

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/0045
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Responsible Officer:	Gareth David
Land to be developed (Address):	Lot 34 DP 4689, 36 Bardo Road NEWPORT NSW 2106
Proposed Development:	Demolition works and construction of a seniors housing development including basement car parking
Zoning:	R2 Low Density Residential
Development Permissible:	Yes, under State Environmental Planning Policy (Housing) 2021
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	Yes
Owner:	BPG Holdings NSW Pty Ltd
Applicant:	Daniel Michael McNamara

Application Lodged:	30/01/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Seniors Living
Notified:	03/02/2023 to 17/02/2023
Advertised:	03/02/2023
Submissions Received:	10
Clause 4.6 Variation:	Nil
Recommendation:	Refusal

Estimated Cost of Works:	\$ 4,771,508.00
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EXECUTIVE SUMMARY

This development application seeks consent for demolition works and construction of a seniors housing development comprising of six (6) dwellings.

The application is lodged pursuant to the provisions of *State Environmental Planning Policy (Housing) 2021* (SEPP Housing 2021).

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) as there were more than 10 submissions received in response to the notification, and the development involves variations to development standards under SEPP Housing, including; Floor Space Ratio, Proximity to Transport Service and Building Envelope.

The applicant has lodged a Class 1 Deemed Refusal appeal to the Land and Environment Court of NSW which, at the time of reporting, remains undetermined.

The applicant was afforded the opportunity to resolve issues raised during the assessment of the application, however those issues remain unresolved.

The submissions received in response to the notification include; incompatibility with the character of the area; overdevelopment; amenity issues (primarily regarding solar access, visual impacts and privacy); construction impacts; traffic and parking; safety; insufficient infrastructure to support the development; wildlife and fauna impacts; tree removal and vegetation impacts; stormwater impacts; excessive excavation and garbage bin collection.

A number of the concerns raised by the notified residents warrant the refusal of the application.

The assessment of the application has found that the proposal in its current form cannot be supported, as it fails to satisfy a number of provisions within the SEPP Housing 2021 and the P21 DCP.

The application does not comply with section 93 of SEPP Housing 2021, which specifies that a consent authority cannot consent to a development application for the purposes of an independent living unit unless it is satisfied that residents will have adequate access to facilities and services. The site is not located within 400m of essential facilities and as such, is reliant on *Keoride*, an on-demand public transport service operating across the Northern Beaches, to meet the requirements of SEPP Housing 2021. The written evidence provided by the applicant has failed to demonstrate Keoride meets the requirements of a *transport service* as required by SEPP Housing 2021. The application does not include a written request to vary this development standard.

The application does not comply with section 108 (2)(c) of SEPP Housing 2021, which requires that the density and scale of the buildings, when expressed as a Floor Space Ratio (FSR) is 0.5:1 or less. The proposal would result in an FSR of 0.75:1, which substantially exceeds this requirement by 50.12%. The application does not include a written request to justify the exceedance of the Floor Space Ratio development standard.

The application does not comply with section 84(2)(c)(iii) of SEPP Housing 2021, which requires that, if the development results in a building with more than 2 storeys—the additional storeys are set back within planes that project at an angle of 45 degrees inwards from all side and rear boundaries of the site. The proposal comprises 3 storeys, including the basement level. The proposed development does not provide the upper third storey within a plane measured at 45 degrees from the side boundaries. The application does not include a written request to vary this development standard.

Critical assessment issues also include; non-compliances with front and side building line; solar access and visual privacy provisions; impacts on the desired future character of the area; the provision of sufficient private open space; and design for crime prevention.

Council's Traffic Engineer and Water Management Officer have also also raised fundamental concerns with the application with regards to stormwater management, provision of visitor parking and access to facilities and services. The application has also not provided sufficient information enable a complete and proper assessment of the proposed excavation.

In summary, the proposed development is considered to be of excessive bulk and scale, which would result in unreasonable impacts upon the amenity of adjoining properties and inconsistency with the desired character of the locality. The application has also failed to demonstrate by written evidence that residents of the proposed development will have satisfactory access to services and facilities.

