced self-care seniors housing **as a stand-alone development where it will reliably meet** the relevant servicing requirements **for the lifetime of the development.**

Given the identified outstanding issues with this development, it is recommended **that the development be refused.**

RECOMMENDATION OF DEVELOPMENT OFFICER/PLANNER

That Council, as the consent authority, pursuant to section 80 of the Environmental Planning and Assessment Act, 1979 refuse Development

Application N0085/14 for construction of 2 dwellings under SEPP Housing for Seniors or People with a Disability 2004 and strata subdivision into two lots at 39 Cabbage Tree Road, Bayview for the reasons contained in the attached draft determination.

Report prepared by

Gordon Edgar

Date: 4 March 2015, **revised and updated 13 November 2015.**

DRAFT DETERMINATION

REFUSAL

ENVIRONMENTAL PLANNING & ASSESSMENT ACT, 1979 (AS AMENDED)

NOTICE TO APPLICANT OF DETERMINATION OF A DEVELOPMENT APPLICATION

Applicants Name and Address:

Janine Crawford
239 Lower Plateau Road
Bilgola Plateau NSW 2107

Being the applicant in respect of Development Application No **N0085/14**

Pursuant to section 80(1) of the Act, notice is hereby given of the determination by Pittwater Council, as the consent authority, of the Development Application for:

Construction of an 2 serviced self-care housing dwellings under SEPP Housing for Seniors or People with a Disability 2004 and strata subdivision into two lots

At:

39 CABBAGE TREE ROAD, BAYVIEW (Lot 2 DP 531960)

Decision:

The Development Application has been refused for the following reasons:

1. The proposal is not acceptable in that it fails satisfy clauses 2(2)(c), 13(3), 17, 42 & 44 of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 ('SEPP (HSPD)') primarily in regard to providing reasonably certainty that the Applicant will provide the requisite services to the future disabled residents of the development continuously for the lifetime of the development.
2. The development site does not comply with the minimum site size required under clause 40(2) of SEPP (HSPD'). The submitted SEPP 1 Objection to this development standard is not considered to be well-founded as the lack of site area directly contributes to the viability of the development as a serviced self-care housing development in terms of the required provision of services for the lifetime of the development.

NOTES:

1. This determination was taken under delegated authority on behalf of the elected Council pursuant to Section 377 of the Local Government Act 1993.
2. An applicant may under Section 82A of the Act, apply to council to review this determination.

3. Section 97 of the Act confers on the applicant who is dissatisfied with the determination of a consent authority a right of appeal to the Land & Environment Court exercisable within 6 months after receipt of this notice.
4. Any person who contravenes this notice of determination of the abovementioned development application shall be guilty of a breach of the Environmental Planning & Assessment Act, 1979, and shall be liable to a monetary penalty and for a restraining order which may be imposed by the Land and Environment Court.

Mark Ferguson
GENERAL MANAGER

Per:

Date

-

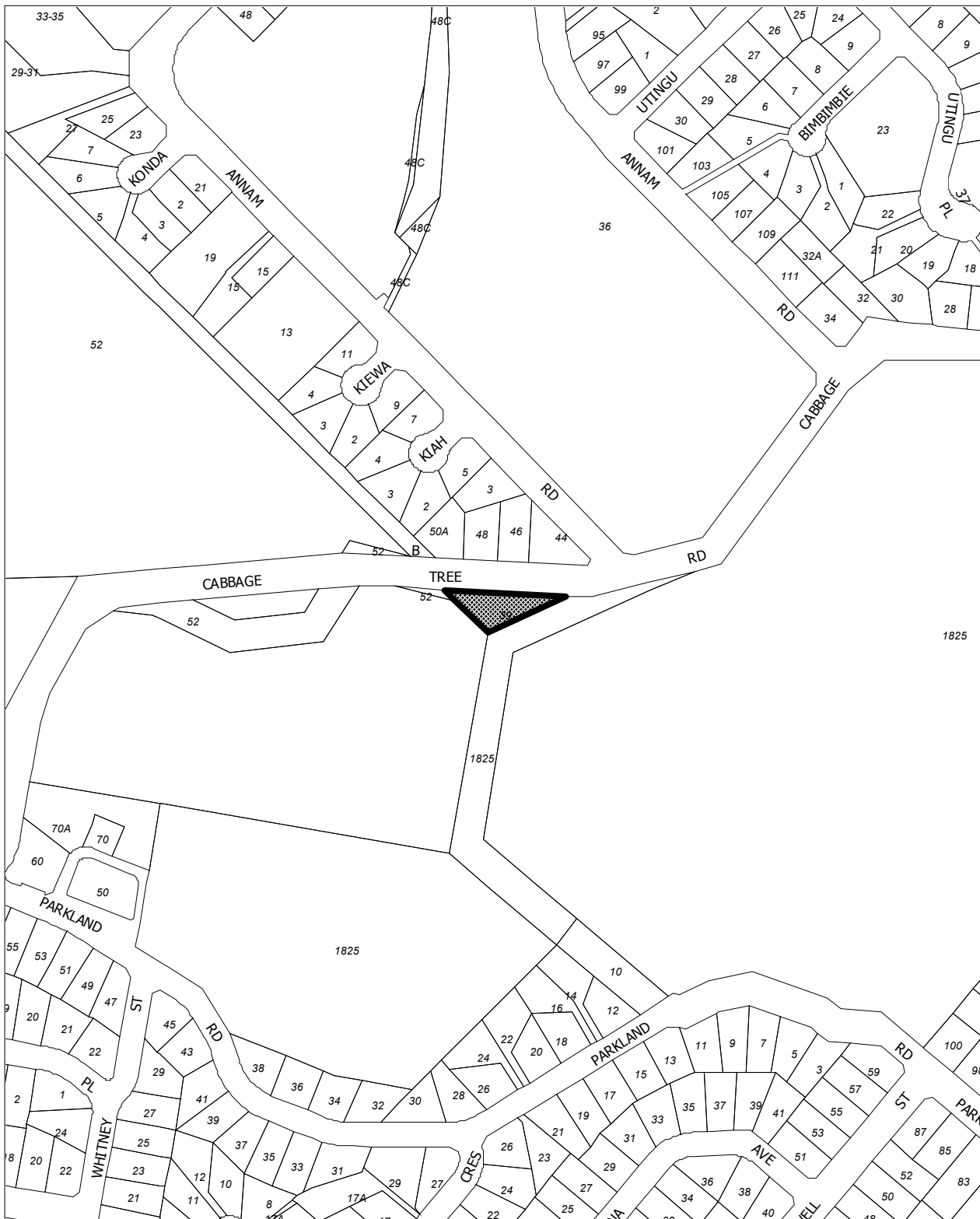
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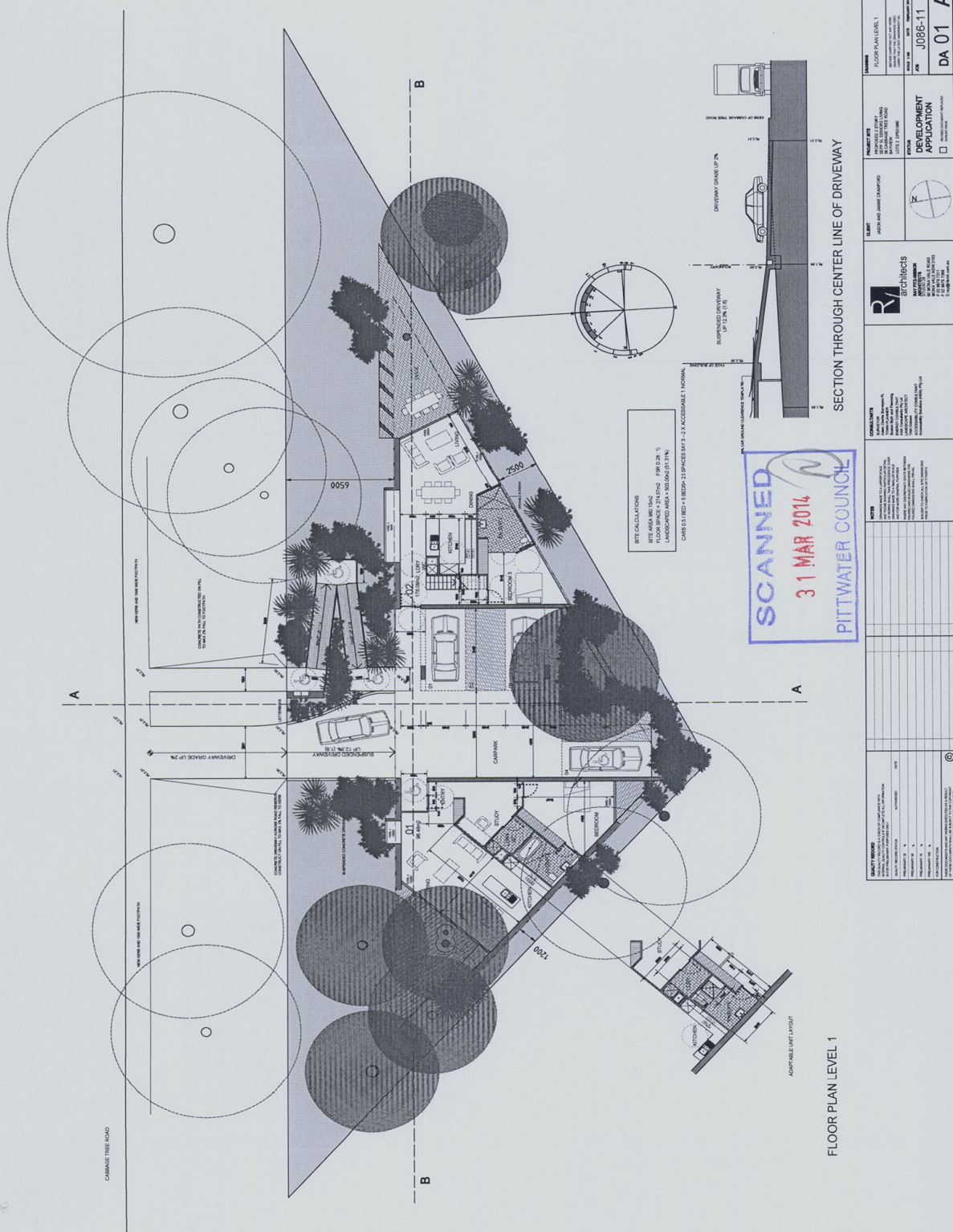
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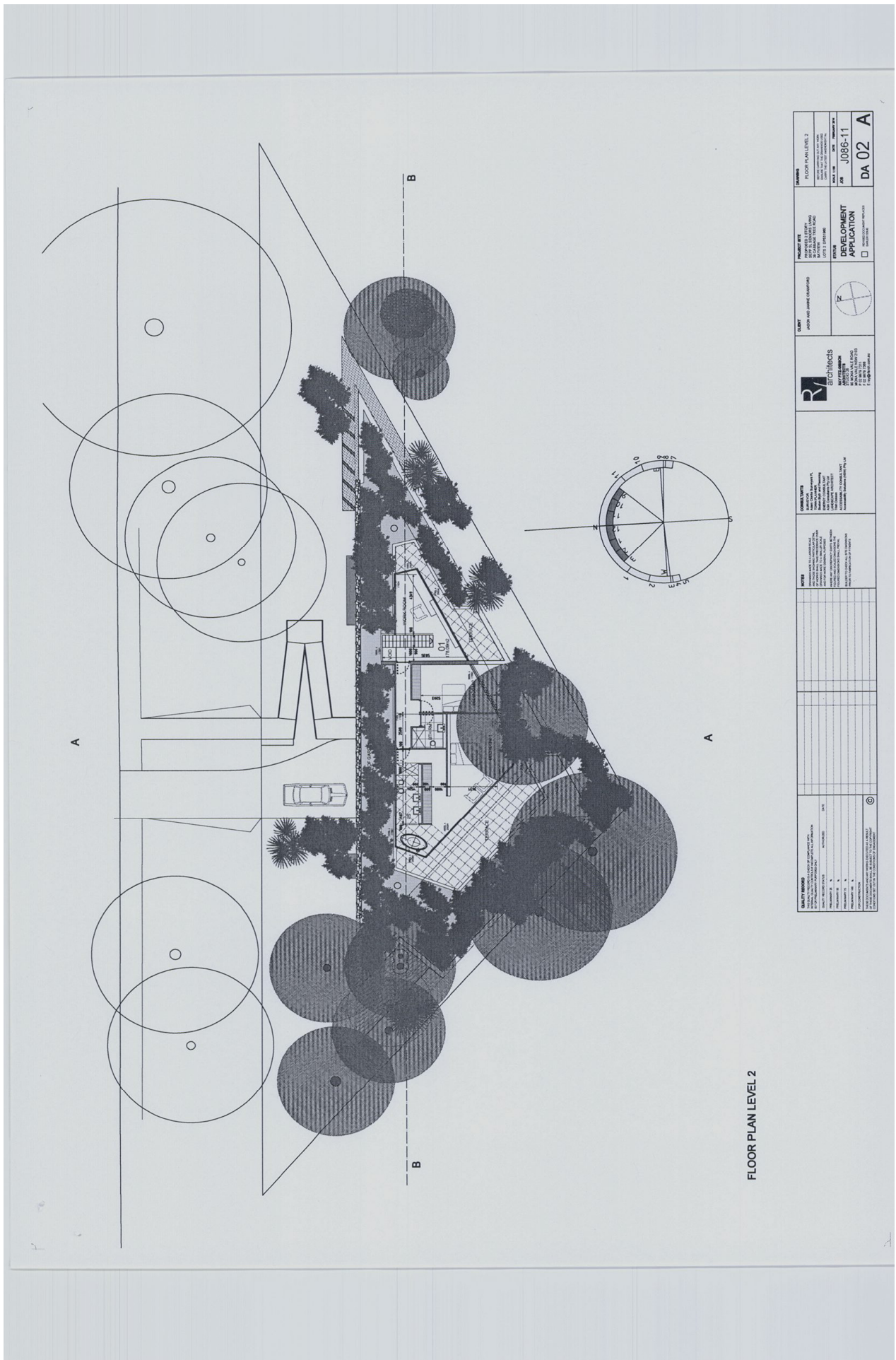
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LOCALITY MAP

