

# DRAFT

Pittwater.

24. As there are existing trees to be retained within 5 metres of proposed development works, all recommendations as outlined in the supplied arborist report by All About Trees, dated 11 June 2014 are required to be complied with before and throughout the development period, particularly with regard to the following:
- a) Works, erection/demolition of structures, excavation or changes to soil levels within 5 metres of existing trees are not permitted unless part of the development as approved, and the storage of spoil, building materials, soil or the driving and parking of any vehicle or machinery within 5 metres of the trunk of a tree to be retained is not permitted;
  - b) Where specified, tree guards are to be provided to all trees as indicated in the report, and are to be installed prior to the commencement of any work on the site. Tree guard materials and dimensions are specified in the arborist report;
  - c) All works within 5 metres of existing trees including demolition, excavation, civil works, fencing and the like must be carried out by hand and under the supervision of an experienced and suitably qualified arborist. In the event that major structural or feeder roots are encountered, the arborist is to advise the builder to carry out appropriate action to ensure the retention of the tree.
  - d) Signage is to be erected advising all contractors and visitors to the site that no works or storage are to take place within the dripline of existing trees.
  - e) Any changes or alterations made to the tree management recommendations as outlined by the arborist report due to the discovery of new structural roots or underground services during development works must be reported to the Principal Certifying Authority prior to works recommencing.
25. Demolition works must be carried out in compliance with WorkCovers *Short Guide to Working with Asbestos Cement* and Australian Standard AS 2601 2001 *The Demolition of Structures*.  
The site must be provided with a sign containing the words *DANGER ASBESTOS REMOVAL IN PROGRESS* measuring not less than 400mm x 300mm and be erected in a prominent visible position on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos cement has been removed from the site and disposed to a lawful waste disposal facility.  
All asbestos laden waste, including flat, corrugated or profiled asbestos cement sheets must be disposed of at a lawful waste disposal facility. Upon completion of tipping operations the applicant must lodge to the Principal Certifying Authority, all receipts issued by the receiving tip as evidence of proper disposal.  
Adjoining property owners are to be given at least seven (7) days notice in writing of the intention to disturb and remove asbestos from the development site.

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

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

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

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1. An Occupation Certificate application stating that the development complies with the Development Consent, the requirements of the Building Code of Australia and that a Construction Certificate has been issued must be obtained before the building is occupied or on completion of the construction work approved by this Development Consent.
2. All existing and /or proposed dwellings/sole occupancy units are to have approved hard-wired smoke alarms installed and maintained over the life of the development. All hard-wired smoke alarms are to be Australian Standard compliant and must be installed and certified by any appropriately qualified electrician prior to the issue of any Occupation Certificate.
3. Prior to the issue of an Occupation Certificate a certificate by a Registered Surveyor stating the following finished floor levels is to be provided to the Private Certifying Authority.
4. Certification is to be provided to a Private Certifying Authority by an experienced Water Engineer who is NPER accredited by the Institution of Engineers, Australia that the stormwater treatment system has been completed in accordance with the engineering plans and specifications required under this consent.
5. Certification is to be provided to the Principal Certifying Authority by a qualified experienced practicing Civil Engineer, with corporate membership of the Institute of Engineers Australia (M.I.E.), or who is eligible to become a corporate member and has appropriate experience and competence in the related field, that the drainage/stormwater management system has been installed to the manufacturer's specification (where applicable) and completed in accordance with the engineering plans and specifications required under this consent.
6. A Certificate is to be submitted to the Principal Certifying Authority with the Subdivision Certificate application by a qualified practising Civil Engineer with corporate membership of the Institute of Engineers Australia (M.I.E), or who is eligible to become a Corporate member and has appropriate experience and competence in the related field confirming to the satisfaction of the Private Certifying Authority that the driveway has been constructed in accordance with the approved plans and relevant conditions of Development Consent.
7. Prior to issue of the Occupation Certificate, Form 3 of the *Geotechnical Risk Management Policy* is to be completed and submitted to the Principal Certifying Authority.
8. The applicant must prepare and submit a post-construction dilapidation report. The report must clearly detail the final condition of all property, infrastructure, natural and man-made features that were originally recorded in the pre-commencement dilapidation report. A copy of the report must be provided to Council, any other owners of public infrastructure and the owners of adjoining and affected private properties including 1440 Pittwater Road and 3 Walsh Street.
9. Restoration of all damaged public infrastructure caused as a result of the development to Council's satisfaction. Council's written approval that all restorations have been completed satisfactorily must be obtained and provided to the Private Certifying Authority with the Occupation Certificate application.
10. All letterboxes are to be designed and constructed to be accessible from the public way. Council must be contacted in relation to any specific requirements for street numbering.
11. Street numbers are to be affixed so that they are clearly displayed and visible from a public place.

## **G. Advice:**

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1. Failure to comply with the relevant provisions of the *Environmental Planning and Assessment Act, 1979* (as amended) and/or the conditions of this Development Consent may result in the serving of penalty notices (on-the-spot fines) under the summary offences provisions of the above legislation or legal action through the Land and Environment Court, again pursuant to the above legislation.
2. Dial before you dig: Prior to excavation the applicant is advised to contact Australia's National Referral Service for Information on Underground Pipes and Cables telephone 1100 or [www.1100.com.au](http://www.1100.com.au)
3. It is the Project Managers responsibility to ensure that all of the Component Certificates/certification issued during the course of the project are lodged with the Principal Certifying Authority. Failure to comply with the conditions of approval or lodge the Component Certificates/certification will prevent the Principal Certifying Authority issuing an Occupation Certificate.
4. In accordance with Section 95(1) of the EPA Act 1979, this development consent lapses 5 years after the date from which this consent operates if the development is not commenced.
5. To ascertain the date upon which a consent operates, refer to Section 83 of the *Environmental Planning and Assessment Act, 1979* (as amended).
6. Should any of the determination not be acceptable, you are entitled to request reconsideration under Section 82A of the Environmental Planning and Assessment Act, 1979. Such request to Council must be made in writing, together with appropriate fees as advised at the time of lodgement of such request, within 6 months of the determination.
7. If you are dissatisfied with this decision, Section 97 of the Environmental Planning and Assessment Act, 1979, gives you a right of appeal to the Land and Environment Court within 6 months of the date of endorsement of this Consent.
8. Portions of the site may be liable to flooding from the 1% AEP and the PMF (Probable Maximum Flood) and effective precautions should be taken by the owner(s) and/or occupier(s) of the building to reduce any potential risk to personal safety and to minimise any property damage to the structure, its fixtures and contents.
9. You are reminded of your obligations under the objectives of the Disability Discrimination Act (DDA) 1992.

## LOCALITY MAP





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<b>C12.2</b>	<b>N0458/14 - 28 Grandview Drive Newport - Strata subdivision of existing residential flat building into 3 lots</b>
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**Meeting:** Sustainable Towns and Villages Committee    **Date:** 20 April 2015

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**COMMUNITY STRATEGIC PLAN STRATEGY:**    Land Use & Development

**COMMUNITY STRATEGIC PLAN OBJECTIVE:**

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

**DELIVERY PROGRAM ACTION:**

Provide an effective development assessment and determination process

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## **1.0 EXECUTIVE SUMMARY**

- 1.1 The Development Unit at its meeting held on the 12 March 2015 considered the Development Officer's report (refer **Attachment 1**) for determination of DA N0458/14 for Strata subdivision of existing residential flat building into 3 lots at 28 Grandview Drive, Newport NSW 2106
  - 1.2 This application has been called to Council by Cr Young.
  - 1.3 The Development Unit received representations from the owners and their Consultant Planner who were happy with the conditions imposed by the Assessing Officer.
  - 1.4 The Development Unit considered the issues raised in the Assessing Officer's report, and had no issues with the report and thus supported the officer's recommendation for approval subject to the conditions contained in the draft consent.
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## **2.0 RECOMMENDATION**

**That the recommendation of the Development Officer be endorsed and Development Application N0458/14 for strata subdivision of the existing residential flat building into 3 lots at 28 Grandview Drive, Newport NSW 2106 be granted development consent subject to the draft conditions of consent attached.**

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## **3.0 BACKGROUND**

### **3.1 PURPOSE**

To seek endorsement of the Development Unit's recommendation following consideration of Development Application N0458/14 for Strata subdivision of existing residential flat building into 3 lots at 28 Grandview Drive, Newport NSW 2106.

### 3.2 BACKGROUND

The Development Unit at its meeting held on the 12 March 2015 considered the Development Officer's report (refer **Attachment 1**) for determination of DA N0458/14 for Strata subdivision of existing residential flat building into 3 lots at 28 Grandview Drive, Newport NSW 2106 and supported the officer's recommendation for approval subject to the conditions contained in the draft consent.

### 3.3 POLICY IMPLICATIONS

Councillor Young has called the matter to Council in accordance with Council policy.

### 3.4 RELATED LEGISLATION

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

### 3.5 FINANCIAL ISSUES

#### 3.5.1 Budget

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

#### 3.5.2 Resources Implications

No implications

### 4.0 KEY ISSUES

This application is to seek approval for the subdivision of an existing residential flat building and no physical change is proposed to the land.

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### 5.0 ATTACHMENTS / TABLED DOCUMENTS

**ATTACHMENT 1** – Assessing Officer's report to the Development Unit meeting held on 12 March 2015.

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### 6.0 SUSTAINABILITY ASSESSMENT

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

Report prepared by

Warwick Lawrence  
**MANAGER, ADMINISTRATION & GOVERNANCE**

**SUBJECT: N0458/14 - 28 Grandview Drive Newport - Strata subdivision of existing residential flat building into 3 lots**

**Meeting:** Development Unit

**Date:** 12 March 2015

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**SUMMARY OF RECOMMENDATION**

**Consent with Conditions**

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**REPORT PREPARED BY:** Erin Dyer

**APPLICATION SUBMITTED ON:** 15/12/2014

**APPLICATION SUBMITTED BY:** SUSANNE KATE DAVIES  
GARETH TATE DAVIES

**OWNER(S):** SUSANNE K DAVIES & GARETH T DAVIES

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**RECOMMENDATION OF DEVELOPMENT OFFICER / PLANNER**

That Council as the consent authority pursuant to Section 80 of the Environmental Planning and Assessment Act 1979 grant consent to Development Application N0458/14 for Strata subdivision of existing residential flat building into 3 lots at 28 Grandview Drive Newport NSW 2106 subject to the draft conditions of consent attached.

Report prepared by  
Erin Dyer, Planner

Andrew Pigott  
**MANAGER, PLANNING & ASSESSMENT**

**SUBJECT: N0458/14 – 28 Grandview Drive, Newport (Lot 87 DP 16029) Strata subdivision of existing residential flat building into 3 lots.**

**Determination Level:** Development Unit

**Date:** 12 March 2015

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## **SUMMARY OF RECOMMENDATION**

### **CONSENT WITH CONDITIONS**

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<b>REPORT PREPARED BY:</b>	Erin Dyer
<b>APPLICATION SUBMITTED ON:</b>	15 December 2014
<b>APPLICATION SUBMITTED BY:</b>	Gareth T and Susanne K Davies C/O Vaughan Milligan Development Consulting P/L PO BOX 49 Newport NSW 2106
<b>OWNER:</b>	Gareth T and Susanne K Davies

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#### **1.0 SITE DETAILS**

The site is known as 28 Grandview Drive, Newport and has a legal description of Lot 87 in Deposited Plan 16029. The site is irregular in shape and has a total stated area of 847.5m<sup>2</sup>. The site is located on the north eastern lower side of Grandview Drive, adjacent to the intersection with Sybil Street. The site has a 12.19 metre frontage to Grandview Drive, Newport. There is no vehicular access to this site. The site falls 26m from the western side to the eastern side, with a slope of approximately 44%. The site is currently occupied by a two (2) storey fibro house, which consists of two attached dwellings and a separate timber cottage. The rear of the site contains dense vegetation. The site's use is described, by way of Court order, dated 28 July 2000, as being a residential flat building. The property is surrounded by other residential properties and an environmental conservation area to the rear.

#### **2.0 PROPOSED DEVELOPMENT**

The application seeks approval for the Strata Title Subdivision of the existing residential flat building. This involves the allocation of individual lot areas in accordance with the existing building configuration. No physical change to the land is proposed.

#### **3.0 LEGISLATION, PLANS AND POLICIES**

The following relevant state and local policies apply:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- Pittwater Local Environmental Plan 2014 (PLEP 2014);
  - Acid Sulphate Soils Map - Area 5
  - Biodiversity Map
  - Height of Buildings Map – 8.5m
  - Geotechnical Hazards Map
  - Lot Size Map – 700sqm
- Pittwater 21 Development Control Plan (P21 DCP);

- Newport Locality
- Geotechnical Risk Management Policy for Pittwater

#### 4.0 ZONING

The site is zoned E4 Environmental Living under Pittwater Local Environmental Plan 2014. Pursuant to the land use table in Part 2 of this instrument, residential flat buildings are not permitted in land zoned E4 Environmental Living.

#### 5.0 BACKGROUND OF APPLICATION

Development application N0458/14 was lodged at Council on 15 December 2014, and subsequently referred to Council's Development Engineer and Natural Environment Officer for comments and/or recommendations.

A search of council's records revealed the following: CC0094/11

A commencement certificate CC0094/11 for a swimming pool. However at the site inspection, it was noted by Council that there was no pool present on the subject site.

##### CC0093/11

Commencement certificate received for additions to the dwelling.

##### N0635/10

Development application N0635/10 for additions and alterations to the residential flat building was withdrawn/cancelled.

##### BC0135/10

Building certificate issued for floor, wall and roof framing, door and window openings, fire rate external wall cladding and a sub-floor timber deck.

##### N0687/10

Development application approved with conditions for alterations and additions to flat three (3) of existing residential flat building.

#### 6.0 NOTIFICATION

The application was notified to seven (7) adjoining property owners for an initial period of fourteen (14) days from 19 December 2014 to 9 January 2015 in accordance with Council's Notification Policy. During this notification period, the applicant and an objector notified Council that the survey plan was for lot 16 Grandview Drive, Newport.

The application was then re-notified to the same seven (7) adjoining property owners for a period of twenty-two (22) days from 5 January 2015 to 27 January 2015 in accordance with Council's Notification Policy.

During this time, Council received:

- Seven (7) email submissions from [squashplayer5000@yahoo.com.au](mailto:squashplayer5000@yahoo.com.au)
- A submission from Tony Sellers
- A submission from the Newport Residents Association (NRA).