This report concludes with a recommendation that the NBLPP should refuse the development application, for the reasons outlined at the end of this report.

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent for:

- Demolition of an existing dwelling-house and associated structures
- Excavation and groundworks
- Site preparation works including the removal of trees
- Construction of a three-storey seniors living development comprising six (6) x three-bedroom self-contained independent living units across two (2) buildings. The lowest storey contains a single basement level providing parking for twelve (12) vehicles, garbage storage areas, plant rooms and a pedestrian entry for persons with a disability
- The proposal also includes outdoor common space, landscaping works, terracing, bin storage, driveway, external access pathways, retaining walls and a stormwater system with OSD

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - 4.3 Height of buildings

Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards

Pittwater Local Environmental Plan 2014 - 7.2 Earthworks

Pittwater Local Environmental Plan 2014 - 7.6 Biodiversity protection

Pittwater 21 Development Control Plan - A4.10 Newport Locality

Pittwater 21 Development Control Plan - B5.15 Stormwater

Pittwater 21 Development Control Plan - B6.3 Off-Street Vehicle Parking Requirements

Pittwater 21 Development Control Plan - B8.6 Construction and Demolition - Traffic Management Plan

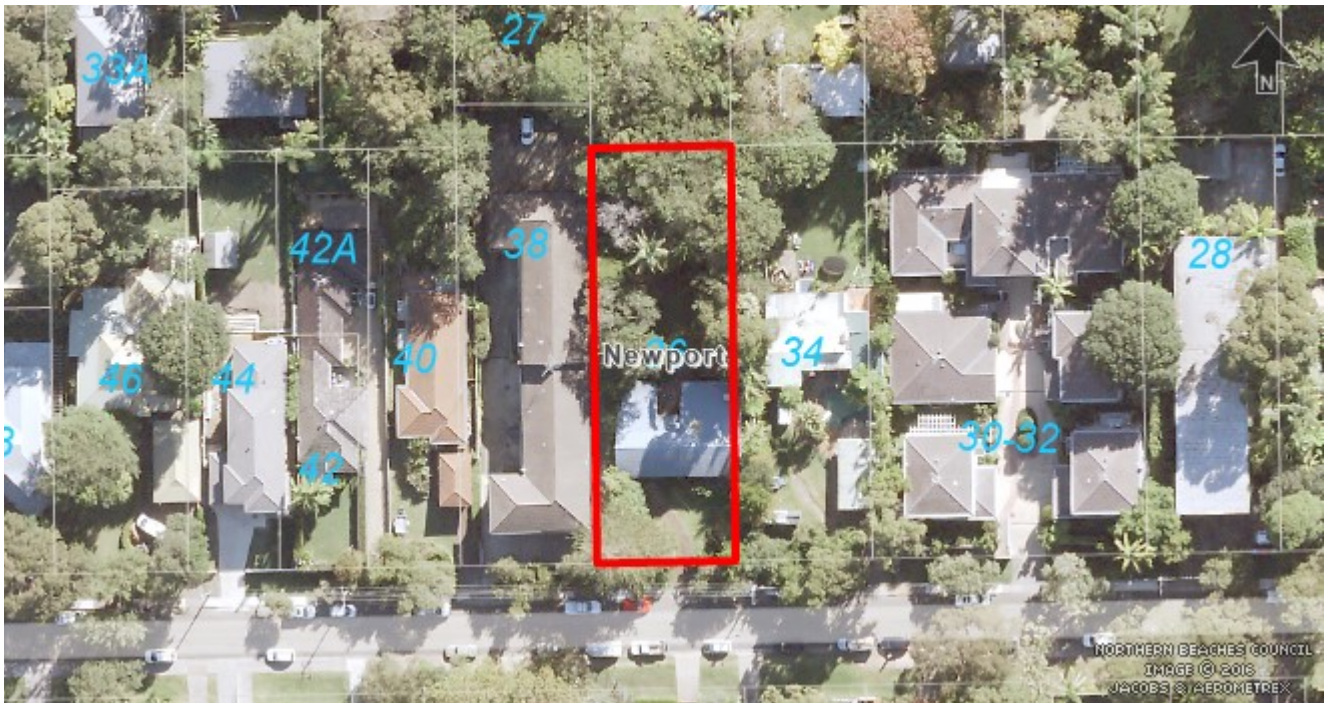
Pittwater 21 Development Control Plan - C1.4 Solar Access