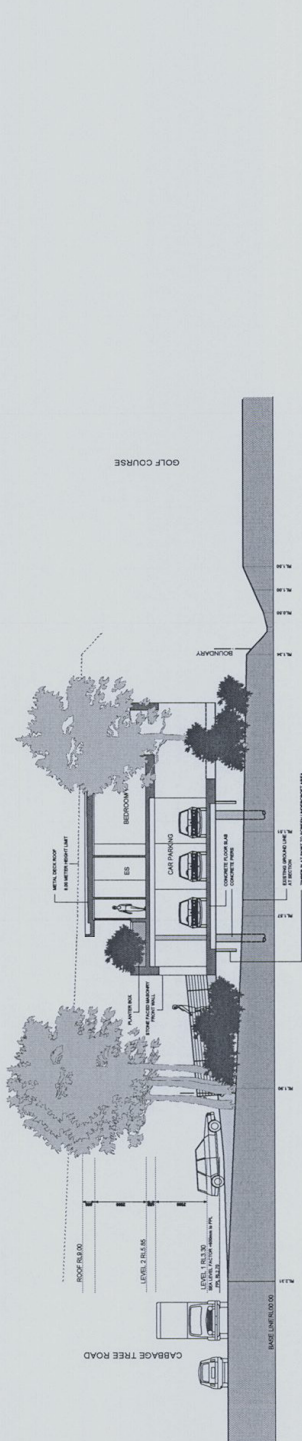


NOTIFICATION PLANS

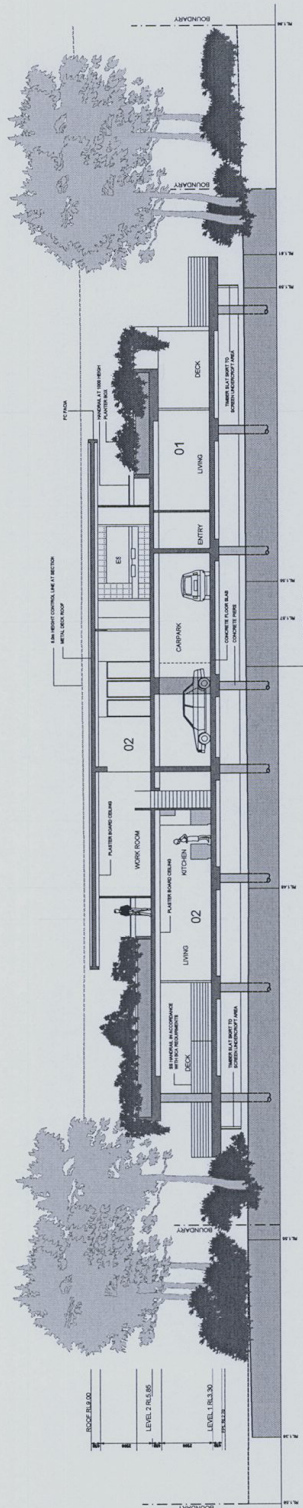




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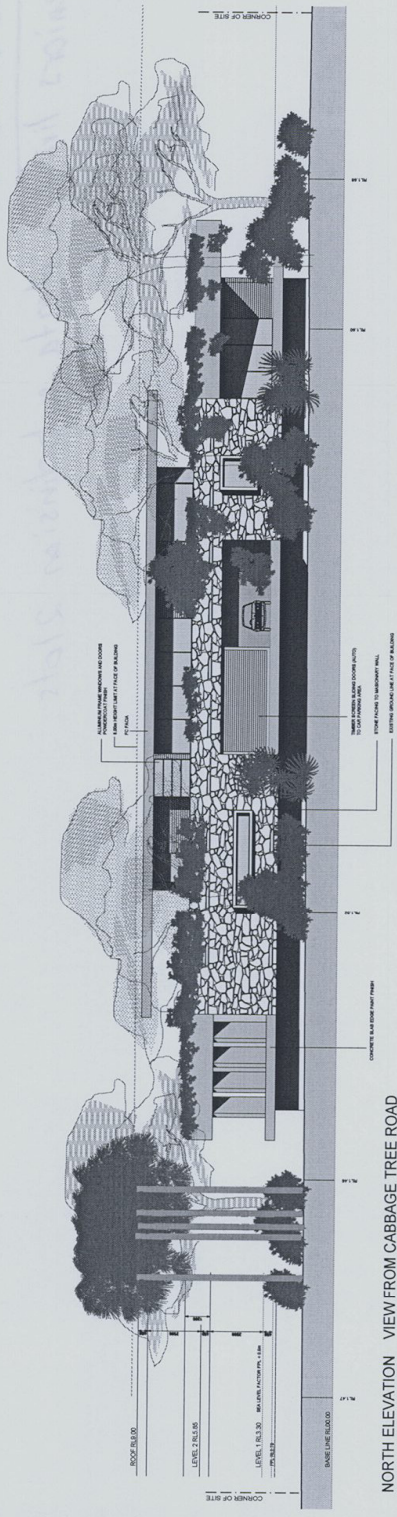
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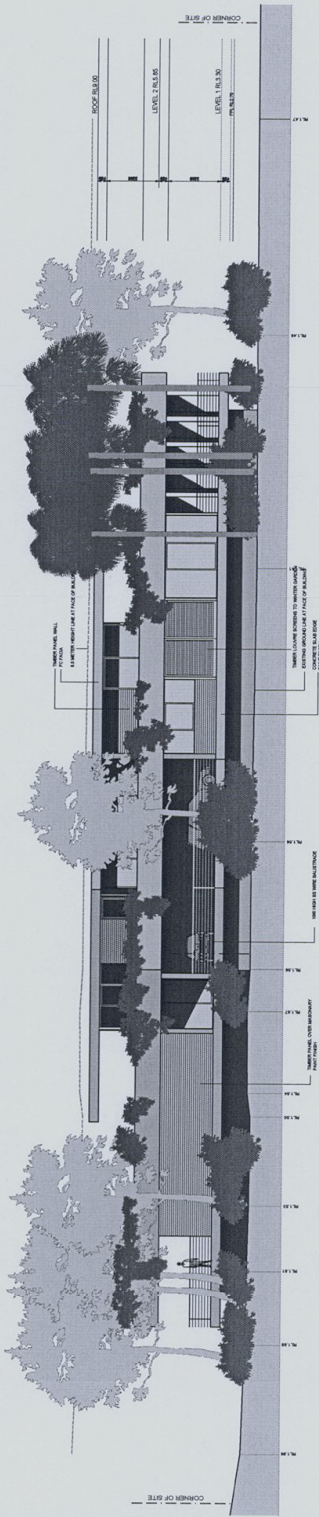
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QUALITY BOARD The Quality Board is a committee of the Council of the City of Sydney, established to ensure that the City of Sydney's development process is transparent, accountable and efficient.		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2019/11/20
 3d Concept Plan by Graham
 20082/114
 2002008200



NORTH ELEVATION VIEW FROM CABBAGE TREE ROAD



SOUTH ELEVATION VIEW FROM THE GOLF COURSE

CLIENT PROJECT NAME: [REDACTED] PROJECT ADDRESS: [REDACTED] PROJECT PHONE: [REDACTED] PROJECT FAX: [REDACTED] PROJECT EMAIL: [REDACTED]		DESIGNER PROJECT NAME: [REDACTED] PROJECT ADDRESS: [REDACTED] PROJECT PHONE: [REDACTED] PROJECT FAX: [REDACTED] PROJECT EMAIL: [REDACTED]	
DATE 2011/11/20		SCALE 1:100	
PROJECT TYPE RESIDENTIAL		DEVELOPMENT APPLICATION <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
PROJECT NO. 20082/114		DA NO. 04	

C12.4 Enliven Pittwater Progress Report

Meeting: Sustainable Towns & Villages Committee

Date: 15 February 2016

COMMUNITY STRATEGIC PLAN STRATEGY: Sustainable Towns & Villages

COMMUNITY STRATEGIC PLAN OBJECTIVE:

- To promote diverse retail and commercial opportunities
- To create a sense of place and enhance the village experience
- To improve the streetscapes and recreational qualities of the centres
- To promote sustainable development in Pittwater's town and village centres
- To ensure that Pittwater's villages remain vibrant as social, cultural and economic hubs

DELIVERY PROGRAM ACTION:

- Develop a strategy to enhance the public domain in local villages and town centres to stimulate social, cultural and economic activity.
-

1.0 EXECUTIVE SUMMARY

The Enliven Pittwater strategy has continued to deliver economic development and place making outcomes over the past six months to 31 December, 2015. The activities delivered through this strategy are underpinned by Pittwater Council's Social and Economic Development Plans 2012-2016.

The Enliven Pittwater Strategy is now well-established and recognised as bringing vibrancy to Pittwater town and village centres. The Enliven Strategy has delivered 21 activities for the period July - December 2015 and a total of 76 deliverables since its inception in July 2013, which have met the eight Enliven Pittwater objectives.

Over the next six months the Enliven Strategy will continue to focus on development and capacity building, to enable community and business to implement programs and activations which increase vibrancy and sense of place in Pittwater.

2.0 RECOMMENDATION

That Council note the progress the Enliven Pittwater strategy has achieved over the past six months.

3.0 BACKGROUND

3.1 PURPOSE

Provide Council with a six monthly progress report on the Enliven Pittwater Strategy. This report contains progress from July - December 2015.

3.2 BACKGROUND

At the Council meeting on 15 April 2013 Council resolved to establish the Enliven Pittwater Strategy.

In line with this resolution, an Expression of Interest process was undertaken to identify a Leadership Group and the launching of Enliven Pittwater in July 2013. Enliven Pittwater underpins both the Pittwater Social Plan and the Pittwater Economic Development Plan, 2012 - 2016. Each plan identifies Pittwater's Town and Village centres as playing an important role in the community's social, cultural and economic life.

Pittwater Council's Social Plan specifically identifies social and cultural offerings in our villages that play an important role in enhancing our communities' connectedness and wellbeing. Pittwater's first ever Economic Development Plan describes the importance of innovative streetscapes, design, and pop-up experiences in bolstering our local economy. Both Plans explore the connection between the local community and the village centres, demonstrating the role such centres play in the social and economic fabric of Pittwater.

The vision for Enliven Pittwater is to enhance vibrancy in Pittwater's town and village centres. This is being achieved by delivering a program of social, cultural and economic outcomes across Pittwater to enhance and activate each centre. Pittwater's village centres are well utilised, offering diverse shopping, eating and recreational opportunities. Enliven Pittwater's aim is to further energise these centres with place making strategies using existing assets either delivered by Council, or by other stakeholders, and to build a program of village-centred activities designed to enliven our public domains and business centres.

The Enliven Pittwater strategy now in its third year, can demonstrate successful achievement of its vision through a strong program of activations and community engagement to achieve measurable outcomes.

Over the past three years the Enliven Pittwater Strategy has been able to achieve wide success through collaboration and partnerships with Chambers of Commerce and the broader business community, local schools, the arts community, and community groups. The success of Enliven Pittwater has been primarily due to developing platforms which enable and support the above mentioned groups to participate in activating the centres.