These submissions raised concerns with regard to the following:

Emails from [squashplayer5000@yahoo.com.au](mailto:squashplayer5000@yahoo.com.au):

- Incorrect plans provided
- No direct access to the property



- No off street parking
- Lot size
- Existing use rights
- Lack of information on the plans including details about what will be common property
- Greedy developer trying to convert three fibro shanties into three units
- Reason behind change is so that developer can sell each unit for a quick profit and depart the area
- 3 owners will mean that these 2 fibro cottages will become a slum
- Appropriateness of the site for subdivision
- Precedence that would be created if subdivision allowed
- Applicability of SEPP10
- Amount of rent derived from each unit
- Authority to approve application
- Over development of the site
- Impact of lack of off street parking on the street and the amenity of adjoining residences
- Preference of 1 owner to repair damage over 3 owners
- History of the property and alleged impropriety allowing it to get to its current state

#### Submission from Tony Sellers

- Detail of plans
- Off street parking
- Lack of access to the street
- Impact of strata subdivision on the amenity of the neighbourhood
- Appropriateness of the block for subdivision
- Size of lots proposed under strata subdivision

#### Submission from Newport Residents Association

- Suitability of the street for strata subdivision no communal benefits
- BCA non compliances
- No vehicular access
- Possibility of disagreement in the future between individual owners
- Inconsistency with the aims of the PLEP 14

#### Additional correspondence with objectors:

Emails sent to objectors with offer to conduct a site visit at their premises and further discuss the issues raised in their submissions. A response was received from squashplayer5000@yahoo.com, however the response did not answer the question as to whether the objector wanted me to conduct a site visit. No response was received from Tony Sellers or Peter Middleton of the Newport Residents Association.

## **7.0 EXISTING USE RIGHTS**

The subject site holds existing use rights as a 'residential flat building.' This was ordered by the Land and Environment Court on 28 July 2000.

Existing use rights are governed by section 106 through to section 109B of the *Environmental Planning and Assessment Act 1979* and Part 5 of the *Environmental Planning and Assessment Regulation 2000*.

Pursuant to section 108(1)(c) of the *Environmental Planning and Assessment Act 1979*, the regulations make provisions with respect to the enlargement, expansion or intensification of

an existing use. Clause 41, Part 5 of the *Environmental Planning and Assessment Regulation 2000*, permits an existing use may be enlarged, expanded or intensified.

Under Clause 42, Part 5 of the *Environmental Planning and Assessment Regulation 2000*, development consent is required for any enlargement, expansion or intensification of an existing use.

The enlargement, expansion or intensification must be for the existing use and no other use, and must be carried out only on land on which the existing use was carried out immediately before the relevant date.

This development application proposes the strata subdivision of an existing residential flat building. A change from Torrens Title to Strata Title will potentially intensify the use of the residential flat building. There will be an increase in the number of Titles over the subject site, thereby increasing the number of entities controlling the site. The practical implication will be that previously there was one owner, there will now be three owners.

The potential intensification of the use does not change the existing use. A change from Torrens Title to Strata title continues the use of the subject site as a residential flat building. There are no physical changes proposed under this application, thereby there are no physical changes which could alter the current land use of the site. The change from Torrens Title to Strata Title is more likely to formalise the use of the subject site as a residential flat building, thereby not enabling a change of the existing use.

The potential intensification will occur only on the subject site. There are no physical changes proposed, with the only changes occurring at 28 Grandview Drive, Newport.

Therefore, in accordance with Part 5 of the *Environmental Planning and Assessment Regulations 2000*, as the proposal intensifies the existing use but does not change the existing use and will only be carried out at 28 Grandview Drive, Newport, development consent is required.

While development consent is being sought under this development application, section 108 (3) of the *Environmental Planning and Assessment Act 1979*, any environmental planning instrument that derogates, or has the effect of derogating from the intensification of the existing use at 28 Grandview Drive, Newport, has no force or effect.

## 8.0 COMPLIANCE TABLE

Given the property is subject to existing use rights, assessment of the development standards under PLEP14 and development controls under Pittwater 21 DCP are for guidance only, as they have no effect as per s108(3) of the *Environmental Planning and Assessment Act 1979*.

T - Can the proposal satisfy the technical requirements of the control?

O - Can the proposal achieve the control outcomes?

N - Is the control free from objection?

Control	Standard	Proposal	T	O	N
<b>Pittwater Local Environmental Plan 2014</b>					
2.6 Subdivision – consent requirements			Y	Y	Y
Zone E4 Environmental Living			N	Y	Y
1.9A Suspension of covenants, agreements and instruments			-	-	-
2.6 Subdivision – consent requirements			-	-	-

Control	Standard	Proposal	T	O	N
4.1 Minimum subdivision lot size		This clause does not apply in relation to the subdivision of individual lots in a strata plan.	-	-	-
4.1AA Minimum subdivision lot size for community title schemes			-	-	-
4.2A Minimum subdivision lot size for strata plan schemes in certain rural, residential and environmental protection zones		This clause only applies to land that is used, or proposed to be used, for the purpose of a dual occupancy.	-	-	N
4.3 Height of Buildings			-	-	-
4.6 Exceptions to development standards		This application relies on a Clause 4.6 variation to development standards.	-	-	N
5.10 Heritage conservation			Y	Y	Y
7.1 Acid sulphate soils			Y	Y	Y
7.2 Earthworks			-	-	-
7.6 Biodiversity protection			-	-	-
7.7 Geotechnical hazards			Y	Y	Y
7.10 Essential services		Suitable vehicular access is not available on the subject site.	-	-	Y
<b>Pittwater 21 Development Control Plan</b>					
3.1 Submission of a Development Application and payment of appropriate fee			Y	Y	Y
3.2 Submission of a Statement of Environmental Effects			Y	Y	Y
3.3 Submission of supporting documentation - Site Plan / Survey Plan / Development Drawings			Y	Y	Y
3.4 Notification			Y	Y	Y
3.5 Building Code of Australia		The applicant's BCA Assessment notes several areas of non-compliance.	N	N	N
6.2 Section 94 Contributions: Open space bushland and recreation	\$9,000 per dwelling (credit given for one dwelling)	2 x \$9,000 = \$18,000	Y	Y	Y
6.3 Section 94 Contributions: Public Library Services	\$2,000 per dwelling (credit given for one dwelling)	2 x \$2,000 = \$4,000	Y	Y	Y
6.4 Section 94 Contributions: Community Service Facilities	\$3,500 per dwelling	2 x \$3,500 = \$7,000	Y	Y	Y

Control	Standard	Proposal	T	O	N
	(credit given for one dwelling)				
6.5 Section 94 Contributions: Village Streetscapes	\$5,000 per dwelling (credit given for one dwelling)	2 x \$5,000 = \$10,000	Y	Y	Y
A1.7 Considerations before consent is granted			Y	Y	Y
B1.4 Aboriginal Heritage Significance			Y	Y	Y
B2.2 Subdivision – Low Density Residential Areas		The proposed subdivision does not meet any of the technical requirements of the controls.	N	N	N
B3.1 Landslip Hazard			Y	Y	Y
B3.6 Contaminated Land and Potentially Contaminated Land			Y	Y	Y
B4.7 Pittwater Spotted Gum Forest – Endangered Ecological Community			Y	Y	Y
B5.1 Water Management Plan			Y	Y	Y
B5.2 Wastewater Disposal			Y	Y	Y
B8.5 Construction and Demolition - Works in the Public Domain			Y	Y	Y
C4.1 Subdivision – Protection from hazards			Y	Y	Y
C4.7 Subdivision – Amenity and Design		As the site holds existing use rights, this clause is not applicable.	-	-	-
D10.1 Character as viewed from a public place		As the site holds existing use rights, this clause is not applicable.	-	-	N

Controls marked with a (-) are not applicable in relation to the proposal.

Controls marked with a (N) are discussed in further detail in the discussion section, below.

## 9.0 DISCUSSION

### 2.6 Subdivision – consent requirements

The proposal includes subdivision that will create additional lots, and is therefore not permissible in accordance with State Environmental Planning Policy (Exempt and Complying Development Codes) 2008, subdivision 38, clause 2.75(b)(ii).

#### Zone E4 Environmental Living

The objectives of the zone are:

- To provide for low impact residential development in areas with special ecological, scientific or aesthetic values.
- To ensure that residential development does not have an adverse effect on those values.

- To provide for residential development of a low density and scale integrated with the landform and landscape.
- To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.

The proposal is not a permissible development in the E4 zone and cannot meet the relevant objectives. Notwithstanding, existing use rights apply to this site and the zone objectives are not able to be enforced.

#### **4.2A Minimum subdivision lot size for strata plan schemes in certain rural, residential and environment protection zones**

Prior to an assessment of the applicability of this clause, it is necessary to establish that the definition of the subject site as a 'residential flat building' arises from an order made by the Land and Environment Court, dated 28 July 2000, where by consent, the Court held that 28 Grandview Drive, Newport held existing use rights as a residential flat building. Searches of Council's records indicate that it is unclear under what environmental planning instrument the original approvals were issued. Therefore, for the purpose of determining whether this clause applies, the use of the buildings needs to be considered under the current PLEP2014 based on the configuration of the site as it stands today. Applying the term 'residential flat building' as defined in an unknown instrument, is not appropriate for the purposes of assessing the applicability of this clause.

This clause applies to land that is used, or is proposed to be used for the purposes of dual occupancy. Pursuant to the definition in PLEP14, a dual occupancy (attached) means two dwellings on one lot of land that are attached to each other (but does not include a secondary dwelling), or dual occupancy (detached) means two detached dwellings on one lot of land (but does not include a secondary dwelling). A dwelling is defined as a room or suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile.

Based on the location plan submitted to Council as part of this development application and upon inspection of the subject site, there appears to be a two storey fibrous cement house at the front of the lot, and a separate timber cottage further east, down the lot. The two storey fibrous cement house contains two dwellings, one on the ground level and one on the lower ground floor level, both being accessible by separate doors on the ground level and lower ground level. The timber cottage is a separate structure, containing a single dwelling. Given that there are more than two dwellings on the subject site, the site cannot be considered a dual occupancy pursuant to PLEP14. Therefore, this clause does not apply to the subject site as the land is not proposed to be used for the purpose of dual occupancy.

Submissions were received by Mr Tony Sellers and squashplayer5000@yahoo.com.au regarding the size of the proposed subdivided lots. Mr Sellers raised the concern that, "the land is legally too small to subdivide." Squashplayer5000@yahoo.com.au raised the concerns:

- Email dated 21 December 2014, "Do you think Pittwater Council will allow strata subdivision of 3 existing units or conversion to strata title as the land is not legally big enough to be subdivided..."
- Email dated 24 December 2014, "Can you please ask Council staff to explain... if approving this DA would set a precedent to allow subdivision of undersized blocks of land in Pittwater"
- Email dated 31 December 2014, "can you please tell me if council staff have authority to approve a change from torrens title to strata title and then subdivision to allow units at 28 Grandview Drive Newport when the land is smaller than the guidelines permit."

- Email dated 15 January 2015, "The problem is the site is too steep, narrow and small so the Developer has asked for an exemption to the minimum size for subdivision."

In response to the concerns raised by Mr Sellers and squashplayer5000@yahoo.com.au, Council is limited by existing use rights legislation and secondly by the clauses in PLEP14. For this zoning and the proposal submitted by the applicant, there are no minimum lot size clauses in PLEP14 which apply to the strata subdivision of this subject site.

#### **4.6 Exceptions to development standards**

A clause 4.6 exception to development standards was included as part of this development application. The clause 4.6 sought support for a variation with respect to clause 4.2A PLEP14 Minimum lot size for strata plan schemes in certain rural, residential and environmental protection zones. However, as discussed under 4.2A, this clause does not apply and therefore no clause 4.6 is required.

A submission was received from squashplayer5000@yahoo.com.au regarding a clause 4.6 exception to development standards. In the email dated 15 January 2015, Squashplayer5000@yahoo.com.au raised the concern that, "the problem is the site is too steep, narrow and small so the Developer has asked for an exemption to the minimum size for subdivision." Given that no clause 4.6 is required, there is no further issue to assess.

Additionally, a submission was received from the Newport Residents Association stating that in disagreement with the Statement of Effect (more specifically, the clause 4.6 appendix), the proposal was inconsistent with the aims of the PLEP14. In response, Council refers to the inapplicability of the PLEP14 in accordance with s108 of the *Environmental Planning and Assessment Act 1979*. Additionally, given that there are no physical works proposed under this application, there will be no additional impact on the character of Newport, on access through Pittwater, on housing for the community now and into the future, or on the health and wellbeing of Pittwater residents.

#### **7.10 Essential Services**

Suitable vehicular access is not available on the subject site. The existing arrangement is for Residents to park their cars to park along kerbside of the surrounding streets. Although this Arrangement is not ideal for the amenity of surrounding residents, this application does not propose any physical change to the land or building or the current arrangements, and therefore lack of suitable vehicular access cannot act as a barrier to development consent.

Submissions were received that raised concerns regarding the lack of suitable vehicle access and parking on the subject site.

Squashplayer5000@yahoo.com.au raised the following concerns:

- Email dated 21 December 2014, "No direct access to this property and no off-street parking are not issues as this property has existing use rights. Is this correct???"
- Email dated 23 December 2014, "...I can not see a survey on the DA to show what will be common property, and floor plans for each unit or access and parking plans."
- Email dated 24 December 2014, "Can you please look into this accusation and ask Pittwater Council to tell the developer to supply floor plans for each of the 3 units so the community can see how much over development has already occurred on this site because the site is totally inappropriate for units due to the narrowness and steepness of the land and lack of off street parking."

- Email dated 15 January 2015, "It has no off street parking so the residents of this house park illegally on the footpath and clog a local side street and detract from the amenity of the neighbourhood because of the over crowding having so many people already living on the site. Yes we cannot do anything about the site because it has existing use rights but can knock back the transfer from Torrens Title to Strata Title."

Tony Sellers raised the following concerns:

- "These Approved plans (*the already approved plans*) do not show the 2 other units on this site or off street parking or direct access to the street because there is no off street parking or direct access to the Grandview Drive."
- "I do not think Pittwater Council agreeing to strata divide... especially on a block of land that is so small steep and narrow with no direct access or off street parking and to far from the bus stop and shops is a good thing and will send the wrong message to other developers."
- "This will hopefully encourage the developer to put in direct street access via steps or build off street parking or sell at a price that will allow the next owner to add steps and parking."

Newport Residents Association Inc. raised concerns that this DA for Strata Title "appears to offer no communal benefits to existing or future residents of Newport." They are concerned that "this property has no vehicular access. It is next to the tightest hairpin bend of Grandview Dr, forcing both residents and visitors to park, on-street, in narrow and short adjacent streets or further up and down parking deficient Grandview Dr..."

Although these submissions have been considered as part of this development application, given that the property is subject to existing use rights, lack of vehicular access and noncompliance with this standard, cannot act as a barrier to development consent.

### **3.5 Building Code of Australia**

Part 4 of the Fire Safety Assessment, prepared by BCA Vision, dated 13 August 2014, recommend upgrades to make the proposed units 1 & 2 compliant with the BCA. Similarly, Part 4 of the Building Compliance Assessment, prepared by BCA Vision, dated 13 August 2014, recommends upgrades to make the proposed units 3 compliant with the BCA.