Pittwater 21 Development Control Plan - C1.5 Visual Privacy
Pittwater 21 Development Control Plan - C1.7 Private Open Space
Pittwater 21 Development Control Plan - C1.18 Car/Vehicle/Boat Wash Bays
Pittwater 21 Development Control Plan - C1.20 Undergrounding of Utility Services
Pittwater 21 Development Control Plan - C1.21 Seniors Housing
Pittwater 21 Development Control Plan - D10.7 Front building line (excluding Newport Commercial Centre)
Pittwater 21 Development Control Plan - D10.8 Side and rear building line (excluding Newport Commercial Centre)

SITE DESCRIPTION

Property Description:	Lot 34 DP 4689 , 36 Bardo Road NEWPORT NSW 2106
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the northern side of Bardo Road.</p> <p>The site is regular in shape with a frontage of 20.115m along Bardo Road and a depth of 60.96m. The site has a surveyed area of 1,220m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a single brick dwelling house.</p> <p>The site contains a gentle fall from north (rear) to the street of approximately 5m providing a fall of around 8%.</p> <p>The site contains a number of trees located mostly along the boundaries and the rear of the site. The front of the site contains a prominent Norfolk Island Pine.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>The area surrounding the site is characterised by residential land uses with the predominant form of development being low density free standing dwellings.</p> <p>Interposed in the area are walk-up residential flat buildings and a number of more recent seniors living developments.</p>

Map:



SITE HISTORY

The land has been used for residential purposes for an extended period of time. A search of Council's records has revealed the following relevant history:

Development Application No. DA2020/0502 - 34 & 36 Bardo Road, Newport

Development Application for demolition works and construction of a Seniors Housing development comprising 12 self-contained dwellings and site consolidation of 34 Bardo Road and 36 Bardo Road, Newport.

This application was refused by Northern Beaches Local Planning Panel on 2 December 2020.

The application was subsequently appealed and approved by the Land and Environment Court of NSW on 2 September 2021

Current Application History

On 28 April 2023, the Applicant commenced Class 1 appeal proceedings against Council's deemed refusal of the current development application

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to amended plans.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter may be addressed via a condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter may be addressed via a condition of consent</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter may be addressed via a condition of consent</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report. In summary, they have been found to be unsatisfactory and form grounds for refusal of the application.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact</p>

Section 4.15 Matters for Consideration	Comments
	<p>in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The suitability of the site in terms of likely impacts on neighbouring amenity and character has been discussed in detail in various section of this report. In summary, the suitability of the site for the development as proposed in its current form remains uncertain, due to fact that the proposal has not fully addressed the environmental impacts of the proposed development. The proposal has also failed to demonstrate that the residents of the proposed development will have satisfactory access to services and facilities.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	The provision of seniors housing in the locality is generally in the broader public interest. However, this assessment has found the proposal to be contrary to the relevant requirement(s) of the P21 DCP and SEPP Housing 2021 and will result in a development which will create an undesirable precedent, such that it would undermine the desired future character of the area and be contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be in the localised public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 03/02/2023 to 17/02/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 10 submission/s from:

Name:	Address:
Ms Maria Assunta King	13 / 38 Bardo Road NEWPORT NSW 2106
Mrs Pamela Anne Brown	2 / 30 - 32 Bardo Road NEWPORT NSW 2106
Mr Barry Peter Best	7 / 30 - 32 Bardo Road NEWPORT NSW 2106
Mr Christopher Leslie	9 / 38 Bardo Road NEWPORT NSW 2106