To date there have been a number of outcomes achieved through Enliven Pittwater which are further outlined within this progress report.

3.3 POLICY IMPLICATIONS

Nil application

3.4 RELATED LEGISLATION

Nil application

3.5 FINANCIAL ISSUES

3.5.1 Budget

The budget is contained within the adopted Delivery Program and Budget 2015/16.

3.5.2 Resources Implications

The Enliven Pittwater strategy is an ongoing place-making strategy aimed at increasing the vibrancy in Pittwater's Town and Village Centres. This is delivered through the Enliven Pittwater Officer within the Place Management Business Unit.

4.0 KEY ISSUES

4.1 ENLIVEN PITTWATER OBJECTIVES

The Leadership Group have adopted the following eight objectives which continue to guide and underpin the Enliven Pittwater strategies.



4.1.1 PROGRESS FOR PERIOD July 2015 – December 2015

The Enliven Pittwater Strategy has continued to develop and deliver activities, trial new concepts, and develop partnerships. Linked to the related Enliven Pittwater objectives, the table 1 below outlines the outcomes and impacts of the activities delivered over the past 6 months.

Table1: Enliven Deliverables July-December 2015

Outcomes	Impacts	Numbers attending
Artist in Residence Exhibition 30 June – 5 July Avalon Enliven partnered event	The Eramboo Artist Harriet Birks exhibited her final works at Avalon Recreational Centre. The residency program is in its 3rd year. The opening night and following exhibition was attended by over 150 people over the three day period and featured local school children's works who participated in the project with the artist.	150 +
Sydney Street Art / Modus Operandi Mural 27 July Mona Vale Enliven partnered event Mona Vale	Enliven Pittwater partnered with local business Modus Operandi, Sydney Street Art and Kayapa Creative Studios to achieve an arts outcome in 'Darley Lane', Mona Vale. The vision for this project is to see the public laneway running between Harker and Darley Streets enhanced with an artwork. The work was completed over three days and has gained positive feedback from community in the area. The launch event was held at ModusOperandi with visitors able to view the work in progress during the weekend of 27-28 July 2015.	300+
Avalon Palm Beach Business Chamber 10 August Enliven Partnered Event Avalon Beach	Enliven Pittwater with Avalon Palm Beach Business Chamber presented a comprehensive update on Australia's Broadband Network and the impacts on community and business in Pittwater. The event was held at Avalon RSL and was well attended.	60 +
Young Pittwater Entrepreneur & Business Development Panel Forum 17 September Mona Vale Enliven Event	This business forum for 18 – 35's, held at Pittwater RSL was organised in response to the Enliven Youth representatives' request for more targeted business information for youth in Pittwater. The forum comprised expert speakers representing Law, Banking, and Marketing, to provide insight into successful business practices. Over 35 guests attended, providing young entrepreneurs with access to expert advice, followed by	35+

	networking and a Q & A session.	
The Northern Beaches Latin American Festival 18 October Avalon Beach Enliven partnered event	<p>The Northern Beaches Latin American Festival was held in Avalon Recreational Centre, and Patterson Lane. Enliven worked with the organisers to facilitate the expansion of this festival now in its second year. The closure of Patterson Lane allowed the organisers additional space to facilitate a 'street food laneway' which aided in creating a 'latino' atmosphere and added to the success of this event.</p> <p>Over 4000 attended this festival many travelling from outer Sydney areas to attend.</p>	4000+
Launch Event - The Game: Avalon Art Carnival Patterson Lane November Avalon Beach Enliven supported event	<p>Enliven Pittwater partnered with Avalon Palm Beach Business Chamber and Eramboo Artist Environment for the Launch Event of The Game: Avalon Art Carnival.</p> <p>Over 200 attended the opening event. The Art Carnival project collated a group of 20 public artworks which were exhibited throughout Avalon Village over the period 13 - 20 November 2015. Patterson Lane- a newly completed event-ready-space, was transformed into a vibrant party space for the launch event of the Art Carnival. Support was provided for this event through the funding of the road closure and provision of the enliven infrastructure i.e. milk crate stools etc. for the event. Good social media engagement #avalonartcarnival #avalonart #enliven #enlivenpittwater</p>	200+
The Game: Avalon Art Carnival 7-21 November Enliven Supported Event Avalon Beach	<p>The event November 2015 was attended by over 1000 people over the duration and attracted very positive feedback from business and community. It was successful in increasing visitation to Avalon Beach Village over the period of the installations. Enliven Pittwater supported the event by providing materials for the artists and assisted with the installation of works in the public space including Dunbar Park. The event strengthened Pittwater's role as a leading centre for the independent arts within the Northern Sydney Region and greater Sydney. Great responses on social media #avalonartcarnival #avalonart #enlivenpittwater #enliven</p>	1000+
Enliven Christmas Window Display Competition'. 30 November-17 December 2015 All	<p>In the lead up to Christmas, Pittwater Council invited all local businesses with street frontages in Mona Vale, Newport, and Avalon village centres, to take part in the 2015 Enliven Christmas Window Display Competition. The competition was very successful with over 31 businesses registering online. Winners were awarded in each town and village centre and received local restaurant vouchers. Social media coverage received positive feedback #enlivenpittwater #enliven</p>	31 Businesses
Enliven Christmas Light Installations 30 November-10 January Mona Vale, Avalon and Newport Enliven Pittwater Initiative	<p>The Enliven Christmas Light initiative responded to requests from community to add an air of festivity to our town and Village Centres over the Christmas period.</p> <p>Newport - Coloured festoon lights were suspended in one of the Norfolk pine trees in the centre traffic Island for Newport</p> <p>Light installations were suspended in the giant fig trees in Park street</p> <p>Avalon - Patterson Lane featured Christmas lighting suspended using the recently installed permanent wires as part of the event-ready-spaces project. Some social media engagement. Great community feedback.</p>	

<p>Summer Sessions -Bluegrass Bert Payne Reserve Newport 3 December Enliven Pittwater</p>	<p>The objectives of the Summer Session program of music and deckchairs was to :</p> <ul style="list-style-type: none"> Activate underutilised public space Provide a platform to showcase local talent Increase cultural vitality in town and village centres Create additional commercial opportunity through increased visitation <p>Over 120 attended this inaugural music and deckchair activation in Newport. The event attracted local Newport visitation and included a broad cross section of community including family groups, youth and older community members. Feedback from the event was very positive. Good social media engagement #SummerSessions #enliven #enlivenpittwater</p>	120 +
<p>Summer Sessions - Jazz Dunbar Park Avalon 4 December Enliven Pittwater</p>	<p>The second of the Enliven Summer Sessions, featured a Jazz trio sourced locally, attended by over 60 guests and included members of the local community including families, youth and older community members and a number of backpackers from nearby backpacker accommodation and was very well received . Feedback from the event was very positive. Good social media engagement #SummerSessions #enliven #enlivenpittwater</p>	60+
<p>Pittwater Artist Trail Bus Loop 5 December Enliven Partnered Event</p> <p>All</p>	<p>Enliven supported the Pittwater Artist trail by coordinating and funding a free shuttle bus to improve logistics in and around the artist studios. The loop beginning at Avalon Village and Palm Beach Wharf, aimed to facilitate easier parking and less congestion in suburban streets, and to entice a wider audience. The project was successful on both objectives. Some social media engagement and good community feedback. Suggest: encourage Pittwater Artist Trail Artists to promote on their own social media & use common # on Instagram & fb.</p>	65
<p>The Newport Family Christmas Party Robertson Road 10 December Enliven event Newport</p>	<p>The Newport Family Christmas party was held in Robertson Road for the second year and supports community place making by providing the road closure for Newport businesses and community to come together and celebrate Christmas. The event saw the street transformed into an event space with Christmas lights music and entertainment. Over 200 people attended the event.</p>	200+
<p>Summer Sessions -Classical Mona Vale 11 December Enliven event</p>	<p>Classical ensemble</p> <p>This classical music and deckchair activation in Mona Vale was very well received.</p>	50+
<p>Summer Sessions -Bluegrass Bert Payne Reserve Newport 17 December Enliven event</p>	<p>Over 250 attended the second round of Summer Sessions demonstrating the success of the initiative with an increase of 100% in attendance following the success of the first event held on 3 December. Feedback from community attending the event was very positive, and good social media responses #SummerSessions #enliven #enlivenpittwater.</p>	250
<p>Carols by the Sea 19 December Avalon Beach Enliven supported event</p>	<p>This family Christmas community event attended by over 4000 was supported by Enliven Pittwater with subsidising part of fireworks display, and extensive promo/media coverage. Enliven representatives were at the event promoting the enliven Pittwater app and providing additional support to the organisers – Avalon Beach Surf Life Saving and Carols by the Sea. Excellent community feedback and engagement on social media #enliven #enlivenpittwater #carolsbythesea #avalon</p>	4000+

Enliven Initiatives	Initiative's developed and implemented by Enliven that meet their key objectives other than events are included the following:	
Footpath and Outdoor seating Guidelines November 2015– January 2016 Enliven Pittwater Initiative	Development of guidelines for footpath and outdoor seating to provide users with clear instructions through use of high quality installations which Pittwater Council endorses for activating our footpaths and public spaces. To be uploaded on to the Pittwater Council Website (footpaths) January 2016.	
Event-Ready-Spaces Project Newport, Mona Vale and Avalon Beach May – November 2015 Enliven Initiative All	Infrastructure including external access to power and stainless steel cabling for the suspension of lighting and art works was recently completed in three locations. A blanket approval for up to three road closures per annum per Space has been agreed with the traffic committee, reducing the lead time required to activate designated event ready spaces in Pittwater.	
Process Review Footpath Permits Pittwater All centres July – December 2015	Simplified processes for all footpaths permit applications including A frames, merchandise, street stalls and events – which has been implemented since June 2015 including: Simplified fee structure for restaurant outdoor seating One year round flat fee More flexible approach to outdoor seating permits to allow customers access Three month permits rather than annual permits.	
Supporting community initiatives: Support and/ or promotion were provided to the following Community initiatives.	Enliven Pittwater extended the promotional reach of these events, with expanded coverage through social media, the Enliven Pittwater App, web and hardcopy material. These events have added vitality to Pittwater, creating recreational and social opportunities across a range of target ages. Supporting these initiatives builds social capital and assists organisations to facilitate the kind of events they want to run locally.	
Newport Sculpture Trail Launch 13 November Newport Enliven supported event	Enliven support was provided to the organisers of the Newport Sculpture Trail through the closure of Robertson Road to provide an open space as the venue for the Launch Event. Due to inclement weather the event did not achieve the projected numbers.	30-50
PCA Art Exhibition Enliven Supported Event	The annual exhibition of PCA at Mona Vale Memorial Hall	150+
Avalon Chamber	Avalon Market Day - provision of Enliven Infrastructure	20,000
Enliven Total Participants all	Total number of participants	30,670
The Enliven Pittwater App	Marketing focus over the next 6 months will centre on increasing the number of subscribers and events uploaded to the app as well as promoting the App to potential visitors to the Pittwater LGA.	

	<p>Improvements included:</p> <p>Explore Button – changed from static site based search to a map based visual, with pin locator for activity based businesses when searching references under the Business search function. This will facilitate easier integration of tourism activities in Pittwater.</p> <p>Addition of the Sports and Clubs Button to replace ‘network’ button</p> <p>Provision of a Link to cross promote the Walking in Pittwater app.</p> <p>Refinement of Marketing Strategy:</p> <p>Increase awareness locally and in the broader market place for the Enliven Pittwater App through a strong media and social media campaign in the months September-October, prior to the Pittwater’s major event season.</p> <p>Since launching:</p> <ul style="list-style-type: none"> ▯ Over 600 Businesses have listed on the app ▯ Over 1200 Users have downloaded the app ▯ Over 144 events posted in the past six months 	
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4.1.2 KEY LEARNINGS AND IMPROVEMENTS

Enliven Pittwater

Enliven Pittwater continually seeks to improve outcomes based on feedback from Chambers of Commerce, business, community and Enliven Pittwater partners.

The Enliven Pittwater Strategy and has met its eight objectives and continues to engage community and business through its program of activities designed to bring vibrancy to our town and village centres. Over the last six months Enliven has focussed on 'activating' to enhance the use of hidden or underutilised public spaces through a range of events and activities. Enliven Pittwater continues to support a reduction in the number of policies that govern the use of public space to enable festivals, events, and other community activities to come to fruition with less 'red tape'. The recent review of busking has seen a significant increase in busking applications resulting in more music and entertainment in the streets of Pittwater's village and town centres as evidenced in *table 2* below.

