

AGENDA

NORTHERN BEACHES LOCAL PLANNING PANEL

Notice is hereby given that the Northern Beaches Planning Panel will be held via Teleconference on

WEDNESDAY 3 AUGUST 2022

Beginning at 12.00pm for the purpose of considering and determining matters included in this agenda.



Peter Robinson
Executive Manager Development Assessment

Quorum

A quorum is three Panel members

Conflict of Interest

Any Panel Member who has a conflict of Interest must not be present at the site inspection and leave the Chamber during any discussion of the relevant Item and must not take part in any discussion or voting of this Item.

Agenda for the Northern Beaches Local Planning Panel to be held on Wednesday 3 August 2022

1.0 APOLOGIES & DECLARATIONS OF INTEREST

2.0 MINUTES OF PREVIOUS MEETING

2.1 Minutes of Northern Beaches Local Planning Panel held 20 July 2022.

3.0 CATEGORY 3 APPLICATIONS

4.0 PUBLIC MEETING ITEMS.....5

4.1 Mod2021/0983 - 231 Whale Beach Road, WHALE BEACH - Modification of Development Consent REV2021/0034 granted for demolition works and construction of a Mixed Use Development comprising Shop Top Housing and retail premises, with associated carparking, landscaping and strata subdivision..... 5

4.2 DA2021/1963 - 10 - 12 Loquat Valley Road, BAYVIEW - Demolition works and construction of a seniors housing development.38

5.0 NON PUBLIC MEETING ITEMS

A statutory Direction by the Minister of Planning and Public Spaces states the panel is only required to hold a public meeting where the development application has attracted 10 or more unique submissions by way of objection. There applications do not satisfy that criterion.

Nil

ACKNOWLEDGEMENT OF COUNTRY

As a sign of respect, the Northern Beaches Local Planning Panel acknowledges the traditional custodians of these lands on which we gather and pays respect to Elders past and present.

1.0 APOLOGIES & DECLARATIONS OF INTEREST

Nil

2.0 MINUTES OF PREVIOUS MEETING

2.1 MINUTES OF NORTHERN BEACHES LOCAL PLANNING PANEL HELD 20 JULY 2022

RECOMMENDATION

That the Panel note that the minutes of the Northern Beaches Local Planning Panel held 20 July 2022 were adopted by the Chairperson and have been posted on Council's website.

4.0 PUBLIC MEETING ITEMS

ITEM 4.1	MOD2021/0983 - 231 WHALE BEACH ROAD, WHALE BEACH - MODIFICATION OF DEVELOPMENT CONSENT REV2021/0034 GRANTED FOR DEMOLITION WORKS AND CONSTRUCTION OF A MIXED USE DEVELOPMENT COMPRISING SHOP TOP HOUSING AND RETAIL PREMISES, WITH ASSOCIATED CARPARKING, LANDSCAPING AND STRATA SUBDIVISION.
AUTHORISING MANAGER	Steve Findlay
TRIM FILE REF	2022/448493
ATTACHMENTS	1 ↓ Assessment Report

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as it is the subject of 10 or more unique submissions by way of objection and it is a modification of a determination or decision made by a local planning panel.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. Mod2021/0983 for Modification of Development Consent REV2021/0034 granted for demolition works and construction of a Mixed Use Development comprising Shop Top Housing and retail premises, with associated carparking, landscaping and strata subdivision on land at Lot B DP 316404, 231 Whale Beach Road, WHALE BEACH, subject to the conditions set out in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2021/0983
Responsible Officer:	Anne-Marie Young
Land to be developed (Address):	Lot B DP 316404, 231 Whale Beach Road WHALE BEACH NSW 2107
Proposed Development:	Modification of Development Consent REV2021/0034 granted for demolition works and construction of a Mixed Use Development comprising Shop Top Housing and retail premises, with associated carparking, landscaping and strata subdivision
Zoning:	B1 Neighbourhood Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Leslie Anthony Cassar Diana Nancy Cassar
Applicant:	Leslie Anthony Cassar
Application Lodged:	01/02/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	16/02/2022 to 02/03/2022
Advertised:	Not Advertised
Submissions Received:	121
Clause 4.6 Variation:	Nil
Recommendation:	Approval

EXECUTIVE SUMMARY

This application seeks approval for a modification of Condition No. 99 of Development Consent No. DA2020/0422, approved under REV2021/0034, to allow an increase in patron numbers to the restaurant within Retail 1 located on the ground floor level fronting Surf Road. The condition was recommended by Council's Health Officer under REV2021/0034 and currently restricts the capacity of the restaurant to a total of 64 patrons, comprising 44 indoor patrons and 20 outdoor patrons, plus 6 staff. The proposal seeks consent for a total of 170 patrons, comprising 140 indoor patrons and 30 outdoor patrons, plus 18 staff.

The limit on the number of patrons in Condition 99, REV2021/0034 was based on the assessment of the original acoustic report submitted for Development Application, DA2020/0422 for demolition works and construction of a Mixed Use Development comprising Shop Top Housing comprising 5 residential apartments, 3 retail premises, basement car parking for 21 cars, associated carparking, landscaping and strata subdivision. The original application was refused by Northern Beaches Local Planning Panel (NBLPP) and a revised proposal was lodged under REV2021/0034 which satisfactorily addressed the issues raised in the original refusal. The review application was subsequently determined by way of approval by the NBLPP in December 2021.

The original proposal included restaurant uses on the Ground Floor Level (Surf Road) known as "Retail 1" and Level 3 (Whale Beach Road) known as "Retail 3". In order to minimise the acoustic and privacy impacts on neighbouring dwellings, the revised proposal increased the size of the restaurant on the Ground Floor Level (Retail 1) and changed the usage of the retail space on Level 3 to neighbourhood shops. The revised proposal did not include an updated acoustic report to reflect the changes of Retail 1 to a larger Restaurant, although a BCA report confirmed that a total of 188 patrons could be accommodated within Retail 1. As noted above, condition 99 of REV2021/0034 was based on the acoustic report for the original proposal DA2020/0422 as an updated acoustic report to reflect the amended retail / restaurant layout had not submitted.

The current modification application is supported by an acoustic report dated December 2021 which specifically assesses the use of Retail 1 as a larger Restaurant. The report makes recommendations to manage noise emissions from patron and staff based on the operation of this space as a restaurant. The recommendations include the need for an acoustic barrier to be erected along the southern boundary with No. 229 Whale Beach Road, no background music, and all windows of the indoor area to be closed. The application has been reviewed by Council's Environmental Health Unit, who raised no objections to the modification to condition 99 to increase patron capacity, subject to compliance with all the recommendations of the 2021 acoustic report. In addition, conditions are recommended to ensure the restaurant in Retail 1 is not used as a function centre, to limit the hours of use of the outdoor area and to require the submission of an Operational Management Plan for the restaurant.

There are no physical changes proposed to the approved development and no increase in the gross leasable retail / restaurant floor area. Importantly, it is noted that car parking requirements under the P21DCP are based on the Leasable Floor Area of the restaurant, and not the number of patrons, hence there are no additional parking spaces required to be provided onsite as a result of the proposed increase in patron numbers. This matter has been the subject of review by Council's Transport Officer and is supported.

A total of 120 submissions were received in response to the notification of the application, including 29 in support of the application and approximately 90 unique submissions raising objections to the application. The issues raised in objection have been reviewed and they do not warrant the refusal of the application or the reduction in the number of proposed patrons, although special conditions have been recommended to address a number of the concerns.

The application is referred to the NBLPP due to the number of submissions exceeding 10.

This report concludes with a recommendation that the NBLPP should grant **approval** to the application, subject to the standard and special conditions attached to this report.

PROPOSED DEVELOPMENT IN DETAIL

The application seeks to modify Condition No. 99 of DA2020/0442 which states as follows:

The capacity of the Ground Floor cafe/restaurant premises is limited to 44 indoor patrons, 20 outdoor patrons and 6 staff members.

Specifically, the application seeks approval to increase the capacity of the Ground Floor restaurant as follows:

- 140 indoor patrons - increased by 96
- 30 outdoor patrons - increased by 10
- 18 staff - increased by 12

The Statement of Environmental Effects (SEE) provides the following points of explanation:

- *The number of patrons in Condition 99 is based on the original Development Application acoustic report by JHA Engineering Revision B Dated 5/2/2020 which stated: based on Architectural drawings, the Ground Floor retail is assumed to have an operating capacity of 50 people internally (44 patrons and 6 staff members), 20 in the outdoor seating area.*
- *The modified plans for the Section 8.2 Review specifically provided a larger Retail 1 space on the ground floor (Surf Rd), and correspondingly a smaller Retail 2 (on Whale Beach Rd). The BCA report, which was provided with the Section 8.2 Review submission, clearly provides numbers for use as a restaurant of 170 patrons and 18 staff (total 188). This is based on Section F2.4 of the BCA.*
- *The original DA plans showed restaurant/café usage both on the Ground Floor (Surf Rd) and Level 3 (Whale Beach Rd). An important change for the Section 8.2 Review, to minimise the acoustic and privacy impacts on neighbouring dwellings, was to increase the size of the restaurant on the ground floor and change the usage of the retail space on Level 3 to neighbourhood shops. This was shown on the architectural plans and referenced in the submission report, town planning report, acoustic report and schedule of amendments. The increased size and capacity of the restaurant was deliberately relocated to the ground floor where it would have least impact.*
- *An Acoustic Letter of Support was provided with the Section 8.2 Review submission which provided overall support for the Section 8.2 Review amended proposal, which included the BCA report, and which clearly stipulates 170 patrons and 18 staff (total 188). Whilst the updated acoustic report did not specifically address the increase in patron numbers, the Review documentation was clear in that our submission is for a total of 170 patrons and 18 staff as stated in the BCA report. The acoustic letter of support was obviously to cover the new plans and not the original DA plans.*
- *We only became aware of this issue once the draft conditions of consent were released. There was not time to provide additional acoustic information and have it notified within the time limits of the Local Planning Meeting held on 1st December 2021. If we had been advised earlier that this condition was to be imposed, we could have provided additional clarifying documentation during the Review process.*

A search of Council's records confirms that the applicant's comments on the circumstances of applying condition 99 in the previous consent is correct.

The subject modification is supported by an amended Acoustic Report, which assesses the use of "Retail 1" on the Ground Floor Level fronting Surf Road as a restaurant/cafe as approved under REV2021/0034. No revised Traffic Assessment Report was submitted with this application.

It is noted that there are no physical changes to the building approved under REV2021/0034.

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Pittwater 21 Development Control Plan - B6.3 Off-Street Vehicle Parking Requirements
Pittwater 21 Development Control Plan - C1.6 Acoustic Privacy
Pittwater 21 Development Control Plan - C2.12 Protection of Residential Amenity

SITE DESCRIPTION

Property Description:	Lot B DP 316404 , 231 Whale Beach Road WHALE BEACH NSW 2107
Detailed Site Description:	The site is irregularly shaped, with a 30.275m wide frontage to Whale Beach Road, a 20.175m wide frontage to Surf Road and a total area of 844.7m ² . The site currently contains a multi-level mixed-use development, with retail and business premises fronting Whale Beach Road and residential development fronting Surf Road. A double carport is located at the south-east corner of the site, with access to/from Surf Road. A single garage is located in the north-west corner of the site, with access to Whale Beach Road. The current buildings and a number of retaining walls are in a state of disrepair. The site does not contain any significant landscaping or natural features.

The site experiences a fall 12.62m from the north-west corner of the site down to the south-east corner of the site, with a slope of approximately 30%. An overland flow path runs along the southern side boundary of the site (and the northern boundary of the site to the south).

Whale Beach Road is a two-lane local road. The portion of the public road reserve immediately adjacent to the site is paved and currently features outdoor furniture and movable landscaping elements associated with an outdoor dining licence. A significant street tree is located within the road reserve. Time restricted parking is available along the frontage of the site, inclusive of a mail zone.

Surf Road is a two-lane local road that connects Whale Beach Road to the beach car park. The public road reserve immediately adjacent to the site is nominal, and contains retaining walls associated with the existing building at the site.

The site is zoned B1 Neighbourhood Centre and is surrounded by land zoned E4 Environmental Living. With the exception of Whale Beach Surf Club (two properties to the south), the area is characterised by dwelling houses.

Map:



SITE HISTORY

On 7 February 2019, a pre-lodgement meeting was held between the applicant and Council staff in relation to a Mixed-Use Development. The key advice provided in the pre-lodgement notes is summarised as follows:

"It is critical that retail premises be maintained on both the Surf Road and Whale Beach Road ground floor levels, in order to meet the definition of shop top housing. Given the very steep slope of the site, having residential dwellings on the eastern side of the development that are at or below the Whale Beach Road level, can be supported. Should a design be lodged with no retail fronting Whale Beach Road, Council would not be in a position to support that proposal..."

On 2 December 2020, Development Application No. **DA2020/0442** for demolition works and construction of a Mixed Use Development comprising Shop Top Housing comprising 5 residential apartments, 3 retail premises, basement car parking for 21 cars, associated carparking, landscaping and strata subdivision, was reported to the NBLPP with a recommendation for refusal. The NBLPP endorsed the recommendation and refused the application. The reasons for refusal are as follow:

1. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of State Environmental Planning Policy 65 - Design Quality of Residential Flat Development and its associated Apartment Design Guide.
2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 7.7 Geotechnical hazards of the Pittwater Local Environmental Plan 2014.
3. Pursuant to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, the proposed development is not consistent with the Desired Future Character of the location and is an over-development of the site.
4. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause C1.3 View Sharing of the Pittwater 21 Development Control Plan.
5. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D12.1 Character as viewed from a public place of the Pittwater 21 Development Control Plan.
6. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D12.6 Side and rear building line of the Pittwater 21 Development Control Plan.
7. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D12.14 Scenic Protection Category One Areas of the Pittwater 21 Development Control Plan.

Following the determination of DA2020/0442, several meetings were held between the applicant and Council staff in an attempt to find a solution to the above matters.

On 25 August 2021, Review of Determination Application No. **REV2021/0034** was lodged with Council, which sought a review of the refusal of DA2020/0824.

It is noted that the review application was accompanied by amended plans to reduce the bulk and scale of the development compared to the proposal that was refused, with larger landscaped setbacks to both side boundaries. The driveway and parking area were redesigned, and the height of the development presenting to Whale Beach Road was reduced and the volume of excavation minimised. The use of the Level 3 retail premise "Retail 3" was also changed from a cafe to a neighbourhood shop to provide better acoustic and privacy amenity to neighbouring properties in Whale Beach Road, and in turn the size of the Ground Floor Level restaurant was increased.

On 1 December 2021, REV2021/0034 was reported to the NBLPP with a recommendation for approval. The NBLPP endorsed the recommendation and approval for the Mixed-Use Development.

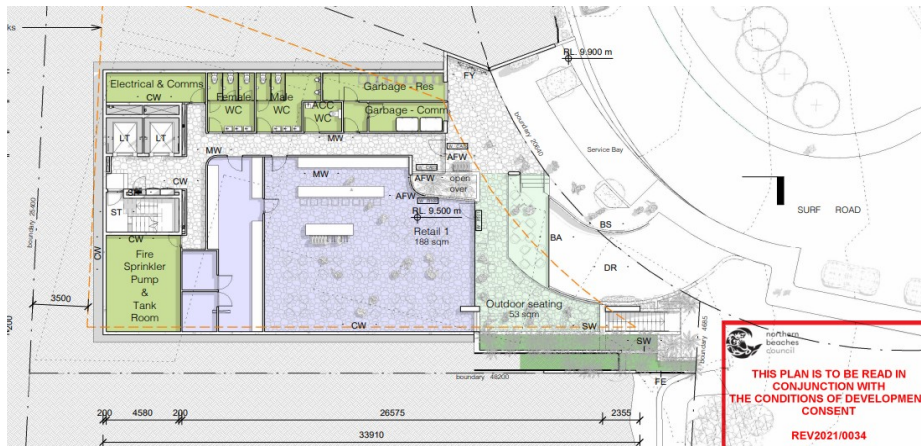
The proposal approved the following areas of retail floorspace:

Ground Floor Level

Retail 1 (fronting Surf Road)

Indoor 188sqm (amended from 153sqm in the original DA)

Outdoor 53sqm, refer to ground floor plan below.



Approved Retail 1 Ground Floor Plan REV2021/0034 (approved plans prepared by Richard Cole Architects)

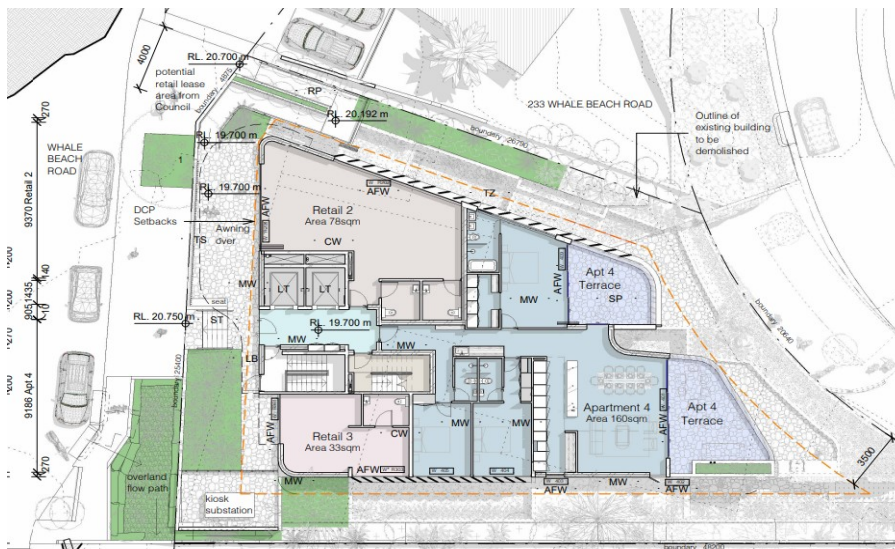
Level 3 Plan (presents as the ground floor level to Whale Beach Road)

Retail 2 - Shop fronting Whale Beach Road

Indoor 78sqm

Retail 3 - Shop (fronting Whale Beach Road)

Indoor 33sqm, refer to ground floor plan below



Approved Retail 2 and 3 - Level 3 Plan REV2021/0034 (approved plans prepared by Richard Cole Architects)

Architects)

Condition 1 "Approved Plans and Supporting Documentation" of REV2021/0034, included a requirement for compliance with the Acoustic Report, Rev B, dated 5 February 2020, prepared by JHA Services.

Condition 99 "Capacity of Ground Floor Cafe or Restaurant" requires:

The capacity of the Ground Floor cafe/restaurant premises is limited to 44 indoor patrons, 20 outdoor patrons and 6 staff members.

Reason: To ensure residential amenity is protected and maintained.

***Note:** As discussed above, Condition 1 and Condition 99 in REV2021/0034 was based on the recommendations of the Acoustic Report prepared for the original DA2020/0442, and not for the amended proposal and design approved under the Review of Determination.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the current application adopts the previous assessment detailed in the Assessment Report for REV2021/0034, in full, with amendments detailed and assessed as follows:

***Note:** Section 8.5(4) of the EPA Act states:

If a determination is changed on review, the changed determination replaces the earlier determination on the date the decision made on the review is registered on the NSW Planning Portal.

In this regard, the approval of REV2021/0034 replaces the earlier refusal of DA2020/0442, such that the Development Consent is now known as DA2020/0442.

The relevant matters for consideration under Section 4.55 (2) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55 (2) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	

Section 4.55 (2) - Other Modifications	Comments
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	The development, as proposed, has been found to be substantially the same as that development approved under REV2021/0034 (and now known as DA2020/0442) for the following reasons: The modification seeks consent for the review of Condition 99 in respect of patron numbers associated with the use of Retail 1 as a Restaurant/Cafe. There is no physical change to the approved development in terms of the built form and numbers of apartments and commercial premises Therefore, the application is solely in relation to the intensity of use of the Ground Floor Level "Retail 1" Restaurant.
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	DA2020/0442 and REV2021/0034 did not require concurrence from the relevant Minister, public authority or approval body.
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, and the Northern Beaches Community Participation Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on "Notification & Submissions Received" in this report.

Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining a modification application made under this section, the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent. <u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation was submitted with the original application. Clauses 54 and 109 of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case. <u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent. <u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition in the original consent. <u>Clause 98</u> of the EP&A Regulation 2000 requires the

Section 4.15 'Matters for Consideration'	Comments
	consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent and the capacity of Retail 1 on the Ground Floor Level is a reason for the current application to increase the patron numbers. <u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the intensification of the proposed development, subject to compliance with the recommendations of the acoustic report and other conditions of consent.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	The notification of the application resulted in a substantial number of submissions, the majority of which are in objection to the proposal. However, based on the assessment undertaken, no matters have arisen in the submissions that would justify the refusal of the application or significant amendment having regard to the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 16/02/2022 to 02/03/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 121 submission/s from:

Name:	Address:
Theodore Steven Chambers	44 Bynya Road PALM BEACH NSW 2108
Mr Jacqueline Susan Rees	1 Boanbong Road PALM BEACH NSW 2108
Ross Clarke	9 A Morella Road WHALE BEACH NSW 2107
Mr Jeremy Wade Cleaver	206 Whale Beach Road WHALE BEACH NSW 2107
Carla Barbara Wehbe	PO Box 495 PARRAMATTA NSW 2124
Mr Richard Frederick Gay	11 Surf Road WHALE BEACH NSW 2107
Mr John Warburton	106 Whale Beach Road WHALE BEACH NSW 2107
Sandy Tran	6 Milga Road AVALON BEACH NSW 2107
Oliver Gale	36 Whale Beach Road AVALON BEACH NSW 2107
Mr Bryan Christie Webster	13 Surf Road WHALE BEACH NSW 2107
Mrs Rae Marie Allen	8 Beauty Drive WHALE BEACH NSW 2107
Mr Andrew Francis Goldsmith	18 Norma Road PALM BEACH NSW 2108
Mrs Cara Jane Morgan	2185 Pittwater Road CHURCH POINT NSW 2105
Mrs Elizabeth Gole	172 Whale Beach Road WHALE BEACH NSW 2107
Mr Daniel Franklin Hofbauer	22 Gilliver Avenue VAUCLUSE NSW 2030
Mr Pedestrian Council Of Australia Limited	PO Box 500 NEUTRAL BAY NSW 2089
Mr Bruce Maitland Kennedy	8 Surf Road WHALE BEACH NSW 2107
Mrs Joanne Mary Kennedy	8 Surf Road WHALE BEACH NSW 2107
Mr Paul Westcott	31 Rayner Road WHALE BEACH NSW 2107
Andrew Morrow	5/21 Baden Road KURRABA POINT NSW 2089
Mr Harley Joseph Groot	12 Amelia Place NORTH NARRABEEN NSW 2101
Ms Fleur Annabell Miskell	843 Barrenjoey Road PALM BEACH NSW 2108
Annabelle Ewen	Address Unknown
Mr Catherine Naito	229 Whale Beach Road WHALE BEACH NSW 2107
Mr Vien Van Luong	200 Whale Beach Road WHALE BEACH NSW 2107
Alexandra Jane Latimer	28 Darley Street FORESTVILLE NSW 2087
Mrs Valda Jean Ewen	2 Iluka Road PALM BEACH NSW 2108
Mr Michael Brendon Ian Moss	133 Whale Beach Road AVALON BEACH NSW 2107
Mr Owen Leo Coughlan	868 Barrenjoey Road PALM BEACH NSW 2108
Mrs Barbara Geraldine Osborne	PO Box 407 NEUTRAL BAY NSW 2089
Ms Eve Maria Heaton Molyneux	26 The Strand WHALE BEACH NSW 2107
The Palm Beach & Whale Beach Association Inc	PO Box 2 PALM BEACH NSW 2108

Name:	Address:
Megan Hoare	Address Unknown
Ms Sheila Frances Rose	310 Whale Beach Road PALM BEACH NSW 2108
Ms Annette May Baggie	166 Whale Beach Road WHALE BEACH NSW 2107
Irene Read	309 - 311 Whale Beach Road PALM BEACH NSW 2108
Mark Azzopardi	Address Unknown
Steven Craig Smith	233 Whale Beach Road WHALE BEACH NSW 2107
Mr Robert Donald Mackinnon	16 Norma Road PALM BEACH NSW 2108
Mrs Virginia Lizelle Stack	5 Beatty Street BALGOWLAH HEIGHTS NSW 2093
Catherine Treweeke Lawyer	11A Avenue Road MOSMAN NSW 2088
Mr William Lindsay White	14 Crane Lodge Place PALM BEACH NSW 2108
Ben Stevenson	172 Plateau Road BILGOLA PLATEAU NSW 2107
Pauline Ryan	40/267 Miller Street NORTH SYDNEY NSW 2060
Leigh Brian Clapham	2 The Circle BILGOLA PLATEAU NSW 2107
Rosemary Edgell Bush	19 Thyra Road PALM BEACH NSW 2108
Belinda Mainprize	Address Unknown
Ms Molly Loloma Treweeke	41 Gurney Crescent SEAFORTH NSW 2092
Mr Roger Dominic Byrne	5 Robert Street FRESHWATER NSW 2096
John O'Neill	19 Raymond Road BILGOLA PLATEAU NSW 2107
Mr Anthony Francis Morrow	9 / 55 Darley Street East MONA VALE NSW 2103
Mr Gary Ian Zamel	62 Cabarita Road AVALON BEACH NSW 2107
Alberto Cubeddu	Address Unknown
Saad Khan	Address Unknown
Col Hughes	20 Eastbourne Road DARLING POINT NSW 2027
Sven Christian	1063 Barrenjoey Road PALM BEACH NSW 2108
Mr Simon Moore Greenaway	4 Ralston Road PALM BEACH NSW 2108
Mr Anthony Robert Falcone	49 Bynya Road PALM BEACH NSW 2108
Ms Rebekah Dorter	40 Trappers Way AVALON BEACH NSW 2107
Brita Benjamin	169 Whale Beach Road WHALE BEACH NSW 2107
Avalon Preservation Trust Incorporated as Avalon Preservation Association	24 Catalina Crescent AVALON BEACH NSW 2107
Mrs Kerry Robyn Coffey	5 Bynya Road PALM BEACH NSW 2108
Mr Philip Matthew Coffey	3 Allenby Lane CLONTARF NSW 2093
Paul Mirabelle	Address Unknown
Mrs Barbara Lyle Dowe	PO Box 194 CAMMERAY NSW 2062
Mr Nicholas Harry Wright	28 The Strand WHALE BEACH NSW 2107
Mr Ian Leslie Pardey	55 Cabarita Road AVALON BEACH NSW 2107
Mr John Kemp Sherlock	32 Morella Road WHALE BEACH NSW 2107
Ian Oliver Cook	180 Whale Beach Road WHALE BEACH NSW 2107
Mr John Leslie Nicholson	13 Morella Road WHALE BEACH NSW 2107
Mrs Dorothy Margaret Mary	158 A Whale Beach Road WHALE BEACH NSW 2107