Name:	Address:
Mrs Rarin Sribu-Nga	
Mr John Colquhoun	40 Bardo Road NEWPORT NSW 2106
Mr Christopher Keith Brown	5 / 30 - 32 Bardo Road NEWPORT NSW 2106
Ms Megan Katharine Kennedy	PO Box 179 NEWPORT BEACH NSW 2106
Mr Oliver Craig Sharp	12 / 38 Bardo Road NEWPORT NSW 2106
Mr David Maxwell Stewart-Hunter	1 / 30 - 32 Bardo Road NEWPORT NSW 2106
Mr Shane Christopher Cox	14 / 38 Bardo Road NEWPORT NSW 2106

The following issues were raised in the submissions:

- Scale and density of the development, overdevelopment of the site and out of character with the street and Newport Locality
- Cumulative impacts of seniors living development on Bardo Road
- Visual impact to adjoining properties
- Amenity impacts – Solar access, visual and acoustic privacy, visual impacts, and loss of outlook
- Insufficient infrastructure to support the development – street parking, sealed footpaths, public transport
- Landscaped area non-compliance
- Car parking
- Impacts of Keoride during pickup
- Construction impacts - Noise, parking, traffic, safety, restricted hours
- Insufficient Construction Traffic Management Plan
- Safety and parking impacts on adjoining childcare centre during and post construction
- Excessive excavation and damage to adjoining property during construction
- Wind exposure
- Insufficient endemic tree species provided
- Wildlife and fauna impacts
- Tree removal and vegetation impacts
- Additional water runoff, overland flow and stormwater impacts
- Garbage bins and collection
- Sustainability
- Traffic generation
- Loss of property value

The above issues are addressed as follows:

- **Scale and density of the development, overdevelopment of the site and out of character with the street and Newport Locality.**

Comment:

This matter has been addressed within Clause *A4.10 Newport Locality* of this report. In summary, the proposed development is not considered complementary to the desired character for this locality, as it does not propose or present as low density residential development. It is considered that the development does not appropriately minimise the medium density character of the proposal. The non-compliant FSR of 0.75:1 reflects an overdevelopment of the site and contributes to excessive bulk and scale. This issue constitutes a reason for the refusal of the application.

- **Cumulative impacts of seniors living development on Bardo Road.**

Comment:

Seniors housing developments are prohibited in the R2 Low Density Residential zone under the PLEP 2014, however, the development is made permissible under the provisions of SEPP Housing 2021, which overrides the PLEP. Each new application proposed for seniors housing will be assessed on its individual merits and how it responds to relevant planning controls and the character of the area. Clause *C1.21 Seniors Housing* of P21DCP specifies that the cumulative impact of seniors living development with R2 Low Density Residential zone shall be controlled by ensuring the development is consistent with the surrounding area in regard to bulk, scale and character and to avoid creating a dominant 'residential flat building' appearance in the neighbourhood. This matter has been addressed within Clause *C1.21 Seniors Housing* of this report. In summary, it is considered that the excessive gross floor area and building massing across the site, as well as insufficient front and side setbacks does not adequately minimise the building footprint and visual bulk and scale of development, and fails to meet the requirements of this control. This issue constitutes a reason for the refusal of the application.

- **Visual impact to adjoining properties**

Comment:

The proposed building form represents a substantial building mass extending from north to south. It is considered that the development provides insufficient separation, breaks in the built form and visual relief as viewed from adjoining properties, particularly No. 38 Bardo Road. This issue constitutes a reason for the refusal of the application.

- **Amenity impacts – Solar access and privacy**

Comment:

The matter of solar access and privacy has been addressed within clause *C1.4 Solar Access* and clause *C1.5 Visual Privacy* of this report. In summary, it is considered that the development has not been designed to maximise solar access or privacy, particularly for the adjoining dwellings at No.38 Bardo Road. These issues will form reasons for refusal of the application.