Table 2 Busking reservations July 2014- January 2016

(source Pittwater Council RMS report downloaded 18.1.16)

Period	Number of Busking reservations	Percentage increase
July 15 – Jan 16 (current)	64	+290%
Jan 15 – July 15 (previous)	22	
July 15 – Jan 16 (current)	64	+270%
July 14 – Jan 15 (same period previous year)	24	

Busking applications increased from 22 reservations in the period January – July 2015 to 64 reservations in the period July 2015 – Jan 2016. Compared with the same period last year (July 2014 – January 2015) there has been an increase of over 290%, from 24 reservations to 64 reservations, demonstrating that a reduction in complexity of policy and fees has encouraged greater street activation.

A comprehensive review of the Enliven App led to enhancements designed to retain and build on the existing client base and increase usability. The improvements are outlined in *table 3* below.

Table 3. Enliven Pittwater App

Enhancements	Outcome
Explore button – with interactive location map accessed on first click	integrates businesses and activities on a map with location pins (colour coded) and ability to zoom in – location based
Link to Walking app – Pittwater Council	Link or cross promote Walking in Pittwater app
Additional Buttons	
Networks button was replaced by "Sports and Clubs "	To provide an easy access point for Pittwater clubs to access free mobile listings for members including sporting clubs, interest groups and registered clubs.

The Enliven Pittwater Strategy delivered or supported 21 activities in the 6 months to December 2015. These activities attracted a combined audience of over 30,670 and included large scale events such as; The South American Latin Festival, The Game: Avalon Art Carnival: and Mona Vale Market Day. All events contribute to the depth and vibrancy of street life in Pittwater. Enliven Pittwater continues to provide high quality events and activations in keeping with its objectives and the needs of Pittwater communities.

4.3 FOCUS AREAS FOR 2016

The Enliven Pittwater Strategy continues to focus on partnership development to deliver sustainable outcomes for business and community to continue to 'enliven' Pittwater town and village centres. The Enliven Pittwater Leadership Group continues to be a key stakeholder in future proposed planning for Mona Vale, with testing of concepts to commence in early 2016. Our aim is to commence engagement activities in Avalon Beach Village in the later part of 2016, in line with the commencement of the Avalon Beach Village Place Plan.

5.0 SUSTAINABILITY ASSESSMENT

Nil application

5.1 GOVERNANCE & RISK

5.1.1 Community Engagement

The Enliven Pittwater Strategy engages with community through a number of vehicles and platforms including the Enliven Pittwater Leadership Group, Enliven events and activations, social media platforms, business and community partnerships.

The Enliven Pittwater Strategy has now entered an established phase and has demonstrated its value and relevance to Pittwater business and community.

In November 2015 a decision to migrate Enliven Pittwater's social media platforms into main stream Pittwater Council platforms was successfully implemented in order to foster further traction and growth, and reduce duplication.

Social media posts relating specifically to Enliven remain in the style, content and branding as before. Whilst other broader messaging falls under the I love Pittwater and Pittwater Council platforms - all performing strongly.

The Enliven Pittwater Leadership Group consists of a broad range of representatives from major stakeholder groups including councillors, youth, and community and council officers. It is proposed that an independent chair be appointed in 2016 for a two year period to ensure the aims of the leadership group continue to be met, and to provide community and business with the capacity to drive future experiences autonomously.

5.1.2 Risk Management

Community and business sentiment has been closely monitored following all events and feedback remains positive. Pittwater Council and the Enliven Pittwater Leadership Group work closely with business and community groups in managing and delivering supported events and activities.

5.2 ENVIRONMENT

5.2.1 Environmental Impact

Nil application

5.2.2 Mitigation Measures

Nil application

5.3 SOCIAL

5.3.1 Address Community Needs & Aspirations

Enliven Pittwater is underpinned by both the Economic Development Plan, and the Social Plan 2012 – 2016, both of which identify the community's priority areas and aim to develop opportunities for employment, education and training in the region through promotion of business, and fostering of relationships with local, state and national agencies. Which subsequently enhances the economic vibrancy of our towns and villages.

5.3.2 Strengthening local community

The Enliven Pittwater Strategy as a vehicle for Place Making is designed to strengthen the social, cultural and economic dynamic in local centres, and supports community by encouraging increased variety of cultural experiences in our towns and village centres. Initially facilitated by Enliven Pittwater, the strategy aims to provide community and business with the capacity to drive future experiences autonomously.

5.4 ECONOMIC

5.4.1 Economic Development

Enliven Pittwater is underpinned by the Economic Development Plan which aims to guide, support, profile and promote business and sustainable economic development in Pittwater. The Enliven Pittwater strategy assists community in identifying opportunities for economic growth through ongoing engagement, seminar events, effective partnerships and collaborative relationships with local business and networks as well as government and non-government organisations.

Report prepared by
Liz Cassis, Enliven Pittwater Project Officer

Nikki Griffith
ACTING MANAGER, PLACE MANAGEMENT

C12.5	Improving the Regulation of Manufactured Homes, Caravan Parks, Manufactured Home Estates and Camping Grounds Discussion Paper
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Meeting: Sustainable Towns & Villages Committee

Date: 15 February 2016

COMMUNITY STRATEGIC PLAN STRATEGY: Land Use & Development

COMMUNITY STRATEGIC PLAN OBJECTIVE:

- To effectively respond to state and regional planning initiatives

DELIVERY PROGRAM ACTION:

- Monitor legislative and regulatory reforms relating to land use planning and respond and advocate on behalf of Council
-

1.0 EXECUTIVE SUMMARY

The Department of Planning and Environment (The Department) placed on exhibition the discussion paper *Improving the Regulation of Manufactured Homes, Caravan Parks, Manufactured Home Estates & Camping Grounds* (the Paper). The Paper sought feedback on a number of proposals to amend the current legislative and regulatory systems to improve and simplify the process.

This Paper is of importance to Council as it is both the owner and regulator of the only caravan park within Council boundaries.

The current approvals pathway and regulatory requirements for caravan parks and manufactured homes is overly complex with approval required under a number of pieces of legislation. This includes the *Environmental Planning and Assessment Act 1979* and the *Local Government Act 1993* and the *Manufactured Home Estates, Caravan Parks, Manufactured Homes, Camping Grounds and Moveable Dwellings Regulations 2005* (the Regulations). Furthermore the Regulations is subject to a sunset clause with an expiry date of September 2016. The Department has thus considered it important that the regulatory process be reviewed and new regulations or policy be in place for when the current Regulations are repealed.

The Paper proposes a number of significant amendments or changes. These include the adoption of new definitions, the removal of dual approval requirements and the repeal of outdated policies. A new set of controls and policies at the State level is proposed in the form of a Guideline document that will provide direction while allowing variations, where appropriate, to be made by the consent authority.

The Discussion Paper was exhibited from the 26 November until 14 December 2015. Council sought and was granted an extension until the 18th January 2016 to provide a submission. Due to the small exhibition period, a submission was made prior to being able to be reported to Council. The submission is now reported to Council for information purposes.

Council Planning staff, including advice from the Property and Compliance Business Units, prepared a submission broadly supporting the proposed amendments while also raising specific areas of concerns and implication for the Pittwater Local Government Area.

2.0 RECOMMENDATION

That Council note the submission prepared by Planning staff in relation to the Discussion Paper 'Improving the Regulation of Manufactured Homes, Caravan Parks, Manufactured Home Estates and Camping Grounds' (at Attachment 1).

3.0 BACKGROUND

3.1 PURPOSE

The purpose of this report is to:

- Provide Council a copy of the submission prepared on Improving the Regulation of Manufactured Homes, Caravan Parks, Manufactured Home Estates & Camping Grounds in **Attachment 1**, and
- Inform Council of issues and concerns relating to the proposed changes.

3.2 HISTORY

The current regulatory system for caravan parks, manufactured homes, manufactured home estates and camping grounds is overly complex and difficult. While the majority of controls are contained within the Local Government (*Manufactured Home Estates, Caravan Parks, Manufactured Homes, Camping Grounds and Moveable Dwellings Regulations*) 2005 (The Regulations), there are other pieces of legislation and state policy that are applicable. This includes the *Environmental Planning and Assessment Act 1979* as well as the *Local Government Act 1993*. There are also two State Environmental Planning Policies (SEPPs) for caravan parks and manufactured home estates that provide further guidance and controls. Furthermore, the Regulations are subject to a sunset clause which is due to expire in September 2016.

The approval system is complex requiring reform and coordination between the different policies, specifically the focus is centred on reducing complexity, removing duplication of approvals and eliminating multiple layers of policy.

Caravan parks provide for tourism accommodation and more recently affordable long term or permanent residential accommodation. The Regulations were developed on the premise that manufactured home estates would fulfil the requirement for long term accommodation however failed to consider the increasing popularity of manufactured homes outside of estates for both primary and secondary dwellings in residential areas. These circumstances further reinforce the need to review the current regulatory system to provide clear direction.

3.3 POLICY IMPLICATIONS

There are potential policy implications for Pittwater Council associated with the discussion Paper depending on the options adopted. Implications include operational issues associated with the management of the caravan park and regulatory related changes associated with design specifications, approvals and compliance.

3.4 RELATED LEGISLATION

There are potential changes to a number of pieces of legislation depending on the options adopted. The relevant legislation includes:

- Environmental Planning and Assessment Act 1979,
- Standard Instrument (Local Environmental Plans) Order 2006,
- Local Government Act 1993
- Local Government Regulation (Manufactured Homes, Caravan Parks, Manufactured Home Estates and Camping Grounds) 2005
- State Environmental Planning Policy 21 – Caravan Parks
- State Environmental Planning Policy 36 – Manufactured Home Estates
- State Environmental Planning Policy (Exempt and Complying Development Codes) 2008
- Pittwater Local Environmental Plan 2014

3.5 FINANCIAL ISSUES

3.5.1 Budget

Preparation and management of the Discussion Paper and its potential outcomes can be accommodated within current budgetary allocations

In relation to the operational management of the caravan park, there is the potential for budgetary implications however until a specific option is adopted it is difficult to predict the scope of these.

Once an approved option is announced and specific details are known, a separate report (prepared by the Property Business Unit) will be presented to Council outlining the budgetary implications.

3.5.2 Resources Implications

Work associated with the outcome of the Discussion Paper can be accommodated within current budgetary allocations

In relation to the operational management of the caravan park, there is potential for resources implications however until a specific option is adopted it is difficult to predict the scope of these.

Once an approved option is announced and specific details are known, a separate report will be presented to Council outlining the resources implications.

4.0 KEY ISSUES

The Paper covers a significant number of issues and potential amendments to improve the current regulatory system. The issues raised are not confined to matters within parks, but also include issues within residential areas.

The specific sections of the Discussion Paper are addressed below.

4.1 Changing nature of caravan parks and manufactured home estates

Historically caravan parks provided affordable tourist accommodation, however over time this has expanded to also cater for long term and permanent residents. When the current regulatory system was being developed and introduced it was considered that manufactured home estates would cater for permanent residents and caravan parks would continue to provide tourist accommodation. In reality, parks and estates cater for both tourist and residential purposes, therefore it is considered appropriate to introduce new land use terms to reflect this.

The Paper proposes to remove the current terms of 'caravan park' and 'manufactured home estate' which is defined as 'land on which manufactured homes are, or are to be, erected' and replace them with new land uses terms of 'Residential Park' and 'Tourist Park'. Rather than rely on definitions based on dwelling typology, the new definitions are based on the primary use of the site.

The following definitions are proposed:

- 'residential park' - 'A place that primarily provides accommodation for permanent residents on which moveable dwellings are installed, manufactured homes are installed, and which may or may not include communal facilities and administrative buildings.'
- 'tourist park' - 'A place that primarily provides for accommodation for tourists and visitors on which moveable dwellings are installed, manufactured home are installed, and which may or may not include communal facilities and administration buildings.'

The proposed amendments are supported as they reduce ambiguity and improve the classification of parks.

While the need to define the primary use of parks and estates is acknowledged it is imperative to continue to permit both tourist and residential accommodation, where appropriate, in existing Parks. Given this there is a need to define how many sites within a premise are used for either purpose through thresholds.

The Paper outlines two potential options to setting thresholds on the number of sites used for either purpose. Both seek to prevent the primary use of a Park being transitioned from a residential park to a tourist park or vice versa, without prior approval. The first option relies on setting controls under the proposed Guideline document which establishes a threshold and provides guidance to Councils on determining if a park is either a residential or tourist park. The second option requires Councils to adopt a model clause, under the Standard Instrument (Local Environmental Plans), and insert into their Local Environmental Plan under Clause 5.4 – Controls relating to miscellaneous permitted uses.