Name:	Address:
Kamaker	
Mr Henry McElean	13 Norma Road PALM BEACH NSW 2108
Mr Trevor Neil Holman	43 Norma Road PALM BEACH NSW 2108
Mr John Charles Gorman	17 Prince Edward Parade HUNTERS HILL NSW 2110
Mr Stephen David Benneyworth	31 Bynya Road PALM BEACH NSW 2108
Louise Margaret Samuels	163 Whale Beach Road WHALE BEACH NSW 2107
Mrs Leonor Isabel Gouldthorpe	2 Surf Road PALM BEACH NSW 2108
Mr Ian David Riley	42 McIntosh Street GORDON NSW 2072
Mark Edward Marriott	PO Box 657 AVALON BEACH NSW 2107
Margaret Collis	9 Bynya Road PALM BEACH NSW 2108
Mrs Joanne Elizabeth Benneyworth	31 Bynya Road PALM BEACH NSW 2108
Ms Lea Ann Cleary	182 Whale Beach Road WHALE BEACH NSW 2107
Luke Adams	86 Pacific Road PALM BEACH NSW 2108
Mr Anthony Scott Fitzgerald	48 Hillside Road NEWPORT NSW 2106
Mr Darren Paul Harvey	12 - 14 Rock Bath Road PALM BEACH NSW 2108
Keith Skinner	114 Whale Beach Road WHALE BEACH NSW 2107
Ms Fiona Leigh Champion	114 Whale Beach Road WHALE BEACH NSW 2107
Ms Judith Nan Rogley	196 Whale Beach Road WHALE BEACH NSW 2107
Ms Virginia Anne Pursell	47 Ferry Road GLEBE NSW 2037
Pine Baran	Address Unknown
Simon Morgan	211 Whale Beach Road WHALE BEACH NSW 2107
Mrs Margot Lyn Coleman	22 Bynya Road PALM BEACH NSW 2108
Mr Michael Urban Roger Crivelli	167 Whale Beach Road WHALE BEACH NSW 2107
Michael Charles Scruby	185 Whale Beach Road WHALE BEACH NSW 2107
Mr Ian William Lothringer	112 Whale Beach Road WHALE BEACH NSW 2107
Mr Stephen Colin Crawford	6 Bushrangers Hill NEWPORT NSW 2106
Joe Cross	Address Unknown
Mr Michael John Shehadie	15 Quinton Road MANLY NSW 2095
Mr Mark Hamish Lochtenberg	Po Box 416 MILSONS POINT NSW 1565
Bruce Hamer	16 Prince Alfred Parade NEWPORT NSW 2106
Mr Trevor John Harrison	6 Surf Road PALM BEACH NSW 2108
Mr Douglas Michael Maher	60 Bynya Road PALM BEACH NSW 2108
Withheld Dr Melissa Jane Lamb	PALM BEACH NSW 2108
Withheld Dr Melissa Jane Lamb	7 Pacific Road PALM BEACH NSW 2108
Emily Irene Ashton	104 Whale Beach Road WHALE BEACH NSW 2107
Mr Philip Foster Begg	7 Waratah Road PALM BEACH NSW 2108

Name:	Address:
Mr Jonathon Pratten	4 Malo Road WHALE BEACH NSW 2107
Mr Robyn Lee Jarvis	3 Queens Avenue VAUCLUSE NSW 2030
Whale Beach Surf Life Saving Club INC	C/- Whale Beach Deli 227 Whale Beach Road WHALE BEACH NSW 2107
Ms Jane Roberta Prior	74 Chisholm Avenue AVALON BEACH NSW 2107
Mrs Dorothy Judith Wolfe	209 Whale Beach Road WHALE BEACH NSW 2107
Joe Vandine	Address Unknown
Ms Prudence Abby Rydstrand	1100 Barrenjoey Road PALM BEACH NSW 2108
Duncan McLennan	Address Unknown
Ms Cara Maree McLennan	32 Norma Road PALM BEACH NSW 2108
Robert Blackman	Address Unknown
Lynne Morris Simonds	17 / 2 A Campbell Parade MANLY VALE NSW 2093
Mr Laurie Bombardiere	22 North Avalon Road AVALON BEACH NSW 2107
Ms John R Molyneux	Level 1 63 William Street DARLINGHURST NSW 2010
Jo Smith	Address Unknown
Mrs Lyndal Eliza Anne Kusely	PO Box 75 AVALON BEACH NSW 2107
Tony Moody Planning And Development Pty Ltd	1/17 Thurlow Street REDFERN NSW 2016

Submissions in Support

A total of twenty-nine (29) submissions have been received in support of the proposal. The letters of support note the following benefits of the application:

- the proposal will replace a run down, structurally unsound and visually unpleasant building
- excellent meeting spot for locals
- create new jobs / boost to the economy
- the new venue will provide a much-needed new cafe / restaurant for locals and visitors
- the modification does not seek to change the already approved development

Comment:

The points in support of the application are generally concurred with.

Submissions in Objection

Approximately ninety (90) unique submissions have been received objecting to the proposal.

***Note:** multiple submissions have been received from the same address which in accordance with the Community Participation Plan (CCP) are counted as one unique submission.

The following issues were raised in submissions which are not directly related to the proposed change and cannot be given any consideration in the subject application to modify Condition 99 in respect of

patron capacity in Retail 1 - Restaurant:

- bulk and size does not suit the landscape – building should not extend above the current building line.
- unfair for neighbours and the aesthetic of the area – reduce the height and bulk
- view loss
- lack of loading zones
- signage not appropriate
- pedestrian access
- waste storage and removal
- smell nuisance from restaurant
- Whale Beach is not a commercial area – the design does not align with the character
- access to Surf Road is dangerous
- no public transport to the site
- current building at 231 Whale Beach Road is crumbling and has apparent structural issues

The following issues are relevant to the subject modification application and are addressed as follows:

- **Noise**

The submissions raise concerns that the acoustic report is not accurate and the recommendations, including no background music and closed windows are not realistic and cannot be complied with. The noise from inside the restaurant will travel and impacts on neighbouring residents. Issue with patrons leaving at night have not been considered in the acoustic report.

Comment:

As detailed in the history section of this report, the review application, REV2021/0034, included modifications to the design of the proposed development including an increase in the floor area of retail 1 compared to the original DA. However, condition 99 of REV2021/0034, in respect of patron numbers to retail 1, was based on the original acoustic report submitted in support of DA2020/0442 as an updated acoustic report was not prepared to reflect the amended design.

The acoustic report, that accompanies the subject modification, correctly assesses the acoustic impacts associated with the larger retail 1 tenancy as a restaurant / cafe with a proposed patron capacity of 170 patrons and 18 staff (total 188) which is consistent with patron numbers permissible under the BCA. The report has been reviewed by Council's Health Unit who offer no objections to the proposal subject to compliance with the recommendations of the amended acoustic report in respect of retail 1 and the original acoustic report in respect of managing noise from the venue.

In order to ensure compliance with the acoustic report it is recommended that condition 99 be modified to include specific reference to the acoustic measures. Subject to compliance with the recommendations of the acoustic report it is not anticipated that noise will escape from within the venue and cause unreasonable acoustic impacts to neighbours. In the event that noise complaints arise during the future operation of the restaurant the amended condition will ensure that compliance action can be enforced.

In regards to potential acoustic issues associated with patrons departing the venue it is recommended that condition 74 be amended to require an Operational Plan of Management (POM) for the use of the restaurant at retail 1. The POM will be required to provide details on all

measures that will be taken to ensure amenity impacts, as a result of the operation of the premises, including measures to manage customers departing the restaurant to ensure that neighbouring amenity is protected.

It is considered that the amendment of condition 74 to require an additional POM is reasonable considering the increase in patron capacity from 70 to 188 to correctly relate to the floor plans and use approved under REV2020/0034. Detailed consideration of the operational management of a 188 patron capacity restaurant was not fully considered under the original application and new and modify conditions address the new planning issues associated with the 188 capacity of the ground level restaurant and the concerns raised in the submissions.

- **Character**

The submissions raise concerns that the increased capacity of ground floor retail results in a development that is not in scale or keeping with the local Whale Beach residential character. The restaurant is too large and no longer suitable in a residential area. The retail space will be used as a function centre which may host weddings, and the like, it is no longer a small scale beachside cafe.

Comment:

The subject site is located within a B1 Neighbourhood Centre zone which allows for a different typology and scale of development compared to the surrounding C4 Environmental Living Zone. Despite this the subject modification does not seek to increase the approved built form or the floor area of retail 1 as approved under REV2021/0034.

Restaurants and cafes are permissible land uses within the B1 zone and condition 3 specified the approved land use. Function centres are prohibited in the B1 zone and a condition is included in the recommendation requiring a modification to condition 3 to specify that the use of retail 1 as a function centre is not approved. As discussed above, the new and modify conditions are considered reasonable as they address the planning issues and concerns from neighbours in respect of the amended 188 capacity ground level restaurant which reflect the development approved under REV2020/0034.

The proposed modification of condition 99, in respect of patron numbers, will not result in a development that it no longer in character with the neighbourhood centre zone, subject to conditions.

- **Road and pedestrian safety issues**

The submissions raise concerns about road safety issues with the proposal resulting in additional traffic generation on local roads which are described as narrow and windy roads and already congested with construction vehicles. Whale Beach Road and Surf Road are both noted to be hazardous. Surf Road is the main pedestrian access to Whale Beach and there is no footpath to Surf Road. Footpaths on other local roads are too narrow forcing pedestrian to walk onto the road to on coming traffic. This issue will intensify with the increase in patron capacity. Lack of public transport to service the venue and limited access for buses to transport customers to and from the venue.

Comment:

It is acknowledged that the topography and uniqueness of the area results in a vulnerable access due to the constraints of the road network. However, Council's Transport Officer has no

objections to the proposal, and it is not anticipated that the additional traffic generated by the proposal will result in road safety issues. As noted throughout this report, the subject modification seeks consent to approve the patron numbers associated with the amended design approved under REV2021/0034 to essentially correct an error with the review consent that approved an acoustic report that was superseded with amended plans. There is no increase in the density of the approved development and therefore no change in the anticipated traffic generated in terms of its assessment against the applicable traffic generating requirements, refer to the comments from Council's Transport Engineer.

It is noted that the condition 17 of the approval (REV2021/0034) requires a Construction Traffic Management Plan (CTMP) which will address issues in respect of access to the site, impact on the street and local network, and may include restrictions in travel routes, lane closure times, and other measures during work. The CTMP will be designed to minimise the impact on the overall community.

The approved building has increased setbacks to both Whale Beach Road and Surf Road compared to the existing building and the approved development includes public domain upgrades including a footpath to connect to the public car park. Conditions are also included in the original consent requiring the installation and maintenance of a pedestrian warning system. The proposal, as approved with conditions, is not considered to result in an unsafe environment for pedestrians.

- **Parking**

The submissions raise concerns that the proposal has a lack of parking and it is not appropriate for customers to use public beach parking area which is required by the public and surf life crew and emergency services and often fully used during weekends, summer and public holidays. There is currently a lack of street parking and the proposal will increase current problems with illegal parking in the area and cars blocking private driveways. Whale Beach Road is not an RMS road and parking rates should not therefore be calculated on the basis of the floor area but the locality.

Comment:

Clause B6.3 of the P21 DCP sets out the car parking requirements for developments. Car parking, for restaurants and cafes, is calculated on the gross lettable floor area (GLA), namely 1 space per 30sqm GLA as opposed to patron numbers. Traffic generation from the site is also determined on the basis of floor area with the RMS Guide to Traffic Generating Development specifying an evening peak trip rate of 5 trips per 100sqm of GLA.

The subject modification does not seek to increase the floor area of retail 1. As such, there is no requirement for additional parking under the subject modification to review patron numbers. It is noted that the detailed assessment report for REV2021/0034 provides a discussion on the car parking options considered under REV2021/0034 including car stackers and additional excavation and the redistribution of the proposed car parking. Given the constraints of the site the alternative options were not considered to be suitable, and it was determined that the amount of retail floor space is appropriate for the site with the proposed car parking being acceptable on merit. Council's Transport Engineer has reviewed the subject modification and offers no objections to the proposal.

In regards to concerns about customers parking in the public car park and any available on street spaces there is no restriction on this provided the relevant parking restrictions are complied with and access / parking for emergency services is not restricted. It is also noted that

for the vast majority of the year parking within the locality, in particular the beach side car park is readily available. It is appreciated that the area faces parking stress during the summer holidays, however the existing cafe has no on site parking, on balance the demand for parking is not dissimilar to that associated with the existing building.

- **Cumulative impact**

The submissions raise concern that cumulative impact from the proposed restaurant and existing venues, including Mobys and the Surf Club in relation to noise and parking issues. The area already has Moby's and the Surf Club as function centres and there is no need for another large venue.

Comment:

Restaurants / cafes are permissible within the B1 Neighbourhood Centre zone and the approved use is permissible. As noted above, a condition is recommended prohibiting the use of Retail 1 as a function centre. In this regard there will be no issues with respect to cumulative impacts of function centres and subject to compliance with the recommendations of the acoustic report there will be no unreasonable impacts on neighbouring amenity associated with the approved ground level restaurant.

- **Servicing**

The submissions raise concerns that the increase in patron numbers will result in a need for additional servicing, deliveries and waste collection which will result in increased noise and road safety impacts.

Comment:

As noted above, the proposal does not seek to increase the size of the retail floor area. The servicing needs for the development have already been considered under the review application and subject to conditions are deemed to be acceptable. Subject to compliance with the existing conditions it is not anticipated that the serving of the site will result in unreasonable amenity impacts.

- **Hours of operation**

The submissions raise concerns that the hours of operation of a licensed venue need to be reduced not increased. The previous cafe, now closed, operated from 7am to 3pm daily the increase in hours represents an intensification of use. The other proposed retail shops, No. 2 and 3, will also increase patron capacity and increase trading hours.

Comment:

The proposal does not seek to amend condition 92 which permits the hours of operation of all three retail tenancies to between 7.00am to 10.00pm daily. Condition 92 does not specifically refer to outdoor trading hours.

In assessing the Review application, condition 92 was based on the consideration of the original acoustic report, albeit for the superseded design, which referred to maximum capacity of 20 patrons outside. As such, given the proposal to increase the seating capacity to 30 patrons outside to reflect the approved design and the updated acoustic report it is considered reasonable to modify condition 92 to limit the outdoor trading to between 7.00am to 8.00pm

Sunday to Thursday and 7.00am to 9.00pm Friday to Saturday. This in turn will help address concerns from neighbours regarding amenity impacts associated with the use of the outdoor seating.

Retail 2 and 3 are intended to be used as shops, as such there is no patron capacity associated with these retail tenancies. In order to ensure this it is recommended that Condition 3 is modified to specify that the use of retail 1 and 2 is restricted to Neighbourhood shops, consistent with the retail use permissible within the B1 zone.

- **Anti-social behaviour**

The submissions raise concern about impacts from anti-social behaviour from customers, including intoxicated patrons being noisy and inappropriate to local residents, littering, noise from cars.

Comment:

Condition 74 requires the submission of a Plan of Management for the site to include space management strategies such as ensure site cleanliness, rapid repair of vandalism and graffiti. As discussed above, it is recommended that the condition be amended to require a POM for the restaurant which will require the applicant to submit details of management measures to address patrons departing the venue.

Anti-social behaviour associated with intoxicated persons will be further considered under a separate application for a liquor licence.

- **Public safety / public interest**

The submissions raise concerns that the increase in patron numbers may lead to public safety issues in relation to beach access, road and pedestrian safety and anti social behaviour from intoxicated customers. The proposal is not in the public interest.

Comment:

Issues in respect to public safety are considered under the responses to issues above relating to road safety, noise and the management of the restaurant. Subject to compliance with the conditions in the original consent (REV2021/0034) and those recommended in the subject modification it is not anticipated that the patron capacity of Retail 1 will have unreasonable impacts on public safety / interest.

- **Precedent**

The submissions raise a concern that the proposal could set a precedent for other similar developments.

Comment:

It is not expected that the approval of the subject application will result in a precedent of similar application. Notwithstanding this each application is assessed on its merits.

- **Procedural issues**

The submission raise concerns that there has been insufficient community consultation

on the application with only 6 properties notified. Further the extent of changes proposed in the application suggests that it requires a new DA

Comment:

The subject modification was notified to all those that made a submission to the previous application in addition to the neighbouring properties. The application seeks to review condition 99 of the approval and is substantially the same as the original application. As such, the application has correctly been lodged as a modification under Section 4.5(2) of the EPA Act 1979.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	Supported, subject to conditions The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below. Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.
Environmental Health (Industrial)	Supported, subject to conditions <i>General Comments</i> Environmental Health were requested to review the modification to REV2021/0034 for increasing the maximum patronage of the premise to 30 outdoor patrons, 140 indoor and 18 staff, and the potential acoustic impacts on the surrounding sensitive receivers. A review of Revision A of the Acoustic Report dated 7 December 2021 adequately models and addresses noise attenuation from the proposed Retail 1 ground floor. Existing attenuation imposed on the previous consent is sufficient to cater for the proposed modification. The intent of REV2021/0034 was to combine the proposed patronage from the food premises on the upper levels and combine them into the lower level. This was not reflected in the conditions of consent which is why the modification was lodged by the applicant. Based on the proposed information provided by the applicant, Environmental Health believes the proposal is adequate for its intended use. In order to facilitate the modification, some changes to conditions of consent will need to be completed to address the acoustic report and

Internal Referral Body	Comments
	increase in patron numbers. Condition 1 of the consent will need to include the "Acoustic Report, Revision A" dated 7 December 2021, under heading "Reports/Documentation - All recommendations and requirements contained within". The existing report referenced as "Acoustic Report, Revision B" dated 5 February 2020 must remain as revision B of the acoustic report encompasses considerations around mechanical ventilation and its attenuation, which was not specified in Revision A. Please note that condition 33 of the prior consent references Condition 1, any amendment to Condition 1 will need to be adequately referenced in Condition 33 to ensure Condition 33 references the correct condition after the amendments have been applied. Condition 99 of the original consent relating to Retail 1 will need to be amended to allow for 30 outdoor, 140 indoor and 18 staff (max. capacity of 188 persons). <i>Recommendation</i> Supported. Subject to amendments to conditions of consent listed above.
Environmental Health (Food Premises, Skin Pen.)	Supported, without conditions <u>General Comments</u> Environmental Health has been engaged to undertake the review of the modification of REV2021/0034 which relates to a change in maximum patronage in the retail 1 of 231 Whale Beach Road, Whale Beach. As part of this referral, Environmental Health reviewed the facilities proposed and their ability to cater for the future use as a food premise. From this review, we believe that the previous determination provides adequate conditions and referenced to adequate plans to facilitate a food business development on the site. We consider that no further conditions are required for the fit out of the premise and we support this proposal. <u>Recommendation</u> Supported - conditions not required for modification.
Traffic Engineer	Supported, without conditions The modification seeks to modify the wording of consent condition No.99 which limits patronage and staffing numbers in the ground floor cafe of the development The Pittwater DCP Parking requirement for restaurants and cafes is determined on the basis of leasable floor area rather than seating

Internal Referral Body	Comments
	capacity i.e 1 space per 30m² GLA, accordingly, amending condition 99 to allow for a capacity of 170 patrons and 18 staff members as opposed to the 66 patrons and 6 staff members referenced in the condition does not alter the parking requirements Traffic Generation from the site is also determined on the basis of floor area with the RMS Guide to Traffic Generating Development specifying an evening peak hour trip rate of 5 trips per 100m² of GLA. This rate was used by the applicant's traffic consultant to calculate the trip generation from the cafe and is accepted as appropriate. There are therefore no traffic engineering grounds upon which to refuse the proposed modification to consent condition No.99

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	Ausgrid have confirmed that a decision is not required.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

All, Environmental Planning Instruments (SEPPs, REPs and LEPS), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs, REPs and LEPS), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)

SEPP 65 - Design Quality of Residential Apartment Development

There is no change to the approved building and the with the exception of Principle 6 - Amenity of SEPP 65 and Part 4H Acoustic Privacy of the ADG the detailed SEPP 65 discussion in the assessment report for REV2021/0034 remains valid.

Principle 6 - Amenity requires:

Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well being. Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas and ease of access for all age groups and degrees of mobility.

Comment:

Subject to compliance with the recommendations of the acoustic report and additional conditions in respect of hours of operation and the need for a Plan of Management the proposal will not result in

unreasonable impacts in acoustic privacy to neighbouring residents.

Part 4H Acoustic Privacy (ADG)

Part 4S Mixed Use (ADG)

Objective in Part 4H sets out requirements relating specifically to residential flat buildings. Objective 4S sets out requirements for mixed use developments including a need for retail uses on the ground level to help activate frontages. The proposal complies with this requirement and activates the frontage. As discussed above, subject to the recommended conditions the proposal complies with the requirements of clause 4S of the ADG.

Pittwater Local Environmental Plan 2014

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

Principal Development Standards

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.5m	Unaltered 8.5m	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
7.2 Earthworks	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Pittwater 21 Development Control Plan

Built Form Controls

There is no change to the approved building therefore a n assessment of the P21 DCP Built Form Controls is not relevant to the subject modification

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.12 Palm Beach Locality	Yes	Yes
B2.6 Dwelling Density and Subdivision - Shop Top Housing	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	No	Yes
B6.7 Transport and Traffic Management	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.10 Building Facades	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.15 Storage Facilities	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
C2.2 Safety and Security	Yes	Yes
C2.3 Awnings	No	Yes
C2.5 View Sharing	Yes	Yes
C2.7 Building Facades	Yes	Yes
C2.8 Energy and Water Conservation	Yes	Yes
C2.9 Waste and Recycling Facilities	Yes	Yes
C2.10 Pollution Control	Yes	Yes
C2.12 Protection of Residential Amenity	Yes	Yes
C2.20 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
C2.21 Food Premises Design Standards	Yes	Yes
C2.22 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D12.1 Character as viewed from a public place	Yes	Yes
D12.3 Building colours and materials	Yes	Yes
D12.5 Front building line	No	Yes
D12.6 Side and rear building line	No	Yes
D12.14 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

B6.3 Off-Street Vehicle Parking Requirements

Retail, cafe and restaurant car parking is calculated at a rate of 1 per 30m² Gross Leasable Floor Area

(GLA) as opposed to patron capacity.

There is no change to the approved amount of retail floor space or the approved 14 car parking spaces, including 3 retail car parking spaces, approved under REV2021/0034. The approved car parking represented a shortfall of 8 space 7 being for the retail comment on the development. Council's Transport Engineer offers no objections to the proposal to increase the patron capacity. Refer to detailed discussion on car parking in the submissions and referrals sections of this report.

C1.6 Acoustic Privacy

Clause C1.6 requires:

Noise-sensitive rooms, such as bedrooms, should be located away from noise sources, including main roads, parking areas, living areas and communal and private open space areas and the like.

Walls and/or ceilings of dwellings that are attached to another dwelling/s shall have a noise transmission rating in accordance with Part F(5) of the Building Code of Australia. (Walls and ceilings of attached dwellings must also comply with the fire rating provisions of the Building Code of Australia).

Noise generating plants including pool/spa motors, air conditioning units and the like shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.

Developments must comply in all respects with the Protection of the Environment Operations Act 1997, and other relevant legislation.

Comment:

The original acoustic report provides specific recommendations for the management of noise associated with plant. Council's Environmental Health Unit have no objections to the proposal subject to a condition that requires compliance with the recommendations of the original acoustic report in respect of plant.

The updated acoustic report provides details of recommendations to ensure that the operation of the restaurant associated with retail 1 complies in all respects with the Protection of the Environment Operations Act 1997, and other relevant legislation. Council's Health Unit have no objections to the proposal subject to a condition that requires compliance with the recommendations of the updated acoustic report.

C2.12 Protection of Residential Amenity

Clause C2.12 requires the protection of residential amenity in terms of visual privacy and solar access. The requirements of the control do not specifically refer to acoustic privacy.

Despite this it is anticipated that the increase in patron capacity will not have unreasonable impacts on neighbouring residential amenity subject to compliance with the recommendations of the amended acoustic report and the existing and amended conditions including the requirement for a POM (condition 74), and no music or amplified music (condition 95). Subject to these conditions the application meets the following outcomes of the control.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- Pittwater Local Environment Plan;
- Pittwater Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

Conclusions on Assessment

Condition 99 (Patron Capacity of Retail 1) of REV2021/0034 related to the superseded design in the original Development Application. The review application amended the design of the retail premises with no restaurant use to Level 3 retail and relocated the restaurant use to the Ground Floor Level "Retail 1". The review application was not supported by an updated acoustic report. The subject modification seeks approval for an increase in patron numbers associated with the amended location and design of the restaurant approved under REV2021/0034, which will correctly relate patron numbers for the new restaurant space, which is supported by a new acoustic report.

Noise Issues

Subject to compliance with the recommendation of the updated acoustic report, the proposal will not result in unreasonable acoustic privacy impacts on neighbouring residents. In order to address the issues raised in the submissions, additional conditions are recommended prohibiting the use of Retail 1 as a function centre, limiting the hours of use of the outdoor seating area and requiring an Operational Management Plan for the management of the restaurant.

Traffic, Parking and Road Safety Issues

The application does not involve an increase in the size, scale and density of the approved development in terms of floor area, rather it is the number of patrons being increased, therefore there will be no change in the anticipated traffic generated in terms of its assessment against the applicable traffic generating requirements. Carparking requirements are based on the relevant requirements under the P21DCP which is based on floor area of the restaurant, as opposed to patron numbers, therefore there is no requirement to increase the number of off-street parking spaces in response to the increased patronage. Council's Transport Engineer supports the proposed increased in patrons on this basis.

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Northern Beaches Local Planning Panel as the consent authority grant approval to Modification Application No. Mod2021/0983 for Modification of Development Consent REV2021/0034 granted for demolition works and construction of a Mixed Use Development comprising Shop Top Housing and retail premises, with associated carparking, landscaping and strata subdivision on land at Lot B DP 316404,231 Whale Beach Road, WHALE BEACH, subject to the conditions printed below:

A. Add Condition No.1A - Modification of Consent - Approved Plans and supporting Documentation to read as follows:

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Acoustic Report Revision B Project No: 190351 only Part 5.1 - Roof top Mechanical Plan Recommendations	05.02.2020	JHA Services
Acoustic Report Revision A Project No: 190351 Part 5 Recommendations	07.12.2021	JHA Services
BCA Design Compliance Report	02.08.2021	Modern Building Certifiers

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans.

B. Amend Condition 3 - Approved Land Use to read as follows:

This consent authorises a mixed-use development, comprising shop top housing and additional retail premises.

Shop top Housing means one or more dwellings located above ground floor retail premises or business premises.

Retail Premises means a building or place used for the purpose of selling items by retail, or hiring or displaying items for the purpose of selling them or hiring them out, whether the items are goods or materials (or whether also sold by wholesale), and includes any of the following:

- (a) (Repealed)
- (b) cellar door premises,
- (c) **food and drink premises,**
- (d) garden centres,
- (e) hardware and building supplies,
- (f) kiosks,
- (g) landscaping material supplies,
- (h) markets,
- (i) plant nurseries,

- (j) roadside stalls,
- (k) rural supplies,
- (l) **shops**,
- (la) specialised retail premises,
- (m) timber yards,
- (n) vehicle sales or hire premises,

but does not include highway service centres, service stations, industrial retail outlets or restricted premises.

This consent authorises Retail 2 and Retail 3 on Level 3 (fronting Whale Beach Road) as a **Neighbourhood Shop** which is defined in the Pittwater LEP 2014 as:

Neighbourhood Shop means premises used for the purposes of selling general merchandise such as foodstuffs, personal care products, newspapers and the like to provide for the day-to-day needs of people who live or work in the local area, and may include ancillary services such as a post office, bank or dry cleaning, but does not include neighbourhood supermarkets or restricted premises.