- **Insufficient infrastructure to support the development – street parking, sealed footpaths, public transport.**

Comment:

As the site is not located within 400m of essential facilities, the applicant seeks to rely on Keoride, an on-demand public transport service operating across the Northern Beaches, to meet the requirements of SEPP Housing 2021. The written evidence provided by the applicant has failed to demonstrate Keoride meets the requirements of a "*transport service*" as specified by Clause 93 (2)(b)(i) of SEPP Housing 2021, which states that the transport service must not be an "*on-demand booking service*" for the transport of passengers for a fare. The application has also failed to demonstrate the exact location of the pick-up and drop-off location of Keoride, and if a suitable access pathway of a sufficient gradient will be available to this location.

Clause 93 (3)(b) & (c) of SEPP Housing 2021 requires that the proposed development must have a suitable access pathway of a sufficient gradient to the required transport service. The application has not demonstrated that a suitable access pathway is available to the required transport service.

The proposal does not provide any convenient on-site parking for visitors. This arrangement is not supported by Council's Traffic Engineer.

These issues will for reasons for refusal of the application.

- **Landscaped area non-compliance**

Comment:

The proposal would comply with the 30% landscaped area requirements (including deep soil zone on at least 15%) as required by SEPP Housing 2021. This overrides the P21 DCP landscaped area requirement.

- **Insufficient car parking**

Comment:

While the proposal provides a sufficient number of parking spaces for residents of the development, Council's Traffic Engineer has raised concerns that the proposal does not provide any convenient on-site parking for visitors and as such, is reliant on on-street parking in Bardo Road. There are existing parking demands in Bardo Road from overflow of parking from residents, who do not have sufficient off-street parking; as well as visitors to the area. Traffic and parking considerations are addressed in further detail by Council's Traffic Engineer under the heading "Internal Referrals" within this report

This will form a reason for refusal of the application.

- **Impacts of Keoride during pickup**

Comment:

As the site is not located within 400m of essential facilities, the applicant seeks to rely on "Keoride", an on-demand public transport service operating across the Northern Beaches, to meet the requirements of SEPP Housing 2021. The written evidence provided by the applicant has failed to demonstrate Keoride meets the requirements of a transport service as specified by Clause 93 (2)(b)(i) of SEPP Housing 2021, which states that the transport service must not be an on-demand booking service for the transport of passengers for a fare.

Insufficient information has been provided with the application to demonstrate the exact location of the pick-up and drop-off location of Keoride, if there is suitable access to these locations and if there will be associated traffic implications with the reliance on Keoride. These issues will for reasons for refusal of the application.

- **Construction impacts - Noise, parking, traffic, safety, restricted hours, insufficient Construction Traffic Management Plan.**

Comment:

If approved, appropriate conditions could be imposed to limit impacts of construction. This could include the provision of an updated Construction Traffic Management Plan (CTMP) to be approved by the Northern Beaches Council Traffic Team prior to the issue of any Construction Certificate, traffic control methods and the restriction of times for excavation works.

- **Safety, traffic and parking impacts on adjoining childcare centre during and post construction.**

Comment:

As above, if approved, appropriate conditions could be imposed to limit impacts on adjoining properties during construction. However, Council's Traffic Engineer has raised concerns that the proposal does not provide any convenient on-site parking for visitors and as such, is reliant on on-street parking in Bardo Road which may conflict with the adjoining childcare centre. This will form a reason for refusal of the application.

- **Excessive excavation and damage to adjoining property during construction**

Comment:

Insufficient information has been provided to ascertain the extent of excavation proposed and potential impacts to adjoining properties. The geotechnical report submitted with the application references plans dated 26/10/22. The plans submitted with the application are dated 17/01/2023. In this regard, there are inconsistencies in the documentation. The geotechnical report also specifies that *"the excavation will reach a maximum depth of ~4.6m and, 1.0m from*

the W common boundary". The proposed basement plan indicates that there will be separation of 1.5m from the western boundary. In this regard, there is a discrepancy in the documentation. This will form a reason for refusal of the application. If suitable information was received, conditions could be imposed requiring dilapidation surveys establish a pre-development condition report of adjoining properties.