It will be a condition of consent that all works described in Part 4 of Fire Safety Assessment, prepared by BCA Vision, dated 13 August 2014 and in Part 4 of the Building Compliance Assessment, prepared by BCA Vision, dated 13 August 2014, be carried out prior to the issue of the subdivision certificate. Should these works require consent; this consent will need to be obtained in a separate application to Council.

A submission was received from the Newport Residents Association. The objector raised the concern that "The applicants own 'BCA Assessment' shows the property to be in breach of numerous contemporary requirements for fire-rating of strata properties..." This objection has been considered and the consent has been conditioned accordingly.

### **A1.7 Considerations before consent is granted**

A number of objections were raised regarding the impact of the change of ownership structure of the subject site. These included:

- A submission received from the Newport Residents Association raised the following concern, "Modern strata title aims for compatibility between the rights and comfort of individual owners and the overall responsibility for common property, as administered by the Owners Corporation. One can only imagine the discord certain to result, when the

strata owners of one or both of the lots in the aged building on the upper part of the steep block, need to carry out extensive structural change which gives no benefit to the lower lot (or conversely, the owners of the lot on the lower slope of this steep block have a requirement for works which is irrelevant to the owners of the upper, disparate structure). It is a recipe for painful litigation."

- A submission received from squashplayer5000@yahoo.com.au dated 24 December 2014, the objector raised the following concern, "The reason for change to strata title is so the developer can sell each unit for a quick profit and depart the area but with 3 owners these 2 fibro cottage will quickly become a slum."
- In a further submission received from squashplayer5000@yahoo.com.au dated 15 January 2014, the objector raised the following concern, "The developer wants the Council to allow a strata title subdivision at 28 Grandview Drive, Newport from 3 existing fibro units Torrens Title to Strata Title. So the Developer hopes he can make a quick profit and depart the scene to leave others to clean up his mess created by the already over development of this site... With one owner responsible for the maintenance of this site and getting rent someone has a reason to care and 28 Grandview Drive Newport has a better chance of staying in a reasonable condition."

As noted above, the only change proposed under this development application is the change from Torrens Title to Strata Title. The impact of this change is that rather than there being one owner, there will be three owners and one body corporate. It is Council's belief that strata subdivision of the lots would likely represent an improvement over the existing arrangements. Strata are governed by a large body of legislation and the approval of the body corporate is generally a pre-requisite for all developments. The practical implication of this being that there will still be homogeneity in decision making and greater regulation over the site.

## **B2.2 Subdivision - Low Density Residential Areas**

The proposed strata subdivision does not meet any of the technical requirements of this control. This application is therefore non-compliant with this control. Notwithstanding; although strata subdivision is in contravention of this control, given the property holds existing use rights, it is still supported by Council.

## **D10.1 Character as viewed from a public place**

A submission was received from the Newport Residents Association which raised concerns about the current design of the property. They wrote, "there is no homogeneity of construction, as there is in almost every other strata property in Newport (a change to Strata Title will not bring any associated improvement to the physical nature of the property)."

If this property did not hold existing use rights, Council would require any such development application to achieve the outcomes of this control. However, in this instance, it does not apply.

## **10.0 CONCLUSION**

The Development Application has been assessed in accordance with the provisions of Section 79C of the Environmental Planning and Assessment Act 1979, Pittwater Local Environmental Plan 2014, Pittwater 21 DCP and other relevant plans and policies.



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**RECOMMENDATION OF DEVELOPMENT OFFICER / PLANNER**

That Council as the consent authority pursuant to Section 80 of the Environmental Planning and Assessment Act 1979 approve Development Application N0458/14 for the strata subdivision of the residential flat building at 28 Grandview Drive, Newport.

Report prepared by

Erin Dyer  
**PLANNER**

Date of Report: 4 March 2015

# DRAFT

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**CONSENT NO: N0458/14  
ENVIRONMENTAL PLANNING & ASSESSMENT ACT, 1979 (AS AMENDED)  
NOTICE TO APPLICANT OF DETERMINATION  
OF A DEVELOPMENT APPLICATION**

Applicant's Name and Address:  
GARETH T AND SUSANNE K DAVIES

C/O- VAUGHAN MILLIGAN DEVELOPMENT CONSULTING P/L  
PO BOX 49  
NEWPORT  
2106

Being the applicant in respect of Development Application No N0458/14

Pursuant to section 80(1) of the Act, notice is hereby given of the determination by Pittwater Council, as the consent authority, of Development Application No **N0458/14** for:

**Strata subdivision of existing residential flat building into 3 lots**

**At: 28 GRANDVIEW DRIVE, NEWPORT NSW 2106 (Lot 87 DP 16029)**

**Decision:**

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

- **Draft Subdivision Plans Sheets 1 and 2 of 2, reference 3493ASP, prepared by Adam Clerke, dated 14 October 2014; and**
- **Geotechnical Risk Management Assessment Report, reference MV 27230A, prepared by Jack Hodgson Pty Limited, dated 21 November 2014.**

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

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

Endorsement of date of consent \_\_\_\_\_

Mark Ferguson  
GENERAL MANAGER  
Per:

# DRAFT

## Conditions of Approval

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

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

### A. Prescribed Conditions:

1. All works are to be carried out in accordance with the requirements of the Building Code of Australia.
2. In the case of residential building work for which the Home Building Act 1989 requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.
3. This approval/consent relates only to the subdivision nominated on the approved consent plans and does not approve or regularise any existing buildings or structures within the property boundaries or within Council's road reserve.

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

1. If any Aboriginal Engravings or Relics are unearthed all work is to cease immediately and the Aboriginal Heritage Office (AHO) and Office of Environment and Heritage (OEH) are to be notified.
2. The recommendation of the risk assessment required to manage the hazards as identified in Geotechnical Report prepared by Jack Hodgson consultants are to be maintained for the life of the development.
3. Prior to the completion of works, all declared noxious weeds are to be removed/controlled in accordance with the Noxious Weeds Act 1993. Environmental weeds are to be removed and controlled. Refer to Pittwater Council website [http://www.pittwater.nsw.gov.au/environment/noxious\\_weeds](http://www.pittwater.nsw.gov.au/environment/noxious_weeds) for noxious/environmental weed lists.
4. No environmental weeds are to be planted on the site. Refer to Pittwater Council website [www.pittwater.nsw.gov.au/environment/noxious\\_weeds](http://www.pittwater.nsw.gov.au/environment/noxious_weeds) for environmental weed lists.
5. In accordance with Pittwater Councils DCP Control B4.22 Protection of Trees and Bushland Vegetation, all existing trees as indicated in the Survey Plan and/or approved Landscape Plan shall be retained except where Council's prior written consent has been obtained, for trees that stand within the envelope of approved development areas and removal is approved through an arborist report. For all other tree issues not related to a development application, applications must be made to Council's Tree Management Officers.

# DRAFT

6. Domestic pet animals are to be kept from entering wildlife habitat areas at all times. Dogs and cats are to be kept in an enclosed area or on a leash such that they cannot enter areas of bushland or foreshore, unrestrained, on the site or on surrounding properties or reserves. Ferrets and rabbits are to be kept in a locked hutch/run at all times.
7. Any vegetation planted onsite outside approved landscape zones is to be consistent with:
  - a) Species listed in the Ecological Sustainability Plan or Bushland Management Plan (if applicable)
  - b) Species listed from the Endangered Ecological Community
  - c) Locally native species growing onsite and/or selected from the list pertaining to the vegetation community growing in the locality as per the vegetation mapping and Native Plants for Your Garden available on the Pittwater Council website  
[http://www.pittwater.nsw.gov.au/environment/species\\_lists](http://www.pittwater.nsw.gov.au/environment/species_lists)
8. No building materials or other materials are to be placed on Bushland vegetation. Sediment is not to leave the site or enter areas of Bushland vegetation, and the appropriate sediment fencing is to be installed.

## **F. Matters to be satisfied prior to the issue of Subdivision Certificate:**

1. A contribution of \$18,000 is to be made to Cashier Code SOPS, pursuant to Section 94 of the *Environmental Planning and Assessment Act, 1979* (as amended), for Embellishment of Open Space, Bushland and Recreation in accordance with Section 94 Contributions Plan No. 2. The Contributions Plan may be inspected at Pittwater Council, No 1 Park Street, Mona Vale. The Section 94 contribution is to be paid prior to issue of the Subdivision Certificate.

Where rates payable under Section 94 Contributions Plan No 2 are reviewed and varied, the applicant is to pay the contribution rate as specified in the plan as it exists at the time of contribution.

2. A contribution of \$4,000 is to be made to Cashier Code SLEL pursuant to Section 94 of the *Environmental Planning and Assessment Act, 1979* (as amended), for Public Library Services in accordance with Section 94 Contributions Plan No.3. The Contributions Plan may be inspected at Pittwater Council, No 1 Park Street, Mona Vale. The Section 94 contribution is to be paid prior to issue of the Subdivision Certificate.
3. A contribution of \$7,000 is to be made to Cashier Code SCSF pursuant to Section 94 of the *Environmental Planning and Assessment Act, 1979* (as amended), for Community Service Facilities in accordance with Section 94 Contributions Plan No. 18. The Contributions Plan may be inspected at Pittwater Council, No 1 Park Street, Mona Vale. The Section 94 contribution is to be paid prior to issue of the Subdivision Certificate.
4. A contribution of \$10,000 is to be made to Cashier Code SVSS, pursuant to Section 94 of the *Environmental Planning and Assessment Act, 1979* (as amended), for improved Village Streetscapes in accordance with Section 94 Contributions Plan No. 19. The Contributions Plan may be inspected at Pittwater Council, No 1 Park Street, Mona Vale. The Section 94 contribution is to be paid prior to issue of the Subdivision Certificate.

Where rates payable under Section 94 Contributions Plan No 19 are reviewed and varied, the applicant is to pay the contribution rate as specified in the plan as it exists at the time of contribution.

# DRAFT

5. All works described in Part 4 of Fire Safety Assessment, prepared by BCA Vision, dated 13 August 2014 and in Part 4 of the the Building Compliance Assessment, prepared by BCA Vision, dated 13 August 2014, be carried out prior to the issue of the subdivision certificate. Should these works require consent, this consent will need to be obtained in a separate application to Council prior to the issue of the subdivision certificate.
6. The applicant is to lodge an application for a Subdivision Certificate with Council or an accredited certifier. The Subdivision Certificate is to be obtained prior to lodgement of the plans with the Land Titles Office.

Note: In the case of Strata Subdivision Plans the Subdivision Certificate may also be issued by an accredited certifier.

7. The following documents and payments are to be submitted to Council in a single package to ensure the efficient release of the Subdivision Certificate:-
  - a) Evidence of Payment of the Section 94 Contribution.
  - b) A copy of the Section 73 Compliance Certificate issued under the provisions of the Sydney Water Act, 1994.
  - c) Copies of the Subdivision Plans (original plus 6 copies).
  - d) The Private Certifying Authority Compliance Certificate. Each component of the works as outlined above are to be certified as being carried out in accordance with the relevant plans and documentation by suitably qualified professional persons as outlined in this development consent. In particular, the construction of the Water Management System is to be supervised and certified by person(s) with appropriate experience and expertise in Environmental Science, Hydrology and Hydraulics, and must be NPER registered members of the Institution of Engineers (Australia).
  - e) Where Material Public Benefits are involved, a Bank Guarantee for the difference between the value of the Material Public Benefit (MPB) and the value of the MPB works constructed for that stage.
  - f) Work-as-executed plans for all structures or facilities which will be dedicated to Council or which are located within drainage easements or which will require ongoing maintenance by Council. The plans are to be in paper and electronic format (dwg or dxf file) and comprise at least the following:-
    - i) Boundary layout;
    - ii) Kerb and gutter, road pavement, footpaths, traffic devices, retaining walls;
    - iii) Signage (including type and wording), line marking;
    - iv) Easements, survey numbers and marks, reduced levels and co-ordinates;
    - v) Stormwater drainage, pipe sizes and types, pit sizes and types, subsoil drains;
    - vi) Water quality devices, ponds, creekline corridors, parkland, play equipment;
    - vii) Significant landscaping.
  - g) A security deposit of a value to be determined by Council is to be made to ensure rectification of any defects during the maintenance period. A maintenance period is to apply to all works to be dedicated to Council or which will require ongoing maintenance by Council. The maintenance period will apply for six (6) months after the issue of the Subdivision Certificate. In that period the applicant will be liable for any part of the works which fail to perform in the manner required by the relevant certifications, or as would be reasonable expected under the design conditions.