Neighbourhood Shops are a type of shop which are classified as a type of retail premises.

This consent authorises Retail 1 on the Ground Floor Level (fronting Surf Road) as a **Restaurant / Café** which is defined in the Pittwater LEP 2014 as:

Restaurant / Café means a building or place the principal purpose of which is the preparation and serving, on a retail basis, of food and drink to people for consumption on the premises, whether or not liquor, takeaway meals and drinks or entertainment are also provided.

This consent does not give approval for the use of Retail 1 as a Function Centre.

Any variation to the approved land use and/occupancy of the building or any part of the building beyond the scope of the above definitions will require separate development consent.

Reason: To ensure compliance with the terms of this consent.

C. Modify Condition 74 - Operational Management Plan to read as follows:

A. An Operational Management Plan is to be prepared for the management of the development and adjacent road reserves identifying:

- i. Consistency with all 'on-going' conditions of consent over the life of the development
- ii. Outlining all required maintenance responsibilities for private infrastructure, including water management infrastructure and landscaping, and
- iii. Space management strategies including activity coordination, site cleanliness, rapid repair of vandalism and graffiti, and the maintenance of lighting and landscaping.

B. A separate Operational Management Plan is to be produced for the management of the Restaurant/Café in "Retail 1" on the Ground Floor Level, identifying:

- i. **Operational Details** - an overview of the organisation providing details of the number of staff, liquor licenses that apply to the restaurant and hours of operation.
- ii. **Noise** - identify noise sources including patrons leaving and entering the restaurant and how management intends to minimise impacts to neighbours of customers departing the restaurant, a statement outlining the premises compliance with acoustic recommendations, details on how

management will address complaints and noise control strategies, details on delivery and waste collection times.

iii. **Management Measures** - details on all measures that will be taken to ensure amenity impacts as a result of the operation of the premises are minimised. Details on all actions to respond to complaints, details on measures that will assist patrons using public transport or on demand services (eg. taxi, Uber (or the like) assistance or provision of a shuttle service).

The Operational Management Plan is to be submitted to the Principal Certifying Authority prior to the issue of the Occupation Certificate.

Reason: To ensure the on-going management of the site over the life of the development and protect residential amenity.

D. Modify Condition 92 - Hours of Operation to read as follows:

The hours of operation of the retail premises and internal areas of the restaurant/cafe are to be restricted to 7:00am to 10:00pm, seven days a week.

The hours of operation of the external areas of the restaurant/cafe are restricted to 7.00am to 8.00pm Sunday to Thursday, and 7.00am to 9.00pm Friday to Saturday.

Upon expiration of the approved hours, all service shall immediately cease, no patrons shall be permitted entry and all customers on the premises shall be required to leave the premises (internal and external areas) within the following 30 minutes.

Deliveries of goods and waste collection associated with the retail premises and restaurant/cafe must not occur between 7.00pm and 7.00am the following day.

Reason: To ensure the uses operate in accordance with the approved hours and the amenity of the surrounding locality is maintained.

E. Modify Condition 99 Capacity of Ground Level Cafe or Restaurant facing Surf Road to read as follows:

The seating capacity of the restaurant/café fronting Surf Road is limited to 140 indoors and 30 outdoors. The maximum number of staff is 18 at any one time (maximum capacity of 188 persons).

Reason: To ensure the patronage and staffing accords is appropriately limited and residential amenity is protected.

F. Add Condition 99 (A) Acoustic Recommendations to read as follows:

The following acoustic recommendations specified in Part 4 of the Acoustic Report, Revision A, dated December 2021, prepared by JHA Services shall be complied with at all times:

- (a) No background or live music in Retail 1.
- (b) A 1.8m high paling fence shall be erected along the southern boundary between the subject site and 229 Whale Beach Road. The paling fence shall have a minimum surface mass of 12kg/m and be constructed with an impervious material. The paling fence shall be continuous with no gaps and shall be close fitting to the ground. All bracing and structural support required to comply with loadings and building regulations shall be provided and reviewed by a structural engineer.
- (c) All windows of the indoor seating area are to remain closed.
- (d) The eastern facade of the indoor seating area is not to be operable/openable, except for patron/staff

ingress and egress. The facade, other external building elements and ventilation opening shall be designed to provide a minimum composite sound insulation of R_w30 .

Reason: To ensure acoustic measures are carried out and residential amenity is protected.

ITEM 4.2**DA2021/1963 - 10 - 12 LOQUAT VALLEY ROAD, BAYVIEW -
DEMOLITION WORKS AND CONSTRUCTION OF A SENIORS
HOUSING DEVELOPMENT.****AUTHORISING MANAGER****Steve Findlay****TRIM FILE REF****2022/448499****ATTACHMENTS**

- 1** [↓](#) **Assessment Report**
- 2** [↓](#) **Site Plans & Elevations**
- 3** [↓](#) **Clause 4.6**
- 4** [↓](#) **Design & Sustainability Advisory Panel Report**

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as it is the subject of 10 or more unique submissions by way of objections and the development contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **refuses** Application No. DA2021/1963 for the demolition works and construction of a seniors housing development on land at Lot 14 DP 30382, 12 Loquat Valley Road, BAYVIEW, Lot 13 DP 30382, 10 Loquat Valley Road, BAYVIEW, for the reasons for refusal set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/1963
Responsible Officer:	Thomas Prosser
Land to be developed (Address):	Lot 14 DP 30382, 12 Loquat Valley Road BAYVIEW NSW 2104 Lot 13 DP 30382, 10 Loquat Valley Road BAYVIEW NSW 2104
Proposed Development:	Demolition works and construction of a seniors housing development
Zoning:	R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	Yes
Owner:	Matthew Allan Hazlett Andre Albert Koolloos Vicki Ann Koolloos
Applicant:	Andre Albert Koolloos
Application Lodged:	21/10/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Seniors Living
Notified:	24/11/2021 to 08/12/2021
Advertised:	24/11/2021
Submissions Received:	52
Clause 4.6 Variation:	4.3 Height of buildings: 16.3%
Recommendation:	Refusal
Estimated Cost of Works:	\$ 3,402,901.00

EXECUTIVE SUMMARY

This development application for a seniors housing development is made pursuant to State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004, as it was lodged before the gazettal of the new "SEPP Housing 2021", that contained relevant savings provision which mean this application is assessed against the 2004 Policy.

The application is being reported to the NBLPP as more than 10 submissions have been received.

A pre-lodgment meeting for this proposal was held with Council and the applicant responded to most of the advice in the application.

The application was referred to the Design and Sustainability Advisory Panel (DSAP), who advised that they supported the proposal subject to a number of specific recommendations. The application has been amended to address some of the DSAP recommendations, including retention of tree 7, and a change of the car park and ramped driveway design.

The notification of the application resulted in 51 submissions being made, all of which were in objection to the proposal, and in summary concerns raised included: overdevelopment, impact on the natural environment, increased traffic, safety, impact on the character of the street and locality, non-compliance with planning controls and non-compliance with SEPP HSPD.

The applicant lodged amended plans in response to Council's Request for Information, and Council's Stormwater, Floodplain Engineering Team and Planner remain not satisfied that the information addresses the assessment issues, particularly in relation to flooding and the height, bulk, scale of the development at the rear of the site. Furthermore, Council's Development Engineer has indicated that additional information is required to complete a full assessment.

The assessment of the application has found that the proposal in its current form cannot be supported, as it fails to satisfy a number of provisions within the SEPP HSPD and the P21 DCP. The main issues are related to character, context, suitability with regard to surrounding land uses, height and number of storeys.

The proposal also provides insufficient information with regard to the Front Building Line (the presentation of the waste area) and Development Engineering (stormwater).

The Applicant's request to justify contravention of the Building Height and Number of storeys standards under Clause 4.6 are not well founded and cannot be supported, as discussed in detail within this report.

Finally, it is noted that a Class 1 Appeal has been made in the Land and Environment Court of NSW in relation to the deemed refusal of the application.

Accordingly, the application is referred to the NBLPP with a recommendation for REFUSAL.

PROPOSED DEVELOPMENT IN DETAIL

The proposal involves the demolition of two existing dwellings and the construction of a seniors housing development.

In detail, the development involves:

- 5 x 3 bedroom seniors living apartments
- Basement parking for 9 cars
- Ground Level apartments
- First floor apartments
- Driveway to rear with access to apartments
- Bin storage area
- Landscaping

Amended Plans

Amended plans were submitted which did not require re-notification in accordance with Council's Community Participation Plan.

In detail, these amended plans involved the following:

Basement Plan

- Driveway from street layout amended to provide required pedestrian site line triangle on the left-hand side of a vehicle exiting the driveway in accordance with the Australian Standard for a two-way driveway entrance.
- The reconfiguration of the basement car parking and access driveway (to provide additional clearance to Tree 7)
- Removal of the timber deck at the rear of the site.

Ground Floor Plan

- The provision of an increased setback between the driveway and the eastern boundary of the property (allowing for landscaping in this area)
- A 500mm reduction in the width of Unit 1 to accommodate the changes to the driveway and associated side boundary setback.
- The relocation of the entry pathway and waste bin storage area in a westerly direction.
- A green roof provided to the waste storage area.
- A widening of the planter box adjacent to the entrance of Unit 2 to provide additional spatial separation and landscape opportunity between the pathway and adjacent bedroom windows.

First Floor Plan

- A reduction in the depths of Units 4 and 5 by 1.5 metres (a reduction in visual bulk and height at the rear of the site)

Roof Plan

- Change of roof material to concrete

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest

- groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards
Pittwater Local Environmental Plan 2014 - 5.21 Flood planning
Pittwater Local Environmental Plan 2014 - 7.4 Floodplain risk management
Pittwater 21 Development Control Plan - B3.11 Flood Prone Land
Pittwater 21 Development Control Plan - C1.3 View Sharing
Pittwater 21 Development Control Plan - C1.5 Visual Privacy
Pittwater 21 Development Control Plan - C1.21 Seniors Housing
Pittwater 21 Development Control Plan - D4.3 Building colours and materials
Pittwater 21 Development Control Plan - D4.5 Front building line

SITE DESCRIPTION

Property Description:	Lot 14 DP 30382 , 12 Loquat Valley Road BAYVIEW NSW 2104 Lot 13 DP 30382 , 10 Loquat Valley Road BAYVIEW NSW 2104
Detailed Site Description:	The subject site consists of two existing allotments located on the northern side of Loquat Valley Road. The site is irregular in shape with a frontage of 37.9m to Loquat Valley Road and a depth of 37m to 45m. The site has a combined surveyed area of 1490.8m². The site is located within the R2 Low Density Residential zone and accommodates two dwelling-houses. The site has a slope from the front to rear, with a cross fall of approximately 7.0m. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by detached residential development and a school.

Map:



SITE HISTORY

The land has been used for residential purposes for an extended period of time.

A search of Council's records has revealed the following relevant history:

- **N0388/09** - Alterations and additions to an existing dwelling, secondary dwelling and carport approved on 24/12/09 (12 Loquat Valley Road).

This has no relevance to the current proposal

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.

Section 4.15 Matters for Consideration	Comments
	<u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application. <u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	Matters have arisen in this assessment that justify the refusal of the application in the public interest and are detailed in the assessment sections of this report and the recommendation.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 24/11/2021 to 08/12/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 52 submission/s from:

Name:	Address:
Ms Linda Olga Haefeli	15 Loquat Valley Road BAYVIEW NSW 2104
Ms Christine Therese O'Connell	13 Valley Close BAYVIEW NSW 2104
Mr Steven Anthony Cox Mrs Kathryn Naomi Cox	7 Jendi Avenue BAYVIEW NSW 2104
Mrs Lisa Jane Read	5 Jendi Avenue BAYVIEW NSW 2104
Mr Ric Bonomo	9 Jendi Avenue BAYVIEW NSW 2104
Mr Robert Lloyd Jones	8 Loquat Valley Road BAYVIEW NSW 2104
Ms Hilary Wren	7 Loquat Valley Road BAYVIEW NSW 2104
Mrs Natalie Doris Jones	8 Loquat Valley Road BAYVIEW NSW 2104
Mr Keith Richard Waters Mrs Saskia Waters Bryce Waters	26 Warili Road FRENCHS FOREST NSW 2086
Mr Darren Mark Read	5 Jendi Avenue BAYVIEW NSW 2104
Mr Michael Richards	26 Jendi Avenue BAYVIEW NSW 2104
Mr Brad Leonard Donelley	9 Barkala Road BAYVIEW NSW 2104
Mrs Dolores Camilia Dowdall	8 Kookaburra Close BAYVIEW NSW 2104
Mr Douglas Ames Traverso	3 Loquat Valley Road BAYVIEW NSW 2104
Holly Parsons	Address Unknown
Mr Mark Geoffrey Whittard Mrs Kristie Louise Whittard	6 Jendi Avenue BAYVIEW NSW 2104
Mr Kevin Michael Howes	24 Loquat Valley Road BAYVIEW NSW 2104
Mr Ji Rong Ni	27 Loquat Valley Road BAYVIEW NSW 2104
Mrs Dianne Reynard Chesser	2039 Pittwater Road BAYVIEW NSW 2104
Mr Michael Alexander Orchard	16 Jendi Avenue BAYVIEW NSW 2104
Mrs Lillian Apoyan	19 Loquat Valley Road BAYVIEW NSW 2104
Mr Irving Delmar Underwood	7 McCarrs Creek Road CHURCH POINT NSW 2105
Dr Jeanette Robin Rosen	11 Jendi Avenue BAYVIEW NSW 2104
Mrs Sophie Cathryn Margaret Orchard	16 Jendi Avenue BAYVIEW NSW 2104
Mr Peter Robert Heal	8 Jendi Avenue BAYVIEW NSW 2104

Name:	Address:
Mrs Carol Heal	
Ms Jodie Giteau	131 Gondola Road NORTH NARRABEEN NSW 2101
Mrs Joy Michelle Wyton	38 Jendi Avenue BAYVIEW NSW 2104
Nigel Roberts	Address Unknown
Mr Craig Nigel Burnard	1 Kookaburra Close BAYVIEW NSW 2104
Mr Mark Francis Horton	2 Elwyn Close MONA VALE NSW 2103
Ms Victoria Alice Chesser	13 Kristine Place MONA VALE NSW 2103
Ms Misa Carroll	2055 Pittwater Road BAYVIEW NSW 2104
Mr Peter Craig Selge	21 Gilwinga Drive BAYVIEW NSW 2104
Christopher Philip Jones Nicola Jane Greenlees-Jones	5 Loquat Valley Road BAYVIEW NSW 2104
Mr Philip Frank Sarin	16 Loquat Valley Road BAYVIEW NSW 2104
Ms Carol Mae Whittington Mr Rodney Alan Whittington	5 Kawana Court BELLA VISTA NSW 2153
Mrs Marjorie Joy Howes	24 Loquat Valley Road BAYVIEW NSW 2104
Mrs Tansey Keys	5 Jendi Avenue BAYVIEW NSW 2104
Mr Karl William Brown	21 Whitney Street MONA VALE NSW 2103
Mrs Robyn Maree Selge	21 Gilwinga Drive BAYVIEW NSW 2104
Ms Elizabeth Anne Purvis	32 Loquat Valley Road BAYVIEW NSW 2104
Mr Narinder Pall Singh Kanda	C/- Domain Residential PO Box 927 MONA VALE NSW 1660
Mr David Bishop	4 Kookaburra Close BAYVIEW NSW 2104
Mrs Elizabeth Marissa Lough	22 Jendi Avenue BAYVIEW NSW 2104
Mr Russell Harrison	38 Loquat Valley Road BAYVIEW NSW 2104
Mrs Margaret Isobel Finlay	16 Alexander Road AVALON BEACH NSW 2107
Ms Sally Lorelle Argent	13 Jendi Avenue BAYVIEW NSW 2104
Sean Fitzgerald Kenny	16 / 1351 Pittwater Road NARRABEEN NSW 2101
Mr James Christopher Lombardo	47 Samuel Street MONA VALE NSW 2103
Mr Enrico Mario Bonomo	9 Jendi Avenue BAYVIEW NSW 2104
Moya Elizabeth Rau	7 A Loquat Valley Road BAYVIEW NSW 2104
Mrs Marita Elizabeth Neilson	2 Pindari Place BAYVIEW NSW 2104

The issues raised in the submissions are addressed as follows:

- **Traffic; Impact during Construction**

The submissions raised concerns with regard to safety, impacts during construction and on-street parking

Comment:

Council's Traffic officer has reviewed the application including additional information and amendments. From this review, Council's traffic officer is satisfied with the proposal subject to

conditions. These conditions would be imposed if the application were to be approved. The conditions include management and mitigation of construction impact.

- **Impact on Natural Environment**

The submissions raised concern with regard to impact on biodiversity (including specific species of animal), vegetation removal, impact on landscaped area, lack of landscaped area (including next to driveway) and inappropriate integration of the proposed building within the natural environment.

Comment:

Council's Natural Environment Officer's (including Landscaped Officer and Biodiversity Officer) have reviewed the application (including the additional information), and are satisfied with the proposal, subject to conditions, if the application was to be approved.

With regard to the integration of the built form with the landscape and natural character at the rear of the site, it is assessed that the bulk and scale of the building is visually dominant and overbearing, so as to not appropriately integrate with the natural character of the locality. This is discussed in more detail later in this report.

This is included as a reason for refusal.

- **Non-compliance with relevant planning controls**

The submissions raised concerns that the proposal does not meet numerous planning controls.

Comment:

A detailed assessment is provided in this report against the relevant planning controls.

The assessment reveals that the built form of the main structure is compliant with the side boundary envelope control and all required setbacks. However, non-compliances exist with regard to other structures in the front setback, the building height, and other non-compliances with the SEPP HSPD. These non-compliances have been addressed in this report and form a reason for refusal where warranted.

- **Precedent**

The submissions raised concerns that the proposal will start a precedent for this type of development (seniors housing) in the area and also for this scale of development.

Comment:

Seniors Housing is a permissible landuse under the State Environmental Planning Policy HSPD and there no precedent is made. An assessment under Section C1.21 of the Pittwater 21DCP has found that the proposal would have a cumulative impact that is unreasonable due to impacts caused by excessive bulk and scale.

This is included as a reason for refusal.

- **Inappropriate character, lack of scenic protection, overbearing bulk and scale, overdevelopment and inappropriate building design**

The submissions raised varying concerns with regard to character, bulk, scale, design and overdevelopment.

Comment:

The presentation of the building from the street is satisfactory due to the levels of building separation, articulation and compliant building height in this perspective of the development.

However, it is agreed that the bulk and scale of the rear of the building is overbearing and visually dominant.

This is included as a reason for refusal.

- **Building Height and Number of Storeys**

The submissions raised concerns that the proposal does not comply with the development standards for Building height and number of storeys under the SEPP HSPD.

Comment:

Applications to vary the development standards for Building Height and Number of Storeys under the SEPP HSPD are not supported for the reasons discussed in the relevant sections of this report.

This is included as a reason for refusal.

- **Views**

The submissions raised concerns that district views and views toward the Pittwater Waterway will be lost.

Comment:

An assessment in this report has found that the overall view impact is minor, and the view sharing situation is reasonable. This is further discussed in the view sharing section of this report.

- **Flooding**

The submissions raised concerns with regard to flooding.

Comment:

These concerns are substantiated by Council's Stormwater, Floodplain Engineering team who has raised concerns with the design in relation to flood levels.

This is included as a reason for refusal.

- **Amenity impact on adjoining neighbours**

Comment:

It is agreed that overlooking between the proposed building and adjoining properties via windows and decks could cause unreasonable privacy. As such, if the application were to be approved, it is recommended that screening devices could be required as conditions of consent.

Due to the separation between the proposed building and neighbouring buildings, the proposal will not have an unreasonable impact on other amenity issues such as solar access.

- **Overshadowing**

The submissions raised concerns with regard to impact on Solar Access.

Comment:

The proposal complies with all requirements in relation to Solar Access. This is due to sufficient separation between the building and neighbouring living spaces.

- **Acid Sulfate Soils**

Comment:

Council's Environmental Health Officer is satisfied with the proposal (including additional information), and has recommended conditions for any consent with regard to Acid Sulfate soils.

- **Insufficient Geotechnical report**

The submissions raised concerns that the Geotechnical consultant did not conduct a site visit, and that the report is inadequate.

Comment:

Council's Development Engineer and assessment officer have reviewed the Geotechnical Report and are satisfied with the submitted documentation. No expert evidence has been provided to the contrary. If approved, conditions may be imposed for further investigation and/or compliance with the recommendations in the report.

- **Impact on the valley to the rear**

The submissions raised concerns with regard to the visually dominant presentation of the building to the rear of the site.

Comment:

The assessment of the visual impact of the development in this report has found that the bulk and scale of the proposed development at the rear is inappropriate and unsuitable in relation to the established character of the area, including with respect to the adjacent valley landscape

and environs.

- **Fences**

Comment:

If approved, conditions would be imposed to ensure suitable fencing is provided, or the deletion of any inappropriate fencing.

- **Bin area**

Comment:

Insufficient information has been provided to determine whether the presentation of the bin area is satisfactory. However, it is noted that the bin area is required to be toward the front of the site for appropriate access and servicing.

- **Colours and Finishes**

Comment:

It is agreed that the colours and finishes are not appropriate for the natural character of the area. Conditions can be imposed in relation to these matters, should the application be approved.

- **Retaining wall (not approved)**

Comment:

A request will be sent to Council's Building Compliance team to investigate the retaining wall in question.

- **Inappropriate development type**

The submissions raised concerns with the type of development for the area. Questions are raised as to whether the development is actually Seniors Housing.

Comment:

The application is lodged for Seniors Housing and is a development type that is permissible under the SEPP HSPD in the R2 Low Density Residential zone. Conditions will be imposed to ensure the use is occupied as a Seniors Housing development if approved.

- **Inconsistency with Central Renewal Framework policy with regard to access to transport and facilities**

Comment:

Councils' Traffic officer is satisfied with the details provided with regard to access to transport and facilities. Further, the proposal provides compliant access with regard to the SEPP HSPD.

- **Stormwater issues**

Comment:

Council's Development Engineer has reviewed the application and requests additional information to carry out a full assessment of the application.

This is included as a reason for refusal.

REFERRALS

Internal Referral Body	Comments
Design and Sustainability Advisory Panel	Supported (subject to recommendations) The Panel is generally supportive of the scheme but considers the recommended changes are important. In particular: • The retention and protection of Tree 7 • The lowering of the entry ramp and wall • Simplification of the car park layout • Relocation of the bin store • Changes in materials to blend with the landscape • Resolution of privacy issues. <u>Assessing officer comments</u> Amended plans and information has been provided to ensure the retention and protection of Tree 7. Council's landscape officer is satisfied with this information subject to conditions. The car parking vehicular access and layout has been amended to ensure suitable and compliant access. This is to the satisfaction of Council's Traffic officer. The bin storage area has not been relocated. In response to the above recommendation, the applicant seeks to provide a green roof to the bin storage area. There is insufficient information to ascertain the visual presentation of this bin area. As such, this is recommended as a reason for refusal. There has been insufficient information provided to resolve privacy issues or to show appropriate colours and materials for the context of the area. As such, this is recommended as a reason for refusal.
Building Assessment - Fire and Disability upgrades	Supported (without conditions) The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development. Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.
Environmental Health (Acid Sulphate)	Supported (with conditions) An acid sulfate soil report has been provided in response to queries about proper analysis and management practices. The report contains

Internal Referral Body	Comments
	data that show sulfidic compounds exceeding action criteria for net acidity, but under further scrutiny were found to be bound mostly in organic molecules. This means the acid compound in the soil are less-easily oxidised due to the relative bond strength of carbon vs. oxygen, thus presenting a lower risk of acid-formation under atmospheric conditions. Under Section 4.3 of the Acid Sulfate Soils Assessment Guidelines, the results of both methods of potential acidity testing do not trigger the requirement for an Acid Sulfate Soil Management Plan. Given the potential risk of environmental harm, we deem it appropriate to place some control measures in place in support of the proposal, please see condition below.
Landscape Officer	Comments: Although the application was originally deficient, additional information was submitted which satisfied Council's Landscape Officer
Landscape Officer	Supported (with conditions) The development application is for the demolition of the existing site structures, and the construction of a seniors housing development and associated works. Council's Landscape Referral section have assessed the application against the following relevant landscape controls and policies: • State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004: clause 33 Neighbourhood amenity and streetscape, and clause 34 Visual and acoustic privacy, • Seniors Living Policy: clause 2. Site Planning and Design; and clause 3. Impacts on Streetscape, • Pittwater Local Environment Plan, and the following Pittwater 21 DCP controls (but not limited to): B4.22 Preservation of Trees and Bushland Vegetation; C1.1 Landscaping; C1.21 Seniors Housing; C1.24 Public Road Reserve - Landscaping and Infrastructure; and D4 Church Point and Bayview Locality. Landscape Referral assessment considers the following relevant landscape matters in terms of the State Environmental Planning Policy: with respect to Clause 33, development should - (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; and with respect to Clause 34, development should consider the visual and acoustic privacy of neighbours in the vicinity and residents by (a) appropriate site planning, the location and design of windows and balconies, the use of screening devices and landscaping. Additionally under the State Environmental Planning Policy, Division 4 Self-contained dwellings the following landscape consideration applies: with respect to clause 50 - Standards that cannot be used to refuse development consent for self-contained dwellings, a consent

Internal Referral Body	Comments
	authority must not refuse consent to a development application made pursuant to this Chapter for the carrying out of development for the purpose of a self-contained dwelling (including in-fill self-care housing and serviced self-care housing) on any of the following grounds - (c) landscaped area: if – (i) in the case of a development application made by a social housing provider - a minimum 35 square metres of landscaped area per dwelling is provided, or (ii) in any other case - a minimum of 30% of the area of the site is to be landscaped, (d) Deep soil zones: if, in relation to that part of the site (being the site, not only of that particular development, but also of any other associated development to which this Policy applies) that is not built on, paved or otherwise sealed, there is soil of a sufficient depth to support the growth of trees and shrubs on an area of not less than 15% of the area of the site (the deep soil zone). Two-thirds of the deep soil zone should preferably be located at the rear of the site and each area forming part of the zone should have a minimum dimension of 3 metres. <u>updated comments 5 July 2022:</u> Further arboricultural information is submitted in response to Landscape Referrals request dated 7/06/2022 for updated arboricultural commentary on the proposed footpath construction impact to existing street trees for the length of the proposed footpath. The Tree Management report for the footpath/boardwalk concludes that as proposed works encroach less than 10% into the tree protection zone of the existing street trees and this can be managed by arboricultural supervision and documentation of works in progress by a project arborist. Based on this assessment Landscape Referral are satisfied the existing street trees are retainable and conditions shall be imposed accordingly. All works within the public road reserve are subject to a road reserve works application under section 138 of the NSW Roads Act requiring detailed information. As noted previously the amended Landscape Plans address the landscape setting concerns raised and subject to imposed conditions the Landscape Plans are acceptable. All of the Arboricultural Impact Assessment reports shall be utilised in imposed conditions, including: Construction Impact & Management Statement (Arboriculture Impact Assessment) dated September 2021; Amended Basement Plans Submission for Tree Management dated 21 April 2022; and Amended Footpath / Boardwalk Plans Submission for Tree Management dated 21 June 2022 and associated Attachment A - plan A09b titled Boardwalk Detail and prepared by Barry Rush & Associates Pty Ltd. <u>updated comments 6 June 2022:</u> Amended Plans and Reports are submitted to address the concerns of various issues including the comments from Landscape Referral. In review of the Amended Plans and Reports, the following revisions to