- **Wind exposure**

Comment:

The proposal will not result in unreasonable wind exposure to adjoining neighbours.

- **Insufficient endemic tree species provided.**

Comment:

The proposal has been reviewed by Council's Landscape Officer and Bushland and Biodiversity Officer who are satisfied that the proposal would include sufficient endemic tree species (subject to conditions).

- **Wildlife and fauna impacts.**

Comment:

The development has been assessed by Council's Biodiversity Team, who raised no objections, subject to conditions. As such, Council is satisfied that the proposal would not result in unreasonable wildlife and fauna impacts.

- **Tree removal and vegetation impacts.**

Comment:

The proposal has been reviewed by Council's Landscape Officer and Bushland and Biodiversity Officer who raise no objections to the proposed tree removal (subject to conditions). The Arboricultural Impact Assessment recommends the retention of the prominent Norfolk Island Pine identified as "T5" including the provision of tree protection measures, such as engagement of a project arborist to supervise any excavation in proximity to the tree.

- **Additional water runoff, overland flow and stormwater impacts**

Comment:

Inadequate details have been provided to address the management of stormwater in terms of the additional impact of water runoff associated with the site changes. This will form a reason for refusal of the application.

- **Garbage bins and collection**

Comment:

The location of the bin storage area at the front of the site and the associated waste collection is supported by Council's Waste Officer (subject to conditions).

- **Sustainability**

Comment:

A BASIX certificate and ABSA Assessor Certificate has been submitted with the application specifying that the proposal meets required sustainability requirements.

- **Traffic generation**

Comment:

The proposal has been reviewed by Council's Traffic Engineer with regards to traffic generation from the additional cars associated with the proposal. Council's Traffic Engineer raised no objections on these grounds.

- **Loss of property value**

Comment:

Property values are not a relevant consideration under Section 4.15 of the EP A Act 1979.

REFERRALS

Internal Referral Body	Comments
Design and Sustainability Advisory Panel	<p>Supported (Subject to Specific Recommendations)</p> <p>The application was presented to the DSAP on 23 February 2023. The Panel generally indicated support for the proposal, subject to the following comments and recommendations:</p> <p>General</p> <p><i>The site is the subject of a current seniors housing consent for twelve (12) Independent Living Units (ILUs) over No.s 34 and 36 Bardo Road. This proposal is for six (6) ILUs, for No. 36 only. It is noted the main difference to what is proposed on this site is the rear unit has gone to 2 stories, as is now permitted.</i></p> <p>Strategic context, urban context: surrounding area character</p> <p><i>While the site is in the R2 Low Density Residential zone, there are residential flat buildings to the west and other seniors housing developments to the east. The character of the area remains low-density its feel due to the small-scale nature of the existing buildings.</i></p> <p><i>The site is on the northern high side of the street, stepping up 1m from the street. There is a significant Norfolk Pine tree in the SW corner of the front yard, which needs to be retained.</i></p> <p><i>The scheme appears to be well resolved and appropriate to its location and surroundings.</i></p> <p>Scale, built form and articulation</p> <p><i>The scale of the buildings are very similar to the neighbouring apartment block, and are under the allowable height.</i></p> <p><i>The buildings have been designed with simple skillion roofs and 'saddlebags' to west side, to minimise the impact of overshadowing to the neighbours.</i></p> <p><i>While the FSR of 0.75:1 is in excess of the 0.5:1 of the SEPP requirements, the landscaped area, building envelope, building height, setback, and parking are all compliant. In this instance, it is the Panel view that the non-compliance is acceptable.</i></p> <p>Access, vehicular movement and car parking</p> <p><i>The location of the Norfolk pine tree has required the driveway and pedestrian access to be located to the east.</i></p>