Another issue relates to permissibility and the appropriate zones to locate tourist and residential parks. The Paper outlines two options, Option one provides a state wide approach which sets mandatory permissibility in specific zones, while Option two allows each Council to set their own preferred zones.

Staff Response:

Council's caravan park mostly provides tourist accommodation, with a smaller number of designated long term and permanent sites. Council's preference is not set rigid thresholds as this has the potential to jeopardize future land uses on site.

In relation to permissibility, the preference is Option two in which Councils have autonomy to set where these land uses are permitted rather than a mandated state-wide approach.

4.2 Approval of manufactured homes outside caravan parks and manufactured home estates

Manufactured homes are a type of self-contained relocatable home or moveable dwelling constructed off-site, transported and installed on site. Manufactured homes are an increasingly desirable option for housing outside of caravan parks and estates, as either the primary dwelling or secondary dwelling, due to affordability and ease of installation. The current regulatory systems did not foresee this development, and thus a complex approval system exists when approving manufactured homes outside of parks.

For example, manufactured homes are not defined as a 'building' under the *Environmental Planning and Assessment Act 1979* and require a Section 68 approval under the *Local Government Act 1993* prior to being installed.

This Paper proposes three amendments to simplify the approvals process for manufactured homes. The first amendment would include manufactured dwellings as a building under the *Environmental Planning and Assessment Act 1979* (EP&A Act) allowing for dual occupancies, dwelling houses and granny flats to be permissible as manufactured homes. The second amendment would remove the requirement to be approved under the *Local Government Act 1993* and the third would permit manufactured homes wherever a dwelling house (or other residential accommodation) is permitted.

Staff Response:

All three proposed amendments are supported. This will provide clear direction across NSW around the permissibility of manufactured dwellings outside of parks and will remove the dual approval requirement under the *Local Government Act 1993*. Details regarding the structural adequacy and robustness and visual appearance of these houses would be required.

4.3 Approval of moveable dwellings

Under the *Local Government Act 1993*, moveable dwellings are defined as any caravan, tent, van or portable device used for human habitation, or a manufactured home. The *Local Government Act 1993* also provides for a range of exemptions, these include

- The erection or installation on land within a caravan park or camping ground;
- Up to two caravans, campervans or tents on any land with the landowner's consent provided they are not occupied for more than two days at a time and not occupied for more than 60 days in a 12 month period;
- One caravan or campervan on land on which there is a dwelling house, provided it is occupied by the owner of the dwelling or members of the household, and it is maintained in a safe and healthy condition; and
- A caravan or campervan on agricultural land provided it is occupied by seasonal workers on the land.

Land within a Crown reserve or in a State forest is covered by the *Crown Lands Act 1989* and the *Forestry Act 1916* and are exempt from Council approval.

The Paper highlights a range of concerns with the inclusion of manufactured homes as a moveable dwelling, including ambiguity and the restrictive nature of the controls as they relate to development outside of parks and camping grounds. The Paper proposes to remove manufactured homes from the broader movable dwellings term and delete the two day concurrent occupation for moveable dwellings to allow for long weekends and holidays.

Staff Response:

The proposal as outlined is generally supported on the proviso that the current control which limits occupation to 60 days within a 12 month period is retained. This has been reflected in the staff submission (**Attachment 1**).

4.4 Facilitating the development of new caravan parks and manufactured home estates

In conjunction with the Pittwater Local Environmental Plan 2014, there are State Environmental Planning Policies (SEPPs) that provide direction and specific controls for caravan parks and manufactured home estates. These applicable SEPPs are State Environmental Planning Policy 21 – Caravan Parks (SEPP 21) and State Environmental Planning Policy 36 – Manufactured Home Estates (SEPP 36).

SEPP 21 applies uniformly across the state, while SEPP 36 applies to all land outside of metropolitan Sydney. The Paper indicates that prior consultation regarding the specified SEPPs has revealed the policies are deficient, ineffective or rely heavily on the Regulations, whilst providing minimal guidance on the alteration or redevelopment of existing parks.

The Paper recommends the SEPPs be repealed with relevant provisions transferred to the Guideline document. This would see the prescriptive nature of the controls transferred to a performance based directional document.

Staff Response:

The changes as outlined are supported. The repeal of the policies and introduction of a Guideline document will provide valuable direction to Councils in relation to management of parks and regulatory controls, which respond to local circumstances.

4.5 Streamlining approval to operate for existing caravan parks, camping grounds and manufactured home estates.

The Local Government Regulations specify existing parks and estates must seek approval every 5 years (unless defined separately) to continue to operate. This approval or extension can be granted if the relevant Council agrees the park is meeting the requirements of the regulations.

The Paper proposes to remove this requirement.

Staff Response:

The requirement for continual approval every 5 years is considered unnecessary and its removal is supported.

4.6 Transitioning existing estates, parks and camping grounds to a new approvals framework

As with any change in legislation and policy there will be circumstances in which existing parks, estates and camping grounds may not satisfy future provisions or zoning requirements. In these circumstances flexibility would be required to permit existing operations to expand or reconfigure.

The Paper suggests that flexibility could be provided within the future controls to support existing operations, while a Planning Circular could be produced to provide further support and guidance.

Staff Response:

Council supports the options as outlined in the Paper, specifically flexibility and the development of a Planning Circular to provide guidance on these matters.

4.7 Streamlining approvals through exempt and complying development

- Outside of parks and estates

The Paper proposes to confirm manufactured homes can be approved under Complying Development and the exempt development provisions are applicable.

Staff Response:

Significant advances in the design and quality of these types of development have occurred in recent years. The proposal as outlined in the Paper is supported as it will provide a greater range of housing types and address affordability issues. Furthermore Council's submission clearly stipulated that 'container housing' should not be permitted under complying development.

This type of housing style should remain as local development subject to a development application and merit assessment.

- Within parks and estates

The Paper proposes to allow manufactured homes under complying development within parks.

Furthermore, the Paper outlines a number of options to transfer sites between tourist and residential uses within parks. This includes changing site uses without approval where thresholds are not changed and with a development application for where the thresholds are breached.

Staff Response:

The proposal to allow Complying Development within parks is supported. Council's submission did specify that parks are not homogenous and reflect different character and local issues in comparison to residential areas. To reflect these differences the existing residential code cannot be utilised, rather a new code for parks must be developed and cannot be a direct translation of the existing dwelling house codes.

As previously indicated, staff do not support the setting of thresholds for residential or tourist purposes. The submission articulates this position and removing the reliance on seeking development consent to change between a residential or tourist site.

4.8 Introduction of a Guideline

The standards and controls for all parks and estates are currently contained within the *Local Government (Manufactured Homes, Caravan Parks, Manufactured Home Estates and Camping Grounds) Regulation 2005* (the Regulation). The Regulations are prescriptive and contain exhaustive controls that regulate a wide variety of matters, including controls for road widths, laundry facilities, site coverage and setbacks for manufactured home sites. The prescriptive nature of the controls does not support variations or site specific solutions which can prevent quality design outcomes being achieved.

The Paper proposes the majority of the controls in the current regulations be retained and moved to a guiding document. The Guideline would provide the fundamental provisions and standards, however would foster variations to the standards if appropriately justified thus improving design outcomes achieved. Alternatively this could also be achieved where the prescriptive nature of some controls could potentially be changed to a performance based approach.

The second proposal is for the Guideline document to be accompanied by a published explanation guide. This is proposed to take a similar approach to the *Apartment Design Guide* which provides guidance for residential apartment buildings

Staff Response:

Both proposals are considered beneficial and are supported. The Guideline document will provide flexible controls and provisions to guide development within the caravan park and remove the restrictive nature of the current Regulations.

4.9 Removal of the need for concurrence from the NSW Department of Planning and Environment

Where a park cannot meet the standards of the Regulations, the consent authority must seek concurrence from the Department of Planning and Environment to vary them. With the repeal of the regulations and their replacement with the Guideline document, it will allow Councils to consider variations to the standards on merit without the requirement to seek concurrence

Staff Response:

The proposal is supported as it will allow Council to consider variations on their merit by Council staff and reduce development application determination times.

4.10 Definitions of development types

The Paper also proposed that a number of definitions be amended, retained or deleted under the relevant pieces of legislation. This would be necessary to ensure that all changes are accurately reflected through all related legislation and/or to provide clearer definitions of land use terms.

In total there are nine changes proposed. The first two relate to removing caravan parks and manufactured home estates as detailed under section 4.1. The other changes in definitions include:

- Retain the camping ground definition
- Retain camp site definition but add three new definitions for short-term site, long-term site and site in general.
- Amend the definition of building under the EP&A Act to include manufactured homes
- Amend the definition of manufactured homes to exclude moveable dwellings
- Amend the definition of moveable dwellings to exclude manufactured homes and include only tents, caravans, campervans and recreation vehicles or portable device used for human habitation
- Delete the definition of relocatable home
- Retain the definitions of major section and installation for manufactured homes

Staff Response:

These changes are supported as they reflect changes made elsewhere in the governing legislation and provide clearer definitions of land use terms.

4.11 Providing for a diversity of residential and tourist uses within parks

Caravan parks provide both recreational and tourism opportunities while also providing a number of long term residential sites. This means there is a need to cater for both types of sites and the need to set appropriate controls. However the discussion paper is relying on setting thresholds for how many sites are used for either purpose.

Staff Response:

Staff do not support a control that sets tourist and residential site thresholds. The preference is for flexibility to change site uses as a rigid approach may jeopardize future land uses. As such Council's submission has stipulated that the setting of thresholds is not support.

4.12 Manufactured homes and the Building Code of Australia (BCA)

NSW is the only jurisdiction in Australia that does not require manufactured homes to meet the BCA requirements. Setting a requirement for manufactured homes to satisfy BCA requirement will ensure NSW is in line with other States and Territories.

Staff Response:

This approach is supported. As manufactured homes become an increasingly popular option, the need to meet the same standards as other dwelling houses is imperative. As discussed previously, it is proposed to include manufactured homes as a 'building' under the Environmental Planning and Assessment Act. This would automatically require manufactured homes to meet the BCA.

4.13 Critical stage inspections for manufactured homes

Currently manufactured homes are subject to different statutory provisions which have been established to control and ensure the quality of the building. The current provisions do not require critical stage inspections as manufactured homes are required to be designed by a practising structural engineer, be structurally sound, installed in accordance with the engineering specifications and compliance plates attached confirming all specified requirements have been met. Furthermore, these plates require a statement detailing compliance with all regulations.

Staff Response:

Requiring manufactured homes to undergo mandatory inspections is supported. These could potentially include inspections of concrete slabs, footings, and the final inspection before the issuing of an occupation certificate. Including manufactured homes as a building under the EP&A Act could potentially provide an option to ensure these inspections become mandatory and undertaken by a 'qualified person'. This person is not currently defined within the Paper Council's submission has raised this point. Furthermore, Council's submission requests a copy of the compliance plate be distributed to the park owners or managers for their records.

4.14 Fire Safety Standards in parks

The current requirements for fire safety and protection within parks are also contained within the Regulations. This includes prescriptive standards for building separation and the number of hydrants and extinguishers required amongst other controls.

Staff Response:

Council's submission supports the alignment of the standards with other forms of residential accommodation. Council's submission suggested the standards be aligned with other forms of residential accommodation.

4.15 Environmentally sensitive land

Caravan parks have traditionally occupied marginal lands that are prone to natural hazards and are unable to support permanent residential accommodation. This is the case for Narrabeen Lakeside Caravan Park where it is subject to high risk flooding. Caravan parks are also defined under the Pittwater Local Environmental Plan as vulnerable development requiring additional levels of protection and safety to minimise such risks. However, rigid compliance may sterilize future development in the park. Council's submission acknowledges parks and estates are sited in environmentally sensitive areas and have requested performance based approaches are adopted to allow for future appropriate development of parks and estates.

Staff Response:

Staff acknowledge natural hazards need to be adequately addressed and considered, however rigid compliance with prescriptive controls is considered too restrictive. The preference is to establish performance based approach to allow suitable solutions to hazards be developed and considered.

4.16 Compliance with certain standards

The *Local Government Act 1993* contains provisions for Councils to manage and enforce compliance with the LG Regulation. However uncertainty remains over enforcement orders and the compliance for parks and estates. To address this issue the Paper has proposed the compliance provisions for caravan parks, estates and moveable dwellings be incorporated into the *Environmental Planning and Assessment Act 1979*.

Staff Response:

Staff welcomes the potential for additional powers to issue infringement notices and manage compliance issues.

5.0 ATTACHMENTS

Attachment 1 – A Submission dated 14 December 2015, to the Department of Planning and Environment outlining Council's concerns and comments.