## G. Advice:

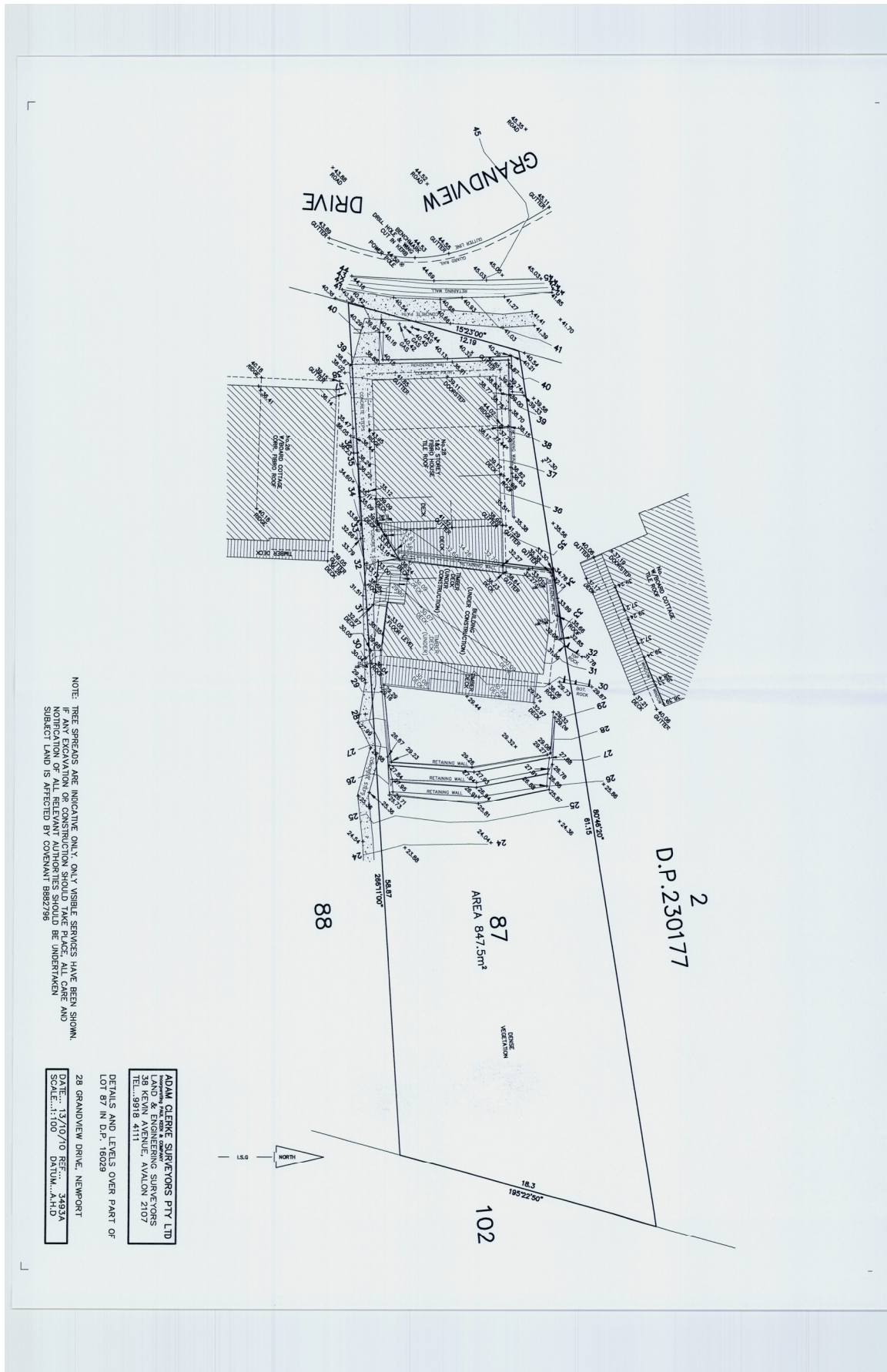
# DRAFT

1. Failure to comply with the relevant provisions of the *Environmental Planning and Assessment Act, 1979* (as amended) and/or the conditions of this Development Consent may result in the serving of penalty notices (on-the-spot fines) under the summary offences provisions of the above legislation or legal action through the Land and Environment Court, again pursuant to the above legislation.
2. In accordance with Section 95(1) of the EPA Act 1979, this development consent lapses 5 years after the date from which this consent operates if the development is not commenced.
3. To ascertain the date upon which a consent operates, refer to Section 83 of the *Environmental Planning and Assessment Act, 1979* (as amended).
4. Should any of the determination not be acceptable, you are entitled to request reconsideration under Section 82A of the Environmental Planning and Assessment Act, 1979. Such request to Council must be made in writing, together with appropriate fees as advised at the time of lodgement of such request, within 6 months of the determination.
5. If you are dissatisfied with this decision, Section 97 of the Environmental Planning and Assessment Act, 1979, gives you a right of appeal to the Land and Environment Court within 6 months of the date of endorsement of this Consent.

## LOCALITY MAP



## NOTIFICATION PLANS



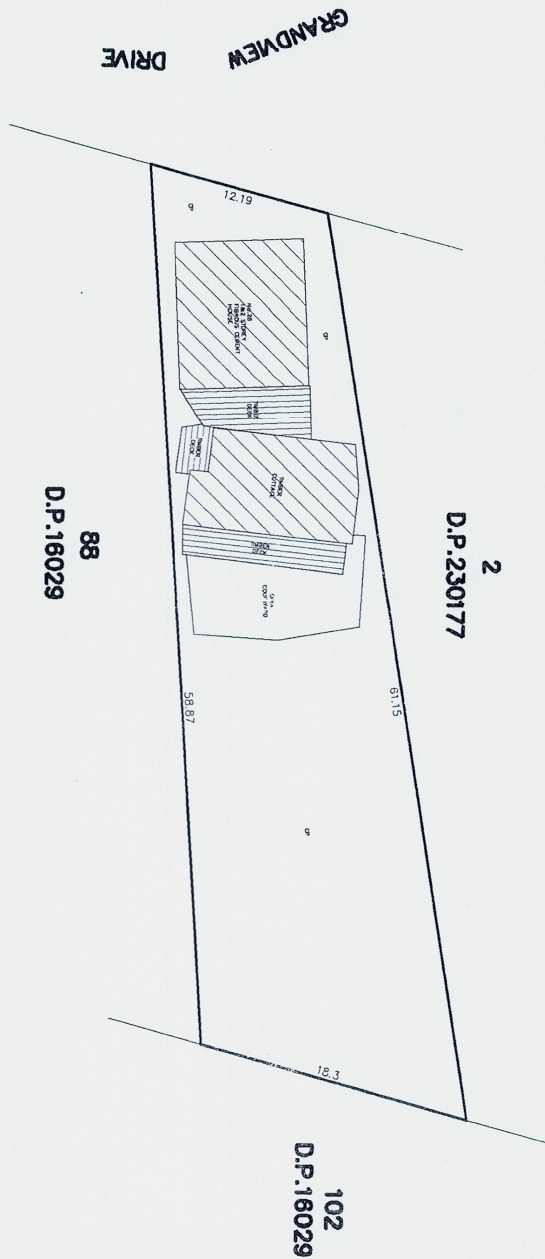


**DRAFT PLAN ONLY**  
 PLAN PREPARED FROM  
 PLANNING PERMISSION  
 ARCHITECTURAL DRAWINGS  
 SUBJECT TO FINAL DESIGN & SURVEY

**14/10/14**  
**DRAFT**

**'LOCATION PLAN'**

SHEET NO. 1 OF 2 SHEETS

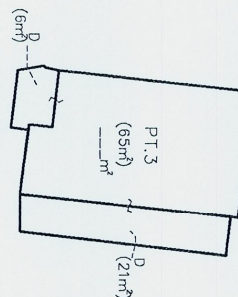


CP  
 COMMON PROPERTY  
 Table of mm  
 00 10 20 30 40 50 60 70 80 90 100 110 120 130 140

Surveyor: ADAM CLERKE  
 Surveyor Ref: 34925P  
 Subdivision No:  
 Lengths are in metres Reduction Ratio 1:250

Registered

SP



NOTES:

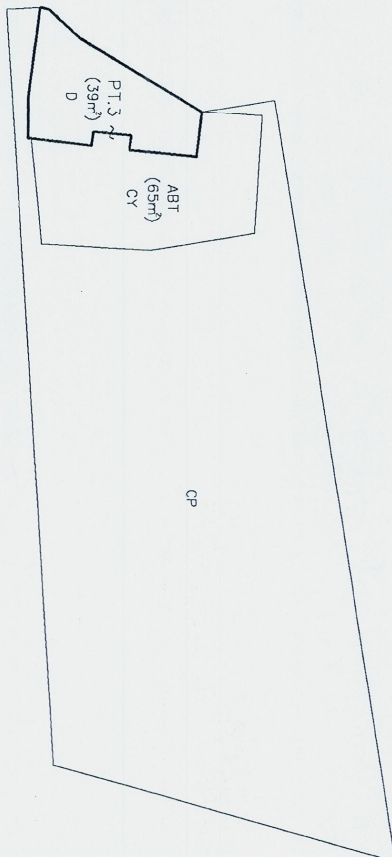
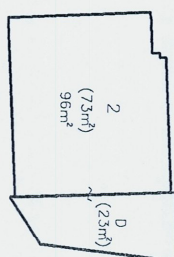
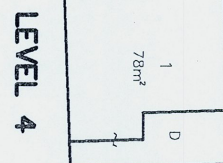
THE STRATUM OF THE OPEN COURTYARDS IS LIMITED IN HEIGHT TO ?? METRES ABOVE AND IN DEPTH TO ?? METRES BELOW THE UPPER SURFACE OF LEVEL 2 FINISH FLOOR LEVEL.

THE STRATUM OF THE OPEN DECK, WHERE NOT ROOFED, IS LIMITED IN HEIGHT TO ?? METRES ABOVE THEIR RESPECTIVE FLOOR LEVEL.

ALL COMMON SERVICE LINES ARE COMMON PROPERTY.

ALL SERVICE LINE WITHIN ONE LOT SERVICING ANOTHER LOT IS COMMON PROPERTY.

ALL BOUNDARY TIMBER FENCING AND CONCRETE BLOCK RETAINING WALLS ARE COMMON PROPERTY.



'FLOOR PLAN'

14/10/14  
DRAFT

DRAFT PLAN ONLY  
PLANS & AREAS SCALED FROM  
ARCHITECTS PLANS AND ARE  
SUBJECT TO FINAL DESIGN & SURVEY

NOTES:

D OPEN DECK

CY OPEN COURTYARD

CP COMMON PROPERTY

ALL AREAS ARE APPROXIMATE AND ARE  
MEASURED FOR STRATA PURPOSES ONLY.

00 10 20 30 40 50 60 70 80 90 100 110 120 130 140

Surveyor: ADAM CLERKE  
Surveyor Ref: 3493ASP  
Subdivision No:  
Lengths are in metres Reduction Ratio 1:200

Registered

SP

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<b>C12.3</b>	<b>N0085/14 for construction of 2 dwellings under SEPP Housing for Seniors or People with a Disability 2004 and strata-subdivision into two lots at 39 Cabbage Tree Road, Bayview NSW 2104</b>
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**Meeting:** Sustainable Towns and Villages Committee    **Date:** 20 April 2015

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**COMMUNITY STRATEGIC PLAN STRATEGY:**    Land Use & Development

**COMMUNITY STRATEGIC PLAN OBJECTIVE:**

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

**DELIVERY PROGRAM ACTION:**

Provide an effective development assessment and determination process

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**1.0    EXECUTIVE SUMMARY**

- 1.1    The Development Unit at its meeting held on the 12 March 2015 considered the Development Officer's report (refer **Attachment 1**) for determination of DA N0085/14 for construction of 2 dwellings under SEPP Housing for Seniors or People with a Disability 2004 and strata-subdivision into two lots at 39 Cabbage Tree Road, Bayview NSW 2104.
  - 1.2    This application has been called to Council by Cr Young.
  - 1.3    The Development Unit received two (2) representations, one (1) speaking against and one (1) speaking for the recommendation on this item.
  - 1.4    The Development Unit considered the issues raised in the Assessing Officer's report, issues raised by both speakers and were satisfied with the assessment and thus supported the officer's recommendation for refusal subject to the conditions contained in the Draft Reason for Refusal.
- 

**2.0    RECOMMENDATION**

**That the recommendation of the Development Officer be endorsed and Development Application N0085/14 for construction of 2 dwellings under SEPP Housing for Seniors or People with a Disability 2004 and strata-subdivision into two lots at 39 Cabbage Tree Road Bayview NSW 2104 be refused for the reasons outlined in the draft refusal notice attached.**

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**3.0    PURPOSE**

To seek endorsement of the Development Unit's recommendation following consideration of Development Application N0085/14 for construction of 2 dwellings under SEPP Housing for Seniors or People with a Disability 2004 and strata-subdivision into two lots at 39 Cabbage Tree Road, Bayview NSW 2104.

## **4.0 BACKGROUND**

The Development Unit at its meeting held on the 12 March 2015 considered the Development Officer's report (refer **Attachment 1**) for determination of DA N0085/14 for construction of 2 dwellings under SEPP Housing for Seniors or People with a Disability 2004 and strata-subdivision into two lots at 39 Cabbage Tree Road, Bayview NSW 2104.

This application was previously considered at the DU meeting at its meeting held on the 26 February 2015 whereby it was deferred to consider additional information and legal advice submitted by the applicant.

The Development Unit considered the issues raised by both the applicant and objector and the matters raised in the Assessing Officer's report. The DU agreed with the views of the Assessing Officer particularly in relation to the provision of services to be provided and supported the officer's recommendation for refusal subject to the conditions contained in the Draft Reasons for Refusal.

## **5.0 POLICY IMPLICATIONS**

Councillor Young has called the matter to Council in accordance with Council policy

## **6.0 RELATED LEGISLATION**

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

## **7.0 FINANCIAL ISSUES**

### **3.5.1 Budget**

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

### **3.5.2 Resources Implications**

No implications

## **8.0 KEY ISSUES**

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

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## **9.0 ATTACHMENTS / TABLED DOCUMENTS**

**ATTACHMENT 1** – Assessing Officer's report to the Development Unit meeting held on 12 March 2015.

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## **10.0 SUSTAINABILITY ASSESSMENT**

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

Report prepared by

Warwick Lawrence

**MANAGER, ADMINISTRATION & GOVERNANCE**

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

**Meeting:** Development Unit

**Date:** 12 March 2015

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**SUMMARY OF RECOMMENDATION**

**Refusal**

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

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**RECOMMENDATION OF DEVELOPMENT OFFICER / PLANNER**

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

Report prepared by  
Gordon Edgar, Executive Planner

Andrew Pigott  
**MANAGER, PLANNING & ASSESSMENT**

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

**Determination Level:            Development Unit    12 March 2015**

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**SUMMARY OF                    REFUSAL**  
**RECOMMENDATION:**

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**REPORT PREPARED BY:** Gordon Edgar

**APPLICATION                    31 March 2014**  
**SUBMITTED ON:**

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

**OWNER(S):                        MRS JANINE ELIZABETH CRAWFORD**



## **PREVIOUSLY DEFERRED MATTER**

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

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

The matter is re-submitted to the Development Unit for further consideration.

### **1.0 SITE DETAILS**

The subject site is known as 39 Cabbage Tree Road, Bayview. It has a legal description of Lot 2 in DP 531960. It is located on the southern side of Cabbage Tree Road. It is triangular in shape with a frontage of 77.23m to Cabbage Tree Road. Both its south-eastern and south-western boundaries adjoin Bayview Golf Course. The Site has a total area of 980.1sqm. The Site is vacant. The Site is vegetated with an almost continuous line of casuarinas lining the front boundary and in a clump in the middle of the Site. In addition, there are some eucalyptus trees in the western and southern corners. The Site is relatively flat. Adjacent to the south-eastern boundary is a small creek which encroaches into the Site at its southern corner. There is also an open drainage channel running within the road reservation down the eastern half of the road frontage to the Site.

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

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

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

## 2.0 PROPOSAL IN DETAIL

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

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

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

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

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

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



### 3.0 STATUTORY AND POLICY CONSIDERATIONS

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

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

#### 3.1 State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004 (**'SEPP (HSPD)'**)

##### 3.1 Application of SEPP (HSPD)

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

#### **"4. Land to which this Policy applies**

##### **(1) General**

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

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

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

Planner's Comment

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

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

The Site is considered to be land adjoining land zoned primarily for urban purposes and it is noted that the Application has been submitted on this basis and is confirmed on page 13 of the submitted Statement of Environmental Effects.

The list of uses that are permissible in the 6(b) zone under PLEP 1993 include *"group buildings or residential flat buildings required for use or occupation by persons employed in connection with a purpose permissible under this heading."*

A 'group building' is defined in PLEP 1993 as:

*"group building means a building consisting of 2 or more dwellings which are commonly known as group houses, villa homes, town houses, semi-detached or terrace buildings and the like, where each of those dwellings is designed, constructed or adapted for use as a separate dwelling."*

The common element in the character or design of all of the above building types is that the dwellings within them are all generally separated by party walls and arranged side-by-side rather than being arranged above or below one another, as is the case with the subject proposal. For this reason, it is considered that the subject proposal is less consistent with the 'group building' definition than it would with the definition of 'residential flat building.'