Internal Referral Body	Comments
	<p><i>Pedestrians will be either taken down to lift lobby by an accessible ramp, or to the front door by way of gentle stairs to the east.</i></p> <p><i>The garage has a very simple and direct layout – straight line with double lockable garages. The garbage room is between the driveway and the pine tree, providing easy access for residents and the street for collection.</i></p> <p>Landscape</p> <p><i>The importance of retaining the Norfolk Island pine is noted and supported.</i></p> <p><i>The landscape is overall well resolved and incorporates appropriate native planting to the site.</i></p> <p><i>The side landscape is broken up by the path, which is noted by Council. However, keeping the buffer to the residential windows is good, as is the ability to grow some climbers to soften the fence.</i></p> <p><i>While small areas of lawn will offer amenity, they might be hard to maintain for older residents.</i></p> <p><u>Recommendations</u></p> <ol style="list-style-type: none"> <i>1. Retain side path location as is</i> <i>2. Consider no mow lawn options/species</i> <p>Amenity</p> <p><i>The proposed layout allows for 4 out of 6 apartments to face due north, with 2 facing to the street. The upper south facing apartment is able to capture sun through a highlight in the roof. All have cross flow ventilation. Skylights to bathrooms on the upper level could increase their amenity – good to consider.</i></p> <p><i>The 2-storey building to the rear has freed up more garden space for all to enjoy.</i></p> <p><u>Façade treatment/Aesthetics</u></p> <p><i>The materiality of the buildings and their articulation are understated, relevant to the area and contribute to aesthetically pleasing compositions across the site.</i></p> <p>Sustainability</p> <p><i>It is good to see a scheme that complies with sunlight and ventilation requirements, and bringing good amenity to the occupants.</i></p>

Internal Referral Body	Comments
	<p><i>To ensure these dwellings are “forward-thinking” and the best they can be for their occupants in the future, we strongly recommend that the energy supply is decarbonised, EV charging is supplied and the passive design and thermal performance of the building fabric is increased.</i></p> <p><i>Consider as many PV panels as possible for the roof to enable as much onsite power generation as possible. With a south facing roof, these might need to be on frames, with the aesthetics of these accommodated in the design.</i></p> <p><i>Heat pump systems for apartments or other ways of providing electric hot water should be considered. (The storage of hot water can be considered a defacto battery if heated by PVs during the day.) Consider locations for possible battery storage.</i></p> <p><i>The Panel notes that the new building codes will require an average of 7 stars NatHERS, with no apartments less than 6 stars. With the very comfortable location makes the achievement of this relatively simple. Future disclosure of energy efficiency at point of sale or lease makes this a good investment.</i></p> <p><u>Recommendations</u></p> <p><i>3. All services should be electric – gas for cooking, hot water and heating should be avoided</i></p> <p><i>4. Provide EV charging points for each unit, and allow for bi-directional (2-way) charging of EV battery for powering the building</i></p> <p><i>5. Include as many PV panels on the roof as possible for both common area and apartment renewable energy supply</i></p> <p><i>6. Ensure all apartments have an average 7-star NatHERS score, with no apartment below 6 stars.</i></p> <p>PANEL CONCLUSION</p> <p><i>The Panel supports the proposal.</i></p> <p><i>The Panel commends the proponents on the well resolved and appropriate scheme but strongly encourages the applicant to make further improvements as recommended.</i></p> <p><u>Planner Comments</u></p> <p><i>It is noted that the panel supports the proposal with regards to urban design. However, as addressed throughout this report, there are a number of planning issues which remain, particularly with regards to Floor Space Ratio, visual bulk, setbacks and neighbouring amenity.</i></p>