Internal Referral Body	Comments
	improve the landscape setting are submitted for consideration: reconfiguration of the basement car parking and access driveway to provide additional clearance to Tree 7 as detailed in amended arborist report; removal of the timber deck at the rear of the site; provision of an increased setback between the driveway and the eastern boundary of the property for vegetation screening; relocation of the entry pathway and waste bin storage area to reduce its visual prominence in the streetscape with a green roof provided to the waste storage area as detailed on the accompanying landscape plans; widening of the planter box adjacent to the entrance of Unit 2 to provide additional spatial separation and landscape opportunity between the pathway and adjacent bedroom windows. These architectural amendments have resulted in a minor increase in landscaped area with the amended landscape plans reflecting the amended architectural detailing as proposed. The amended Landscape Plans address the landscape setting concerns raised and subject to imposed conditions the Landscape Plans are acceptable, with the following noted exceptions that will be the subject of conditions: selection of proposed street trees fronting the development site; and any other requirement for street tree replacement following the provision of additional arboricultural comments (see below) on the impact of the 1.5m wide footpath to the existing crossing. Additional arboricultural comments dated 21 April 2022 are provided regarding the impact to existing tree 7 (Lemon Scented Gum) from the basement proposal, and as demonstrated the impact from the amended Basement Plan breaches the tree protection zone by a total surface area less than 10%, and this is an acceptable encroachment under Australian Standard 4970-2009 'Protection of trees on development sites' provided the beached area/s can be made up in a different direction/area of existing ground, which is the case in this proposal. The additional arboricultural comments do not provide any reference to the impact of the proposed footpath upon existing trees in proximity including within the road reserve verge and private land, and this information is required and was requested in the Landscape Referral dated 23/11/2021 listed as "updated arboricultural commentary on the proposed footpath construction impact to existing street trees for the length of the proposed footpath". The Amended Architectural Plan A09A - Pedestrian Access to Bus Stop, includes the proposed 1.5m wide footpath within the road verge and the impact to existing trees shall be investigated and reported including impact from excavation and construction, and proposed construction alternatives to preserve the existing trees. The Landscape Plans additionally propose a 1.5m wide footpath across the development site. The following information is required to continue the Landscape Referral:

Internal Referral Body	Comments
	• updated arboricultural commentary on the proposed footpath construction impact to existing street trees for the length of the proposed footpath <u>previous comments:</u> It is noted that the proposal provides Landscaped Area and Deep Soil Area in excess of the State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 requirements. A Landscape Plan is submitted and indicates existing trees to be retained and removed in co-ordination with the Arboricultural Impact Assessment, includes landscape design for the enhancement of the landscape setting, and within the public road verge proposes a footpath and street tree planting, and the Landscape Plan is generally acceptable subject to additional tree canopy planting and small tree planting for screening along the boundaries. Concern is raised that the small width garden area between the proposed driveway ramp wall and the side boundary of the adjoining property at No. 8 is insufficient in width to support or establish suitable planting as intended and this width should be increased. Details of the footpath construction across all development application documents are general at this stage and it is noted that the existing gradient within the road reserve in parts may require either retaining walling with safety railing or otherwise an above ground suspended footpath, with associated safety design solutions. Cross section details as part of the documentation shall be provided to assist with determination of road verge amenity impacts. The construction impacts to existing street trees within the road verge is not determined in detail where pavement design may need to be above existing grades to protect tree roots. Should the application be approved, detailed information at construction certificate stage will be required under a section 138/139 Roads Act application, with engineering, landscape and arboricultural documents to detail and co-ordinate the road reserve verge design for the footpath, street tree planting, and retention of existing street trees. A Arboricultural Impact Assessment titled 'Construction Impact & Management Statement' is submitted with the development application. The proposal requires the removal of existing trees as detailed in the accompanying arborist report with tree loss compensated by replacement tree planting. Basement encroachment near T7 - Lemon Scented Gum is predominately to the area currently occupied by structures such as timber decks, stairs, retaining walls and paths and as such the recommendations of the arborist can be supported, and the basement slab is proposed on piers that can be located to avoid tree roots. The SRZ is not impacted and it however noted that above ground decks are located close to the tree trunks and concern is raised for future requests for removal based on risk to persons and property. It is

Internal Referral Body	Comments
	suggested that additional tree canopy planting shall be included to ensure long term canopy is maintained and enhanced. At this stage Landscape Referral are unable to support the application as the following information is not provided: • road reserve verge cross sections to demonstrate the physical and visual outcome for the footpath, and relationship with preservation of existing street trees and available width for new street tree planting, • additional tree canopy planting throughout the property located at least 5 metres from buildings to offset loss of tree canopy, and reduce the built form and establish an appropriate setting where landscape is prominent, • additional small tree planting for screening along the boundaries, to reduce the built form and establish an appropriate setting where landscape is prominent, • increase garden width between the proposed driveway ramp wall and the side boundary of the adjoining property at No. 8 to adequately support planting and at least 900mm is considered necessary to support columnar shrub screen planting, • updated arboricultural commentary on the proposed footpath construction impact to existing street trees for the length of the proposed footpath. Amended Architectural, Landscape and Arboricultural plans and reports are required to demonstrate the above outcomes.
NECC (Bushland and Biodiversity)	Supported (with conditions) Council's Biodiversity Referrals team have assessed the Development Application for compliance against the following applicable biodiversity related controls: • Biodiversity Conservation Act 2016 • Biodiversity Conservation Regulation 2017 • Pittwater LEP cl. 7.6 Biodiversity Protection • Pittwater 21 DCP cl. B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor The Development Application seeks consent for demolition of the existing dwellings and subsequent construction of a seniors housing development. The Arboricultural Impact Assessment (Growing My Way Tree Services, September 2021) has recommended the removal of one (1) exotic tree, Tree A: <i>Chamaecyparis obtusa</i> 'Crippsii', due its location within the development footprint. All prescribed trees are proposed for retention. The Landscape Plan (Conzept Landscape Architects, September 2021) is supported and contains a high proportion of native species as required for compliance with P21DCP cl. B4.4.

Internal Referral Body	Comments
	The application does not require the removal of prescribed trees or vegetation, nor is it likely to impact on nearby biodiversity values. Subject to conditions the Bushland and Biodiversity referral team find the application to be consistent against relevant environmental controls.
NECC (Development Engineering)	Not supported (Insufficient Information) 30/06/2022 “Council’s records indicate that the subject property is burdened by a Council stormwater pipeline. Applicant is advised to accurately locate, confirm dimensions including depth and plot to scale Council’s public drainage system and associated infrastructure on the DA site plans that outline the proposal. This should be carried out by a service locating contractor and registered surveyor. (Evidence of methodology used for locating stormwater system should be provided). Proposed dwelling footprints should not be located within this easement.” 28/2/2022: The proposed development is for the demolition of two dwellings (no. 10 & 12 Loquat Valley Road) and construction of seniors housing apartments with basement carpark and associated works. Access Access to nearest public transport to be assessed by Council’s Traffic Team, applicant to address the issues raised by Traffic team. Footpath grades are to be compliant with Clause 26 of the SEPP. Stormwater Council’s records indicate that the subject property is burdened by a Council stormwater pipeline. Applicant is advised to accurately locate, confirm dimensions including depth and plot to scale Council’s public drainage system and associated infrastructure on the DA site plans that outline the proposal. This should be carried out by a service locating contractor and registered surveyor. (Evidence of methodology used for locating stormwater system should be provided); Proposed dwelling footprints should not be located within this easement. The subject site is identified as flood prone (low to high flood risk). As addressed by Council’s Natural Environment - Flood Team, applicant to provide details of flood control for the basement car park and neighboring properties. Geotech The site is located within the H1 hazard area. An excavation to a depth of about 5.3m is proposed for the basement. Geotechnical assessment by JK Geotechnics, Ref: 34376YFrpt, dated 20/9/2021 is provided with form 1 and 1a.

Internal Referral Body	Comments
NECC (Riparian Lands and Creeks)	Supported (with conditions) This application has been assessed against relevant legislation and policy relating to waterways, riparian areas, and groundwater. The catchment is supporting a channel network discharging into Pittwater Bay. The reach of interest is now piped on the lots located North of the subject site. The NSW Dept of Natural Resources Access Regulator is mapping the creek at that location triggering a controlled activity approval from the NSW Dept of Natural Resources Access Regulator (https://www.dpie.nsw.gov.au/nrar). Sediment and erosion controls must be installed prior to any disturbance of soil on site and maintained until all work is complete and groundcover re-established. This application, subject to conditions, is supported.
NECC (Stormwater and Floodplain Engineering – Flood risk)	Not Supported The proposed development is for the demolition of two dwellings and construction of a building with 5 seniors housing apartments and a basement carpark. As the development is Seniors Housing land use, it is considered a vulnerable land use. Further information and flood mapping was provided. The development is not supported due to the following reasons: • Difference mapping has not been provided showing if the proposed development will result in a greater than 10% increase in PMF peak velocity on neighbouring properties. This is not compliant with prescriptive control A1 of the part B3.11 of the Pittwater DCP and the definition of adverse flood impacts. • It should be demonstrated that the development will not result in a net loss in flood storage or floodway in 1% AEP flood. These calculations must be provided and mapping of the floodway in relation to the proposed building must also be provided. This is not compliant with prescriptive control A2 of the part B3.11 of the Pittwater DCP and the definition of adverse flood impacts. • Flood gates can not be used to protect garages below the 1% AEP flood level. At the location of the flood gate, the 1% AEP flood level is 4.6m AHD based on the McCarrs Cr, Mona Vale and Bayview Flood Study. A fixed barrier (for example a fixed crest/ramp) or higher floor level must be incorporated at this location up to the 1% AEP flood level of 4.6m AHD. A self closing flood gate can then protect the garage up to the PMF level.

Internal Referral Body	Comments
NECC (Water Management)	Supported (with conditions) This application has been assessed against relevant legislation and policy relating to waterways, riparian areas, and groundwater. The proposed stormwater water quality system is satisfactory with a treatment chain incorporating reuse and infiltration. The construction stage must be managed to mitigate any pollution risk. The operation phase is include an effective maintenance of the water quality system to perform to design objectives. Sediment and erosion controls must be installed prior to any disturbance of soil on site and maintained until all work is complete and groundcover re-established. This application, subject to conditions, is supported.
Road Reserve	Supported (with conditions) There is limited impact on existing road infrastructure. The provision of new footpath providing access to inbound (east bound) bus services is supported subject to s138 Road Act Application (noting the requirement to remove redundant driveway crossings/laybacks for pedestrian safety). The pathway also needs to provide a connection to the west bound bus stop. Of concern is the lack of accessibility from the outbound (west bound) bus stop. Significant works are required at stop id 210415 in Pittwater Road adjacent to the school including improvements to levels with kerbing and an improved connection to the proposed footpath in Loquat Valley Road. The Development Engineering Team to provide conditions accordingly.
Traffic Engineer	Comment: Although the original application was deficient, additional information was submitted which satisfied Council's Traffic Engineers
Traffic Engineer	Further comments 22/7/22 The applicant has provided amended plans dated 27/5/22 which have addressed my concerns relating to the inconsistencies between the gradients shown in the traffic impact assessment and on the DA plans. The gradients on the amended plans are acceptable. The traffic generation from the development and offstreet parking arrangements remain acceptable It is noted that the applicant has provided additional information noting that the approval granted to the seniors housing development approved under DA2019/0154 requires the developer to construct a DDA compliant footpath on the western side of Pittwater Road and extending north to link with the bus stop located on the west side of Pittwater Road north of Loquat Valley Road. Given the above and

Internal Referral Body	Comments
	noting the additional footpath works proposed by the applicant under this development application (on the north side of Loquat Valley Road) a continuous accessible path of travel will be available to the bus stops on both the east and west side of Pittwater Road. Subject to conditions there are no traffic engineering concerns relating to approval of the application Revised comments - 26/5/22 The updated traffic impact statement amended traffic report, supplementary statement of Environmental Effects and amended plans have been reviewed. There are inconsistencies in the information provided which require amendment 1. The driveway long section and plan on page 8 of the amended architectural plans requires amendment. The plan and sectional views suggest that the mid section of the driveway is graded at 1 in 5 which does not correspond with the reduced levels which suggest it is graded at 1 in 4. 2. The updated traffic impact assessment suggests that the first 6m of the driveway is graded at 1 in 20 however the plans and levels suggest that the first 6.315m inside the property boundary is graded at 1 in 30. 3. The updated traffic impact assessment suggests that the mid section of the driveway is graded at 1 in 4 which differs from information on the amended architectural plans The plans and the updated traffic impact assessment report should be consistent. The levels and grades referenced in the updated traffic impact assessment are acceptable however as these grades impact upon the basement floor level which may have broader implications on the architectural plans it is essential that the plans and information in the updated traffic impact assessment be reviewed by the applicant and consistent information presented prior to further comment. Original comments - 15/12/21 The development is for demolition of the existing dwelling on the site and construction of a seniors housing development comprised of 5 x 3 bedroom dwellings with 9 offstreet carparking spaces, all accessible. <u>Traffic Generation</u> The RMS Guide to Traffic Generating Development advises that traffic generation from resident funded developments of this type can be estimated at 2 vehicles trips per dwelling per day. With evening peak trips estimated at 0.2 trips per dwelling. i.e this development would generate in the order of 10 trips per day and 1 evening peak hour trip.

Internal Referral Body	Comments
	This amount of traffic generation will not create any appreciable impacts on the function of the surrounding road network. <u>Offstreet Parking</u> Parking rates for Seniors Living developments are determined by the SEPP (Housing for Seniors or People with a Disability) which outlines that a consent authority must not refuse consent on the grounds of parking if at least 0.5 spaces are provided for each bedroom. As the development includes 15 bedrooms 7.5 parking spaces are required. The development provides 9 offstreet parking spaces which exceeds the SEPP requirement. The SEPP also requires that at least 5% of the parking spaces must be designed so that the width can be increased to 3.8m to facilitate access for persons with a disability. As each of the parking spaces has been designed to be fully compliant with the requirements of AS2890.6 the SEPP requirement is exceeded. The SEPP does not outline a requirement for visitor parking however does state at Clause 38 that in terms of accessibility it should provide convenient access and parking for residents and visitors. The Pittwater DCP requires that visitor parking be provided at a rate of 1 space for every 3 dwellings. This would equate to 1.67 spaces. As it is not legally permissible to park on either side of Loquat Valley Road in the vicinity of the development, parking opportunities for visitors are limited. It is therefore considered that at least one of the offstreet parking spaces should be assigned as visitor parking space. Given that the SEPP requirement in terms of accessible parking has been exceeded visitor parking could also be achieved by redesignating one of the Shared zones as a second able bodied visitor parking space. The Shared Area between spaces 3 & 4 or 5 & 6 would appear to be the most appropriate if this option were to be pursued. Each of the offstreet parking spaces is of a compliant width with the offstreet parking area laid out in compliance with AS2890.1 & AS2890.6 <u>Vehicular Access</u> The vehicle access driveway is graded appropriately and has been widened to 5.5m for the first 6m inside the property boundary which allows for an entering vehicle to pull in off the road and footpath area to allow and exiting vehicle to pass. Due to the steep gradient on the driveway and its curved design sight lines between entering and exiting vehicles will be poor. The driveway is only 3.6m in width over most of its length which is sufficient for a one way access but will not allow two vehicles to pass. Although it will be a rare event for two vehicles to encounter each other on the driveway ramp reversing up or down the ramp to allow an opposing

Internal Referral Body	Comments
	vehicle to pass will be unsafe and awkward. Given that this is a seniors living development measures to prevent such an occurrence are considered necessary. Traffic light control of entry and exit movements should be provided with lights at the top and bottom of the driveway ramp to provide notice that the ramp is in use. Marked waiting areas at the top and both of the ramp positioned to allow for passing of an opposing vehicle are also required and these should be marked on the plans with swept path plots provided to demonstrate that vehicle passing is possible. AS2890.1 clause 3.2.4(b) and fig 3.3 requires that a pedestrian sightline triangle of 2.5m x 2.0m be available at the point where the driveway meets the property boundary to allow for clear sightlines to pedestrians. This does not appear to be available from the driveway as it is currently designed. The plans should be amended to facilitate clear sightlines to pedestrians. <u>Access to Public Transport</u> Bus Services are available on Pittwater Road in both a north and southbound direction within approx. 230m walking distance of the site. This satisfies the SEPP requirement that bus services are available from the development to and from services. Clause 38 of the SEPP requires that obvious and safe pedestrian links should be available to public transport services or local facilities. This would be required for bus services in both the outgoing and incoming direction. In this respect the development plans include provision for a footpath on the north side of Loquat Valley Road between the site and the existing pedestrian crossing outside St.Lukes School. This facilitates safe pedestrian access to the bus stop on the east side of Pittwater Road. It is however noted that Council's standard footpath width is 1.5m whereas the plans show a footpath of only 1.2m in width. It will need to be widened. There is no footpath link from the development site to the nearest bus stop on the west side of Pittwater Road and that bus stop is currently not DDA compliant being poorly graded and without tactile tiles or seating. In order to meet the safe pedestrian access requirement it will be necessary that a footpath link be provided to this bus stop and the bus stop upgraded to ensure it is DDA compliant. Given the number and nature of amendments required it is considered that the issues above are most appropriately addressed by the provision of amended plans to which conditions can then be applied.
Waste Officer	Supported (with conditions) Waste Management Assessment Recommendation - Acceptable, subject to conditions.

Internal Referral Body	Comments
	Please note - Bulky Goods Collection - A bulky goods room is not required for proposals of less than 10 dwellings. - If a bulky goods room is to be provided then it must be separate from the bin storage room. The bulky goods room cannot be accessed through the bin room. For this proposal either: - Delete the bulky goods room (increase size of binroom) <u>OR</u> - Provide alternative access into the bulky goods room. Ray Creer Waste Services Officer
External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

All, Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)

SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

SEPP 65 - Design Quality of Residential Apartment Development

Clause 4 of State Environmental Planning Policy No. 65 – Design Quality for Residential Apartment

Development (SEPP 65) stipulates that:

(1) This Policy applies to development for the purpose of a residential flat building, shop top housing or mixed use development with a residential accommodation component if:

(a) the development consists of any of the following:

- (i) the erection of a new building,
- (ii) the substantial redevelopment or the substantial refurbishment of an existing building,
- (iii) the conversion of an existing building, and

(b) the building concerned is at least 3 or more storeys (not including levels below ground level (existing) or levels that are less than 1.2 metres above ground level (existing) that provide for car parking), and

(c) the building concerned contains at least 4 or more dwellings.

As previously outlined the proposed development is for the erection of a 3 storey residential flat 'seniors housing' development plus basement car parking for the provisions of 5 self-contained dwellings.

As per the provisions of Clause 4 outlining the application of the policy, the provisions of SEPP 65 are applicable to the assessment of this application.

As previously outlined within this report Clause 50(1A) of the Environmental Planning and Assessment Regulation 2000 requires the submission of a Design Verification Certificate from the building designer at lodgement of the development application. This documentation has been submitted.

Clause 28 of SEPP 65 requires:

(2) In determining a development application for consent to carry out development to which this Policy applies, a consent authority is to take into consideration (in addition to any other matters that are required to be, or may be, taken into consideration):

- (a) the advice (if any) obtained from the design review panel, and
- (b) the design quality of the development when evaluated in accordance with the design quality principles, and
- (c) the Apartment Design Guide.

DESIGN REVIEW PANEL

Northern Beaches Council does not have an appointed SEPP 65 Design Review Panel.

DESIGN QUALITY PRINCIPLES

Principle 1: Context and Neighbourhood Character

Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions.

Responding to context involves identifying the desirable elements of an area's existing or future character. Well designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood. Consideration of local context is important

for all sites, including sites in established areas, those undergoing change or identified for change.

Comment:

The proposed development is on a site with a varied context. At the front of the site, the street is characterised by one-two storey presentations of residential development. The proposal is consistent with this character.

At the rear of the site, the area is characterised by a larger open valley, with residential development that have large rear setbacks, and where presentation of building height is mitigated through substantial spacing, articulation and modulation. The proposed development is not consistent with this established character.

Principle 2: Built Form and Scale

Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.

Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements. Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.

Comment:

The lack of sufficient stepping toward the rear of the site results in a bulk and scale of the development that does not align with the established or desired character of the area.

Principle 3: Density

Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.

Appropriate densities are consistent with the area's existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.

Comment:

The proposal has a high level of amenity for each apartment, and the five units provides an appropriate density for the area with regard to public transport, access to jobs, community facilities and the environment. This is subject to confirmation of access to facilities under the SEPP HSPD.

Principle 4: Sustainability

Good design combines positive environmental, social and economic outcomes. Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and livability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials, and deep soil zones for groundwater recharge and vegetation.

Comment:

Councils Design and Sustainability Advisory Panel have reviewed the application and provided a number of pertinent recommendations with regard to Sustainability, If approved, these

recommendations could be conditioned.

Principle 5: Landscape

Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.

Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, coordinating water and soil management, solar access, micro-climate, tree canopy, habitat values, and preserving green networks. Good landscape design optimises usability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity, provides for practical establishment and long term management.

Comment:

The proposal provides a compliant Landscaped Area with the SEPP HSPD. However, the bulk and scale of the development at the rear of the site does not sufficiently integrate with the landscaped character of the area at the rear.

Principle 6: Amenity

Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well being.

Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas, and ease of access for all age groups and degrees of mobility.

Comment:

Each unit is well orientated and well separated from neighbouring living spaces. This generally allows for a suitable amenity outcome. However, conditions would be imposed with regard to screening for privacy if the development were to be approved.

Principle 7: Safety

Good design optimises safety and security, within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety.

A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.

Comment:

The proposal has many openings surrounding the building, and also has ground level access for each unit to the street. This maximises opportunity for passive surveillance.

Principle 8: Housing Diversity and Social Interaction

Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.

Well-designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix. Good design involves practical and flexible features, including different types of communal spaces for a broad range of people, providing opportunities for social interaction amongst residents.

Comment:

The proposal involves private open space surrounding the development and communal areas to the front and rear of the site. This allows appropriate opportunity for use of space and social interaction.

Principle 9: Aesthetics

Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures.

The visual appearance of well designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.

Comment:

The building bulk and scale is acceptable within the streetscape. However, the colours and materials of the development do not suitably respond to the natural character of the area.

APARTMENT DESIGN GUIDE

The following table is an assessment against the criteria of the 'Apartment Design Guide' as required by SEPP 65.

Development Control	Criteria / Guideline	Comments
Part 3 Siting the Development		
Site Analysis	Does the development relate well to its context and is it sited appropriately?	Inconsistent The proposal relates well to context toward the front of the site but does not relate with the insufficient bulk and scale at the rear.
Orientation	Does the development respond to the streetscape and site and optimise solar access within the development and to neighbouring properties?	Consistent
Public Domain Interface	Does the development transition well between the private and public domain without compromising safety and security? Is the amenity of the public domain retained and enhanced?	Consistent
Communal and	Appropriate communal open space is to be	Consistent

Public Open Space	provided as follows: - Communal open space has a minimum area equal to 25% of the site - Developments achieve a minimum of 50% direct sunlight to the principal usable parts of the communal open space for a minimum of 2 hours between 9 am and 3pm on 21 June (mid-winter)	Communal open space is provided to the north of the site and also within the front setback area.												
Deep Soil Zones	Deep soil zones are to meet the following minimum requirements: <table border="1"> <thead> <tr> <th>Site area</th><th>Minimum dimensions</th><th>Deep soil zone (% of site area)</th></tr> </thead> <tbody> <tr> <td>Less than 650m²</td><td>-</td><td rowspan="4">7%</td></tr> <tr> <td>650m² – 1,500m²</td><td>3m</td></tr> <tr> <td>Greater than 1,500m²</td><td>6m</td></tr> <tr> <td>Greater than 1,500m² with significant existing tree cover</td><td>6m</td></tr> </tbody> </table>	Site area	Minimum dimensions	Deep soil zone (% of site area)	Less than 650m ²	-	7%	650m ² – 1,500m ²	3m	Greater than 1,500m ²	6m	Greater than 1,500m ² with significant existing tree cover	6m	Consistent The proposal provides for 45% of the site to have seep soil.
Site area	Minimum dimensions	Deep soil zone (% of site area)												
Less than 650m ²	-	7%												
650m ² – 1,500m ²	3m													
Greater than 1,500m ²	6m													
Greater than 1,500m ² with significant existing tree cover	6m													
Visual Privacy	Minimum required separation distances from buildings to the side and rear boundaries are as follows: <table border="1"> <thead> <tr> <th>Building height</th><th>Habitable rooms and balconies</th><th>Non-habitable rooms</th></tr> </thead> <tbody> <tr> <td>Up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr> <tr> <td>Up to 25m (5-8 storeys)</td><td>9m</td><td>4.5m</td></tr> <tr> <td>Over 25m (9+ storeys)</td><td>12m</td><td>6m</td></tr> </tbody> </table> Note: Separation distances between buildings on the same site should combine required building separations depending on the type of rooms. Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.	Building height	Habitable rooms and balconies	Non-habitable rooms	Up to 12m (4 storeys)	6m	3m	Up to 25m (5-8 storeys)	9m	4.5m	Over 25m (9+ storeys)	12m	6m	Consistent Separation of at least 6m for habitable rooms are provided.
Building height	Habitable rooms and balconies	Non-habitable rooms												
Up to 12m (4 storeys)	6m	3m												
Up to 25m (5-8 storeys)	9m	4.5m												
Over 25m (9+ storeys)	12m	6m												

Pedestrian Access and entries	Do the building entries and pedestrian access connect to and addresses the public domain and are they accessible and easy to identify? Large sites are to provide pedestrian links for access to streets and connection to destinations.	Consistent
Vehicle Access	Are the vehicle access points designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes?	Consistent (subject to confirmation from Council's Traffic Engineer)
Bicycle and Car Parking	For development in the following locations: - On sites that are within 80m of a railway station or light rail stop in the Sydney Metropolitan Area; or - On land zoned, and sites within 400m of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less. The car parking needs for a development must be provided off street. Parking and facilities are provided for other modes of transport. Visual and environmental impacts are minimised.	Consistent
Part 4 Designing the Building		
Amenity		
Solar and Daylight Access	To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space: Living rooms and private open spaces of at least 70% of apartments in a building are to receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter.	Consistent All 5 apartments receive the minimum required sunlight.
	A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter.	Consistent
Natural Ventilation	The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents by:	Consistent