A 'residential flat building' is defined in the adopted portion of the Model Provisions in PLEP 1993 as follows:

*"'residential flat building' means a building containing 2 or more dwellings."*

This is considered to be the 'best fit' definition for the proposal within the list of permissible development in the 6(b) zone.

However, there is a provision that requires that the residential flat building be occupied by persons employed in connection with other permissible uses in the 6(b) zone. The question as to whether the provision that required the residential flat building to be used by persons employed by or in association with a permissible use in the 6(b) zone would preclude this form of development from being considered to be permissible in its own right under clause 4 of SEPP (HSPD) was considered in association with a previous development application for the Site (DA0045/12). In the assessment of this matter, reference was made to *TC Punnett and Associates Pty Ltd v Warringah Council [2001] NSWLEC 152*, where the circumstances were very similar to the subject proposal. In the *T.C. Punnett* case, the land in question was also zoned 6(b) Private Recreation "B" in the relevant LEP and this LEP had identical wording in its 6(b) land use table. *McEwen AJ* found in paragraph 24 of this judgement:

*"...the use of dwelling-houses or residential flat buildings "by persons employed in connection with a purpose permissible under this heading"...necessarily remains a use for the purpose of a dwelling-house or a residential flat building."*

In other words, the requirement regarding who occupies the building in the 6(b) land use table does not preclude dwellings or residential flat buildings from being considered to be permissible uses in the 6(b) zone for the purposes of determining the application of SEPP(HSPD) to the Site.

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

### 3.1.2 Serviced Self-Care Housing

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

***"17 Development on land adjoining land zoned primarily for urban purposes***

- (1) Subject to subclause (2), a consent authority must not consent to a development application made pursuant to this Chapter to*

*carry out development on land that adjoins land zoned primarily for urban purposes unless the proposed development is for the purpose of any of the following:*

- (a) A hostel,*
- (b) A residential care facility,*
- (c) Serviced self-care housing.*

*(2) A consent authority must not consent to a development application made pursuant to this Chapter to carry out development for the purposes of serviced self-care housing on land that adjoins land zoned primarily for urban purposes unless the consent authority is satisfied that the housing will be provided:*

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

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

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

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

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

The Applicant provided additional information in response to this issue on 15 October 2014 as follows:

*“The issue as to whether the required services must be provided from the site was dealt with by Cowdroy J in the matter of Information Gateways Pty Ltd v Hornsby Shire Council [2005] NSWLEC 242 where at paragraphs 24 to 25 the court found:*

*‘24. In respect of the provision for serviced self-care housing on land that adjoins land zoned primarily for urban purposes, the SLSEPP indicates the following:*

- It is the applicant’s responsibility to provide the services of meals, cleaning services, personal care and nursing care.*
- The provision of the services is part of the development.*
- The residents must have reasonable access to the services.*
- The applicant cannot rely on services provided by the Home and Community Care (HACC) program.*

*25. Clause 74(1) of the SLSEPP does not require the services referred to in subpara (a) must be provided from the site, i.e. that the meals must be cooked on the site. The Court therefore rejects the council’s primary submission.’*

*We note that Warringah Council recently approved a similar application subject to a deferred commencement condition requiring written evidence that in accordance with clause 42(1) and 92) (sic) of SEPP HSPD that residents of the proposed development will have reasonable access to:*

- (a) home delivered meals, and*
- (b) personal care and home nursing, and*
- (c) assistance with housework.*

*No objection is raised to such condition noting the abundance of private service providers within the Pittwater and Warringah LGA areas.”*

A number of concerns are raised with respect to the above response to this issue.

Research into the *Information Gateways Pty Ltd v Hornsby Shire Council* decision by Cowdroy J and the version of the SEPP that it would have been made under has revealed that, when this decision was made, the wording of the relevant clause concerning serviced self-care housing was different to the current wording of clause Clause 17 of SEPP (HSPD), which is reproduced above. At the time of the Information Gateways decision, the SEPP was known as State Environmental Planning Policy (Seniors Living) 2004 (“**SEPP(Seniors Living) 2004**”). The relevant serviced self-care housing clause was clause 74 rather than clause 17. The wording of Clause 74 at the time of the Information Gateways decision was as follows with essential differences to the current wording of clause 17(2) highlighted:

**“74 Serviced self-care housing**

- (1) *A consent authority must not consent to a development application made pursuant to this Chapter to carry out development for the purpose of serviced self-care housing on land that adjoins land zoned primarily for urban purposes unless the consent authority is satisfied, **by written evidence**, that residents of the proposed development will have reasonable access to:*
  - (a) **home delivered** meals, and
  - (b) personal care and home nursing, and
  - (c) assistance with housework.
- (2) *For the purposes of subclause (1), residents of a proposed development do not have reasonable access to the services referred to in subclause (1) if those services will be limited to services provided to residents under the Home and Community Care Program administered by the Commonwealth and the State.*
- (3) ***A consent authority must not consent to a development application made pursuant to this Chapter to carry out development for the purpose of serviced self-care housing on land that adjoins land zoned primarily for urban purposes unless it is satisfied that the development will result in 70 or more dwellings (whether because of a new development or alterations and additions to an existing development) for use as serviced self-care housing.***

In addition to the above changes, the definition of “serviced self-care housing” changed between SEPP (Seniors Living) 2004 and the currently applicable SEPP (HSPD). The current definition under clause 13(3) of SEPP (HSPD) of “serviced self-care housing” is reproduced above. The corresponding definition from clause 15 of SEPP (Seniors Living) 2004 is reproduced below with essential differences highlighted:

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

The change in the requirements from having “home delivered meals” being “provided on site” as a required service to having the provision of meals and other services available “on the site” is significant as it explains why the Court rejected Hornsby Council’s contention that the meals service had to be based on the site at that time. Given the change

in the wording of this requirement removing home delivered meals as an option, the Court may well have taken a different view in relation to the subject development. This is particularly likely given that the definition of serviced self-care housing has changed from the services being “provided on site” to the services being “available on the site.” The definition of “available” in the Macquarie Dictionary is “*suitable or ready for use; at hand; of use or service.*” This change provides clarification that the required services need to be made available or sourced from the Site rather than provided on site.

Subparagraph (3) of clause 74 of SEPP (Seniors Living) 2004 above gives some insight into the intention that the provision of serviced self-care housing on land that adjoins land zoned primarily for urban purposes was that it be a part of a larger development such that the on-site servicing provisions would already exist and be at a reasonable scale providing such services to multiple self-care dwellings on the one site and within the same development. It is of concern that the proposed development is only for a dual occupancy that is not a part of a larger aged care facility. The Site and the development are clearly too small for it to be reasonable or practical for the requisite services to be provided by staff based on the site.

The note in clause 17(2) of SEPP (HSPD) excludes the possibility of the requisite services being provided or funded by government community based packages. Such services are based off-site but are provided on site. This would imply that privately based off-site services may also not be considered to be “reasonable access” to such services.

The quoted paragraphs of the Information Gateways decision also need to be considered in the context of the full judgement and its findings. In the paragraphs of the Information Gateways decision that immediately followed the previously quoted paragraphs 24 & 25, the following findings were made:

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

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



are to be provided have been agreed, and that the services will be provided **for the life of the development**. The consent authority therefore requires:

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

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

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

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

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

*“In this Policy, **people with a disability** are people of any age who have, either permanently or for an extended period of time, one or*

*more impairments, limitations or activity restrictions that substantially affect their capacity to participate in everyday life."*

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

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

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

#### 3.1.3 Future Resident Restrictions and Strata Subdivision

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

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

#### 3.1.4 Site Compatibility Certificate

Clause 24 of SEPP (HSPD) stipulates that certain development on land adjoining land zoned primarily for urban purposes must have a site

compatibility certificate. This requirement does not apply to dual occupancy development however and, for the purposes of this clause, the development is considered to be dual occupancy development, thus not requiring a site compatibility certificate.

#### 3.1.5 Accessibility

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

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

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

The proposal involves constructing a new footpath to link the pedestrian access to the building to an existing pedestrian crossing refuge on Cabbage Tree Road, just to the west of the Site, utilizing the existing footpath on the northern side of Cabbage Tree Road and extending this footpath down Annam Road to connect with the existing bus stop on the north-eastern side of Annam Road. This bus stop is approximately 215m from the Site and the 155 service to Mona Vale, Narrabeen, Collaroy, Dee Why, Warringah Mall and Manly, where the requisite facilities and services are available. The SEPP requires at least 1 bus service to these destinations between 8am and Midday and 1 bus service between Midday and 6pm Mondays to Fridays. The 155 service has 4 services in the stipulated morning period and 6 services in the afternoon period.

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

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

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

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

### 3.1.6 Design Requirements

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

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

*The proposed development should:*

- (a) recognise the desirable elements of the location's current character (or, in the case of a precinct undergoing transition, where described in local planning controls, the desired future character) so that new buildings contribute to the quality and identity of the area, and*
- (b) retain, complement and sensitively harmonise with any heritage conservation areas in the vicinity and any relevant heritage items that are identified in a local environmental plan, and*
- (c) maintain reasonable neighbourhood amenity and appropriate residential character by:*
  - i) providing building setbacks to reduce bulk and overshadowing, and*
  - ii) using building form and siting that relates to the site's land form, and*
  - iii) adopting building heights at the street frontage that are compatible in scale with adjacent development, and*
  - iv) considering, where buildings are located on the boundary, the impact of the boundary walls on neighbours, and*
- (d) be designed such that the front building of the development is set back in sympathy with, but not necessarily the same as, the existing building line, and*
- (e) embody planting that is in sympathy with, but not necessarily the same as, other planting in the streetscape, and*
- (f) retain, wherever reasonable, major existing trees, and*
- (g) be designed so that no building is constructed in a riparian zone."*

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

#### "Streetscape Character

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

*In close proximity, under the canopy trees, continuous open space occurs along the southern alignment, whilst residential development*

*occurs only on the northern alignment. This arrangement provides a unique visual and physical streetscape character.*

*Proposed Development within Southern Alignment of Cabbage Tree Road*

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

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

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

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

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

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

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

Clause 34 relates to visual and acoustic privacy. As discussed elsewhere in the body of this report, the Bayview Golf Course has objected to the development stating that the proposed dual occupancy use conflicts with the adjoining golf course use and that the day to day operations of the golf course will cause visual and acoustic privacy impacts for the future residents of the development. The design of the building has addressed these issues where possible.

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

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

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

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

and enabling the residents to view approaching visitors from within their dwellings. Such matters could be conditioned.

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

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

#### 3.1.7 Development Standards to be Complied With

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

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

#### 3.1.8 Development on Land Adjoining Land Zoned Primarily for Urban Purposes

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

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

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



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

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

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

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

The lack of adequate written evidence in the Application to demonstrate that residents of the development will have reasonable access to the required home-based services was raised with the town planning consultant for the Applicant and their response is detailed under section 3.1.2 of this report. This response merely states that such a requirement could be conditioned and quotes a Land and Environment Court judgement in which the relevant judgement actually rejects the reliance upon a condition to satisfy this requirement as being inappropriate in the circumstances.

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

This is considered to be an issue of concern as no written evidence has been provided in the Application to demonstrate that reasonable access to such home-based services is provided, as discussed under section 3.1.2 of this report.

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

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

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

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

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

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

Again, it would appear that the Applicant would be relying upon a condition to be imposed upon an off-site service provider who has not been nominated and who has not agreed to anything at this point of time and may well not wish to agree to an extended period of time, such as the likely 40 year life of the development. As demonstrated earlier in this report, this is not considered to be an acceptable way to address this requirement, particularly when there is great uncertainty as to who the condition should be requiring to provide the services and how or if this responsibility is transferred over the life of the development.

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

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

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

Control Type	Standard	Proposed	Comment
Height	8m maximum	< 8m	Complies
FSR	0.5:1	0.28:1	Complies
Landscaped Area	30% Minimum	51.3%	Complies

Deep Soil Area	15% Minimum	51.3%	Complies
Solar Access	3hrs minimum in Midwinter	Achieved	Complies
Private Open Space	10sqm minimum per unit	Achieved	Complies
Parking	2 spaces required	4 spaces provided	Complies

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

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

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

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

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

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

In such circumstances, it cannot be legitimately argued that requiring numerical compliance with a minimum site size development standard is "unreasonable or unnecessary". Not only is it considered that strict enforcement of this development standard is necessary but, it is also

considered that, in order to meet the on-site service requirements for 'serviced self-care housing' it is likely that a considerable larger development site than 1,000sqm would most likely be required in order to make it a viable development in terms of the provision of on-site services.

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

### **3.3 Pittwater Local Environmental Plan 2014 (PLEP 2014)**

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

In this regard, the Site is zoned RE2 Private Recreation under PLEP 2014. In this zone under this instrument residential flat buildings are not permissible development under any circumstances. Consequently, the provisions of SEPP (HSPD) would not apply to the Site and the proposed development would be prohibited. As PLEP 2014 articulates the future planning intent for the use of the Site it is relevant to take this into account in the assessment of the subject application. The proposal is clearly contrary to the future land use intent for the Site, as expressed in PLEP 2014. This is a recommended reason for refusal.