6.0 SUSTAINABILITY ASSESSMENT

6.1 GOVERNANCE & RISK

6.1.1 Community Engagement

The purpose of this report is to inform Council of the proposed changes to the legislation for caravan parks, manufactured homes, manufactured home estates and camping grounds. The proposal was formally exhibited by the Department of Planning and Environment and community comments sought. In moving forward if the Department implements changes as proposed in the Discussion Paper, Council will need to inform the community, specifically long term residents of Narrabeen Lakeside Caravan Park

6.1.2 Risk Management

Council's submission on the paper, *Improving the Regulation of Manufactured Homes, Caravan Parks, Manufactured Home Estates and Camping Grounds* outlined the concerns raised in the report.

There is no risk anticipated from the making of a submission.

In the long term, the review and streamlining of the associated legislation and policies will provide clarity, reduce duplication and overall improve approval processes.

6.2 ENVIRONMENT

6.2.1 Environmental Impact

- The proposed changes are not considered to have an impact upon flora and fauna as they do not change environmental protections.

6.2.2 Mitigation Measures

- The proposed changes will be affected by climate change as the caravan park is potentially subjected to coastal inundation from rising sea levels.
- The proposed changes may impact water use and
- The proposed changes may impact energy use and greenhouse gases

6.3 SOCIAL

6.3.1 Address Community Need & Aspirations

- The proposed changes will not affect the quality of cultural, community or recreational services available to the community.
- The proposed changes to the Local Government (*Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings*) Regulation 2005 outlined in the Discussion Paper and this report will seek to improve the health and safety of residents residing in manufactured homes and within parks.
- The proposed changes will not affect the services for our community.
- The proposed changes will not affect the mobility of residents.

6.3.2 Strengthening local community

- The proposed changes will not affect the community feeling of connectedness.
- The proposed changes will not affect the liveability of our villages.
- The proposed changes will not promote education and knowledge generation.

6.4 ECONOMIC

6.4.1 Economic Development

- The proposed changes may create or support opportunities for local economic growth, however given the proposed amendments to the Local Government (*Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings*) Regulation 2005 outlined in the Discussion Paper are high level it is difficult to accurately reflect the potential impact at this stage.

Report prepared by
Brendan Gavin, Assistant Strategic Planner
Anne-Maree Newbery, Principal Officer Strategic Planning

Andrew Pigott
MANAGER, PLANNING & ASSESSMENT

Andrew Pigott, Manager Planning and Assessment
8:00am to 5:30pm Monday - Thursday, 8:00am to 5:00pm Friday
Phone 9970 1111

14 December 2015

Carlie Ryan,
Team Leader, Housing Policy
Department of Planning and Environment
GPO Box 39
Sydney NSW 2001

Dear Madam,

Improving the Regulation of Manufactured Homes, Caravan Parks, Manufactured Home Estates & Camping Grounds Discussion Paper

Pittwater Council would like to thank the Department of Planning and Environment for providing Council with the opportunity to comment on the discussion paper for caravan parks, manufactured homes and camping grounds. Broadly speaking, Council is pleased the Department is seeking to amend the current regulatory and approval framework that is overly complex and rigid.

Council recognises the importance that caravan parks play in providing both an affordable housing option as well tourism and recreational opportunities. Council would also like to note that there is currently only one caravan park in Pittwater and that it is both owned and regulated by Council.

Council has reviewed the discussion paper and would like to provide the following comments;

Section 4.1 – Changing nature of caravan parks and manufactured home estates

Council supports the proposed definitions of 'Tourist Park' and 'Residential Park' and a zoned based approach to permitting such land uses. These uses should not be regulated through mandatory provisions in the Standard Instrument, rather Council supports a flexible approach in which local council retain autonomy in setting zones in which these land uses are permitted based upon evidence based planning approaches via strategic plans and housing strategies

Section 5.1 – Approval of manufactured homes outside caravan parks and manufactured home estates.

Council supports removing the need to seek two approvals for manufactured homes. The most practical option would be to include manufactured homes as a building under the Environmental Planning and Assessment Act (EP&A) and remove the requirement for them to seek approval under the Local Government Act.

Section 5.2 – Approval of moveable dwellings

Council supports the removal of manufactured homes from the broader moveable dwelling definition as it provides greater clarity. Council also proposes that tents, caravan and campervans should not be allowed to be occupied for more than 60 days in a 12 month period, and have the relevant landowner's consent.

Section 5.3 – Facilitating the development of new parks and estates.

Council supports the repeal of SEPP 21 and SEPP 36 and their replacement with the Guideline document. Council would welcome additional opportunities to review the Guideline prior to its finalisation.

Section 5.4 - Streamlining approvals to operate for existing parks, camping grounds and manufactured home estates.

Council supports the removal of the requirement to seek consent to operate every 5 years. Once-off development consent is supported.

Section 5.5 - Transitioning existing parks, estates and campgrounds to the new approvals framework

Council notes that the intention in this section is to prevent existing parks from being subjected to new controls that were not in place at the time of the original approval. Council would support the Department of Planning and Environment if they were to release a Planning Circular to provide guidance for existing parks outlining how the new approval process relates to them.

Council is concerned that any changes in the layout of the park or sites could result in the entire site being subject to compliance with new controls, and asks that flexibility is provided for parks in this situation.

Section 5.6 - Streamlining approval through exempt and complying

Manufactured homes outside parks.

Council agrees with the provisions to allow exempt and complying development for manufactured homes outside of parks. Council however does not support 'shipping container' housing be permitted under the Complying Development Code and these developments should only be permitted subject to merit assessment via a development application

Manufactured homes within parks.

Council also supports extending exempt and complying development provisions to manufactured homes within caravan parks, subject to the development of specific provisions for caravan parks and related sites. However Council does not support a direct translation of the existing code provisions. The new provisions will need to take into consideration the different character and requirements of caravan parks as well as natural hazards, such as flooding.

Council does not support the setting of thresholds for residential or tourist sites as this could potentially limit future land uses opportunities. The requirement that a development application is needed to change between residential and tourist sites, and vice versa, is not supported by Council. The preference is to provide flexibility in the allocation of sites.

Section 5.7 - Introduction of a guideline

Council strongly supports the removal of the current Local Government Regulations for caravan parks and camping sites and their replacement with a Guideline document. Council agrees that the current provisions are overly prescriptive and restrictive. Council support the publication of a document, such as the Apartment Design Guide for SEPP 65, to explain the policy and its controls to the general public.

Section 5.8 - Removal of concurrence from Planning

The removal of the concurrence requirement to vary standards is supported. Variations to standards can be assessed and determined by Council as part of the development application process.

Section 5.9 - Definitions.

Council supports the proposed definitions as outlined in the Discussion Paper.

Section 6.1 - Providing for a diversity of residential and tourist uses.

Council appreciates that both proposed park types will include a number of sites used for other purposes, such as a residential park may contain a number of tourist sites while a tourist park may contain residential sites. It is important that this is recognised and protected to avoid restricting future uses of caravan parks.

Section 8.1 - Manufactured homes and BCA.

Requiring manufactured homes to meet the Building Code of Australia (BCA) is supported as it will ensure NSW comes into line with the other states and territories. Manufactured homes are increasing in popularity as a permanent residential accommodation option both within and outside of dedicated parks. Therefore it is essential that they satisfy the fundamental requirements of the BCA.

Section 8.2 – Critical State Inspections

With the increased popularity of manufactured homes as a housing option within and outside of parks, it is important that critical stage inspections are mandated. This is imperative to ensure dwellings are constructed as per the approved plans and specifications. Furthermore it will ensure all residential housing options are subject to the same construction inspection safeguards and regime

Council seeks further clarification on who constitutes a ‘qualified person’ and in relation to homes within parks, a copy of the compliance certificate from the manufacturer should be distributed to the park owners or managers.

Section 8.3 - Fire Safety Standards

It is imperative that all residential uses, including manufactured homes, are aligned with the requirement for other housing forms.

Section 8.4 - Environmentally Sensitive land

Council acknowledges the need for proper management of natural hazards and risk, however strict compliance with standards may unnecessarily restrict development. Council supports flexibility and performance based approaches to planning in which clear and concise outcomes are set and development proposals must demonstrate how the relevant outcomes are achieved.

Section 8.5 - Compliance with certain standards

Council would support having additional powers to enforce compliance within parks, including the ability to issue infringement notices.

If you have any enquires about this matter please do not hesitate to contact Anne-Maree Newbery on 9970 1164.

Yours sincerely,

Andrew Pigott

MANAGER – PLANNING AND ASSESSMENT

C12.6	Amendment to the Pittwater Local Environmental Plan (LEP) 2014 (Planning Proposal)
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Meeting: Sustainable Towns & Villages Committee

Date: 15 February 2016

COMMUNITY STRATEGIC PLAN STRATEGY: Land Use & Development

COMMUNITY STRATEGIC PLAN OBJECTIVE:

- To establish land uses that respond to environmental, cultural, social and economic needs in a sustainable manner

DELIVERY PROGRAM ACTION:

- Prepare new Standard Instrument LEP
-

1.0 EXECUTIVE SUMMARY

On 27 June 2014, the Pittwater Local Environmental Plan (LEP) 2014 came into effect.

The Pittwater LEP 2014 was intended as a translation of the provisions of the Pittwater LEP 1993 into the NSW Government's *Standard Instrument—Principal Local Environmental Plan*.

On 21 July 2014, Council was informed that following a thorough review of the Pittwater LEP 2014 after it was made, it was evident that a number of changes had been introduced in the period between Council adopting the draft Pittwater LEP on 20 December 2013 and the Pittwater LEP 2014 being made by the Department of Planning and Parliamentary Counsel.

In order to rectify some of the changes introduced, Council was subsequently informed of four expedited amendments that had been initiated to the Pittwater LEP 2014 (under Section 73A of the Environmental Planning & Assessment Act 1979 (EP&A Act)) to remedy minor errors following changes made by the State Government.

A Planning Proposal (Attachment 1) was also subsequently prepared to address some of the more substantial changes made to the Pittwater LEP 2014 by the State Government, as well as to address other 'house-keeping' matters that have been identified since the LEP came into effect.

On 18 May 2015, the Planning Proposal was submitted to Council for consideration, with a recommendation:

1. That Council endorse the Planning Proposal at Attachment 1 for forwarding to the Department of Planning & Environment (DP&E) with a request for a Gateway Determination to certify the commencement of a public exhibition to amend the Pittwater Local Environmental Plan (LEP) 2014.
2. That Council endorse making a request to the DP&E that Council's delegate (the General Manager) exercise delegation to finalise the proposed amendments to the Pittwater LEP 2014.

Council resolved to adopt the recommendation and subsequently a request for a Gateway Determination was forwarded to DP&E on 26 May 2015. DP&E have not issued a Gateway Determination, siting a number of unresolved matters in the Planning Proposal. Negotiations between Council and DP&E have subsequently occurred and all outstanding concerns have been resolved to the Departments satisfaction.

The Amendment items of concern include:

- Amendment Item 1, clause 4.1 (Minimum subdivision lot size) subclause (3A) clarification relating to the calculation of lot size area for battle-axe lots.
- Amendment Item 2, clause 4.1 (Minimum subdivision lot size) inclusion of additional subclause to permit subdivision of land identified in “Area 1” on Lot Size Map is less than the minimum subdivision lot size if the resultant lot is associated with the subdivision of land within an Urban Release Area.
- Amendment Item 4, clause 4.3 (Height of buildings) inclusion of additional subclauses relating to height of secondary dwelling or rural worker’s dwelling and dual occupancy.
- Amendment Item 5, clause 4.3 (Height of buildings) by adding an additional subclause to clarify the maximum height of development over the waterway.
- Amendment Item 6, Amend Height of Buildings Map – Sheet HOB_012 in relation to 14 Orchard Street, Warriewood.
- Amendment Item 11, insert additional objectives for zones RU2, R2, R3, R5, E3, E4 and B1

The outcome of the negotiations resulted in a number of amendments to the formally endorsed Planning Proposal submitted for a Gateway Determination. The changes are significant and result in a substantially different Planning Proposal. Given the scope of the changes the Department has requested Council amend the Planning Proposal, in-line with their advice, and formally withdraw the current Gateway Determination request.

A revised Planning Proposal (Attachment 2) has been prepared incorporating the changes required by DP&E.