	At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.													
	Overall depth of a cross-over or cross-through apartment must not exceed 18m, measured glass line to glass line.	Consistent												
Ceiling Heights	Measured from finished floor level to finished ceiling level, minimum ceiling heights are: <table><tr><th colspan="2">Minimum ceiling height</th></tr><tr><td>Habitable rooms</td><td>2.7m</td></tr><tr><td>Non-habitable</td><td>2.4m</td></tr><tr><td>For 2 storey apartments</td><td>2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr><tr><td>Attic spaces</td><td>1.8m at edge of room with a 30 degree minimum ceiling slope</td></tr><tr><td>If located in mixed used areas</td><td>3.3m for ground and first floor to promote future flexibility of use</td></tr></table>	Minimum ceiling height		Habitable rooms	2.7m	Non-habitable	2.4m	For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area	Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope	If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use	Consistent
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If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use													
Apartment Size and Layout	Apartments are required to have the following minimum internal areas: <table><tr><th>Apartment type</th><th>Minimum internal area</th></tr><tr><td>Studio</td><td>35m²</td></tr><tr><td>1 bedroom</td><td>50m²</td></tr><tr><td>2 bedroom</td><td>70m²</td></tr><tr><td>3 bedroom</td><td>90m²</td></tr></table> The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each. A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m² each.	Apartment type	Minimum internal area	Studio	35m ²	1 bedroom	50m ²	2 bedroom	70m ²	3 bedroom	90m ²	Consistent All 5 units exceed the requirement for minimum internal area.		
Apartment type	Minimum internal area													
Studio	35m ²													
1 bedroom	50m ²													
2 bedroom	70m ²													
3 bedroom	90m ²													
	Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room.	Consistent												

	Daylight and air may not be borrowed from other rooms.																
	Habitable room depths are limited to a maximum of 2.5 x the ceiling height.	Consistent															
	In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.	Consistent															
	Master bedrooms have a minimum area of 10m ² and other bedrooms 9m ² (excluding wardrobe space).	Consistent															
	Bedrooms have a minimum dimension of 3.0m and must include built in wardrobes or have space for freestanding wardrobes, in addition to the 3.0m minimum dimension.	Consistent															
	Living rooms or combined living/dining rooms have a minimum width of: 3.6m for studio and 1 bedroom apartments 4m for 2 and 3 bedroom apartments	Consistent															
	The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts	Consistent															
Private Open Space and Balconies	All apartments are required to have primary balconies as follows: <table><tr><th>Dwelling Type</th><th>Minimum Area</th><th>Minimum Depth</th></tr><tr><td>Studio apartments</td><td>4m²</td><td>-</td></tr><tr><td>1 bedroom apartments</td><td>8m²</td><td>2m</td></tr><tr><td>2 bedroom apartments</td><td>10m²</td><td>2m</td></tr><tr><td>3+ bedroom apartments</td><td>12m²</td><td>2.4m</td></tr></table> The minimum balcony depth to be counted as contributing to the balcony area is 1m	Dwelling Type	Minimum Area	Minimum Depth	Studio apartments	4m ²	-	1 bedroom apartments	8m ²	2m	2 bedroom apartments	10m ²	2m	3+ bedroom apartments	12m ²	2.4m	Consistent
	Dwelling Type	Minimum Area	Minimum Depth														
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2 bedroom apartments	10m ²	2m															
3+ bedroom apartments	12m ²	2.4m															
	For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m ² and a minimum depth of 3m.	Consistent															
Common Circulation and Spaces	The maximum number of apartments off a circulation core on a single level is eight.	Consistent															
	For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.	N/A															
Storage	In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided: <table><tr><th>Dwelling Type</th><th>Storage size volume</th></tr><tr><td>Studio apartments</td><td>4m²</td></tr></table>	Dwelling Type	Storage size volume	Studio apartments	4m ²	Consistent Storage is provided within the parking area and within the units.											
	Dwelling Type	Storage size volume															
	Studio apartments	4m ²															

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1 bedroom apartments	6m ²											
2 bedroom apartments	8m ²											
3+ bedroom apartments	10m ²											
	At least 50% of the required storage is to be located within the apartment.											
Acoustic Privacy	Noise sources such as garage doors, driveways, service areas, plant rooms, building services, mechanical equipment, active communal open spaces and circulation areas should be located at least 3m away from bedrooms.	Consistent										
Noise and Pollution	Siting, layout and design of the building is to minimise the impacts of external noise and pollution and mitigate noise transmission.	Consistent										
Configuration												
Apartment Mix	Ensure the development provides a range of apartment types and sizes that is appropriate in supporting the needs of the community now and into the future and in the suitable locations within the building.	Consistent										
Ground Floor Apartments	Do the ground floor apartments deliver amenity and safety for their residents?	Consistent										
Facades	Ensure that building facades provide visual interest along the street and neighbouring buildings while respecting the character of the local area.	Consistent										
Roof Design	Ensure the roof design responds to the street and adjacent buildings and also incorporates sustainability features. Can the roof top be used for common open space? This is not suitable where there will be any unreasonable amenity impacts caused by the use of the roof top.	Consistent										
Landscape Design	Was a landscape plan submitted and does it respond well to the existing site conditions and context.	Consistent										
Planting on Structures	When planting on structures the following are recommended as minimum standards for a range of plant sizes: <table><tr><th>Plant type</th><th>Definition</th><th>Soil Volume</th><th>Soil Depth</th><th>Soil Area</th></tr><tr><td>Large Trees</td><td>12-18m high, up to 16m crown</td><td>150m³</td><td>1,200mm</td><td>10m x 10m or equivalent</td></tr></table>	Plant type	Definition	Soil Volume	Soil Depth	Soil Area	Large Trees	12-18m high, up to 16m crown	150m ³	1,200mm	10m x 10m or equivalent	Consistent
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Turf			200mm																													
Universal Design	Do at least 20% of the apartments in the development incorporate the Livable Housing Guideline's silver level universal design features	Consistent																														
Adaptable Reuse	New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.	N/A																														
Mixed Use	Can the development be accessed through public transport and does it positively contribute to the public domain? Non-residential uses should be located on lower levels of buildings in areas where residential use may not be appropriate or desirable.	Consistent																														
Awnings and Signage	Locate awnings along streets with high pedestrian activity, active frontages and over building entries. Awnings are to complement the building design and contribute to the identity of the development. Signage must respond to the existing streetscape character and context.	N/A																														
Performance																																
Energy Efficiency	Have the requirements in the BASIX certificate been shown in the submitted plans?	Consistent																														
Water Management and Conservation	Has water management taken into account all the water measures including water infiltration, potable water, rainwater, wastewater, stormwater and groundwater?	Consistent																														
Waste Management	Has a waste management plan been submitted as part of the development application demonstrating	Consistent																														

	safe and convenient collection and storage of waste and recycling?	
Building Maintenance	Does the development incorporate a design and material selection that ensures the longevity and sustainability of the building?	Consistent

STANDARDS THAT CANNOT BE USED TO REFUSE DEVELOPMENT CONSENT

Clause 30 of SEPP 65 Standards that cannot be used as grounds to refuse development consent or modification of development consent states that:

(1) If an application for the modification of a development consent or a development application for the carrying out of development to which this Policy applies satisfies the following design criteria, the consent authority must not refuse the application because of those matters:

- (a) if the car parking for the building will be equal to, or greater than, the recommended minimum amount of car parking specified in Part 3J of the Apartment Design Guide,
- (b) if the internal area for each apartment will be equal to, or greater than, the recommended minimum internal area for the relevant apartment type specified in Part 4D of the Apartment Design Guide,
- (c) if the ceiling heights for the building will be equal to, or greater than, the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide.

Note. The Building Code of Australia specifies minimum ceiling heights for residential flat buildings.

Comment:

A recommendation of refusal is not included for any of these matters.

(2) Development consent must not be granted if, in the opinion of the consent authority, the development or modification does not demonstrate that adequate regard has been given to:

- (a) the design quality principles, and
- (b) the objectives specified in the Apartment Design Guide for the relevant design criteria.

(3) To remove doubt:

- (a) subclause (1) does not prevent a consent authority from refusing an application in relation to a matter not specified in subclause (1), including on the basis of subclause (2), and
- (b) the design criteria specified in subclause (1) are standards to which clause 79C (2) of the Act applies.

Note. The provisions of this clause do not impose any limitations on the grounds on which a consent authority may grant or modify development consent.

Comment:

Regard has been given to these principles in the assessment above.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1234384M_02).

The BASIX Certificate indicates that the development will achieve the following:

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	45	45

A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

SEPP (Housing for Seniors or People with a Disability) 2004

The development application has been lodged pursuant to State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP (HSPD)) as the development is for five self contained seniors housing units.

Chapter 1 – Preliminary

The aims of the Policy are set out in Clause 2 and are as follows;

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.

Comment:

The proposed development is consistent with aim (a) of the Policy as the development for Seniors Housing will provide an increase supply of accommodation to meet the needs of seniors or people with a disability.

In relation to (b), the proposal provides efficient use of existing infrastructure and services as access is provided to and from the site via footpaths and close proximity to bus stops. However, further information is required in regard to comments provided by Council's Traffic Officer in regard to design of footpaths and road design.

In relation to (c), the proposal does not provide an appropriate design to minimise environmental impact including on amenity, visual bulk, and flooding.

Chapter 2 – Key Concepts

Comment: The proposed development is consistent with the key concepts contained within SEPP (HSPD). The development comprises self-contained dwellings which are to be occupied by seniors or people with a disability.

As such, the proposed development is consistent with Chapter 2 of SEPP (HSPD).

Chapter 3 – Development for seniors housing

Chapter 3 of SEPP HSPD contains a number of development standards applicable to development applications made pursuant to SEPP HSPD. Clause 18 of SEPP HSPD outlines the restrictions on the occupation of seniors housing and requires a condition to be included in the consent if the application is approved to restrict the kinds of people which can occupy the development. If the application is approved the required condition would need to be included in the consent. The following is an assessment of the proposal against the requirements of Chapter 3 of SEPP (HSPD).

Development Criteria			
Clause	Requirement	Proposal	Complies
PART 2 - Site Related Requirements			
26(1)	Satisfactory access to: (a) shops, banks 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	Councils Traffic officer has provided the following comments with regard to access: <i>"It is noted that the applicant has provided additional information noting that the approval granted to the seniors housing development approved under DA2019/0154 requires the developer to construct a DDA compliant footpath on the western side of Pittwater Road and extending north to link with the bus stop located on the west side of Pittwater Road north of Loquat Valley Road. Given the above and noting the additional footpath works proposed by the applicant under this development application (on the north side of Loquat Valley Road) a continuous accessible path of travel will be available to the bus stops on both the east and west side of Pittwater Road."</i>	Yes
26(2)	Access complies with this clause if: (a) the facilities and services referred are located at a distance of not more than 400 metres from the site or (b) there is a public transport service available to the residents not more than 400metres away.	The site is approximately 200m from a bus stop (being two bus stops travelling in each direction).	Yes
27	If located on bush fire prone land, consideration has been given to the relevant bushfire guidelines.	The subject site is not within Bushfire Prone Land.	N/A
28	Consideration is given	Reticulated water and sewerage infrastructure	Yes

Development Criteria			
Clause	Requirement	Proposal	Complies
	to the suitability of the site with regard to the availability of reticulated water and sewerage infrastructure.	is presently available to the site. The proposed seniors housing development is capable of connecting to a reticulated water system, in accordance with the provisions of Clause 28.	
29	Consideration must be given to whether the proposal is compatible with the surrounding land uses having regard to the following criteria specified in Clauses 25(5)(b)(i), 25(5)(b)(iii), and 25(5)(b)(v): i) the natural environment and the existing uses and approved uses of land in the vicinity of the proposed development iii) the services and infrastructure that are or will be available to meet the demands arising from the proposed development and any proposed financial arrangements for infrastructure provision, v) the impact that the bulk, scale, built form and character of the proposed development is likely to have on the existing uses, approved uses and future uses of land in the vicinity of the development.	The development is considered against the requirements contained within Clause 25 (5) as follows: i) The site is located within a low density residential area where there is a mix building forms including detached dwellings, other residential development, and a nearby school on the corner of Pittwater Road and Loquat Valley Road. The character is generally that of lower density style residential development, along with a significant natural corridor through the rear of the site. The dominant presentation of the building akin to a medium to higher density, particularly at the rear of the site, does not appropriately complement with the surrounding character. iii) The Applicant has provided an Access Report to support the proposal and Council's Traffic officer supports the application subject to conditions which could be provided in the case of an approval. v) The proposed development includes 5 apartments constituting of 3 bedrooms and basement parking for vehicles. The presentation of the building within the Streetscape is sufficient, as the development presents with a compliant building height, building separation and well integrated landscaped area. The proposed bulk and scale of the proposal toward the rear of the site, including the impact on properties to the rear will be dominant and overbearing. In particular, the height of the structure and presentation of building bulk to the valley at the rear, will not provide an appropriate transition from a highly developed site (as proposed) to the lowly developed and well landscaped valley.	No
PART 3 - Design Requirements – Division 1			
30	A site analysis is provided.	A site analysis has been provided to meet the requirements of this clause.	Yes.

Clause 31 Design of in-fill self-care housing

Pursuant to Cause 31 in determining a development application to carry out development for the purpose of in-fill self-care housing, a consent authority must take into consideration the provisions of the *Seniors Living Policy: Urban Design Guidelines for Infill Development* published by the former NSW Department of Infrastructure, Planning and Natural Resources dated March 2004.

The provisions of the *Seniors Living Policy: Urban Design Guidelines for Infill Development* have been taken into consideration in the assessment of the application against the design principles set out in Division 2, Part 3 of SEPP HSPD. A detailed assessment of the proposal's inconsistencies with regards to the requirements of SLP is undertaken hereunder.

Section	Requirements	Comment
1. Responding to context	Built Environment – New development is to follow the patterns of the existing residential neighbourhood in terms of built form. Policy environment – Consideration must be given to Councils own LEP and/or DCPs where they may describe the character and key elements of an area that contribute to its unique character.	The proposed development provides a two-three storey development with basement parking. The building form represents a well distributed building mass at the front of the site. However, there is not appropriate transition between building bulk and height at the rear, the natural environment within the adjacent valley. The Desired Character for the Church point and Bayview Locality includes the following Statements: <i>"The Church Point and Bayview locality will remain a low-density residential area with dwelling houses a maximum of two storeys in any one place in a natural landscaped setting, integrated with the landform and landscape."</i> and <i>"Development on slopes will be stepped down or along the slope to integrate with the landform and landscape, and minimise site disturbance. Development will be designed to be safe from hazards."</i> At the front of the site, the proposed built form is consistent with the desired character of the locality which seeks low density development forms. However, as above, the presentation

Section	Requirements	Comment
		of building bulk at the rear of the site does not appropriately integrate with the landscaped character of this area or step with the slope of the site.
2. Site Planning and design	Objectives of this section are to: -Minimise the impact of new development on neighbourhood character -Minimise the physical and visual dominance of car parking, garaging and vehicular circulation.	The proposed development does not minimise the impact on the neighbourhood character due to the significant height and bulk of the building at the rear. Insufficient information has been provided to determine the presentation of the basement parking at the rear. However, concern is raised that the proposed basement car parking will provide a dominant presentation of built form at the rear of the site which does not sufficiently integrate with the Landscaped Character to the rear of the site.
3. Impacts on streetscape	Objectives of this section are to: -Minimise impacts on the existing streetscape and enhance its desirable characteristics -Minimise dominance of driveways and car park entries in streetscape.	As identified above, the development provides a sufficient presentation of bulk and building form which is complementary with the character of the area at the front of the site.
4. Impacts on neighbours	The proposal is generally in accordance with the requirements of this section.	The impact of bulk on neighbours to the rear of the site is unacceptable. Conditions could be provided to mitigate some of the privacy impacts including with screening. However, the presentation of building bulk to the neighbours is unacceptable.
5. Internal site amenity	Objectives of this section are to: -Provide safe and distinct pedestrian routes to all dwellings and communal facilities.	The site layout provides appropriate and safe access to each unit.

Clause 32 Design of residential development

In accordance with Clause 32 of SEPP HSPD, a consent authority must not consent to a development application made pursuant to this Chapter unless the consent authority is satisfied that the proposed development demonstrates that adequate regard has been given to the principles set out in Division 2 of Part 2.

The following table outlines compliance with the principles set out in Division 2, Part 3 of SEPP HSPD.

Control	Requirement	Proposed	Compliance
CL33 Neighbourhood amenity and streetscape	a. Recognise the desirable elements of the location's current character so that new buildings contribute to the quality and identity of the area.	At the front of the site, the proposal recognises desirable elements through suitable height, articulation and Building presentation. However, the bulk and height of the building at the rear do not recognise or integrate sufficiently with the lowly developed and highly landscaped character at the rear.	No
	b. Retain, complement and sensitively harmonise with any heritage conservation area in the vicinity and any relevant heritage items that re identified in a local environmental plan.	N/A	Yes
	c. Maintain reasonable neighbour amenity and appropriate residential character by;	The building involves a compliant side boundary envelope, and compliant side setbacks. This assists in ensuring compliance with the controls for overshadowing.	Yes.
	(i) providing building setbacks to reduce bulk and overshadowing	The building height also complies at the front of the site and in so provides a sufficient presentation to the street.	Yes
	(ii) using building form and siting that relates to the site's land form, and	Built form on the boundary is sufficiently minimised.	Yes
	(iii) adopting building heights at the street frontage that are compatible in scale with adjacent development,		
	(iv) and considering, where buildings are located on the boundary, the impact of the boundary walls on neighbors.		
	d. Be designed so that the front building of the development is set	The front of the building complies with the front setback numerical control	Yes

Control	Requirement	Proposed	Compliance
	back in sympathy with, but not necessarily the same as, the existing building line, e. embody planting that is in sympathy with, but not necessarily the same as, other planting in the streetscape. f. retain , wherever reasonable, major existing trees, and g. be designed so that no building is constructed in a riparian zone.	under the DCP and this is in sympathy with the existing building line. Planting is in sympathy with the Streetscape. Council's Landscape officer has recommended conditions that could be imposed to ensure this in the event this application was approved. Major trees are to be retained to the satisfaction of Council's Landscape officer. This includes the retention of Tree 7 (as was recommended by the Design and Sustainability Advisory Panel). Council's Riparian Officer is satisfied with the proposal, subject to conditions.	Yes Yes Yes
CL 34 Visual and acoustic privacy	The proposed development should consider the visual and acoustic privacy of neighbours in the vicinity and residents by: (a) Appropriate site planning, the location and design of windows and balconies, the use of screening devices and landscaping, and (b) Ensuring acceptable noise levels in bedrooms of new dwellings by locating them away from driveways, parking areas and paths.	The three storey design of the decks along with car parking area at the rear provides unreasonable opportunity for disturbance due to the scale of the development at the rear.	No
CL35 Solar access and design for climate	The proposed development should: (a) ensure adequate daylight to the main living areas of neighbours in the vicinity and residents and adequate sunlight to substantial areas of	The proposal provides sufficient setbacks and separation from neighbor's to ensure an appropriate design for climate and solar access.	Yes

Control	Requirement	Proposed	Compliance
	private open space, and (b) involve site planning, dwelling design and landscaping that reduces energy use and makes the best practicable use of natural ventilation solar heating and lighting by locating the windows of living and dining areas in a northerly direction.		
CL 36 Stormwater	Control and minimise the disturbance and impacts of stormwater runoff and where practical include on-site detention and water re-use.	Insufficient information has been provided to determine this. Council's Stormwater Engineer has provided the following comments: <i>"Council's records indicate that the subject property is burdened by a Council stormwater pipeline. Applicant is advised to accurately locate, confirm dimensions including depth and plot to scale Council's public drainage system and associated infrastructure on the DA site plans that outline the proposal. This should be carried out by a service locating contractor and registered surveyor. (Evidence of methodology used for locating stormwater system should be provided). Proposed dwelling footprints should not be located within this easement."</i>	No
CL 37 Crime prevention	The proposed development should provide personal property security for residents and visitors and encourage crime prevention by: (a) site planning that allows observation of the approaches to a dwelling entry from	The proposal involves units with sufficient and separate access. The proposal also involves various openings which provide opportunity for passive surveillance.	Yes

Control	Requirement	Proposed	Compliance
	inside each dwelling and general observation of public areas, driveways and streets from a dwelling that adjoins any such area, driveway or street, and (b) where shared entries are required, providing shared entries that serve a small number of dwellings that are able to be locked, and (c) providing dwellings designed to allow residents to see who approaches their dwellings without the need to open the front door.		
CL 38 Accessibility	The proposed development should: (a) have obvious and safe pedestrian links from the site that provide access to public transport services or local facilities, and (b) provide attractive, yet safe environments for pedestrians and motorists with convenient access and parking for residents and visitors.	The proposed development has demonstrated that compliant access can be provided from the site to the closest public transport links to access essential services. These arrangements would be subject to conditions provided by Council's Traffic officer and development engineer.	Yes
CL 39 Waste management	The proposed development should be provided with waste facilities that maximise recycling by the provision of appropriate facilities.	The proposal is provided with waste storage which satisfies the requirements of Council's Waste Management Guidelines.	Yes

Part 4 - Development standards to be complied with

Clause 40 – Development standards – minimum sizes and building height

Pursuant to Clause 40(1) of SEPP HSPD a consent authority must not consent to a development application made pursuant to Chapter 3 unless the proposed development complies with the standards specified in the Clause.

The following table outlines compliance with standards specified in Clause 40 of SEPP HSPD.

Control	Required	Proposed	Compliance
Site Size	1000 sqm	1490.8sqm	Yes.
Site frontage	20 metres	37.8m	Yes.
Building Height	8m or less (Measured vertically from ceiling of topmost floor to ground level immediately below)	8.5m	No (see comments under Clause 4.6)
	A building that is adjacent to a boundary of the site must not be more than 2 storeys in height.	3 storeys	No (see comments under Clause 4.6)
	A building located in the rear 25% of the site must not exceed 1 storey in height	Development located in rear 25% of site does not exceed one storey in height	Yes

Clause 41 Standards for hostels and self-contained dwellings

In accordance with Clause 41 a consent authority must not consent to a development application made pursuant to Chapter 3 unless the development complies with the standards specified in Schedule 3 for such development. The following table outlines compliance with the principles set out in Schedule 3 of SEPP HSPD.

Control	Required	Proposed	Compliance
Wheelchair Access	If the whole site has a gradient less than 1:10, 100% of the dwellings must have wheelchair access by a continuous path of travel to an adjoining public road. If the whole of the site does not have a gradient less than 1:10 the percentage of dwellings that must have wheelchair access must equal the proportion of the site that has a gradient of less than 1:10 or 50% whichever is the greater.	Complies in accordance with Access report (all dwellings accessible from street boundary)	Yes
Security	Pathway lighting (a) must be designed and located so as to avoid	Lighting may be conditioned to ensure compliance with glare and reflection should	Yes

Control	Required	Proposed	Compliance
	glare for pedestrians and adjacent dwellings, and (b) Must provide at least 20 lux at ground level	the application be considered for approval.	
Letterboxes	Letterboxes: (a) must be situated on a hard standing area and have wheelchair access and circulation by a continuous accessible path of travel, and (b) must be lockable, and (c) must be located together in a central location adjacent to the street entry.	A condition may be provided to ensure an appropriate location for a letter box.	Yes
Private car accommodation	(a)Carparking space must comply with AS2890 (b)One space must be designed to enable the width of the spaces to be increased to 3.8 metres, and (c) any garage must have a power operated door or there must be a power point and an area for motor or control rods to enable a power operated door to be installed at a later date.	Each apartment is provided with a space that is readily accessible. Council's Traffic officer is also satisfied with the proposed car parking arrangements.	Yes
Accessible entry	Every entry to a dwelling must comply with Clause 4.3.1 and 4.3.2 of AS4299	Complies	Yes
Interior general	Widths of internal corridors and circulation at internal doorways must comply with AS1428.1.	Complies	Yes
Bedroom	At least one bedroom within each welling must have: (a) An area sufficient to accommodate a wardrobe and a queen size bed	Complies in accordance with the Access Report	Yes

Control	Required	Proposed	Compliance
	(b) A clear area for the bed of at least 1200 mm wide at the foot of the bed and 1000mm wide beside the bed between it and the wall, wardrobe or any other obstruction. (c) Power and telephone outlets and wiring described in Clause 8 of Schedule 3.		
Bathroom	The bathroom is to comply with the requirements described in Clause 9 of Schedule 3.	Complies in accordance with the Access Report	Yes
Toilet	The toilet is to comply with the requirements described in Clause 9 of Schedule 3.	Complies in accordance with the Access Report	Yes
Surface finishes	Balconies and external paved areas must have slip resistant surfaces.	Complies in accordance with the Access Report	Yes
Door hardware	Door handles and hardware for all doors must be provided in accordance with AS4299.	Complies in accordance with the Access Report	Yes
Ancillary items	Switches and power points must be provided in accordance with AS4299.	Complies in accordance with the Access Report	Yes
Living & dining room	A living room must have a circulation space in accordance with Clause 4.7.1 of AS4299, and a telephone adjacent to a general power outlet. Also a living and dining room must have a potential illumination level of at least 300 lux.	Complies in accordance with the Access Report	Yes
Kitchen	The kitchen must comply with the requirements of Clause 16 of Schedule 3	Complies in accordance with the Access Report	Yes
Access to kitchen, main bedroom,	The kitchen, main bedroom, bathroom	Complies in accordance with the Access Report	Yes

Control	Required	Proposed	Compliance
bathroom & toilet	and toilet must be located on the entry level.		
Laundry	The laundry must comply with the requirements of Clause 19 of Schedule 3.	Complies in accordance with the Access Report	Yes
Storage	A self-contained dwelling must be provided with a linen storage in accordance with Clause 4.11.5 of AS4299	Complies in accordance with the Access Report	Yes
Garbage	A garbage storage area must be provided in an accessible location.	Complies in accordance with the Access Report. Council's Waste officer is also satisfied with this location. It is noted that the Design and Sustainability Panel is concerned with the location due to the presentation of the bin area. As such, further information is required with regard to the presentation of the bin area.	Yes

Part 5 Development on land adjoining land zoned primarily for urban purposes

This part is not applicable to the subject site.

Part 6 Development for vertical villages

This part is not applicable to the proposed development.

Part 7 Development standards that cannot be used as grounds to refuse consent

Clause 46 Inter relationship of Part with design principles in Part 3

Clause 46 states that nothing in Part 7 permits the granting of consent pursuant to the Chapter 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.

Clause 50 Standards that cannot be used to refuse development consent for self-contained dwellings

In accordance with Clause 50 of SEPP HSPD a consent authority must not refuse consent to a development application made pursuant to Chapter 3 for the carrying out of development for the purpose of a self-contained dwelling on any of the grounds listed in Clause 50.

The following table outlines compliance with standards specified in Clause 50 of SEPP HSPD.

Control	Required	Proposed	Compliance
Building height	8m or less	8.5m	No

Control	Required	Proposed	Compliance
	(Measured vertically from ceiling of topmost floor to ground level immediately below)		
Density and scale	0.5:1	0.48:1	Yes
Landscaped area	30% of the site area is to be landscaped	52%	Yes
Deep soil zone	15% of the site area Two thirds of the deep soil zone should be located at the rear of the site. Each area forming part of the zone should have a minimum dimension of 3 metres.	40%	Yes
Solar access	Living rooms and private open spaces for a minimum of 70% of the dwellings of the development receive a minimum of 3 hours direct sunlight between 9am and 3pm in mid winter	All 5 dwellings receive the required solar access.	Yes.
Private open space	(i) in the case of a single storey dwelling or a dwelling that is located, wholly or in part, on the ground floor of a multi-storey building, not less than 15 square metres of private open space per dwelling is provided and, of this open space, one area is not less than 3 metres wide and 3 metres long and is accessible from a living area located on the ground floor, and (ii) in the case of any other dwelling, there	All dwellings have compliant Private Open Space.	Yes

Control	Required	Proposed	Compliance
	is a balcony with an area of not less than 10 square metres (or 6 square metres for a 1 bedroom dwelling), that is not less than 2 metres in either length or depth and that is accessible from a living area		
Parking	(15 bedrooms proposed – 8 carparking spaces required)	9 Spaces	Yes
Visitor parking	None required if less than 8 dwellings	Less than 8 dwellings	N/A

SEPP (Infrastructure) 2007

Ausgrid

Clause 45 of the SEPP requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

The proposal was referred to Ausgrid who raised no objections, subject to general requirements.