### **3.4 Pittwater Local Environmental Plan 1993 (PLEP 1993)**

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

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

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

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

#### **4.0 BACKGROUND**

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

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

#### **5.0 NOTIFICATION**

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

## 6.0 ISSUES

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

## 7.0 COMPLIANCE TABLE

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

Control	Standard	Proposal	T	O	N
<b>Pittwater Local Environmental Plan 1993</b>					
33. Preservation of trees or vegetation			Y	Y	Y
39. Suspension of covenants, etc.			-	-	-
46. Provision of adequate water and sewerage services			Y	Y	Y
5 Consideration of certain applications			-	-	-
<b>Pittwater 21 Development Control Plan</b>					

<b>Control</b>	<b>Standard</b>	<b>Proposal</b>	<b>T</b>	<b>O</b>	<b>N</b>
3.1 Submission of a Development Application and payment of appropriate fee		See comment below.	N	Y	Y
3.2 Submission of a Statement of Environmental Effects			Y	Y	Y
3.3 Submission of supporting documentation - Site Plan / Survey Plan / Development Drawings			Y	Y	Y
3.4 Notification			Y	Y	Y
3.5 Building Code of Australia			Y	Y	Y
3.6 State Environment Planning Policies (SEPPs) and Sydney Regional Environmental Policies (SREPs)			-	-	-
6.2 Section 94 Contributions - Open Space Bushland and Recreation		S.94 Open space contribution = \$18,000	Y	Y	Y
6.3 Section 94 Contributions - Public Library Services		S.94 Library Contribution = \$4,000	Y	Y	Y
6.4 Section 94 Contributions - Community Service Facilities		S.94 Community Services Contribution = \$7,000	Y	Y	Y
6.5 Section 94 Contributions - Village Streetscapes		S.94 Village Streetscape contribution = \$10,000	Y	Y	Y
A1.7 Considerations before consent is granted		Refer to discussion below regarding objection issue of potential conflict of adjoining land uses.	Y	Y	N
A4.9 Mona Vale Locality		Refer below for detailed discussion.	Y	Y	N
B1.3 Heritage Conservation - General			-	-	-
B1.4 Aboriginal Heritage Significance		No apparent issues.	Y	Y	Y



<b>Control</b>	<b>Standard</b>	<b>Proposal</b>	<b>T</b>	<b>O</b>	<b>N</b>
B3.5 Acid Sulphate Soils		Refer to comment below.	Y	Y	Y
B3.6 Contaminated Land and Potentially Contaminated Land			Y	Y	Y
B3.19 Flood Hazard - Flood Category 1 - High Hazard - Other Development		Objections have raised flood impact and human safety concerns due to flooding. These issues are discussed in detail below.	Y	Y	N
B3.23 Climate Change (Sea Level Rise and Increased Rainfall Volume)			Y	Y	Y
B4.13 Freshwater Wetlands (non Endangered Ecological Communities)		Refer to comment below in discussion section.	Y	Y	Y
B4.14 Development in the Vicinity of Wetlands		For comment see B4.13	Y	Y	Y
B5.2 Wastewater Disposal			Y	Y	Y
B5.4 Stormwater Harvesting			Y	Y	Y
B5.9 Stormwater Management - Water Quality - Other than Dwelling House, Dual Occupancy and Secondary Dwellings			Y	Y	Y
B5.10 Stormwater Discharge into Public Drainage System			Y	Y	Y
B6.2 Access Driveways and Works on the Public Road Reserve- All Development other than Dwelling Houses, Secondary Dwelling and Dual Occupancy			Y	Y	Y
B6.4 Internal Driveways - All Development other than Dwelling Houses, Secondary Dwelling and Dual Occupancy			Y	Y	Y

<b>Control</b>	<b>Standard</b>	<b>Proposal</b>	<b>T</b>	<b>O</b>	<b>N</b>
B6.6 Off-Street Vehicle Parking Requirements - All Development other than Dwelling Houses, Secondary Dwelling and Dual Occupancy	2 spaces required	4 spaces provided. Objections raised concern over parking provision. Refer to discussion below.	Y	Y	N
B6.10 Transport and Traffic Management - All Development other than Dwelling Houses, Secondary Dwelling and Dual Occupancy		Refer to discussion below.	Y	Y	N
B8.2 Construction and Demolition - Erosion and Sediment Management			Y	Y	Y
B8.3 Construction and Demolition - Waste Minimisation			Y	Y	Y
B8.4 Construction and Demolition - Site Fencing and Security			Y	Y	Y
B8.5 Construction and Demolition - Works in the Public Domain			Y	Y	Y
B8.6 Construction and Demolition - Traffic Management Plan		Refer to discussion below.	Y	Y	N
C1.1 Landscaping		For comment see B4.13	Y	Y	Y
C1.2 Safety and Security			Y	Y	Y
C1.3 View Sharing			Y	Y	Y
C1.4 Solar Access		Refer to discussion below for solar access assessment.	Y	Y	Y
C1.5 Visual Privacy			Y	Y	Y
C1.6 Acoustic Privacy			Y	Y	Y
C1.9 Adaptable Housing and Accessibility		Refer to discussion below.	Y	Y	N
C1.10 Building Facades			Y	Y	Y
C1.12 Waste and Recycling Facilities			Y	Y	Y
C1.13 Pollution Control			Y	Y	Y

<b>Control</b>	<b>Standard</b>	<b>Proposal</b>	<b>T</b>	<b>O</b>	<b>N</b>
C1.15 Storage Facilities	A lockable storage area of minimum 8 cubic metres per dwelling shall be provided. This may form part of a carport or garage.	Storage areas are not shown on the plans however, it is considered that this provision could be conditioned, should the development be approved.	N	Y	Y
C1.20 Undergrounding of Utility Services			Y	Y	Y
C1.21 SEPP (Housing for Seniors or People with a Disability) 2004		Objections have raised concern regarding the compliance of the development with the provisions of SEPP(HSPD). Refer to section 3.1 of this report for full assessment.	N	N	N
C1.23 Eaves			Y	Y	Y
C1.24 Public Road Reserve - Landscaping and Infrastructure			Y	Y	Y
D9.1 Character as viewed from a public place	Relevant controls include: Minimise bulk/scale; parking structures must not be dominant feature when viewed from public place; parking structures behind the front building line and be no greater than 50% of lot frontage, or 7.5 metres, whichever is lesser.	Objections have raised concern over the visual impact of the development on the character of the locality and the streetscape. This is discussed below in relation to the provisions of section D9.1 of the DCP.	N	Y	N
D9.2 Scenic protection - General			Y	Y	Y
D9.3 Building colours and materials			Y	Y	Y
D9.4 Height - General	Maximum building height permitted is 8.5m. A permitted variation is 8m above the Flood Planning Level.	Less than 8m.	Y	Y	Y

Control	Standard	Proposal	T	O	N
D9.6 Front building line	Required minimum front building setback for 6(b) zoned land is based upon a merit assessment.	The proposal has a predominant front building setback of 6.5m from the street. This is appropriate for a residential building. There are some minor projections which add to the articulation of the front elevation of the building and do not have any adverse impacts.	Y	Y	Y
D9.7 Side and rear building line	Technically, there are no side or rear setback provisions for 6(b) zoned land. As a guide, the dual occupancy setback provisions area are side setbacks of 1m and 2.5m and a rear setback of 6.5m.	Objections have raised concern over the adequacy of the proposed setbacks. Refer below for detailed discussion of the performance of the development against side and rear setback controls and outcomes.	Y	Y	N
D9.12 Fences - General		No new fencing proposed.	-	-	-
<b>State Environmental Planning Policies and other EPI's</b>					
SEPP (Housing for Seniors or People with a Disability) 2004		Refer to C1.12 and Section 3.1 of this report for detailed considerations of the development against the requirements of SEPP(HSPD).	N	N	N

## 8.0 DISCUSSION OF ISSUES

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

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

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

### A1.7 Considerations before consent is granted

#### Potential Conflict between Adjoining Land Uses

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

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

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

The golf course has requested that, should the development be approved, Council impose conditions that require indemnities to be recorded on the title of the land that indemnifies the golf club from any damages caused by errant golf balls or by the day to day operations of the golf course and its maintenance yard. It also requests that chain wire fencing be provided along unfenced boundaries at the expense of the developer.

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

#### Cost of Development

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

#### Risk to Council in Approving Non-Complying Development Application

An objection has raised concern that, if Council approved this non-compliant development application, it is at risk of legal action against the consequences of such a decision. The Application is recommended for

refusal but even if it were to be approved, it is not agreed that this perceived risk should prevent Council from approving a non-complying development application if Council should consider that the application has sufficient merit notwithstanding the non-compliance.

#### Risk of Precedent

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

#### **A4.9 Mona Vale Locality**

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

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

*"Existing residential areas will remain primarily low-density with dwelling houses a maximum of two storeys in any one place in a landscaped setting, integrated with the landform and landscape.....Any dual occupancy dwellings will be located on the valley floor and lower slopes that has less tree canopy coverage, species and habitat diversity and fewer other constraints to development....*

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

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

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

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

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

### **B3.5 Acid Sulphate Soils**

Council's Natural Resources officer has advised the following:

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

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

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

Flooding has been raised as a concern in objections.

Council's Catchment Management Unit have reviewed the proposal and advised the following:

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

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

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

*The proposed development is assessed under B3.23 Climate Change (Sea Level Rise and Increased Rainfall Volume) as the*



*proposal intensifies the number of dwellings within the floodplain from existing conditions.*

*The flood levels incorporating climate change for the site are:*

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

#### *Floor Levels*

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

#### *Impacts to Flood Storage*

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

#### *Impacts of Floodway*

*The proposed development does not address the original concern of developing within a floodway and its impact on residents and visitors to the property. Conditions are required to ensure the structural integrity of building piers to withstand the hydraulic forces of floodwaters and debris, and to manage the use of the land and subsequent flood risk to current ground level.*

#### *Flood Compatible Materials, Electrical Equipment and Storage of Hazardous Goods*

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

#### *Structural Integrity*

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

#### *Flood Emergency Response*

*The Flood Risk Report has stated the requirements for evacuation but does not specifically mention the actions of residents for this building in the event of an emergency. A condition is required to ensure that a Flood Emergency Response Plan is prepared. This*

*Plan should state evacuation is the preferred method of emergency response and the residents are suitably advised of the arrangements.*

#### Car Parking

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

#### Intensification

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

### **B4.13 Freshwater Wetlands (non Endangered Ecological Communities)**

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

*"The property is currently vacant and consists of two (2) dominant species of canopy tree (Casuarina glauca and Swamp Mahogany) and grassy ground cover. The proposed works include construction of an affordable rental housing development containing two dwellings and strata subdivision. An arborist report has been supplied (Urban Forestry Australia, December 2011) and identifies seventy (70) trees on site. All are locally native. Twenty-four (24) trees have been identified for removal. Of there, two (2) of these are in poor health and are not suitable for retention and one (1) is an immature specimen (Swamp Mahogany) which has been recommended for removal and replacement on site.*

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

*There are no further natural resource issues."*

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

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

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

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

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

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

#### **B8.6 Construction and Demolition - Traffic Management Plan**

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

#### **C1.4 Solar Access**

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

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

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

#### **C1.9 Adaptable Housing and Accessibility**

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

#### **D9.1 Character as viewed from a public place**

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

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

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

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

#### **D9.7 Side and Rear Building Line**

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

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

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

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

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

## **9.0 CONCLUSION**

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

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

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

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

The required written evidence has not been provided to give Council any certainty whatsoever that the on-site services are able to be provided for the lifetime of the development. It is doubtful, given the changes in the servicing requirements that accepting off-site services would be acceptable as the commitment must be for the lifetime of the development and this would be unlikely to occur given the likely period this may involve of approximately 40 years and the fact that contracts or agreements would apply to nominated individuals or companies that may not be in existence for this lengthy time period. Any period during which the required services could not be provided or cease to be provided would render the development prohibited and disadvantage the disabled residents within the development.

The development is also proposed to be subdivided by strata title. Thus, once the strata units are sold, the responsibility of the ongoing management of the development would fall on the future Body Corporate rather than the Applicant.

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

It is also relevant to note that, should Council grant consent to the subject development as serviced self-care seniors housing, the approved development would immediately then benefit from existing use rights as it is no longer permissible due to the change in permissible uses between PLEP 1993 and PLEP 2014. The current RE2 Private recreation zoning of the Site under PLEP 2014 does not permit residential flat buildings (or dual occupancy development) under any circumstances. Thus, the development would be contrary to the planning intent of the Site, as expressed in its zoning. Any future alterations and additions to this now prohibited development would not be subject to

numerical DCP or LEP provisions that govern building height, setbacks, density or parking requirements. In such circumstances, great care should be taken to ensure that the development is appropriate for the site and location and that it will properly cater for the people for which it is intended under the provisions of SEPP (HSPD), that is, for people with a disability who have distinct needs for assistance with independent living. Such certainty has not been demonstrated.

The limited size of this development has a direct influence on the inability of this development to incorporate on-site services which is why it is not considered that any SEPP 1 variation to the minimum site area for seniors housing of 1,000sqm should be supported. It is likely that a much larger site area than 1,000sqm is necessary to effectively provide serviced self-care seniors housing that meets the relevant servicing requirements.

Given the identified outstanding issues with this development, it is recommended for refusal.

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#### **RECOMMENDATION OF DEVELOPMENT OFFICER/PLANNER**

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

Report prepared by

Gordon Edgar

Date: 4 March 2015

# DRAFT

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**REFUSAL  
ENVIRONMENTAL PLANNING & ASSESSMENT ACT, 1979 (AS AMENDED)  
NOTICE TO APPLICANT OF DETERMINATION  
OF A DEVELOPMENT APPLICATION**

Applicants Name and Address:

Janine Crawford  
239 Lower Plateau Road  
Bilgola Plateau NSW 2107

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

Pursuant to section 80(1) of the Act, notice is hereby given of the determination by Pittwater Council, as the consent authority, of Development Application No **N0085/14** for:

**construction of 2 dwellings under SEPP Housing for Seniors or People with a Disability 2004 and strata-subdivision into two lots**

**At: 39 CABBAGE TREE ROAD, BAYVIEW NSW 2104 (Lot 2 DP 531960)**

**Decision:**

The Development Application has been refused for the following reasons:

1. The development site does not comply with the minimum site size required under clause 40(2) of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 ('SEPP (HSPD)'). The submitted SEPP 1 Objection to this development standard is not considered to be well-founded as the lack of site area directly contributes to the inability of the development to be consistent with the definition of 'serviced self-care housing' under SEPP (HSPD) rendering the proposal prohibited development.
2. The development would be prohibited under the provisions of Pittwater Local Environmental Plan 2014 as the RE2 zoning would not permit residential flat buildings and the provisions of State Environmental Planning Policy (Housing for Seniors or People with a Disability) would no longer apply to the Site. Consequently, the development is not satisfactory as it is contrary to the future land use planning intent for the Site having regard for Section 79C(1)(a)(ii) of the Environmental Planning & Assessment Act, 1979.
3. The proposal is prohibited development and is not satisfactory having regard for clauses 13(3), 17, 42 & 44, of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 as the development is not consistent with the definition of 'serviced self care housing' in relation to the requirement for the provision of reasonable access to home-based services which are available on the site including the provision of meals, personal care, home nursing and assistance with housework.

**NOTES**

1. This determination was taken under delegated authority on behalf of the elected Council pursuant to Section 377 of the Local Government Act 1993.
2. An applicant may under Section 82A of the Act, apply to council to review this determination.
3. Section 97 of the Act confers on the applicant who is dissatisfied with the determination of a consent authority a right of appeal to the Land & Environment Court exercisable within 6 months after receipt of this notice.
4. Any person who contravenes this notice of determination of the abovementioned development application shall be guilty of a breach of the Environmental Planning & Assessment Act, 1979, and shall be liable to a monetary penalty and for a restraining order which may be imposed by the Land and Environment Court.