Required changes include:

- Amendment Item 1, clause 4.1 (Minimum subdivision lot size) subclause (3A) – to be removed;
- Amendment Item 2, clause 4.1 (Minimum subdivision lot size) inclusion of additional subclause – to be removed and replaced by mapping changes to the Lot Size Map map number LSZ_012;
- Amendment Item 4, clause 4.3 (Height of buildings) – additional justification required.
- Amendment Item 5, clause 4.3 (Height of buildings) by adding an additional subclause to clarify the maximum height of development over the waterway – to be removed.
- Amendment Item 6, Amend Height of Buildings Map – additional justification required.
-

- Amendment Item 11, insert additional objectives for zones RU2, R2, R3, R5, E3, E4 and B1 – to be removed;

Should Council endorse the recommendation contained in this report, a request will be forwarded to DP&E seeking to formally withdraw the Gateway Determination request forwarded to DP&E on 26 May 2015 and seek a Gateway Determination to certify the commencement of a statutory public exhibition for the amended Planning Proposal (Attachment 2).

Any submissions received as a result of the public exhibition period would be reviewed and considered before presenting the outcome to Council.

It is recommended that a request be sought for Council's delegate (the General Manager) to exercise delegation to finalise the proposed amendments to the Pittwater LEP 2014.

2.0 RECOMMENDATION

1. *That Council withdrawal the current Gateway Determination request forwarded to the Department of Planning and Environment (DP&E) on 26 May 2015.*
2. *That Council endorse the amended Planning Proposal at Attachment 2 for forwarding to the Department of Planning and Environment (DP&E) with a request for a Gateway Determination to certify the commencement of a public exhibition period to amend the Pittwater Local Environmental Plan (LEP) 2014.*
3. *That Council endorse to make a request to the Department of Planning and Environment (DP&E) that Council's delegate (the General Manager) exercise delegation to finalise the proposed amendments to the Pittwater LEP 2014.*

3.0 BACKGROUND

3.1 PURPOSE

The purpose of this report is:

- To seek Council's endorsement to withdraw the current Gateway Determination request forwarded to the Department of Planning and Environment (DP&E) on 26 May 2015.
- To seek Council's endorsement of the amended Planning Proposal (**Attachment 2**) for forwarding to DP&E with a request for a Gateway Determination to certify the commencement of a public exhibition to amend Pittwater LEP 2014.
- To seek Council's endorsement to request to the DP&E that Council's delegate (the General Manager) exercise delegation to finalise the proposed amendments to the Pittwater LEP 2014.

3.2 BACKGROUND

On 27 June 2014, the Pittwater LEP 2014 came into effect.

The Pittwater LEP 2014 was intended as a translation of the provisions of the Pittwater LEP 1993 into the NSW Government's *Standard Instrument—Principal Local Environmental Plan*.

On 21 July 2014, Council was informed that following a thorough review of the Pittwater LEP 2014 after it was made, it was evident that a number of changes had been introduced in the period between Council adopting the draft Pittwater LEP on 20 December 2013 and the Pittwater LEP 2014 being made by the Department of Planning and Environment and Parliamentary Counsel.

In order to rectify some of the changes introduced, Council was subsequently informed of four expedited amendments that had been initiated to the Pittwater LEP 2014 (under Section 73A of the Environmental Planning & Assessment Act 1979 (EP&A Act)) to remedy minor errors following changes made by the Department of Planning and Environment and Parliamentary Counsel.

Council was also informed of other key changes that had been made to the Pittwater LEP 2014 and that a 'house-keeping' amendment would be undertaken to rectify such changes.

3.3 POLICY IMPLICATIONS

Nil.

3.4 RELATED LEGISLATION

Should Council endorse the recommendation contained in this report, the Pittwater LEP 2014 will be amended in accordance with the amended Planning Proposal at Attachment 2, which has been amended as a consequence of negotiations with DP&E during the initial Gateway Determination request and dependent on the outcome of the public exhibition of the Planning Proposal.

3.5 FINANCIAL ISSUES

3.5.1 Budget

Preparation and management of the Planning Proposal process can be accommodated within current budgetary allocations.

3.5.2 Resources Implications

Work associated with the Planning Proposal can be accommodated within current staffing levels.

4.0 KEY ISSUES

4.1 Meetings with the Hon. Robert Stokes MP and staff from the DP&E

On 15 July 2014, a meeting was held with the Hon. Robert Stokes MP (then Minister for the Environment, Minister for Heritage, Minister for the Central Coast, and Assistant Minister for Planning), DP&E staff, the Mayor, Councillor Ferguson, Councillor Young, the General Manager and Council staff to discuss issues with some of the changes made to the Pittwater LEP 2014.

The meeting was productive and DP&E staff advised that a letter to Council, clarifying some of the changes made to the Pittwater LEP 2014 during the process of finalising the Plan, would be forthcoming.

Council received such correspondence from the DP&E on 27 August 2014. The correspondence also suggested that a meeting be arranged with staff from Council and the DP&E to further progress the issues.

Council responded to the DP&E correspondence on 3 October 2014 to outline the amendments proposed to the Pittwater LEP 2014 and the preferred approach to making each amendment.

Council's letter was the basis for discussion at the meeting held with staff from Council and the DP&E on 8 October 2014. A forward path was established for each matter addressed in the letter. Confirmation of this was received from the DP&E on 24 November 2014. A number of the amendments proposed in the subject Planning Proposal (Attachment 1) are as discussed and agreed with DP&E at this meeting.

4.2 Original Planning Proposal

As outlined above, in making the Pittwater LEP 2014, the Department of Planning and Environment and Parliamentary Counsel made a number of changes to the plan adopted by Council on 20 December 2013. The policy implication of these changes was reviewed and it was considered necessary to rectify a number of the changes made.

Additionally, since the Pittwater LEP 2014 has been in effect, some 'house-keeping' matters were identified and subsequent amendments were proposed to improve the accuracy and the effective operation of the Plan.

A Planning Proposal (refer **Attachment 1**) was prepared to address some of the changes made to the Pittwater LEP 2014, as well as the 'house-keeping' matters that have been identified.

The proposed amendments included:

- Rectify anomalies and discrepancies, and improve the clarity of the written instrument and maps.
- Implement or amend provisions consistent with the draft Pittwater LEP as publicly exhibited and/or adopted by Council, where certain provisions were altered or not included when the plan was made.
- Make other minor amendments relating to individual sites.

The table below provides a summary of the amendments that were proposed as part of the original planning proposal.

No.	Proposed Amendment	Description
1	Amend clause 4.1 (Minimum subdivision lot size) subclause (3A)	To clarify what is not included in the calculation of the lot size of a battle-axe block or a lot with access to a road by an access corridor (e.g. a right of carriageway).
2	Amend clause 4.1 (Minimum subdivision lot size)	To rectify an anomaly by adding an exception to the minimum lot size control for land zoned RU2, where part of the land is also within the Warriewood Valley Urban Release Area.
3	Amend clause 4.3 (Height of buildings) subclause (2F)	To clarify where development must not exceed 8.5 metres in height in the Warriewood Valley Urban Release Area. The amendment will ensure that the 8.5 metre height requirement only applies to development fronting particular streets in the Warriewood Valley Urban Release Area

No.	Proposed Amendment	Description
4	Amend clause 4.3 (Height of buildings)	To clarify that secondary dwellings, rural worker's dwellings and the second dwelling within a dual occupancy (detached) should be single storey in appearance, consistent with the Pittwater 21 DCP prior to the Pittwater LEP 2014 being made.
5	Amend clause 4.3 (Height of buildings)	To clarify the maximum height of development over the waterway
6	Amend the Height of Buildings Map Grid Map 012 in relation to 14 Orchard Street, Warriewood (Sector 901F)	To rectify an error on the Height of Buildings Map in relation to Sector 901F of the Warriewood Valley Urban Release Area.
7	Amend clause 6.1(1)(c)	To remove an objective that is no longer relevant.
8	Amend Schedule 1 subclause 19	To rectify an error in the Pittwater LEP 2014 that relates to the boundary of an area associated with an additional permitted use that is currently in operation and was permitted under the Pittwater LEP 1993.
9	Amend the Land Zoning Map so the portion of 167 Mona Vale Road, Ingleside currently zoned SP2 Infrastructure "Classified Road" is instead zoned RU2 Rural Landscape consistent with the remainder of the allotment	To rectify an anomaly.
10	Amend the Height of Buildings Map Grid Maps 013 and 017	The proposed amendment is intended to provide improved readability of the Height of Buildings Map and consistency with approved masterplans in relation to the Elanora and Newport commercial centres.

No.	Proposed Amendment	Description
11	<p>Insert the following objectives into the following zones:</p> <p>RU2 Rural Landscape</p> <ul style="list-style-type: none"> To ensure that development is integrated with the immediate and surrounding landform, natural landscape and bushland setting to achieve the desired character of the locality. <p>R2 Low Density Residential</p> <ul style="list-style-type: none"> To ensure that development is integrated with the immediate and surrounding landform and landscape to achieve the desired character of the locality. <p>R3 Medium Density Residential</p> <ul style="list-style-type: none"> To ensure that development is integrated with the immediate and surrounding landform and landscape to achieve the desired character of the locality. 	<p>To reinstate zone objectives that ensure development in certain zones is consistent with the desired character of the locality.</p>

No.	Proposed Amendment	Description
	<p>Zone R5 Large Lot Residential</p> <ul style="list-style-type: none"> To ensure that development is integrated with the immediate and surrounding landform, natural landscape and bushland setting to achieve the desired character of the locality. <p>Zone E3 Environmental Management</p> <ul style="list-style-type: none"> To ensure that development is integrated with the immediate and surrounding landform and landscape to achieve the desired character of the locality. <p>Zone E4 Environmental Living</p> <ul style="list-style-type: none"> To ensure that development is integrated with the immediate and surrounding landform and landscape to achieve the desired character of the locality. <p>Zone B1 Neighbourhood Centre To ensure that the scale of development is compatible with the surrounding built and natural environment</p>	
12	Amend Clause 7.8 (Limited development on foreshore area) subclause (2) to remove reference to 'extension' and 'alteration'	To remove the ability to undertake extensions and alterations to buildings in the foreshore area, which is generally consistent with the intention of the draft Pittwater LEP that was publicly exhibited and adopted by Council on 20 December 2013.
13	<p>Amend Schedule 1 by adding the following subclause:</p> <p>24. Use of certain land in Zone SP2 Infrastructure "Classified Road"</p>	The proposed amendment would permit 'access structures ancillary to a dwelling house' on privately-owned land zoned SP2 Infrastructure "Classified Road".

No.	Proposed Amendment	Description
	<p>(1) This clause applies to land identified as "Area 24" on the Additional Permitted Uses Map.</p> <p>(2) Development for the purposes of access structures associated with a dwelling house is permitted with development consent.</p> <p>Amend the Additional Permitted Uses Map to include "Area 24".</p>	
14	Amend the Land Zoning Map for 6A Macpherson Street, Warriewood (Lot 6 DP 1161389) from R3 Medium Density Residential to RE1 Public Recreation	The amendment is required as the land has been dedicated to Council and forms part of the creek line corridor
15	Remove 67A Marine Parade, Avalon Beach (Lot 2 DP 1205310) from the Land Reservation Acquisition Map	The proposed amendment is required as the land has been acquired.

The amendments as proposed in the initial Planning Proposal were generally consistent with the version of the draft Pittwater LEP adopted by Council on 20 December 2013, Council policies, the Pittwater LEP 1993 and/or provisions within the Pittwater 21 Development Control Plan (DCP) that were in place prior to the commencement of the Pittwater LEP 2014.

On 18 May 2015, the Planning Proposal was submitted to Council for consideration, with a recommendation:

1. That Council endorse the Planning Proposal at Attachment 1 for forwarding to the Department of Planning & Environment (DP&E) with a request for a Gateway Determination to certify the commencement of a public exhibition to amend the Pittwater Local Environmental Plan (LEP) 2014.
2. That Council endorse making a request to the DP&E that Council's delegate (the General Manager) exercise delegation to finalise the proposed amendments to the Pittwater LEP 2014.

Council resolved to adopt the recommendation and subsequently a request for a Gateway Determination was forwarded to DP&E on 26 May 2015.

However, the DP&E have not issued a Gateway Determination, due to a number of unresolved matters in the Planning Proposal. Negotiations between Council and DP&E have occurred, additional justification provided and DP&E have requested a number of changes be made to the Planning Proposal.

The outcome of the negotiations resulted in a number of amendments to the formally endorsed Planning Proposal submitted for a Gateway Determination. The changes are meaningful and result in a substantially different Planning Proposal to which was originally submitted. Given the scope of the changes the Department has requested Council amend the Planning Proposal and formally withdraw the current Gateway Determination request.

4.3 Revised Planning Proposal

A revised Planning Proposal (Attachment 2) has been prepared incorporating the changes required by DP&E and Parliamentary Counsel.