Pittwater Local Environmental Plan 2014

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

Principal Development Standards

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Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings	8.5m	9.3m	16.3	No (see comments)

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	No
4.6 Exceptions to development standards	No
5.10 Heritage conservation	Yes
5.21 Flood planning	No
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.4 Floodplain risk management	No
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of Non-compliance

Development standard:	Clause 40(4) (a & b) SEPP (HSPD)
Requirement:	a) Height of 8.0 metres or less b) 2 storeys adjacent to boundary
Proposed:	a) 9.3m b) 3 storeys
Percentage variation to requirement:	a) 16.3% b) 50%

Assessment of request to vary a development standard

The following assessment of the variation to Clause 40 (4) SEPP (SHPD) has taken into consideration the judgements contained within Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61, and RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130.

Clause 4.6 Exceptions to development standards

(1) The objectives of this clause are as follows:

(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.

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

Comment:

Clause 40 (4) SEPP (SHPD) is not expressly excluded from the operation of this clause.

(3) 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.

(4) 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 Secretary has been obtained.

Clause 4.6 (4)(a)(i) (Justification) assessment

Clause 4.6 (4)(a)(i) requires the consent authority to be satisfied that the applicant's written request, seeking to justify the contravention of the development standard, has adequately addressed the matters required to be demonstrated by cl 4.6(3). There are two separate matters for consideration contained within cl 4.6(3) and these are addressed as follows:

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

Comment:

The Applicant's written request has not demonstrated that the objectives of the development standard are achieved.

In this regard, the Applicant's written request has not adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.

Comment:

In the matter of Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Preston CJ provides the following guidance (para 23) to inform the consent authority's finding that the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard:

'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.'

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*

Applicants Written Request

The applicants written requests argue, in part:

- The topography of the land in combination with the flooding affectation of the site makes compliance difficult to achieve.
- Compliance with the height of building development standard would require significant reduction of floor space (to be below the standard)
- The non-compliant elements are of good design and would not give rise to adverse streetscape or residential amenity outcomes

It is agreed that the constraints of the site provide a situation in which compliance is more difficult to achieve. However, it is not agreed that a reduction in building height (and in so floor space), would prevent orderly development of the land. A reduction in floor space, height and unit numbers could still provide a Seniors Housing Development or other permissible development on the land. A reduction of building height would constitute a development that reduces environmental impact whilst also providing for housing for the residential zone. This remains a "promotion of orderly and economic use and

development of the land."

In this regard, the applicant's written request has not demonstrated that the proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore satisfying cls 1.3 (c) and (g) of the EPA Act.

Therefore, the applicant's written request has not adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

Therefore, Council is not satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3).

Clause 4.6 (4)(a)(ii) (Public Interest) assessment

cl 4.6 (4)(a)(ii) requires the consent authority to be satisfied that:

(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

Comment:

CLAUSE 40 (4) (c) of the SEPP HSDP

While there is no specific objective to the standard within Clause 40(4) the primary purpose of the storey and height limit under the clause is to limit the bulk and scale of a building to protect Environmental impact and amenity impact. An assessment of this purpose is provided below. In addition, given that there is no specific objective to Clause 40(4) it is also worth assessing the development against the objectives as prescribed by Clause 4.3 - "Height of Building" of the PLEP to relevantly determine the suitability of the non-compliance associated with the proposed development.

The objectives of clause 4.3 are as follows:

(1) The objectives of this clause 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,

Comment:

The proposed development includes 5 apartments constituting of 3 bedrooms and basement parking for vehicles. The presentation of the building within the Streetscape is sufficient, as the development presents with a compliant building height, building separation and well integrated landscaped area. The proposed bulk and scale of the proposal toward the rear of the site, including the impact on properties to the rear will be dominant and overbearing. In particular, the height of the structure and presentation of building bulk to the valley at the rear, will not provide an appropriate transition from a highly developed site (as proposed) to the lowly developed and well landscaped valley.

The proposal **does not satisfy** this objective.

b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,

Comment:

The proposal, when viewed from the street, is generally compatible with the existing heights, as viewed from different angles of the street and public domain. However the three storey visual presentation of the development toward the valley at the rear is significant, and not off a scale that is consistent with the predominant character of the valley with consideration of setbacks, landscaping, and building separation.

The proposal **does not satisfy** this objective.

c) to minimise any overshadowing of neighbouring properties,

Comment:

The proposal is well separated from neighbouring living spaces so as to sufficiently minimise impact of overshadowing.

The proposal **satisfies** this objective.

d) to allow for the reasonable sharing of views,

Comment:

The proposal allows for reasonable sharing of views (see full assessment under C1.3 View Sharing).

The proposal **satisfies** this objective.

e) to encourage buildings that are designed to respond sensitively to the natural topography,

Comment:

The site involves a topography with a significant slope toward the rear. This provides a situation in which the subject site adjoins a large valley of residential properties. The lack of sufficient stepping of the built form with the topography and the three story nature provides a situation in which the building is overly dominant in presentation to these properties at the rear.

The proposal **does not satisfy** this objective.

f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items,

Comment:

The significant amount of building bulk, scale and height toward the rear of the property provides a situation in which there is not an appropriate transition between the development and the landscaped character toward the rear.

The proposal **does not satisfy** this objective.

Zone Objectives

The underlying objectives of the R2 Low Density Residential zone are:

- *To provide for the housing needs of the community within a low density residential environment.*

Comment:

The proposed seniors housing development achieves this objective as it provides for the housing needs of seniors and people with a disability within a low density residential environment.

It is considered that the development **satisfies** this objective.

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Comment:

Senior's housing provides for day to day needs of residents.

It is considered that the development **satisfies** this objective.

- *To provide for a limited range of other land uses of a low intensity and scale, compatible with surrounding land uses.*

co

Comment:

For reasons outline above under the objectives of the development standard, the proposal **does not satisfy** this objective.

Conclusion:

For the reasons detailed above, the proposal is inconsistent with the objectives of the R2 Low Density Residential zone.

Clause 4.6 (4)(b) (Concurrence of the Secretary) assessment

cl. 4.6(4)(b) requires the concurrence of the Secretary to be obtained in order for development consent to be granted.

Planning Circular PS 18-003 dated 21 February 2018 issued by the NSW Department of Planning & Infrastructure, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, the concurrence of the Secretary for the variation SEPP HSPD Development Standard is assumed by the NBLPP as the development contravenes a numerical standard by more than 10%.

5.21 Flood planning

Councils Flooding Officer has raised the following issues:

- Difference mapping has not been provided showing if the proposed development will result in a greater than 10% increase in PMF peak velocity on neighbouring properties. This is not compliant with prescriptive control A1 of the part B3.11 of the Pittwater DCP and the definition of adverse flood impacts.
- It should be demonstrated that the development will not result in a net loss in flood storage or floodway in 1% AEP flood. These calculations must be provided and mapping of the floodway in relation to the proposed building must also be provided. This is not compliant with prescriptive control A2 of the part B3.11 of the Pittwater DCP and the definition of adverse flood impacts.
- Flood gates cannot be used to protect garages below the 1% AEP flood level. At the location of the flood gate, the 1% AEP flood level is 4.6m AHD based on the McCarrs Cr, Mona Vale and Bayview Flood Study. A fixed barrier (for example a fixed crest/ramp) or higher floor level must be incorporated at this location up to the 1% AEP flood level of 4.6m AHD . A self closing flood gate can then protect the garage up to the PMF level.

As such, the proposal is inconsistent with this clause, and this is included as a reason for refusal.

7.4 Floodplain risk management

Councils Flooding Officer has raised the following issues:

- Difference mapping has not been provided showing if the proposed development will result in a greater than 10% increase in PMF peak velocity on neighbouring properties. This is not compliant with prescriptive control A1 of the part B3.11 of the Pittwater DCP and the definition of adverse flood impacts.
- It should be demonstrated that the development will not result in a net loss in flood storage or floodway in 1% AEP flood. These calculations must be provided and mapping of the floodway in relation to the proposed building must also be provided. This is not compliant with prescriptive control A2 of the part B3.11 of the Pittwater DCP and the definition of adverse flood impacts.
- Flood gates cannot be used to protect garages below the 1% AEP flood level. At the location of the flood gate, the 1% AEP flood level is 4.6m AHD based on the McCarrs Cr, Mona Vale and Bayview Flood Study. A fixed barrier (for example a fixed crest/ramp) or higher floor level must be incorporated at this location up to the 1% AEP flood level of 4.6m AHD . A self closing flood gate can then protect the garage up to the PMF level.

As such, the proposal is inconsistent with this clause.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	6.5m	N/A	Yes
Rear building line	6.5m	6.5m	N/A	Yes
Side building line	3m	4m	N/A	Yes
	3m	3.3m	N/A	Yes
Building envelope	3.5m	Within	N/A	Yes
	3.5m	Within	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.4 Church Point and Bayview Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.11 Flood Prone Land	No	No
B3.12 Climate Change (Sea Level Rise and Increased Rainfall Volume)	Yes	Yes
B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor	Yes	Yes
B4.22 Preservation of Trees and Bushland Vegetation	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B6.6 On-Street Parking Facilities	Yes	Yes
B6.7 Transport and Traffic Management	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	No	No
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.9 Adaptable Housing and Accessibility	Yes	Yes
C1.10 Building Facades	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.14 Separately Accessible Structures	Yes	Yes
C1.15 Storage Facilities	Yes	Yes
C1.18 Car/Vehicle/Boat Wash Bays	Yes	Yes
C1.19 Incline Passenger Lifts and Stairways	Yes	Yes
C1.20 Undergrounding of Utility Services	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C1.21 Seniors Housing	No	No
C1.23 Eaves	Yes	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D4.1 Character as viewed from a public place	Yes	Yes
D4.2 Scenic protection - General	Yes	Yes
D4.3 Building colours and materials	No	No
D4.5 Front building line	No	No
D4.6 Side and rear building line	Yes	Yes
D4.8 Building envelope	Yes	Yes
D4.12 Fences - Flora and Fauna Conservation Areas	Yes	Yes
D4.13 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes

Detailed Assessment

B3.11 Flood Prone Land

Council's Stormwater, Floodplain Engineer has raised the following issues:

- Difference mapping has not been provided showing if the proposed development will result in a greater than 10% increase in PMF peak velocity on neighbouring properties. This is not compliant with prescriptive control A1 of the part B3.11 of the Pittwater DCP and the definition of adverse flood impacts.
- It should be demonstrated that the development will not result in a net loss in flood storage or floodway in 1% AEP flood. These calculations must be provided and mapping of the floodway in relation to the proposed building must also be provided. This is not compliant with prescriptive control A2 of the part B3.11 of the Pittwater DCP and the definition of adverse flood impacts.
- Flood gates cannot be used to protect garages below the 1% AEP flood level. At the location of the flood gate, the 1% AEP flood level is 4.6m AHD based on the McCarrs Cr, Mona Vale and Bayview Flood Study. A fixed barrier (for example a fixed crest/ramp) or higher floor level must be incorporated at this location up to the 1% AEP flood level of 4.6m AHD . A self closing flood gate can then protect the garage up to the PMF level.

As such, the proposal is inconsistent with this clause, and this is included as a reason for refusal.

C1.3 View Sharing

Merit consideration

The development is considered against the underlying Outcomes of the Control as follows:

- *A reasonable sharing of views amongst dwellings.*

Comment:

In determining the extent of potential view loss to adjoining and nearby properties, the four (4) planning principles outlined within the Land and Environment Court Case of Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140, are applied to the proposal.

14 Loquat Valley Road, Bayview

1. Nature of the views affected

"The first step is the assessment of the views to be affected. Water views are valued more highly than land views. Iconic views (e.g. of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured".

Comment to Principle 1:

The views impacted are district views along with a partial view of Pittwater from the neighbouring property as can be seen below:



2. What part of the affected property are the views obtained

"The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic".

Comment to Principle 2:

The view is obtained from a side deck and adjoining living area over a side boundary.

3. Extent of impact

"The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating".

Comment to Principle 3:

As a result of the partial and distant nature of the view, the impact is assessed as being minor.

4. Reasonableness of the proposal that is causing the impact

"The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable."

Comment to Principle 4:

The proposed building complies with the numerical control for front building line. As such, the minor impact viewed of the side boundary is deemed reasonable.

- *Views and vistas from roads and public places to water, headland, beach and/or bush views are to be protected, maintained and where possible, enhanced.*

Comment:

Views and vistas from roads and public places will be sufficiently maintained.

- *Canopy trees take priority over views.*

Comment:

Surrounding canopy trees will generally take precedent over views.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of PLEP 2014 / P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

C1.5 Visual Privacy

Concern is raised with regard to overlooking from the decks at the rear of the site. However, overlooking may be resolved with screening in this instance.

C1.21 Seniors Housing

The proposed development fails to adequately address the outcomes of Part C.21. The specific outcomes of the control include:

- Visual bulk and scale of development is limited.
- Restricted footprint of development on site.
- Retention of the natural vegetation and facilitate planting of additional landscaping where possible.
- Achieve desired future character of the locality.
- Social mix of residents in the neighbourhood.
- Minimal cumulative impact from State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.

Controls

Cumulative Impact

Seniors housing developed in accordance with the State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004, outside the R3 Medium Density Residential and B4 Mixed Use zones shall:

- Be in keeping with the development of the surrounding area in regard to bulk, building height, scale and character.
- Not result in such an accumulation of Seniors Housing developments to create a dominant social type in the surrounding neighbourhood.
- Not result in such an accumulation of Seniors Housing developments to create a dominant 'residential flat building' appearance in the neighbourhood.

In terms of the development's response to the outcomes and controls of this requirement, it is noted that there are some seniors housing developments within the area, but not a number within close proximity to the site that would cause concern with regard to cumulative impact.

The appearance of this development with regard to bulk and scale at the rear of the site is overbearing and dominant due to insufficient stepping with the topography of the land and a lack of appropriate transition to the valley at the rear.. This does not ensure a complementary relationship with surrounding residential development and instead provides a presentation of a dominant 'residential flat building style' appearance.

The proposal is not considered to successfully address the outcomes and controls of this clause and this forms a recommended reason for refusal for the proposed development.

D4.3 Building colours and materials

The proposal is not consistent with the external building colours under the control of this clause. Given the site is in a scenic protection area, and is within an area highly characterised by natural colours and features, the proposed colours are not acceptable.

If approved, a condition could be imposed to require colours to be consistent with the control under this

clause.

D4.5 Front building line

The proposal complies with the numerical standard to the building.

However, further information is required with regard to the presentation of the bin area (given it's location within the front setback).

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2022.

A monetary contribution of \$34,029 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$3,402,901.

CONCLUSION

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- Pittwater Local Environment Plan;
- Pittwater Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, in this regard the application is not considered to be acceptable and is recommended for refusal.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Inconsistent with the objectives of the DCP
- Inconsistent with the zone objectives of the LEP
- Inconsistent with the aims of the LEP
- Inconsistent with the objectives of the relevant EPIs
- Inconsistent with the objects of the Environmental Planning and Assessment Act 1979

Council not satisfied that:

1) The Applicant's written requests under Clause 4.6 of the Pittwater Local Environmental Plan 2014 seeking to justify a contravention of Clause 40(4) (a & b) has adequately addressed and demonstrated that:

a) Compliance with the standard is unreasonable or unnecessary in the circumstances of the case; and

b) There are sufficient environmental planning grounds to justify the contravention.

2) The proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Overall Planning Conclusions

This report provides an assessment of the application for the redevelopment of the site as a seniors housing development containing 5 units.

The site has been inspected and the application assessed having regard to the provisions of Section 4.15 of the EP&A Act, 1979, the provisions of relevant EPIs, including SEPP (HSPD) 2004, SEPP 65, SEPP (Infrastructure), PLEP 2014, the relevant codes and policies of Council, the relevant provisions of the Pittwater 21 DCP.

Public Consultation

The public exhibition of the DA resulted in a large response from the community. Objections to the proposed development include concerns relating to impact on natural environment, overdevelopment, traffic, safety, impact on character, non-compliance with planning controls and non-compliance with SEPP HSPD.

The issues raised in the submissions have been addressed in the 'Public Exhibition & Submissions' section of this report.

Outstanding Issues

While it is acknowledged that the Applicant has responded with amended plans seeking to address the issues raised by Council in its referral comments and issues letter, the amendments are not sufficient to address issues raised by Council's Traffic Officer, Flood Officer and assessment officer.

Further to this, Council's Development Engineer has requested additional information in order to complete a full assessment.

Planning Assessment

The assessment of the application against the provisions of SEPP (HSPD) has identified that the proposal is not satisfactory in relation to a number of the requirements of the SEPP.

In particular, the proposal is not consistent or complementary with the context of the existing natural and built environment. This is due to the height, bulk and scale of the building at the rear of the site. In this regard the proposal does not comply with Clause 29, Clause 31, Clause 33, Clause 34 and Clause 40 of SEPP HSPD.

Court Action

It is noted that a Class 1 Appeal for this application has been made in the Land and Environment Court of NSW.

Based on the assessment contained in this report, it is recommended that the NBLPP refuse the application for the reasons detailed within the recommendation of this assessment. It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council, as the consent authority REFUSE Development Consent to Development Application No DA2021/1963 for the Demolition works and construction of a seniors housing development on land at Lot 14 DP 30382, 12 Loquat Valley Road, BAYVIEW, Lot 13 DP 30382, 10 Loquat Valley Road, BAYVIEW, for the reasons outlined as follows:

1. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of State Environmental Planning Policy 65 - Design Quality of Residential Flat Development.

In detail, the proposal does not meet the following principles due to an inappropriate bulk, scale and integration in to the landscaped character and context:

- o Principle 1: Context and Neighbourhood Character
- o Principle 2: Built Form and Scale
- o Principle 5: Landscape
- o Principle 9: Aesthetics

2. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of State Environmental Planning Policy (Housing for Seniors or people with a Disability) 2004.

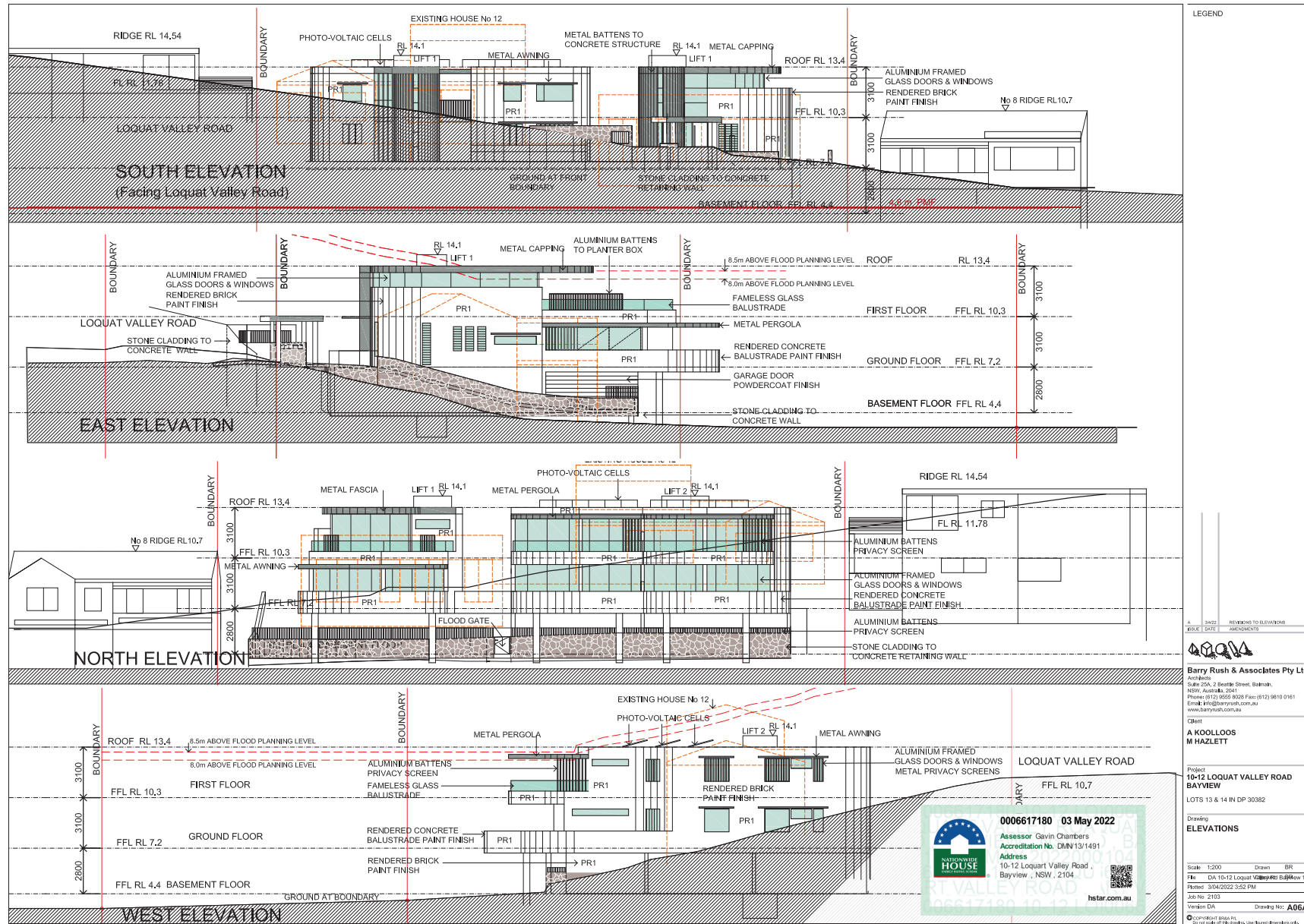
In particular, the proposal is not consistent or complementary with the context of the existing natural and built environment. This is due to the height, bulk and scale of the building at the rear of the site. In this regard the proposal does not comply with Clause 29, Clause 31, Clause 33, Clause 34 and Clause 40 of SEPP HSPD.

3. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 7.4 Floodplain risk management of the Pittwater Local Environmental Plan 2014.
4. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause B3.11 Flood Prone Land of the Pittwater 21 Development Control Plan.
5. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause C1.21 Seniors Housing of the Pittwater 21 Development Control Plan.

The appearance of this development with regard to bulk and scale at the rear of the site is

overbearing and dominant due to insufficient stepping with the topography of the land and a lack of appropriate transition to the valley at the rear.. This does not ensure a complementary relationship with surrounding residential development and instead provides a presentation of a dominant 'residential flat building style' appearance.





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Town Planners

16th May 2022

**Updated Clause 4.6 variation request – Clause 40(4)(a) State
Environmental Planning Policy (Housing for Seniors or People with a
Disability) 2004
Proposed Seniors Housing
10 and 12 Loquat Valley Road, Bayview**

1.0 Introduction

This updated clause 4.6 variation request has been prepared having regard to an application proposes the demolition of the existing dwelling located on the subject allotment and the construction of a seniors housing development incorporating 5 x 3 bedroom in-fill self-care housing units and basement car parking for 9 vehicles pursuant to the provisions of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP HSPD).

The proposed development is depicted on amended Architectural plans A01(A) – A10(A), A11 – A14 and A15(A) prepared by Barry Rush and Associates Pty Limited.

The document has been prepared in support of a variation to the clause 40(4)(a) SEPP HSPD development standard relating to building height.

This clause 4.6 variation has been prepared having regard to the Land and Environment Court judgements in the matters of *Wehbe v Pittwater Council* [2007] NSWLEC 827 (*Wehbe*) at [42] – [48], *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248, *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61, and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130.

**2.0 State Environmental Planning Policy (Housing for Seniors or
People with a Disability) 2004 (SEPP HSPD)**

2.1 Clause 40(4)(a) SEPP HSPD

Pursuant to clause 40(4)(a) of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP HSPD) the height of all buildings in the proposed development must be 8 metres or less.

Height in relation to a building, means the distance measured vertically from any point on the ceiling of the topmost floor of the building to the ground level immediately below that point.

Whilst there are no stated objectives associated with this standard it is considered appropriate to adopt the objectives associated with the building height standard applicable to development on the land pursuant to clause 4.3 - Height of buildings within Pittwater Local Environmental Plan 2014 (PLEP) namely:

- (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.

It has been determined that the the proposal has a maximum height, as defined, of 9.28 metres as measured to the underside of the first floor ceiling along the rear northern edge of the proposed development with this non-compliance reducing as the landform rises towards the property frontage. The front façade and western edge of the development are compliant with the 8 metre height standard. This represents a maximum non-compliance of 1.28 metres or 16.% with the extent of non-compliance depicted in Figures 1 and 2 over page.

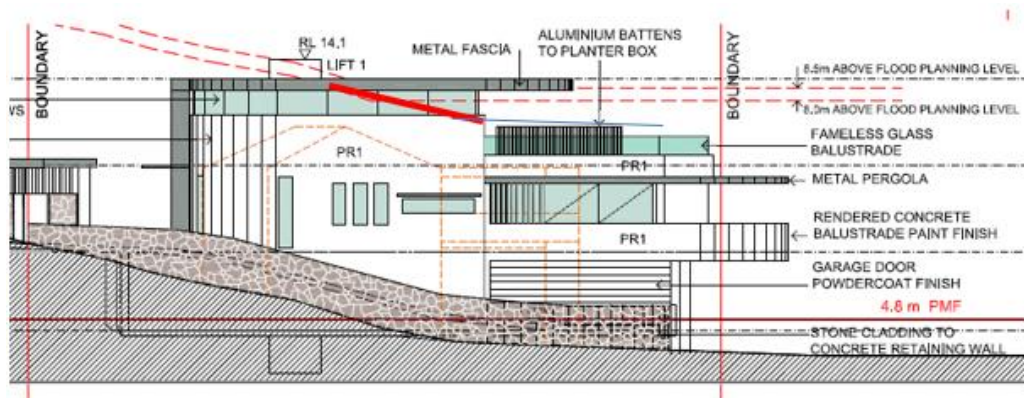


Figure 1 - Plan extract showing the extent of building height breach along the eastern façade of the building

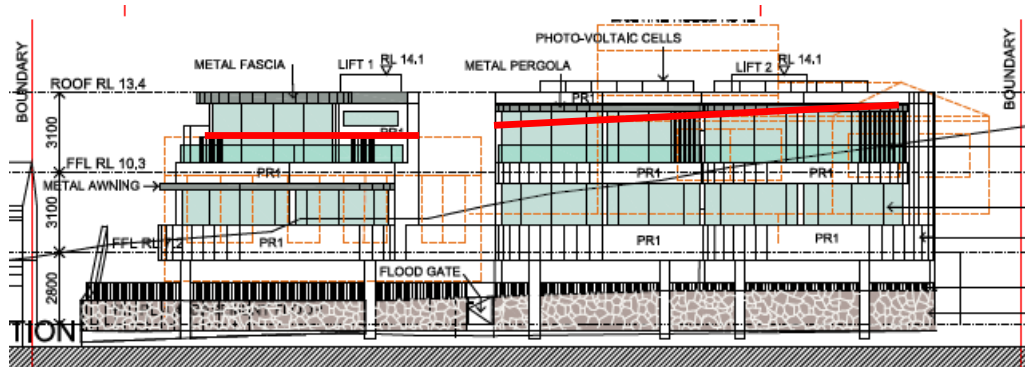


Figure 2 - Plan extract showing the extent of building height breach along the northern rear façade of the building

2.2 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of PLEP provides:

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

The decision of Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (“Initial Action”) provides guidance in respect of the operation of clause 4.6 subject to the clarification by the NSW Court of Appeal in *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [1], [4] & [51] where the Court confirmed that properly construed, a consent authority has to be satisfied that an applicant’s written request has in fact demonstrated the matters required to be demonstrated by cl 4.6(3).