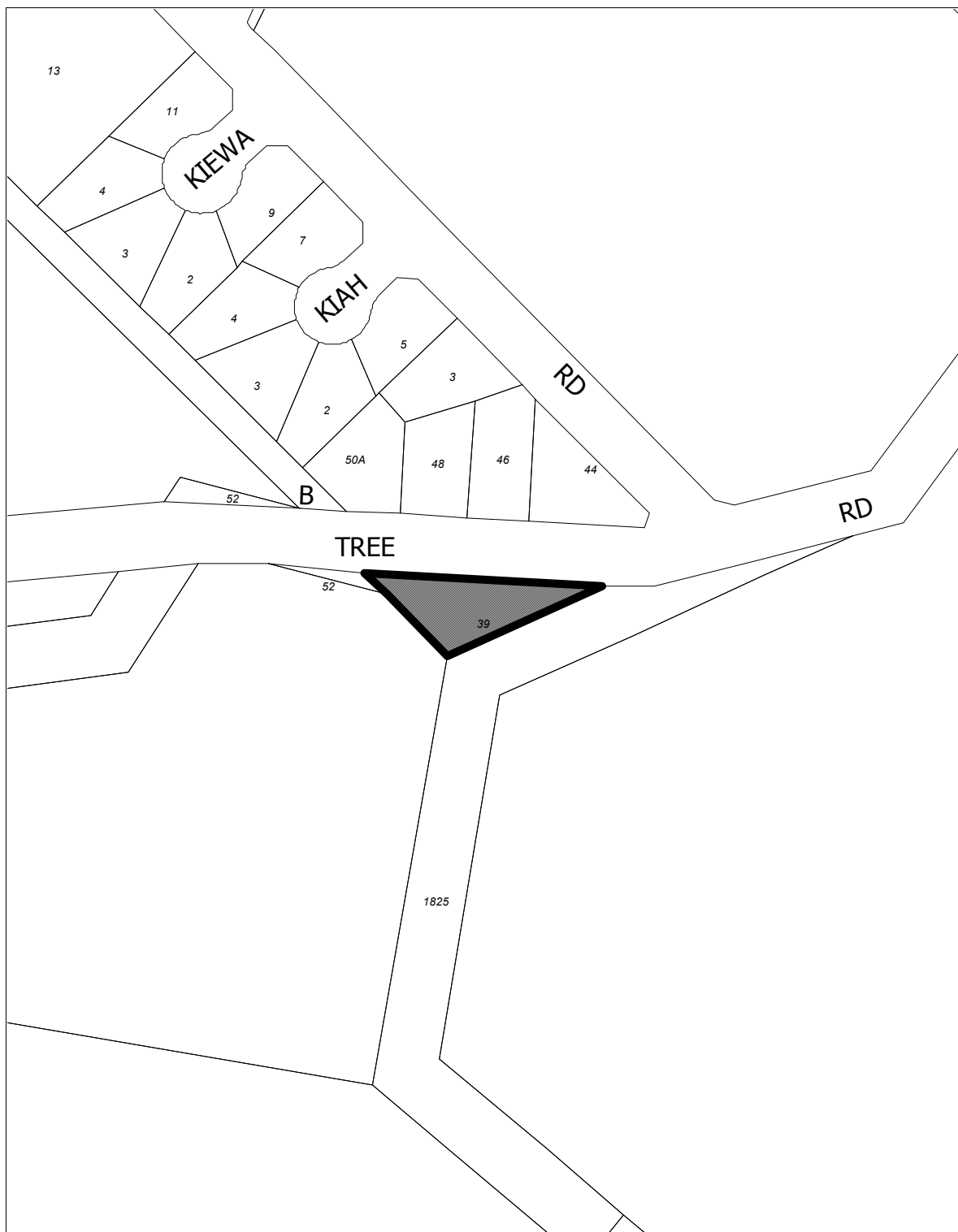


# DRAFT

Mark Ferguson  
GENERAL MANAGER  
Per:

Date: \_\_\_\_\_

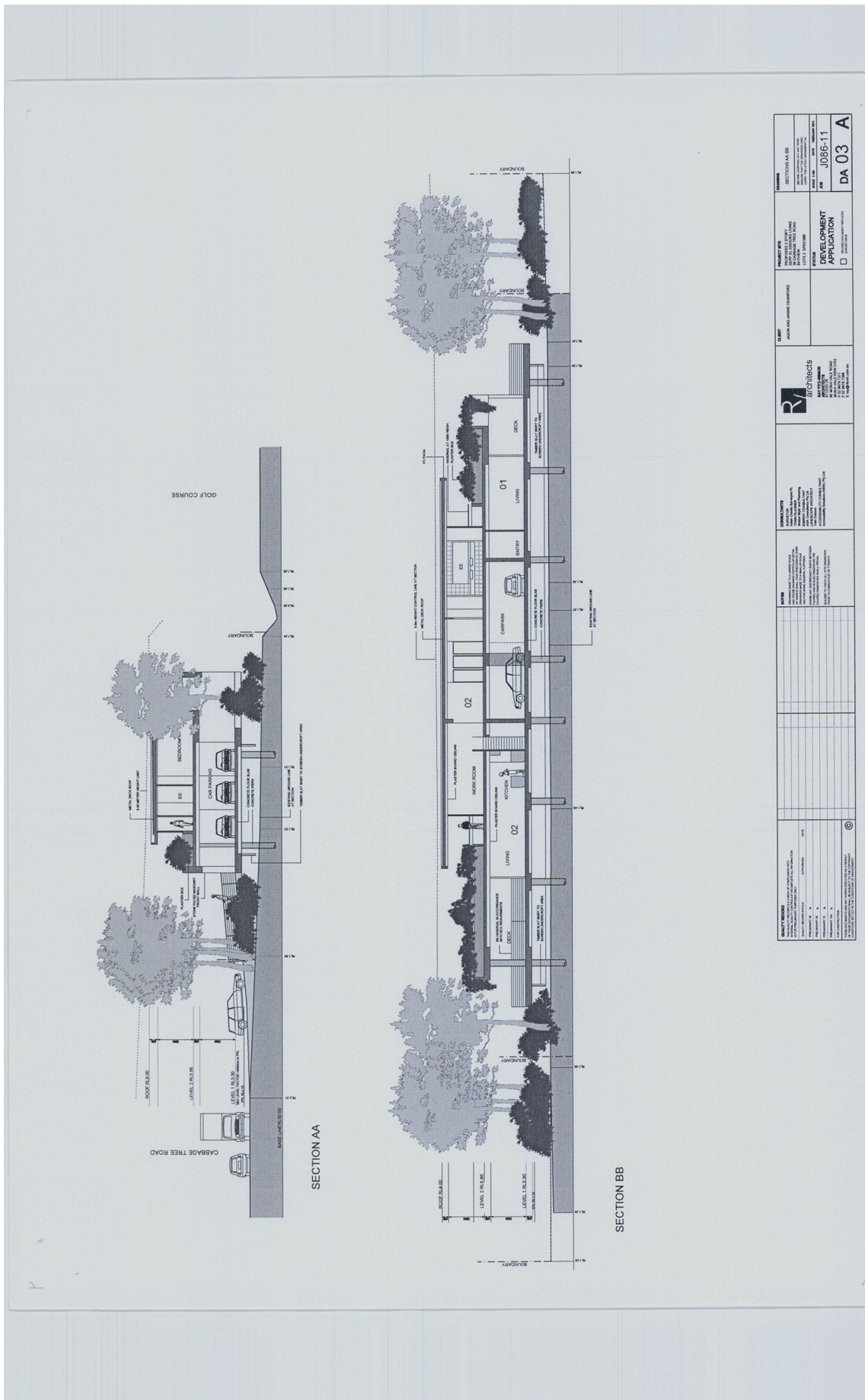
## LOCALITY MAP

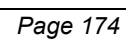


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## **C12.4 Pittwater Community Based Heritage Study Review (2015)**

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**Meeting:** Sustainable Towns & Villages Committee      **Date:** 20 April 2015

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**COMMUNITY STRATEGIC PLAN STRATEGY:** Land Use & Development

**COMMUNITY STRATEGIC PLAN OBJECTIVE:** To identify and conserve Pittwater's heritage

**DELIVERY PROGRAM ACTION:** Implement recommendations from the Community Based Heritage Study

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### **1.0 EXECUTIVE SUMMARY**

#### **1.1 SUMMARY**

On 20 February 2012, Council was informed that Pittwater had been successful in its application for funding from the NSW Heritage Branch (under the Office of Environment & Heritage) who had called for expressions of interest for funding grants to undertake a 'Community Based Heritage Study'.

The Pittwater Community Based Heritage Study Review (2015) has been prepared by Heritage Consultants, City Plan Heritage, with assistance from a Heritage Study Working Group, which included members of the Pittwater community.

The Pittwater Community Based Heritage Study Review (2015) provides an updated and contemporary Heritage Study for Pittwater, including an updated Thematic History and list of heritage items.

The draft Pittwater Community Based Heritage Study Review was publicly exhibited between Saturday 2 August and Saturday 13 September 2014 (43 days inclusive). During the public exhibition, a total of 57 submissions were received. City Plan Heritage considered all submissions received, and updated and revised the draft Pittwater Community Based Heritage Study Review as necessary.

One of the intentions of this report is to present to Council the final Pittwater Community Based Heritage Study Review (2015) (**Tabled Document**).

Should Council endorse the recommendation contained in this report, the following key actions will result:

- The Pittwater Community Based Heritage Review (2015) will become the most up to date and contemporary Heritage Study for Pittwater
- Schedule 5 (Environmental heritage) of the Pittwater Local Environmental Plan (LEP) 2014 will be amended (dependant on the outcome of the public exhibition) to include the updated list of heritage items
- The heritage controls in the Pittwater 21 Development Control Plan (DCP) will be amended (dependant on the outcome of the public exhibition)



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## 2.0 RECOMMENDATION

1. That Council adopt the Pittwater Community Based Heritage Study Review (2015) (Tabled Document).
  2. That Council endorse the Planning Proposal at Attachment 1 for forwarding to the Department of Planning & Environment (DP&E) with a request for a Gateway Determination to certify the commencement of a public exhibition to amend Schedule 5 (Environmental heritage) of the Pittwater Local Environmental Plan (LEP) 2014.
  3. That Council endorse making a request to the DP&E that Council's delegate (the General Manager) exercise delegation to finalise the proposed amendments to Schedule 5 (Environmental heritage) of the Pittwater LEP 2014.
  4. That Council endorse the draft Pittwater 21 Development Control Plan (DCP) heritage controls at Attachment 2 for public exhibition.
  5. That the significant contribution made by the Study Team, including the Heritage Study Working Group and City Plan Heritage, towards the preparation of the Pittwater Community Based Heritage Study Review (2015) be acknowledged.
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## 3.0 BACKGROUND

### 3.1 PURPOSE

The purpose of this report is:

- To present to Council the final Pittwater Community Based Heritage Study Review (2015) (**Tabled Document**).
- To seek Council's endorsement to forward the Planning Proposal (**Attachment 1**) to amend Schedule 5 (Environmental heritage) of the Pittwater LEP 2014 to the DP&E for a Gateway Determination to certify the commencement of a public exhibition.
- To seek Council's endorsement to request to the DP&E that Council's delegate (the General Manager) exercise delegation to finalise the proposed amendments to Schedule 5 (Environmental heritage) of the Pittwater LEP 2014.
- To seek Council's endorsement of the draft Pittwater 21 DCP heritage controls at **Attachment 2** for public exhibition.
- To acknowledge the significant contribution made by the Study Team, including the Heritage Study Working Group and City Plan Heritage, towards the preparation of the Pittwater Community Based Heritage Study Review (2015).

### 3.2 BACKGROUND

On 20 February 2012, Council was informed that Pittwater had been successful in its application for funding from the NSW Heritage Branch (under the Office of Environment & Heritage) who had called for expressions of interest for funding grants to undertake a 'Community Based Heritage Study'.

Subject to compliance with standard conditions and timeframes, Council received confirmation that a grant of up to \$50,000 had been approved to assist Council in undertaking a Community Based Heritage Study Review for Pittwater.

The guide for undertaking a Community Based Heritage Study – *Community-based heritage studies: A guide* (NSW Heritage Branch 2013) – states that a Heritage Study investigates the history of a Local Government Area (LGA), and identifies and assesses items and places of local heritage significance that demonstrate this history. A Heritage



Study explains why the items or places are significant and recommends ways to manage and conserve such significance.

A Community Based Heritage Study is undertaken utilising a community-based approach. It gives the community the opportunity to make a valuable contribution to a Heritage Study, with appropriate guidance from a Heritage Consultant.

The Pittwater LEP 2014 currently lists 130 individual items of local heritage significance and six heritage conservation areas within the Pittwater LGA.

The items currently listed in Schedule 5 (Environmental heritage) of the Pittwater LEP 2014 have been drawn from existing Heritage Studies that collectively apply to the Pittwater LGA. These are:

- *Barrenjoey Peninsula and Pittwater Heritage Study*, Volumes 1-4, McDonald McPhee Pty Ltd and Craig Burton, January 1989,
- *Ingleside/Warriewood Urban Release Area Heritage Study*, Tropman & Tropman Architects, July 1993, and
- *Warringah Heritage Study*, Hughes Trueman Ludlow, April 1994. This study applies to the area of Pittwater generally south of Mona Vale Road that was not included in the Barrenjoey Peninsula and Pittwater Heritage Study.

The Pittwater Community Based Heritage Study Review incorporates a review of these studies and provides an updated and contemporary Heritage Study for Pittwater.

On 20 February 2012, Council resolved:

1. *That the information provided in the report be noted.*
2. *That Council engage a suitably qualified consultant to undertake the Community Based Heritage Study review.*
3. *That a 'Heritage Study Working Group' be established through a process of expressions of interest, with a selection panel to determine the composition of the Group.*
4. *That Cr White be nominated to be a member of the 'Heritage Study Working Group' and this Councillor participate in the selection of community participants in the Group.*
5. *That the community be invited to nominate items of heritage significance for consideration by the heritage consultant and the 'Heritage Study Working Group' during the review process.*
6. *That the draft heritage study and progress reports be submitted to the NSW Heritage Branch as required by the conditions of the funding grant (by 15 May 2012 and 15 May 2013).*
7. *That the draft heritage study prepared during the review process be reported back to Council prior to public exhibition.*

## **Consultant commissioned to undertake the Pittwater Community Based Heritage Study Review**

On 2 March 2012, Council engaged City Plan Heritage to undertake the Pittwater Community Based Heritage Study Review, with Musecape as a sub-consultant on landscape issues.

The role of City Plan Heritage was as follows:

- Review and update Pittwater's existing Heritage Studies, including the thematic local history as necessary
- Complete the relevant steps set out in *Community-based heritage studies: A guide* (NSW Heritage Branch 2013)
- Work with a Heritage Study Working Group
- Consult with the community regarding potential new heritage items and the significance and relevance of current items
- Review submissions received regarding potential new heritage items and the significance and relevance of current items
- Review submissions received during the public exhibition of the draft Pittwater Community Based Heritage Study Review and make further recommendations or amendments based on the community response
- Deliver a consolidated Heritage Study for Pittwater, including an assessment of any recommended items and an update of the significance and relevance of current items

### **The Heritage Study Working Group**

In February 2012, expressions of interest were sought for the Heritage Study Working Group (the Working Group). The Working Group comprised:

- The Heritage Consultant and Landscape Heritage Consultant
- One councillor
- Three members of Council's Strategic Planning Team
- One staff member from the library
- 13 volunteers from the community

The role of the Working Group was to undertake research, nominate and consider the local heritage significance of items and make recommendations for the future management and promotion of local heritage items.