Generally DP&E and Parliamentary Counsel don't support the following:

- Amendment Item 1, clause 4.1 (Minimum subdivision lot size) subclause (3A) – to be removed (Parliamentary Counsel advise DP&E they will not support the proposed amendment);
- Amendment Item 2, clause 4.1 (Minimum subdivision lot size) inclusion of additional subclause – to be removed and replaced by mapping changes to the Lot Size Map-Sheet LSZ_012 (Amending the LEP map will achieve the same outcome without altering the format and wording of the Standard Instrument Clause, ensuring the integrity of the Standard Instrument (Local Environmental Plans) Order);
- Amendment Item 5, clause 4.3 (Height of buildings) by adding an additional subclause to clarify the maximum height of development over the waterway – to be removed (The recently exhibited Standard Instrument (Local Environmental Plans) Amendment Order 2015 will address this issue from a state wide perspective)
- Amendment Item 11, insert additional objectives for zones RU2, R2, R3, R5, E3, E4 and B1 – to be removed (Parliamentary Counsel advise DP&E they will not support the proposed amendment);

All amendments including supported and not supported are outlined below:

No.	Proposed Amendment	Description	Amendment	Justification
1	Amend clause 4.1 (Minimum subdivision lot size) subclause (3A)	To clarify what is not included in the calculation of the lot size of a battle-axe block or a lot with access to a road by an access corridor (e.g. a right of carriageway).	Deleted	DP&E confirm proposed amendment to wording of standard instrument clause is not supported.

No.	Proposed Amendment	Description	Amendment	Justification
2	Amend clause 4.1 (Minimum subdivision lot size)	To rectify an anomaly by adding an exception to the minimum lot size control for land zoned RU2, where part of the land is also within the Warriewood Valley Urban Release Area.	Remove written exception as described and replace with mapping changes to Lot Size Map-Sheet LSZ_012. Subsequently amend map legend for all Lot Size Map Sheets (LSZ_005 to LSZ_019)	DP&E confirm proposed amendment to wording of standard instrument clause is not supported; however the objective of the proposed amendment can be achieved via a mapping amendment.
3	Amend clause 4.3 (Height of buildings) subclause (2F)	To clarify where development must not exceed 8.5 metres in height in the Warriewood Valley Urban Release Area. The amendment will ensure that the 8.5 metre height requirement only applies to development fronting particular streets in the Warriewood Valley Urban Release Area	Additional justification provided to support Council's position. No changes	Amendment supported by DP&E, subject to the provision of additional justification, no changes required.
4	Amend clause 4.3 (Height of buildings)	To clarify that secondary dwellings, rural worker's dwellings and the second dwelling within a dual occupancy (detached) should be single storey in appearance, consistent with the Pittwater 21 DCP prior to the Pittwater LEP 2014 being made.	Additional justification provided to support Council's position. No change	Amendment supported by DP&E, subject to the provision of additional justification, no changes required.
5	Amend clause 4.3 (Height of buildings)	To clarify the maximum height of development over the waterway	deleted	DP&E confirm proposed amendment not supported as the draft Standard Instrument (Local Environmental Plans) Amendment Order 2015 will address the issue from a Statewide perspective.

No.	Proposed Amendment	Description	Amendment	Justification
6	Amend the Height of Buildings Map Grid Map 012 in relation to 14 Orchard Street, Warriewood (Sector 901F)	To rectify an error on the Height of Buildings Map in relation to Sector 901F of the Warriewood Valley Urban Release Area.	Additional justification provided to support Council's position. No change	Amendment supported by DP&E, subject to the provision of additional justification, no changes required.
7	Amend clause 6.1(1)(c)	To remove an objective that is no longer relevant.	No change	Amendment supported by DP&E no changes required.
8	Amend Schedule 1 subclause 19	To rectify an error in the Pittwater LEP 2014 that relates to the boundary of an area associated with an additional permitted use that is currently in operation and was permitted under the Pittwater LEP 1993.	No change	Amendment supported by DP&E no changes required.
9	Amend the Land Zoning Map so the portion of 167 Mona Vale Road, Ingleside currently zoned SP2 Infrastructure "Classified Road" is instead zoned RU2 Rural Landscape consistent with the remainder of the allotment	To rectify an anomaly.	No change	Amendment supported by DP&E with agency consultation no changes required.
10	Amend the Height of Buildings Map Grid Maps 013 and 017	The proposed amendment is intended to provide improved readability of the Height of Buildings Map and consistency with approved masterplans in relation to the Elanora and Newport commercial centres.	No change	Amendment supported by DP&E, subject to the provision of additional justification, no changes required.

No.	Proposed Amendment	Description	Amendment	Justification
11	<p>Insert the following objectives into the following zones:</p> <p>RU2 Rural Landscape</p> <ul style="list-style-type: none"> To ensure that development is integrated with the immediate and surrounding landform, natural landscape and bushland setting to achieve the desired character of the locality. <p>R2 Low Density Residential</p> <ul style="list-style-type: none"> To ensure that development is integrated with the immediate and surrounding landform and landscape to achieve the desired character of the locality. <p>R3 Medium Density Residential</p> <ul style="list-style-type: none"> To ensure that development is integrated with the immediate and surrounding landform and landscape to achieve the desired character of the locality. <p>Zone R5 Large Lot Residential</p> <ul style="list-style-type: none"> To ensure that development is integrated with the immediate and surrounding landform, natural landscape and bushland setting to achieve the desired character of the locality. 	To reinstate zone objectives that ensure development in certain zones is consistent with the desired character of the locality.	Deleted	DP&E confirm proposed amendment to wording of standard instrument objectives is not supported.

	<p>Zone E3 Environmental Management</p> <ul style="list-style-type: none"> To ensure that development is integrated with the immediate and surrounding landform and landscape to achieve the desired character of the locality. <p>Zone E4 Environmental Living</p> <ul style="list-style-type: none"> To ensure that development is integrated with the immediate and surrounding landform and landscape to achieve the desired character of the • <p>Zone B1 Neighbourhood Centre.</p> <ul style="list-style-type: none"> To ensure that the scale of development is compatible with the surrounding built and natural environment 			
12	<p>Amend Clause 7.8 (Limited development on foreshore area) subclause (2) to remove reference to 'extension' and 'alteration' as follows:</p> <p>(2) Development consent must not be granted for development on land in the foreshore area except for the following purposes:</p> <p>(a) the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area, if the levels, depth or other exceptional features of the site make it appropriate to do so,</p>	<p>To remove the ability to undertake extensions and alterations to buildings in the foreshore area, which is generally consistent with the intention of the draft Pittwater LEP that was publicly exhibited and adopted by Council on 20 December 2013.</p>	<p>Clause amended as follows:</p> <p>(2) Development consent must not be granted for development on land in the foreshore area except for the following purposes:</p> <p>(a) the alteration, extension or rebuilding of an existing dwelling wholly or partly on the foreshore area if the footprint of the extension or alteration will not extend any further forward of the foreshore building line than the footprint of the existing dwelling,</p>	<p>Amendment incorporating new clause is supported by DP&E.</p>

13	Amend Schedule 1 by adding the following subclause: 24. Use of certain land in Zone SP2 Infrastructure "Classified Road"	The proposed amendment would permit 'access structures ancillary to a dwelling house' on privately-owned land zoned SP2 Infrastructure "Classified Road".	No change	Amendment supported by DP&E with agency consultation no changes required.
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	(3) This clause applies to land identified as "Area 24" on the Additional Permitted Uses Map. (4) Development for the purposes of access structures associated with a dwelling house is permitted with development consent. Amend the Additional Permitted Uses Map to include "Area 24".			
14	Amend the Land Zoning Map for 6A Macpherson Street, Warriewood (Lot 6 DP 1161389) from R3 Medium Density Residential to RE1 Public Recreation	The amendment is required as the land has been dedicated to Council and forms part of the creek line corridor	No change	Amendment supported by DP&E no changes required.
15	Remove 67A Marine Parade, Avalon Beach (Lot 2 DP 1205310) from the Land Reservation Acquisition Map	The proposed amendment is required as the land has been acquired.	No change	Amendment supported by DP&E no changes required.

It is recommended that Council continues to advocate for Council's delegate (the General Manager) to exercise delegation to finalise the proposed amendments to the Pittwater LEP 2014.

4.4 Statutory public exhibition

Should Council endorse the recommendation contained in this report, the amended Planning Proposal (**Attachment 2**) will be forwarded to the Greater Sydney Commission with a request for a Gateway Determination to certify the commencement of a statutory public exhibition.

Community consultation will be undertaken in accordance with Section 57 of the EP&A Act and the requirements of 'A guide to preparing local environmental plans' (Department of Planning & Infrastructure, 2013).

As part of the statutory public exhibition of the Planning Proposal (**Attachment 2**), the following is proposed to be undertaken:

- A 28-day public exhibition period
- Notification in writing to landowners directly affected by site specific amendments, registered Pittwater community groups and Chambers of Commerce, and relevant public authorities and State agencies at the commencement of the public exhibition period.
- Notification in the Manly Daily at the commencement of the public exhibition period
- Relevant documentation available at Council's Customer Service Centres and libraries for the duration of the public exhibition period
- Relevant documentation on Council's website for the duration of the public exhibition period
- Council staff will be available to respond to any enquiries

As previously outlined, in the Council report dated 18 May 2015, The Planning Proposal predominately include changes to broad scale controls that are applicable to a large number of properties e.g. the foreshore area. As such it is not intended to display any notification signs, however all property owners directly affected by site specific amendments will be notified in writing.

Any submissions received as a result of the public exhibition period will be reviewed and considered before presenting the outcome to Council.

If, following the public exhibition, the recommendation to Council is to progress the Planning Proposal and Council supports the recommendation, Council's delegate (the General Manager) would exercise delegation to finalise the proposed amendments to the Pittwater LEP 2014.

5.0 ATTACHMENTS / TABLED DOCUMENTS

Attachment 1: Endorsed Planning Proposal to amend the Pittwater LEP 2014

Attachment 2: Amended Planning Proposal, as a consequence of negotiations with the Department of Planning and Environment, to amend the Pittwater LEP 2014

6.0 SUSTAINABILITY ASSESSMENT

6.1 GOVERNANCE & RISK

6.1.1 Community Engagement

Community engagement will be undertaken in accordance with Section 57 of the EP&A Act and the requirements of '*A guide to preparing local environmental plans*' (Department of Planning & Infrastructure, 2013). See 'Statutory public exhibition' in Section 4.0 of this report for details.

6.1.2 Risk Management

The subject Planning Proposal (**Attachment 2**) stems from the process of undertaking a 'like for like' approach to preparing the Pittwater LEP 2014, or a translation of the previous LEP – the Pittwater LEP 1993.

The process to amend the Pittwater LEP 2014 will be undertaken in accordance with the legislative requirements of the EP&A Act.

6.2 ENVIRONMENT

6.2.1 Environmental Impact

As the subject Planning Proposal (**Attachment 2**) stems from the process of undertaking a 'like for like' approach to preparing the Pittwater LEP 2014, or a translation of the previous LEP – the Pittwater LEP 1993, it will not affect flora and fauna, nor levels of pollution (air, noise, water, soils etc.).

6.2.2 Mitigation Measures

As the subject Planning Proposal (**Attachment 2**) stems from the process of undertaking a 'like for like' approach to preparing the Pittwater LEP 2014, or a translation of the previous LEP – the Pittwater LEP 1993, it will not be affected by climate change impacts, and it will not impact water use and management, energy use and green-house gas emissions, or resource and waste management.

6.3 SOCIAL

6.3.1 Address Community Need & Aspirations

As the subject Planning Proposal (**Attachment 2**) stems from the process of undertaking a 'like for like' approach to preparing the Pittwater LEP 2014, or a translation of the previous LEP – the Pittwater LEP 1993, it will not affect the quality of cultural, community or recreational services available to the community; the health, safety and well-being of residents; the services of our community; or the mobility of residents.

6.3.2 Strengthening local community

As the subject Planning Proposal (**Attachment 2**) stems from the process of undertaking a 'like for like' approach to preparing the Pittwater LEP 2014, or a translation of the previous LEP – the Pittwater LEP 1993, it will not affect the community feeling of connectedness or the liveability of our villages. Further, as it is unrelated, the subject Planning Proposal will not promote education or knowledge generation.

6.4 ECONOMIC

6.4.1 Economic Development

As the subject Planning Proposal (**Attachment 2**) stems from the process of undertaking a 'like for like' approach to preparing the Pittwater LEP 2014, or a translation of the previous LEP – the Pittwater LEP 1993, it will not create or support opportunities for local economic growth as it is unrelated.

Report prepared by
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