Initial Action involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner.

At [90] of *Initial Action* the Court held that:

“In any event, cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). There is no provision that requires compliance with the objectives of the clause. In particular, neither cl 4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard “achieve better outcomes for and from development”.

If objective (b) was the source of the Commissioner's test that non-compliant development should achieve a better environmental planning outcome for the site relative to a compliant development, the Commissioner was mistaken. Clause 4.6 does not impose that test."

The legal consequence of the decision in *Initial Action* is that clause 4.6(1) is not an operational provision and that the remaining clauses of clause 4.6 constitute the operational provisions.

Clause 4.6(2) of PLEP provides:

- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

This clause applies to the clause 40(4)(a) height development standard contained within SEPP HSPD.

Clause 4.6(3) of PLEP provides:

- (3) *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 proposed development does not comply with the height of buildings standard at clause 40(4)(a) of SEPP HSPD which specifies a maximum building height however strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard.

The relevant arguments are set out later in this written request.

Clause 4.6(4) of PLEP provides:

- (4) *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.*

In *Initial Action* the Court found that clause 4.6(4) required the satisfaction of two preconditions ([14] & [28]). The first precondition is found in clause 4.6(4)(a). That precondition requires the formation of two positive opinions of satisfaction by the consent authority. The first positive opinion of satisfaction (cl 4.6(4)(a)(i)) is that the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3)(a)(i) (*Initial Action* at [25]).

The second positive opinion of satisfaction (cl 4.6(4)(a)(ii)) is that the proposed development will be in the public interest **because** it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out (*Initial Action* at [27]). The second precondition is found in clause 4.6(4)(b).

The second precondition requires the consent authority to be satisfied that that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (*Initial Action* at [28]).

Under cl 64 of the *Environmental Planning and Assessment Regulation* 2000, the Secretary has given written notice dated 5th May 2020, attached to the Planning Circular PS 18-003 issued on 5th May 2020, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

Clause 4.6(5) of PLEP provides:

- (5) *In deciding whether to grant concurrence, the Director-General must consider:*
 - (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*

- (b) *the public benefit of maintaining the development standard, and*
- (c) *any other matters required to be taken into consideration by the Director-General before granting concurrence.*

As these proceedings are the subject of an appeal to the Land & Environment Court, the Court has the power under cl 4.6(2) to grant development consent for development that contravenes a development standard, if it is satisfied of the matters in cl 4.6(4)(a), without obtaining or assuming the concurrence of the Secretary under cl 4.6(4)(b), by reason of s 39(6) of the Court Act. Nevertheless, the Court should still consider the matters in cl 4.6(5) when exercising the power to grant development consent for development that contravenes a development standard: *Fast Buck\$ v Byron Shire Council* (1999) 103 LGERA 94 at 100; *Wehbe v Pittwater Council* at [41] (*Initial Action* at [29]).

Clause 4.6(6) relates to subdivision and is not relevant to the development. Clause 4.6(7) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation. Clause 4.6(8) is only relevant so as to note that it does not exclude clause 40(4)(a) SEPP HSPD from the operation of clause 4.6.

3.0 Relevant Case Law

In *Initial Action* the Court summarised the legal requirements of clause 4.6 and confirmed the continuing relevance of previous case law at [13] to [29]. In particular the Court confirmed that the five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary as identified in *Wehbe v Pittwater Council* (2007) 156 LGERA 446; [2007] NSWLEC 827 continue to apply as follows:

17. *The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].*
18. *A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].*
19. *A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].*

20. *A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: *Wehbe v Pittwater Council* at [47].*
21. *A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: *Wehbe v Pittwater Council* at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in *Wehbe v Pittwater Council* at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.*
22. *These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.*

The relevant steps identified in *Initial Action* (and the case law referred to in *Initial Action*) can be summarised as follows:

1. Is clause 40(4)(a) SEPP HSPD a development standard?
2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:
 - (a) compliance is unreasonable or unnecessary; and
 - (b) there are sufficient environmental planning grounds to justify contravening the development standard
3. Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of clause 40(4)(a) SEPP HSPD and the objectives for development for in the zone?

4. Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?
5. Where the consent authority is the Court, has the Court considered the matters in clause 4.6(5) when exercising the power to grant development consent for the development that contravenes clause 40(4)(a) of SEPP HSPD?

4.0 Request for variation

4.1 Is clause 40(4)(a) of SEPP HSPD a development standard?

The definition of “development standard” at clause 1.4 of the EP&A Act includes:

- (c) *the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,*

Clause 40(4)(a) of SEPP HSPD prescribes a height provision that relates to certain development. Accordingly, clause 40(4)(a) of SEPP HSPD is a development standard.

4.2A Clause 4.6(3)(a) – Whether compliance with the development standard is unreasonable or unnecessary

The common approach for an applicant to demonstrate that compliance with a development standard is unreasonable or unnecessary are set out in *Wehbe v Pittwater Council* [2007] NSWLEC 827.

The first option, which has been adopted in this case, is to establish that compliance with the development standard is unreasonable and unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

Consistency with objectives of the height of buildings standard

An assessment as to the consistency of the proposal when assessed against the implicit objectives of the standard is as follows:

- (a) *to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,*

Response: The desired future character for the Church Point and Bayview Locality, and the associated height of buildings development standard, anticipates a building having an overall height of 8.5 metres above ground, or 8 metres above the Flood Planning Level (FPL) , with a building height of up to 10 metres able to be considered on sites having a slope across the building footprint of 30% or greater. Development is to sit below surrounding tree canopy level.

Notwithstanding the building height breaching elements, the proposed development displays a height which is consistent with the 8.5 metre/ 10 metre building height anticipated by development on the subject property and surrounding steeply sloping land. The development displays a height below that established by the existing dwelling on the subject site, No. 12 Loquat Valley Road, with the building sitting below the height of the surrounding tree canopy.

In terms of scale, notwithstanding the building height breaching elements, the proposal satisfies the 0.5:1 FSR threshold standard applicable to this form of development on this particular site with both the height and scale (FSR) consistent with the desired future character of the locality. The scale the building has been broken up through the adoption of a pavilion style building topology such that the development displays a height and scale consistent with larger detached style housing within the sites visual catchment including that established on No. 12 Loquat Valley Road.

This objective is satisfied notwithstanding the building height breaching elements proposed.

(b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,

Response: In relation to the building's presentation in a streetscape context, I note that the development presents as a 2 storey pavilion style building form which steps down the site in response to topography consistent with the built form characteristics established by development located on sloping land within the sites visual catchment.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191 I have formed the considered opinion that most observers would not find the proposed development, by virtue of its height, offensive, jarring or unsympathetic in a streetscape context nor when compared to the built form characteristics of development within the site's visual catchment as they present to the street. Accordingly, it can be reasonably concluded that the proposal is compatible with its surroundings.

For the reasons outlined above, I am satisfied that the development displays a height and scale which is compatible with surrounding and nearby development notwithstanding the building height breaching elements proposed. This objective is satisfied notwithstanding the non-compliant building height breaching elements.

(c) to minimise any overshadowing of neighbouring properties,

Response: I note that the development is compliant with the building height standard along its front and western building façades with compliance along these edges of the development minimising overshadowing of neighbouring properties as depicted on the shadow diagrams at Annexure 1. That is, the building height breaching elements do not contribute to unreasonable or unacceptable shadowing impacts to neighbouring properties.

Notwithstanding the building height breaching elements compliant levels of solar access are maintained to neighbouring properties and to that extent overshadowing impacts have been minimised. This objective is satisfied notwithstanding the non-compliant building height breaching elements.

(d) to allow for the reasonable sharing of views,

Response: Having inspected the subject property and walked the surrounding streets to determine available view lines from both the public and private domains I am satisfied that the non-compliant building height breaching elements will not give rise to unacceptable public or private view affectation. This objective is satisfied notwithstanding the non-compliant building height breaching elements.

(e) to encourage buildings that are designed to respond sensitively to the natural topography,

Response: The building height breaching elements do not themselves result in adverse impacts on the natural topography with site disturbance limited to that required to accommodate a compliant quantum of basement car parking. This objective is satisfied notwithstanding the non-compliant building height breaching elements.

(f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.

Response: The subject property is not located within immediate proximity of any heritage item or heritage conservation area with the building height breaching elements not giving rise to adverse visual impact on the natural environment. In this regard, I note that the development retains the majority of significant trees on the site such that this objective is satisfied notwithstanding the building height breaching elements proposed.

Consistency with zone objectives

The subject property is zoned Residential R2 Low Density Residential pursuant to PLEP. An assessment as to the consistency of the development against the zone objectives as follows:

- *To provide for the housing needs of the community within a low density residential environment.*

Response: The proposal provides housing which will meet the needs of seniors or people with a disability within the community within a low density residential environment. The proposal achieves this objective notwithstanding the noncompliance.

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Response: Not applicable.

- *To provide for a limited range of other land uses of a low intensity and scale, compatible with surrounding land uses.*

Response: The proposal provides for seniors housing which in terms of its land use and building form is low intensity and scale and compatible with surrounding land uses.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191 I have formed the considered opinion that most observers would not find the proposed development, by virtue of its height, offensive, jarring or unsympathetic in a streetscape context nor when compared to the built form characteristics of development within the site's visual catchment as they present to the street. Accordingly, it can be reasonably concluded that the proposal is compatible with its surroundings.

Further, the non-compliant building height elements will not give rise to any unacceptable residential amenity impacts in terms of privacy, solar access or view affectation and to that extent I rely on the shadow diagrams at Annexure 1.

The non-compliant component of the development, as it relates to site frontage, demonstrates consistency with objectives of the R2 Low Density Residential zone and the objectives of the building height standard. Adopting the first option in *Wehbe* strict compliance with the height of buildings standard has been demonstrated to be unreasonable and unnecessary.

4.2B Clause 4.6(4)(b) – Are there sufficient environmental planning grounds to justify contravening the development standard?

In Initial Action the Court found at [23]-[24] that:

23. *As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be “environmental planning grounds” by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase “environmental planning” is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.*
24. *The environmental planning grounds relied on in the written request under cl 4.6 must be “sufficient”. There are two respects in which the written request needs to be “sufficient”. First, the environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”. The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds.*

The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].

Sufficient environmental planning grounds exist to justify the variation to the height of buildings standard. Those grounds are as follows:

Ground 1

The topography of the land, which falls approximately 7 metres across its surface in a northerly direction towards the rear of the site and approximately 5 metres across its frontage in an easterly direction, makes strict compliance with the height of building standard difficult to achieve particularly when coupled with the flooding affectation at the rear of the property which prevents floor levels at the rear of the site being set at ground level (existing).

The topography of the land and flooding affectation makes strict compliance with the 2 storey height standard difficult to achieve whilst providing a contextually appropriate, FSR compliant stepped building form on this particular site.

Ground 2

Objective 1.3(c) of the Environmental Planning and Assessment Act 1979 is:

“to promote the orderly and economic use and development of land,”

Compliance with the height of buildings standard would necessitate a significant reduction in floor space in circumstances where the proposal satisfies the applicable FSR standard.

Under such circumstances strict compliance would not promote the orderly and economic use and development of land.

Ground 3

Objective 1.3(g) of the EP&A Act is:

“to promote good design and amenity of the built environment,”

The non-compliant portion of the building is of good design as it has been distributed across the site in a manner which does not give rise to adverse streetscape or residential amenity consequences.

For the above reasons there are sufficient environmental planning grounds to justify contravening the development standard.

4.3 Clause 4.6(a)(iii) – Is the proposed development in the public interest because it is consistent with the objectives of clause 40(4)(a) SEPP HSPD building height development standard and the objectives of the R2 Low Density Residential zone

The consent authority needs to be satisfied that the proposed development will be in the public interest if the standard is varied because it is consistent with the objectives of the standard and the objectives of the zone.

Preston CJ in Initial Action (Para 27) described the relevant test for this as follows:

“The matter in cl 4.6(4)(a)(ii), with which the consent authority or the Court on appeal must be satisfied, is not merely that the proposed development will be in the public interest but that it will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out.

It is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest.

If the proposed development is inconsistent with either the objectives of the development standard or the objectives of the zone or both, the consent authority, or the Court on appeal, cannot be satisfied that the development will be in the public interest for the purposes of cl 4.6(4)(a)(ii)."

As demonstrated in this request, the proposed development is consistent with the objectives of the development standard and the objectives for development in the zone in which the development is proposed to be carried out.

Accordingly, the consent authority can be satisfied that the proposed development will be in the public interest if the standard is varied because it is consistent with the implicit objectives of the standard and the objectives of the zone.

4.4 Secretary's concurrence

By Planning Circular dated 5th May 2020, the Secretary of the Department of Planning & Environment advised that consent authorities can assume the concurrence to clause 4.6 request except in the circumstances set out below:

- Lot size standards for rural dwellings;
- Variations exceeding 10%; and
- Variations to non-numerical development standards.

The circular also provides that concurrence can be assumed when an LPP is the consent authority where a variation exceeds 10% or is to a non-numerical standard, because of the greater scrutiny that the LPP process and determination s are subject to, compared with decisions made under delegation by Council staff.

Concurrence of the Secretary can therefore be assumed in this case.

5.0 Conclusion

Pursuant to clause 4.6(4)(a), the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3) being:

- (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.

As such, I have formed the highly considered opinion that there is no statutory or environmental planning impediment to the granting of a height of building variation in this instance.

Boston Blyth Fleming Pty Limited

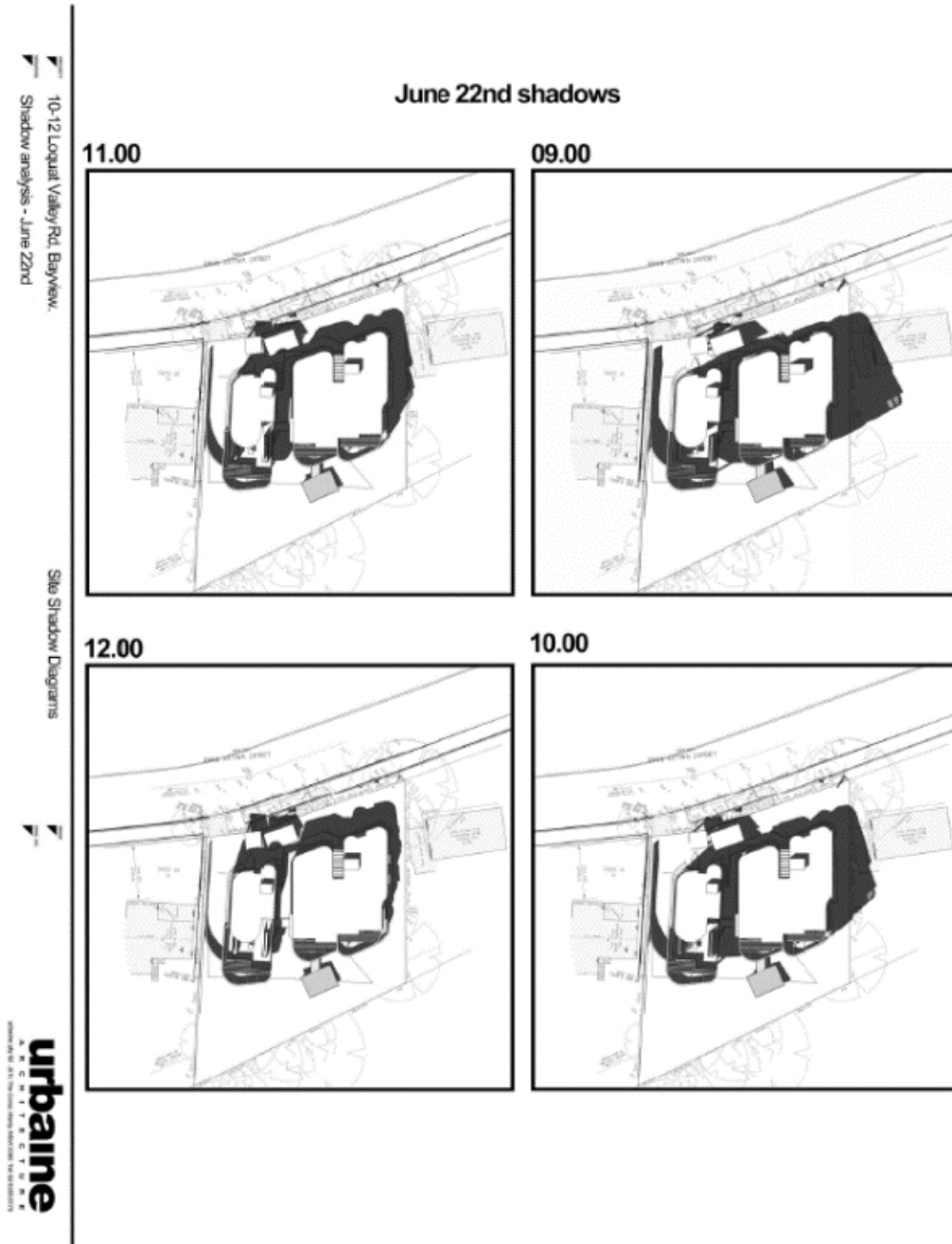


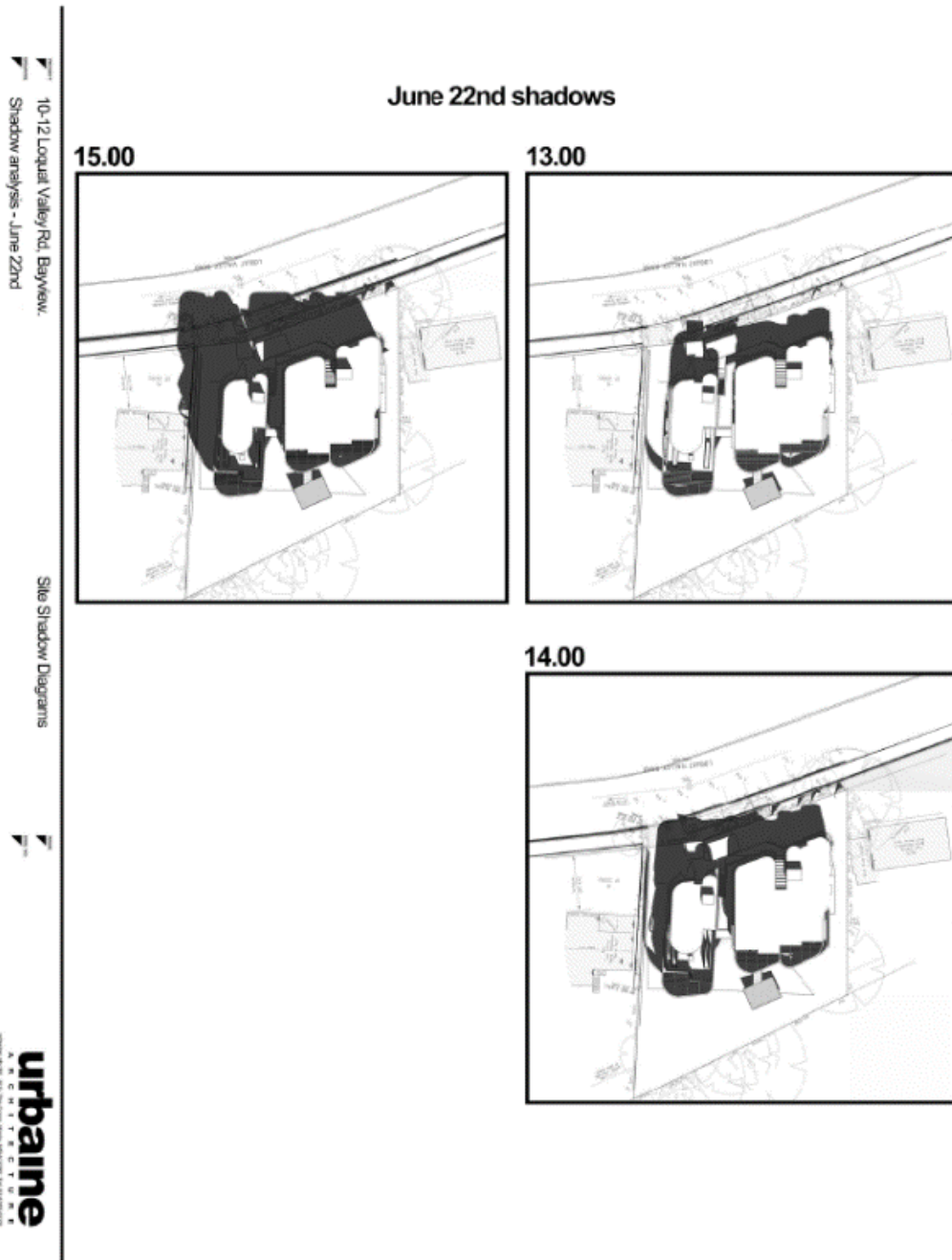
Greg Boston

B Urb & Reg Plan (UNE) MPIA

Director

Annexure 1 Shadow diagrams





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BostonBlythFleming
Town Planners

16th May 2022

**Updated clause 4.6 variation request – Clause 40(4)(b) State
Environmental Planning Policy (Housing for Seniors or People with a
Disability) 2004
Proposed Seniors Housing
10 and 12 Loquat Valley Road, Bayview**

1.0 Introduction

This updated clause 4.6 variation request has been prepared having regard to an application proposes the demolition of the existing dwelling located on the subject allotment and the construction of a seniors housing development incorporating 5 x 3 bedroom in-fill self-care housing units and basement car parking for 9 vehicles pursuant to the provisions of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP HSPD).

The proposed development is depicted on amended Architectural plans A01(A) – A10(A), A11 – A14 and A15(A) prepared by Barry Rush and Associates Pty Limited.

The document has been prepared in support of a variation to the clause 40(4)(b) SEPP HSPD development standard relating to building height.

This clause 4.6 variation has been prepared having regard to the Land and Environment Court judgements in the matters of *Wehbe v Pittwater Council* [2007] NSWLEC 827 (*Wehbe*) at [42] – [48], *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248, *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61, and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130.

**2.0 State Environmental Planning Policy (Housing for Seniors or
People with a Disability) 2004 (SEPP HSPD)**

2.1 Clause 40(4)(b) SEPP HSPD

Pursuant to clause 40(4)(b) of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP HSPD) a building that is adjacent to a boundary of the site (being the site, not only of that particular development, but also of any other associated development to which this Policy applies) must be not more than 2 storeys in height.

The note to this clause identifies the associated purpose of object namely:

Note. *The purpose of this paragraph is to avoid an abrupt change in the scale of development in the streetscape.*

Pursuant to clause 3(2) of SEPP HSPD, in calculating the number of storeys in a development for the purposes of this Policy, a car park that does not extend above ground level by more than 1 metre is not to be counted as a storey.

It has been determined that the portion of the basement located towards the rear of the development is more than 1 m above ground level (existing) and to that extent results in a 3 storey building as defined. This breach occurs approximately 7.5 metres into the site as measured from the front boundary along the eastern façade of the development and approximately 20 metres into the property as measured from the front boundary along the western façade of the development as depicted in Figures 1 and 2 below and over page.

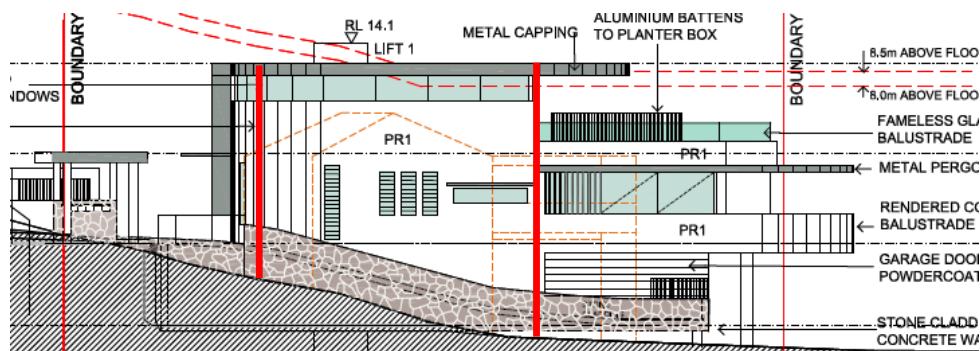


Figure 1 - Plan extract showing the 3 storey building height as viewed from the east with the 3 storey element between the 2 red lines

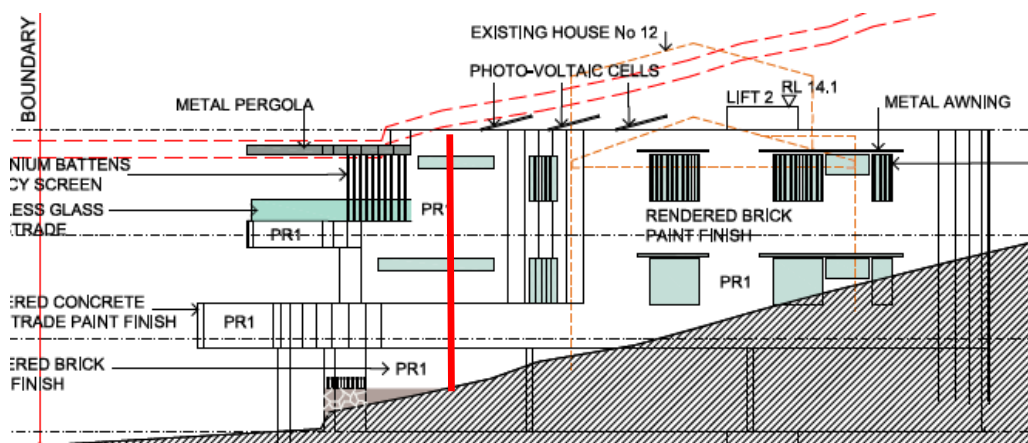


Figure 2 - Plan extract showing the 3 storey building height as viewed from the west with the 3 storey element to the left of the red line

2.2 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of PLEP provides:

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

The decision of Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (“Initial Action”) provides guidance in respect of the operation of clause 4.6 subject to the clarification by the NSW Court of Appeal in *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [1], [4] & [51] where the Court confirmed that properly construed, a consent authority has to be satisfied that an applicant’s written request has in fact demonstrated the matters required to be demonstrated by cl 4.6(3).

Initial Action involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner.

At [90] of *Initial Action* the Court held that:

“In any event, cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). There is no provision that requires compliance with the objectives of the clause. In particular, neither cl 4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard “achieve better outcomes for and from development”.

If objective (b) was the source of the Commissioner’s test that non-compliant development should achieve a better environmental planning outcome for the site relative to a compliant development, the Commissioner was mistaken. Clause 4.6 does not impose that test.”

The legal consequence of the decision in *Initial Action* is that clause 4.6(1) is not an operational provision and that the remaining clauses of clause 4.6 constitute the operational provisions.

Clause 4.6(2) of PLEP provides:

- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

This clause applies to the clause 40(4)(b) height development standard contained within SEPP HSPD.