The Working Group had a total of four meetings. At the first meeting, which was held on 29 March 2012, City Plan Heritage were introduced and the Working Group were invited to make nominations for potential heritage items. It was advised that nominations were also invited from the wider community.

The second meeting, which was held on 20 April 2012, involved discussion of the nominations received and arranging necessary site visits.

The third meeting, which was held on 17 May 2012, involved discussion around the assessment of the nominated items and the outcomes of the site visits. City Plan Heritage also outlined the list of potential recommended nominated heritage items and invited questions and comments from the Working Group.

On 28 February 2013, the Working Group met for the fourth and final time. At this meeting, City Plan Heritage briefed the Working Group on the draft Pittwater Community Based Heritage Study Review, including the recommended nominated heritage items.

## **Nominations for potential heritage items**

On 15 March 2012, Council sent letters to all registered community groups in Pittwater inviting nominations for potential heritage items, including any information on local history or known heritage items. An advertisement was also placed in the Manly Daily on 17 March 2012 and a Council media release was issued on 19 March 2012.

The timeframe for nominations closed on 13 April 2012. Over 130 nominations were received from members of the Working Group, the community, community groups, and the Australian Institute of Architects.

## **Heritage Branch Funding**

Council has received payment for the full grant (i.e. \$50,000) from the NSW Heritage Branch.

On 21 July 2014, Council was informed of the background to the draft Pittwater Community Based Heritage Study Review with a recommendation that it be placed on public exhibition. Council subsequently resolved:

1. *That the information provided in this report be noted.*
2. *That the draft Pittwater Community Based Heritage Study Review (2014) as tabled, be placed on public exhibition for 42 days.*
3. *That a report on the outcome of the public exhibition be included in consideration of a future Planning Proposal and be reported to Council.*
4. *That the valuable contribution made by the volunteer members of the Heritage Study Working Group be acknowledged.*

### **3.3 POLICY IMPLICATIONS**

Should Council endorse the recommendation contained in this report, the following policy implications will result:

- The Pittwater Community Based Heritage Review (2015) will become the most up to date and contemporary Heritage Study for Pittwater, superseding the following Heritage Studies:
  - *Barrenjoey Peninsula and Pittwater Heritage Study*, Volumes 1-4, McDonald McPhee Pty Ltd and Craig Burton, January 1989,
  - *Ingleside/Warriewood Urban Release Area Heritage Study*, Tropman & Tropman Architects, July 1993, and
  - *Warringah Heritage Study*, Hughes Trueman Ludlow, April 1994. This study applies to that part of Pittwater generally south of Mona Vale Road, being that area not included in the Barrenjoey Peninsula and Pittwater Heritage Study.
- The following heritage controls in the Pittwater 21 DCP will be amended (dependant on the outcome of the public exhibition):
  - B1.1 Heritage Conservation – Heritage items, heritage conservation areas and archaeological sites listed in Pittwater Local Environmental Plan 2014
  - B1.2 Heritage Conservation – Development in the vicinity of a heritage item, heritage conservation areas, archaeological sites or potential archaeological sites
  - B1.3 Heritage Conservation – General

### 3.4 RELATED LEGISLATION

Should Council endorse the recommendation contained in this report, Schedule 5 (Environmental heritage) of the Pittwater LEP 2014 will be amended (dependant on the outcome of the public exhibition).

### 3.5 FINANCIAL ISSUES

#### 3.5.1 Budget

As the Delivery Program incorporates the action to 'Implement recommendations from the Community Based Heritage Study', a budget has been allocated to facilitate the recommended amendments to the Pittwater LEP 2014 and Pittwater 21 DCP.

#### 3.5.2 Resources Implications

- This report includes a recommendation to list a number of sites owned and/or managed by Council as local heritage items. A local heritage listing may affect the ongoing future costs of managing these sites and could affect the future disposal of them.

Any future development or works to these sites would require consideration of potential impacts to the heritage significance of the item. If a Development Application (DA) is required for proposed works to an item of local heritage significance, heritage controls are triggered under the Pittwater LEP 2014 and the Pittwater 21 DCP, which require the consideration of heritage matters. Subsequently, the consent authority may require a heritage management document to be prepared (e.g. a Heritage Impact Statement or a Conservation Management Plan). The requirement for a heritage management document imposes an additional cost on land owners, however a heritage management document is usually necessary for the Assessment Officer, in conjunction with Council's Heritage Advisor, to make a recommendation as to whether the proposed works will have an acceptable impact on the heritage significance of the item.

The sites owned and/or managed by Council are listed in the following table:

<b>Recommended item</b>	<b>Address/location</b>	<b>Suburb</b>
Sandstone road remnants and associated landscape	Road surface of unnamed section of North Avalon Road, immediately adjacent to 640, 642 and 644 Barrenjoey Road, extending approximately 10 metres to a culvert and its retaining wall	Avalon Beach
Sandstone kerb and gutter	Palmgrove Road (portion) below Stella James House (32 Plateau Road) and extending up to 61 Palmgrove Road	Avalon Beach
Sea Scout Hall	Bayview Park, 1672 and 1678 Pittwater Road	Bayview
Bayview Yacht Racing Association Boatshed	1836 and 1852 Pittwater Road	Bayview
Laterite site	Mona Vale Road next to the public cycleway, south from the Baha'i Temple grounds, parallel to 173 Mona Vale Road	Ingleside
Carving – Survey mark	Opposite 158 Mona Vale Road (southern side)	Ingleside

Mona Vale Bowling Club	1598 Pittwater Road	Mona Vale
Stone wall	Adjacent to Betty Morrison Reserve (north boundary of Lot 2 DP 230883 in road reserve)	Newport
Newport War Memorial in Trafalgar Park	16 Queens Parade	Newport
Newport Wharf	1A Queens Parade	Newport
Newport Bowling Club	6 Palm Road	Newport
German rock carvings and associated landscape	Deep Creek Reserve (140 Wakehurst Parkway, Lot 1 DP 188050)	North Narrabeen
Palm Beach Kindergarten	1053 Barrenjoey Road	Palm Beach
Palm Beach Wharf	1149 and 1149A Barrenjoey Road	Palm Beach
Warriewood Wetland	14 Jacksons Road	Warriewood
Pittwater Trigonometrical Stations	Bangally Head Reserve (80A Binburra Avenue) Bushrangers Hill Reserve (26 Karloo Parade, Lot 1 DP 600462) 173A Mona Vale Road	Avalon Beach Newport Ingleside

- The Pittwater Community Based Heritage Study Review (2015) recommends the listing of a number of sites that relate to Council infrastructure (see above table). The relevant Council Business Units were consulted during the public exhibition period and it is considered that the listing of these sites as items of local heritage significance will be manageable.

## 4.0 KEY ISSUES

### Consultation

*Consultation with owners of the recommended nominated heritage items (prior to the public exhibition of the draft Pittwater Community Based Heritage Study Review)*

Following the initial preparation of the draft Pittwater Community Based Heritage Study Review, including the list of recommended nominated heritage items, as presented to the Working Group on 28 February 2013, owners of the recommended nominated heritage items were notified and invited to contribute additional information and comment on the potential heritage significance of the relevant item. Owners were also offered the opportunity to meet with Council staff and City Plan Heritage.

Meetings were held on 8, 14 and 19 August 2013 with 27 owners, with an additional six meetings being held on alternative days via phone conference. On 22 August 2013, a meeting was held with representatives from Pittwater Council to discuss the potential heritage significance of items in Council's ownership or care, control and management.

A total of 32 written submissions were received:

- 31 were from owners of recommended nominated heritage items – six indicated their support, 20 indicated their objection and the remaining five raised particular matters/concerns but did not specifically state their support for or objection to the recommended listing.
- One was from the owner of an existing heritage item. The submission suggested that the item does not meet the criteria for heritage listing but did not specifically state their support for or objection to the existing listing.

Following consultation with the owners of the recommended nominated heritage items, City Plan Heritage considered all submissions received and any additional information provided, and updated and revised the draft Pittwater Community Based Heritage Study Review as necessary. City Plan's response to all submissions received was reported to the Council meeting held on 21 July 2014.

#### *Public exhibition of the draft Pittwater Community Based Heritage Study Review*

The public exhibition of the draft Pittwater Community Based Heritage Study Review was held between Saturday 2 August and Saturday 13 September 2014 (43 days inclusive).

For the purpose of the public exhibition, the following was undertaken:

- Letters advising of the public exhibition and inviting comments on the draft Pittwater Community Based Heritage Study Review were sent to the following:
  - Owners of recommended nominated heritage items
  - Owners of existing heritage items
  - Those that nominated heritage items
  - Members of the Heritage Study Working Group
  - Registered Pittwater community groups and Chambers of Commerce
- Owners of recommended nominated heritage items were invited in writing to attend a one-on-one meeting to speak to City Plan Heritage and Council staff (a member of Council's Strategic Planning Team) about why their property is recommended for heritage listing. Owners of existing heritage items were invited to attend a one-on-one meeting upon request. Meetings were held on 11 and 19 August 2014, and a further meeting was scheduled for 11 September 2014 for those who were unavailable to attend the initial meeting dates. A total of 14 owners of recommended nominated heritage items and existing heritage items attended a one-on-one meeting.
- Two notices were published in the Manly Daily to advertise the public exhibition period and to invite comments on the draft Pittwater Community Based Heritage Study Review.
- A media release was issued.
- Hardcopies of the draft Pittwater Community Based Heritage Study Review were made available for viewing at Mona Vale and Avalon Customer Service Centres and libraries.
- Relevant documentation was also made available online at [www.pittwater.nsw.gov.au/heritagestudy](http://www.pittwater.nsw.gov.au/heritagestudy)
- Members of Council's Strategic Planning Team were made available to respond to enquiries (i.e. phone calls, emails and face-to-face)

During the public exhibition, a total of 57 submissions were received – 11 indicated their support, 27 indicated their objection and the remaining 19 were neutral or raised particular matters/concerns but did not specifically state support for or objection to the recommended listing.

Following the public exhibition, City Plan Heritage considered all submissions received, and updated and revised the draft Pittwater Community Based Heritage Study Review as necessary. City Plan's response to all submissions received is at **Attachment 3**.

## Final Pittwater Community Based Heritage Study Review (2015)

The Pittwater Community Based Heritage Study Review (2015) (**Tabled Document**) makes a number of recommendations in relation to:

- Items of local heritage significance,
- The future management of heritage in Pittwater,
- The management of items not considered to be of local heritage significance, and
- Late nominations.

### *Items of local heritage significance*

The Pittwater Community Based Heritage Study Review (2015) recommends amending the Pittwater LEP 2014 as follows:

- Include an additional 49 items of local heritage significance to Schedule 5 (Environmental Heritage) (refer to the list of items in the first and second tables in Part 2 of **Attachment 1**), and
- Update the list of existing items of local heritage significance in Schedule 5 (Environmental Heritage) (refer to the list of items in the third and fourth tables in Part 2 of **Attachment 1**).

The draft Pittwater Community Based Heritage Study Review that was publicly exhibited proposed a new Heritage Conservation Area in Bilgola. During the public exhibition period, City Plan Heritage undertook further investigations into the proposed Bilgola Heritage Conservation Area, involving a survey of the surviving garden and landscape remnants of the Bilgola Estate and discussions with the Heritage Officers at the NSW Heritage Branch. As a result, at this time it is not recommended that a Heritage Conservation Area be established for the area in Bilgola. Rather, the Pittwater Community Based Heritage Study Review (2015) recommends that 'a thorough investigation and assessment of the heritage significance of the remnant garden and landscape elements of the former Bilgola House in any future heritage study within 24 months following the completion of this Heritage Study Review' be considered.

To facilitate the recommended amendments to Schedule 5 (Environmental heritage) of the Pittwater LEP 2014, a Planning Proposal has been prepared (**Attachment 1**). Council's endorsement is sought to forward the Planning Proposal at **Attachment 1** to the DP&E for a Gateway Determination to certify the commencement of a public exhibition.

Further, in line with the DP&E's '*A guide to preparing local environmental plans*', an amendment to Schedule 5 (Environmental heritage) of an LEP, including adding or removing a heritage item or items, supported by an Office of Environment & Heritage-endorsed local strategy or where the Office of Environment & Heritage provides preliminary support to the proposal, is an amendment that may be delegated to Council for finalisation. Accordingly, it is recommended that a request be sought for Council's delegate (the General Manager) to exercise delegation to finalise the proposed amendments to Schedule 5 (Environmental heritage) of the Pittwater LEP 2014.

On receipt of a Gateway Determination from the DP&E, a statutory public exhibition of the Planning Proposal would be undertaken.

As part of the statutory public exhibition of the Planning Proposal, the following is proposed to be undertaken:

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

All submissions received during the public exhibition will be reviewed and considered before presenting the outcome to Council.

#### *The future management of heritage in Pittwater*

The draft Community Based Heritage Study Review also makes a number of recommendations for the future management of heritage in Pittwater, including amending the current heritage controls (listed below) in the Pittwater 21 DCP:

- B1.1 Heritage Conservation – Heritage items, heritage conservation areas and archaeological sites listed in Pittwater Local Environmental Plan 2014
- B1.2 Heritage Conservation – Development in the vicinity of a heritage item, heritage conservation areas, archaeological sites or potential archaeological sites
- B1.3 Heritage Conservation – General

To facilitate the recommended amendments to the heritage controls in the Pittwater 21 DCP, draft controls have been prepared (**Attachment 2**) based on controls drafted by City Plan Heritage and contained in Chapter 5 of the Pittwater Community Based Heritage Study Review (2015) report. Council's endorsement of the draft Pittwater 21 DCP heritage controls at **Attachment 2** for public exhibition is sought. The timing of the public exhibition of the draft heritage controls would coincide with the statutory public exhibition of the Planning Proposal to amend Schedule 5 (Environmental heritage) of the Pittwater LEP 2014.

#### *Management of items not considered to be of local heritage significance*

The Pittwater Community Based Heritage Study Review (2015) also makes a number of recommendations for the management of items not considered to be of local heritage significance. Such recommendations include:

- Add streets to Pittwater's Most Scenic Streets Register,
- Continue management under the relevant Plan of Management,
- Prepare a register of all memorials and monuments, and
- Archival recording of certain items.

#### *Late nominations*

A number of late nominations were received. The Pittwater Community Based Heritage Study Review (2015) recommends that the late nominations are kept confidential and an assessment of the potential heritage significance be undertaken within 24 months of the adoption of the Pittwater Community Based Heritage Study Review (2015).