Clause 4.6(3) of PLEP provides:

- (3) *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 proposed development does not comply with the height of buildings standard at clause 40(4)(b) of SEPP HSPD which specifies a maximum building height however strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard.

The relevant arguments are set out later in this written request.

Clause 4.6(4) of PLEP provides:

- (4) *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.*

In *Initial Action* the Court found that clause 4.6(4) required the satisfaction of two preconditions ([14] & [28]). The first precondition is found in clause 4.6(4)(a). That precondition requires the formation of two positive opinions of satisfaction by the consent authority. The first positive opinion of satisfaction (cl 4.6(4)(a)(i)) is that the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3)(a)(i) (*Initial Action* at [25]).

The second positive opinion of satisfaction (cl 4.6(4)(a)(ii)) is that the proposed development will be in the public interest ***because*** it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out (*Initial Action* at [27]). The second precondition is found in clause 4.6(4)(b). The second precondition requires the consent authority to be satisfied that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (*Initial Action* at [28]).

Under cl 64 of the *Environmental Planning and Assessment Regulation* 2000, the Secretary has given written notice dated 5th May 2020, attached to the Planning Circular PS 18-003 issued on 5th May 2020, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

Clause 4.6(5) of PLEP provides:

- (5) *In deciding whether to grant concurrence, the Director-General must consider:*
 - (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - (b) *the public benefit of maintaining the development standard, and*
 - (c) *any other matters required to be taken into consideration by the Director-General before granting concurrence.*

As these proceedings are the subject of an appeal to the Land & Environment Court, the Court has the power under cl 4.6(2) to grant development consent for development that contravenes a development standard, if it is satisfied of the matters in cl 4.6(4)(a), without obtaining or assuming the concurrence of the Secretary under cl 4.6(4)(b), by reason of s 39(6) of the Court Act. Nevertheless, the Court should still consider the matters in cl 4.6(5) when exercising the power to grant development consent for development that contravenes a development standard: *Fast Buck\$ v Byron Shire Council* (1999) 103 LGERA 94 at 100; *Wehbe v Pittwater Council* at [41] (*Initial Action* at [29]).

Clause 4.6(6) relates to subdivision and is not relevant to the development. Clause 4.6(7) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation. Clause 4.6(8) is only relevant so as to note that it does not exclude clause 40(4)(b) SEPP HSPD from the operation of clause 4.6.

3.0 Relevant Case Law

In *Initial Action* the Court summarised the legal requirements of clause 4.6 and confirmed the continuing relevance of previous case law at [13] to [29]. In particular the Court confirmed that the five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary as identified in *Wehbe v Pittwater Council* (2007) 156 LGERA 446; [2007] NSWLEC 827 continue to apply as follows:

17. *The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].*
18. *A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].*
19. *A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].*
20. *A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].*

21. *A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: *Wehbe v Pittwater Council* at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in *Wehbe v Pittwater Council* at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.*
22. *These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.*

The relevant steps identified in *Initial Action* (and the case law referred to in *Initial Action*) can be summarised as follows:

1. Is clause 40(4)(b) SEPP HSPD a development standard?
2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:
 - (a) compliance is unreasonable or unnecessary; and
 - (b) there are sufficient environmental planning grounds to justify contravening the development standard
3. Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of clause 40(4)(b) SEPP HSPD and the objectives for development for in the zone?
4. Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?

5. Where the consent authority is the Court, has the Court considered the matters in clause 4.6(5) when exercising the power to grant development consent for the development that contravenes clause 40(4)(b) of SEPP HSPD?

4.0 Request for variation

4.1 Is clause 40(4)(b) of SEPP HSPD a development standard?

The definition of “development standard” at clause 1.4 of the EP&A Act includes:

- (c) *the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,*

Clause 40(4)(b) of SEPP HSPD prescribes a height provision that relates to certain development. Accordingly, clause 40(4)(b) of SEPP HSPD is a development standard.

4.2A Clause 4.6(3)(a) – Whether compliance with the development standard is unreasonable or unnecessary

The common approach for an applicant to demonstrate that compliance with a development standard is unreasonable or unnecessary are set out in *Wehbe v Pittwater Council* [2007] NSWLEC 827.

The first option, which has been adopted in this case, is to establish that compliance with the development standard is unreasonable and unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

Consistency with objectives of the height of buildings standard

An assessment as to the consistency of the proposal when assessed against the implicit objective of the standard is as follows:

The purpose of this paragraph is to avoid an abrupt change in the scale of development in the streetscape.

Response: Having regard to the stated objective of the clause 40(4)(b) SEPP HSPD standard we make the following observations:

- The topography of the land, which falls approximately 7 metres across its surface in a northerly direction towards the rear of the site and approximately 5 metres across its frontage in an easterly direction, facilitates a 2 storey stepped building form which, whilst overlapping into a 3 storey form as defined, provides for a 1 and 2 storey built form presentation as viewed from Loquat Valley Road.

- In this regard, the variation does not result in an abrupt change in the scale of development in the streetscape compared to that anticipated through strict compliance with the 2 storey development standard.
- The development presents as a 2 storey stepped and compliant form as viewed from the rear of the property and from the properties western boundary where the 3rd storey component would be located generally below a 1.8 metre high boundary fence.
- The building will present as part 3 storeys as viewed from the eastern adjoining properties however the non-compliant three story element is confined to the central portion of the elevation with compliance achieved at the northern and southern edges of the building as depicted in Figure 1.
- In relation to the building's presentation in a streetscape context, I note that the development presents as a 2 storey form which steps down the site in response to topography consistent with the built form characteristics established by development located on sloping land within the sites visual catchment.
- Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191 I have formed the considered opinion that most observers would not find the proposed development, by virtue of its number of storeys, offensive, jarring or unsympathetic in a streetscape context nor when compared to the built form characteristics of development within the site's visual catchment as they present to the street as depicted in the photomontages at Figures 3 and 4 over page. Accordingly, it can be reasonably concluded that the proposal is compatible with its surroundings.

In this regard, I am satisfied that the height of the proposal does avoid an abrupt change in the scale of development in the streetscape and to that extent achieves the implicit objective notwithstanding the building height variation proposed.



Figure 3 - Photomontage looking down Loquat Valley Road alignment past subject property



Figure 4 - Photomontage looking up Loquat Valley Road alignment past subject property

Consistency with zone objectives

The subject property is zoned Residential R2 Low Density Residential pursuant to PLEP. An assessment as to the consistency of the development against the zone objectives as follows:

- *To provide for the housing needs of the community within a low density residential environment.*

Response: The proposal provides housing which will meet the needs of seniors or people with a disability within the community within a low density residential environment. The proposal achieves this objective notwithstanding the noncompliance.

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Response: Not applicable.

- *To provide for a limited range of other land uses of a low intensity and scale, compatible with surrounding land uses.*

Response: The proposal provides for seniors housing which in terms of its land use and building form is low intensity and scale and compatible with surrounding land uses.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191 I have formed the considered opinion that most observers would not find the proposed development, by virtue of its number of storeys, offensive, jarring or unsympathetic in a streetscape context nor when compared to the built form characteristics of development within the site's visual catchment as they present to the street. Accordingly, it can be reasonably concluded that the proposal is compatible with its surroundings.

Further, the non-compliant building height elements will not give rise to any unacceptable residential amenity impacts in terms of privacy, solar access or view affectation and to that extent I rely on the shadow diagrams at Annexure 1.

The non-compliant component of the development, as it relates to site frontage, demonstrates consistency with objectives of the R2 Low Density Residential zone and the implicit objective of the building height standard. Adopting the first option in *Wehbe* strict compliance with the height of buildings standard has been demonstrated to be unreasonable and unnecessary.

4.2B Clause 4.6(4)(b) – Are there sufficient environmental planning grounds to justify contravening the development standard?

In Initial Action the Court found at [23]-[24] that:

23. *As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be “environmental planning grounds” by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase “environmental planning” is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.*
24. *The environmental planning grounds relied on in the written request under cl 4.6 must be “sufficient”. There are two respects in which the written request needs to be “sufficient”. First, the environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”. The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds.*

The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].

Sufficient environmental planning grounds exist to justify the variation to the height of buildings standard. Those grounds are as follows:

Ground 1

The topography of the land, which falls approximately 7 metres across its surface in a northerly direction towards the rear of the site and approximately 5 metres across its frontage in an easterly direction, facilitates a 2 storey stepped building form which, whilst overlapping into a 3 storey form as defined, provides for a 1 and 2 storey built form presentation as viewed from Loquat Valley Road. In this regard, the variation does not result in an abrupt change in the scale of development in the streetscape compared to that anticipated through strict compliance with the 2 storey development standard.

The topography of the land and flooding affectation makes strict compliance with the 2 storey height standard difficult to achieve whilst providing a contextually appropriate, FSR compliant stepped building form on this particular site.

Ground 2

Objective 1.3(c) of the Environmental Planning and Assessment Act 1979 is:

“to promote the orderly and economic use and development of land,”

Compliance with the height of buildings standard would necessitate a significant reduction in floor space in circumstances where the proposal satisfies the applicable FSR standard.

Under such circumstances strict compliance would not promote the orderly and economic use and development of land.

Ground 3

Objective 1.3(g) of the EP&A Act is:

“to promote good design and amenity of the built environment,”

The non-compliant portion of the building is of good design as it reflects the contextually appropriate distribution of a compliant quantum of floor space on this particular site having regards to the site's topography and extent of flood affectation at the rear of the property which limits the available building footprint and prevents the location of floor space within the rear 25% of the site area.

For the above reasons there are sufficient environmental planning grounds to justify contravening the development standard.

4.3 Clause 4.6(a)(iii) – Is the proposed development in the public interest because it is consistent with the objectives of clause 40(4)(b) SEPP HSPD building height development standard and the objectives of the R2 Low Density Residential zone

The consent authority needs to be satisfied that the proposed development will be in the public interest if the standard is varied because it is consistent with the objectives of the standard and the objectives of the zone.

Preston CJ in Initial Action (Para 27) described the relevant test for this as follows:

“The matter in cl 4.6(4)(a)(ii), with which the consent authority or the Court on appeal must be satisfied, is not merely that the proposed development will be in the public interest but that it will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out. It is the proposed development’s consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest.

If the proposed development is inconsistent with either the objectives of the development standard or the objectives of the zone or both, the consent authority, or the Court on appeal, cannot be satisfied that the development will be in the public interest for the purposes of cl 4.6(4)(a)(ii).”

As demonstrated in this request, the proposed development is consistent with the objectives of the development standard and the objectives for development in the zone in which the development is proposed to be carried out.

Accordingly, the consent authority can be satisfied that the proposed development will be in the public interest if the standard is varied because it is consistent with the implicit objectives of the standard and the objectives of the zone.

4.4 Secretary’s concurrence

By Planning Circular dated 5th May 2020, the Secretary of the Department of Planning & Environment advised that consent authorities can assume the concurrence to clause 4.6 request except in the circumstances set out below:

- Lot size standards for rural dwellings;
- Variations exceeding 10%; and
- Variations to non-numerical development standards.

The circular also provides that concurrence can be assumed when an LPP is the consent authority where a variation exceeds 10% or is to a non-numerical standard, because of the greater scrutiny that the LPP process and determination s are subject to, compared with decisions made under delegation by Council staff.

Concurrence of the Secretary can therefore be assumed in this case.

5.0 Conclusion

Pursuant to clause 4.6(4)(a), the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3) being:

- (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.*

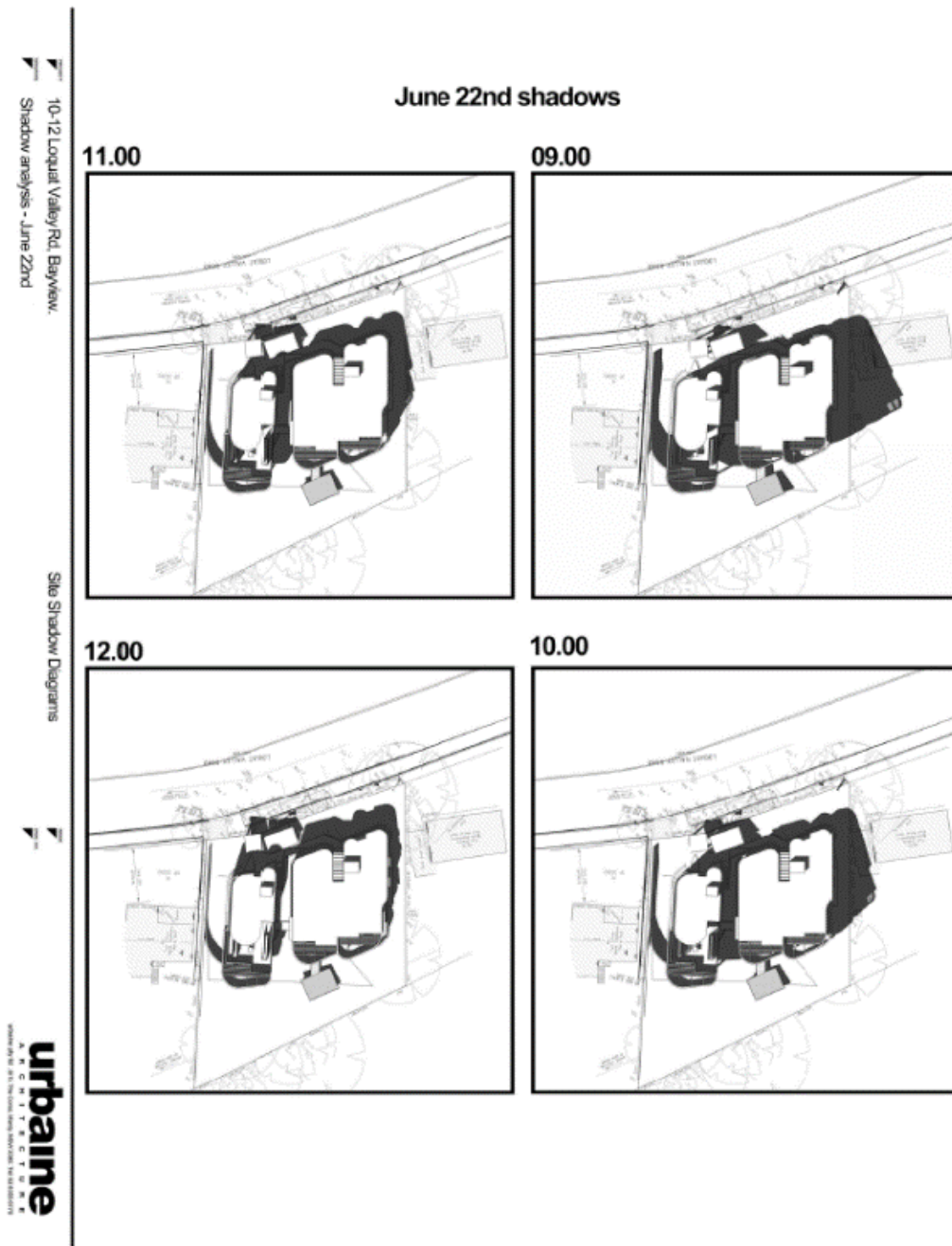
As such, I have formed the highly considered opinion that there is no statutory or environmental planning impediment to the granting of a height of building variation in this instance.

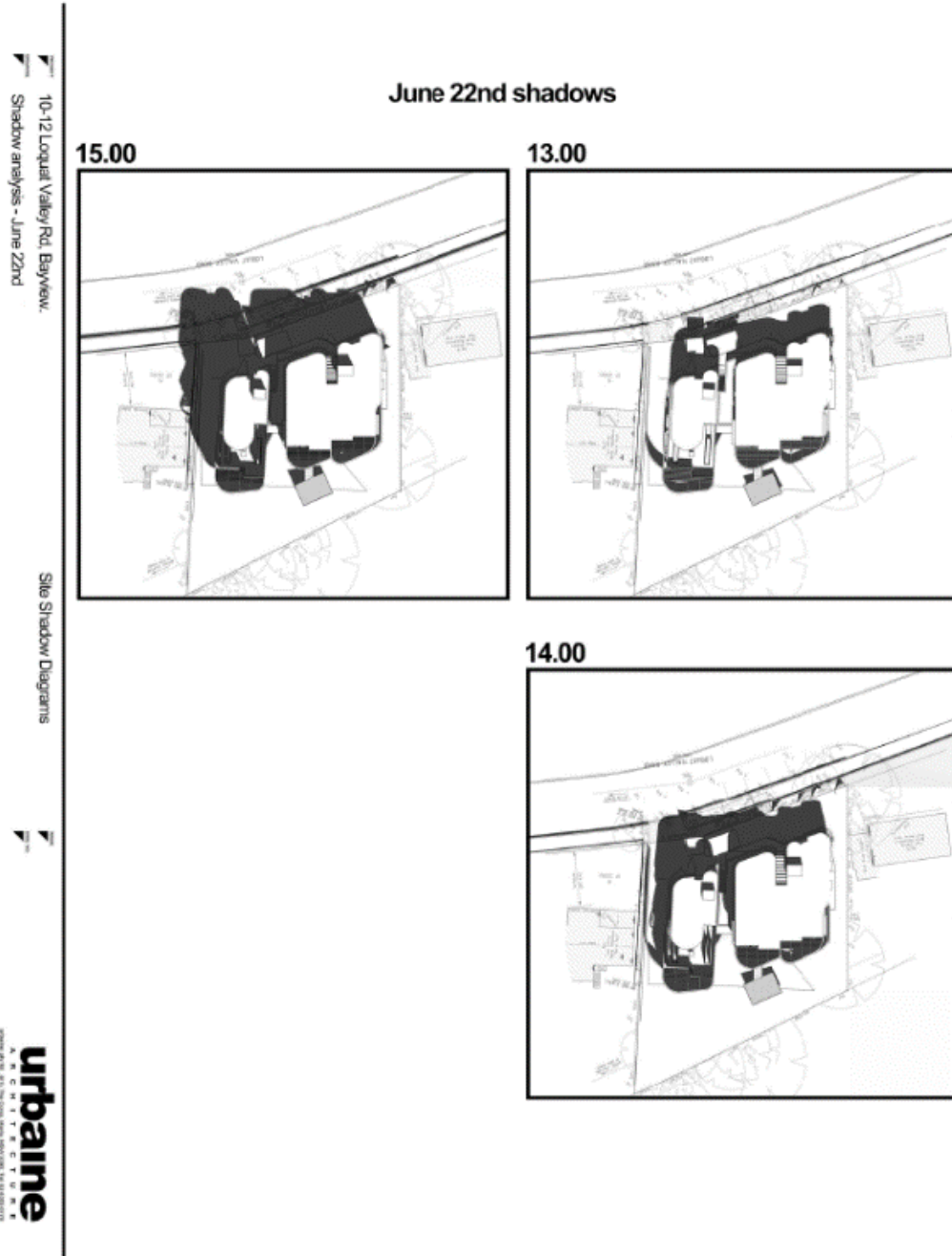
Boston Blyth Fleming Pty Limited



Greg Boston
B Urb & Reg Plan (UNE) MPIA
Director

Annexure 1 Shadow diagrams







Design + Sustainability Advisory Panel Meeting Report – Date 24 February 2022

3 - DA2021 1963 - 10 Loquat Valley Road, BAYVIEW

PANEL COMMENT AND RECOMMENDATIONS

General

The Panel was informed that a Pre-lodgement meeting (PLM2021/0160) was held on 13 June 2021 to discuss demolition works and the construction of a seniors housing development.

Concerns were raised at that meeting regarding the character and presentation of the building within the street and locality. In particular, the following issues were raised:

- Height of the building, including the number of storeys at the rear of the site.
- Lack of spacing between the building modules to allow for landscaped buffers. It was stated that generous and meaningful landscaped planting would be required between buildings via increased separation.
- Retention of privacy for adjoining properties.
- Referral Issues, including Landscaping, Flooding, Traffic, Engineering, Biodiversity and Waste management.

The proposal has not been presented to the Panel in a Pre-DA meeting. The Panel understands that the applicant wishes to respond to outstanding technical issues after receiving the overall advice of the Panel.

Strategic context, urban context: surrounding area character Scale, built form and articulation

The development is permissible in the zone. Given that the proposal is for what is essentially a 3 storey building in a detached residential area, the presentation would have benefitted from additional analysis of the impacts on the adjoining sites, and in particular the sites to the north across the water course.

The proposal is excavated into the site and presents a low profile to Loquat Valley Road. There are minor height breaches resulting principally from the steep topography and the levels set by flooding and required freeboard that are still to be finalised. The Panel considers these height breaches insignificant and recognises the efforts that have been made to keep the building as low as possible.

The massing of the building has been determined by the car parking level and the need to maintain a minimum freeboard while retaining the potential for natural ventilation and with the aim of minimising impacts on tree 7 which is supported by the Panel.

Although the building is approximately the same height as the existing buildings on the site, it extends much further to the north and will present as a single mass with a slot between the east and west sections.

The design breaks up the mass of the building by separating the eastern and western portions, with the larger western portion set well below the road level and maintaining a height that is close to that of the existing building.

The gap between the building is landscaped, but further consideration needs to be given to this; refer to 'Landscape' comments

The bulk of the building and materials and choice of finishes will further emphasise the single mass. Materials and finishes are discussed in greater detail in the 'Aesthetics' section.



Access, vehicular movement and car parking

The raised ramp results in a high blank wall above natural ground level in close proximity to the neighbouring property. This is to meet the Australian Standards for driveways, however creates an unacceptable impact on the adjoining property.

Alternate design considerations may include changes to the driveway setback which will involve considerable redesign to the proposal and or changes to the driveway gradients. Any change to the driveway gradients would require discussion and acceptance by Council's engineers taking into account pedestrian and traffic safety. Although vehicular movements may be low, the driveway has a 90 bend at one end and a gradient rising to the street at the other. If vehicles were to compete, either would need to reverse back on to the street at a gradient of 1:8 which would not provide safe sight lines, or at the other end reverse around a corner back into the basement. Fundamentally they have not provided a sufficient setback to the side boundary.

Street address – entry experience at the driveway could be improved.

The bin location and the associated structure is unfortunate and dominates the entrance to the development. It is convenient but unpleasant to walk past and on the street. It is not clear to the panel why the Bedrooms 2 and 3 are not on the upper level that enjoys northern aspect and is accessible by the lift. Relocating the bedrooms would allow the bin enclosure to be better integrated into the bulk of the building.

While the Panel understands council has stringent requirement for access to bins and travel distances, the panel considered this structure unnecessarily bulk and intrusive and detracts from the overall appearance and presentation of the building to the street.

The car-parking layout is convoluted.

Recommendations

1. Investigate alternate design of the location and/or ramp gradient for discussion and acceptance by Council's Traffic Engineers
2. Investigate redesign of car park to provide easier manoeuvring, and to
 - a. maximise the area around tree 7 open to the sky
 - b. simplify the structural layout that does not correspond to the walls above in any case
3. Investigate alternative locations and arrangements for the bin enclosure, the alignment of the entry path and possible relocation of bedrooms 2 and 3 of Unit 1. To the upper level to allow the bin store to be incorporated into the building envelope.

Landscape

The Panel recognises the efforts to protect and retain the trees on the site, however is not sure that these efforts will be successful given the very significant excavation and changes to hydrology that will result and well as the impacts of building over the root zone to the extent proposed.

No details of the proposed retaining walls or details of the planting outside Unit 2 in the vicinity of Bedroom 3 or bedroom 2 have been provided.

Species selection is appropriate but need to respond better to privacy and overlooking etc.

Recommendations

4. Review the arborist report and provide more detail and assessment of the impact of the proposed building and changes to the site hydrology and possible impacts on tree 7

5. Provide full assessment of the tree including the percentage encroachment into the TPZs, and a more comprehensive analysis of the likely impacts of changes to hydrology.
6. Remove trees that are not to be retained from the drawings, it is simply confusing (tree 9 in particular)
7. Lower car ramp wall and increase buffer to eastern boundary to accommodate more substantial screen planting
8. Provide details of the treatment of the retaining walls and landscaping around the building.
9. More, larger screen trees to respond to screening views should be included in the landscape design

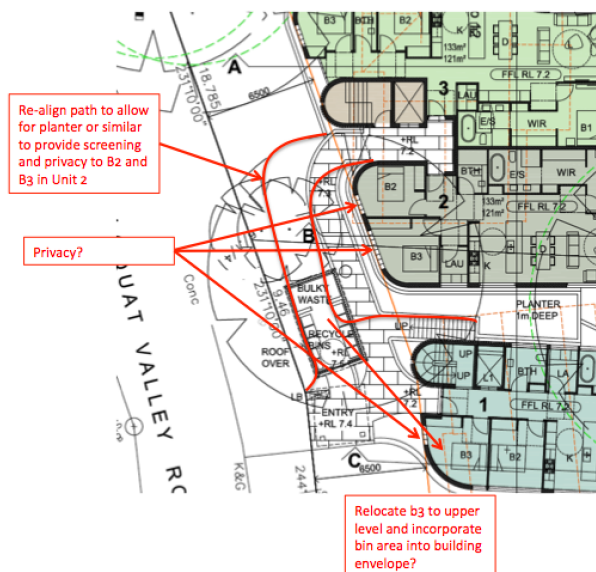
Amenity

The units provide good internal amenity however privacy of B2 and B3 in Unit 2 are severely compromised by the entry path 1.2 metres distant. Similarly, B3 in Unit 1 is similarly compromised.

An outdoor sitting deck is shown but the Panel questions the utility and accessibility of this. It is hard to imagine how or why it would be used when the units have generous balconies looking north into the tree canopy.

Recommendation

10. Provide further detail on how privacy for B2 and B3 in Unit 2 is to be achieved that may include a planter or garden bed



Façade treatment/Aesthetics

The Panel does not support the use of light-coloured render in this location

Recommendations

11. Colours and materials, including should aim to blend with the natural landscape
12. Reconsider the use of painted rendered block work. If retained, should be a dark recessive colour that relates to the vegetation
13. Provide sample boards to resolve finishes with council.



Sustainability

The BASIX report indicates that no sustainability measures in excess of the minimum compliance have been included. Significant sustainability initiatives are recommended and will be expected if any non-compliances are sought. Additionally, the roofs don't look like they have any room for the slope that will be required for drainage. Achieving this should not compromise the recommendation for high levels on insulation in this important part of the building envelope. The frames that will be required for the PV panels should also be drawn in, with leniency given for this on any impact on the height requirements.

Recommendations

14. Aim for a minimum 7 star NatHERS for every apartment that will require in addition to thoughtful design with regards to orientation:
 - a. Well insulated building envelope with adequate space in all roofs for high levels of insulation
 - b. High performance windows and doors
15. Electrify all dwellings - do not include gas. This can include:
 - a. Electric heat pumps for hot water
 - b. Induction cooktops and electric ovens
 - c. Electric heating and cooling - efficient air-conditioners that can do both
16. Install as many PV panels as possible on the roof to create onsite renewable energy taking into account the overshadowing from adjoining properties and existing trees.
17. Ensure external windows to bathrooms and utility rooms wherever possible
18. Provide bi-directional EV charging points for all units' car spaces

PANEL CONCLUSION

The Panel is generally supportive of the scheme but considers the recommended changes are important.

In particular:

- The retention and protection of Tree7
- The lowering of the entry ramp and wall
- Simplification of the car park layout
- Relocation of the bin store
- Changes in materials to blend with the landscape
- Resolution of privacy issues.