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>Supported, subject to conditions</p> <p>The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no concerns with the application.</p> <p><i><u>Note:</u> The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage</i></p>
Landscape Officer	<p>Supported, subject to conditions</p> <p>Council's Landscape Referral section have assessed the application against the following policies and controls:</p> <ul style="list-style-type: none"> • State Environmental Planning Policy (Housing) 2021; Part 5 Housing for seniors and people with a disability; Division 6 Design principles 99 Neighbourhood amenity and streetscape, for required landscape outcomes; 00 Visual and acoustic privacy, for required landscape outcomes; and Division 7 Non-discretionary development standards, for landscape area and deep soil minimum requirements. • Seniors Living Policy: Part 2 Site Planning and Design; Part 3 Impacts on Streetscape; and Part 4 Impacts on Neighbours. • Pittwater 21 DCP controls B4.22 Preservation of Trees and Bushland Vegetation, C1.1 Landscaping, C1.21 Seniors Housing, and D10 Newport Locality <p>A Landscape Plan and a Arboricultural Impact Assessment are submitted with the application.</p> <p>Landscape Referral are satisfied that clause 99, 100, and 108 of SEPP (Housing) 2021; and Part 2, 3 and 4 of the Seniors Living Policy, is generally achieved as proposed in the Landscape Plan with regard to the landscape outcome setting of the proposed development, including reduction of the built form, replacement tree planting, landscape screening, landscape area and deep soil. It is noted that specific aspects of the proposed Landscape Plan are required to be adjusted to ensure an appropriate landscape outcome including: provision of tall shrub screen planting along the eastern boundary; and removal of lawn areas that are inadequate in area to provide any recreational benefit and replacement with mass planted areas is required, and conditions for an Amended Landscape Plan shall be imposed.</p> <p>The Arboricultural Impact Assessment recommends: the retention of the prominent Norfolk Island Pine identified as T5 including the provision of tree protection measures such as engagement of a project arborist to supervise any excavation in proximity: the removal of one Bottlebrush street tree (TA) to facilitate the proposed driveway; and removal of existing trees T1-T4 and T6-T8 impacted by</p>

Internal Referral Body	Comments
	development works. Landscape Referral raise no objections.
NECC (Bushland and Biodiversity)	<p>Supported, subject to conditions</p> <p>The proposal seeks approval for demolition works and construction of a seniors housing development including basement car parking. The comments on this referral relate to the following controls and provisions:</p> <ul style="list-style-type: none"> • Pittwater LEP 2014 - Clause 7.6 Biodiversity Protection • Pittwater 21 DCP - Clause B4.6 Wildlife Corridors <p>The proposal has been submitted with an Arboricultural Impact Assessment (AIA) as well as a Landscape plan including a planting schedule.</p> <p>A total of 8 trees were assessed in the AIA and it has been recommended that trees 1-4 and 6-8 are removed to accommodate the proposed footprint. An additional tree described as TA (<i>Melaleuca viminalis</i>), located on the council verge has also been nominated for removal to facilitate the proposed works, its removal is subject to approval by the Landscape Referral team. A number of additional trees which are found within the development footprint have not been included in the AIA. However, upon review of additional documentation provided and a desktop survey it has been determined that these are exempt species including a Camelia sp. and two Bangalow palms (<i>Archontophoenix cunninghamiana</i>).</p> <p>The provided landscape plan includes a planting schedule that complies with PDGP B4.6 controls ensuring "development shall ensure that at least 60% of any new planting incorporates native vegetation (as per species listed in Native Plants for Your Garden available on the Pittwater Council website). Landscaping is to be outside areas of existing bushland and not include environmental weeds."</p>
NECC (Development Engineering)	<p>Supported, subject to conditions</p> <p>No objections to the proposed seniors living development subject to conditions.</p>
NECC (Water Management)	<p>Not Supported</p> <p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> • Supplied plans and reports; • Northern Beaches Water Management for Development Policy (WM Policy); and • Relevant LEP and DCP clauses. <p>The proposal would significantly increase the total impervious area of</p>

Internal Referral Body	Comments
	<p>the site. Stormwater plans have been provided without supporting evidence that the required water quality parameters will be met. A MUSIC model or equivalent should be provided to demonstrate compliance with the Table 5 – General Stormwater Quality Requirements of the Northern Beaches Water Management for Development Policy.</p> <p>If cartridges are proposed, the stormwater plans should indicate the number and location.</p>
Traffic Engineer	<p>Not supported</p> <p>The proposal is for demolition works and construction of a two-storey seniors living development comprising of six (6) three-bedroom self-contained independent living units across two buildings. The units are to be constructed over a single basement level providing parking for 12 vehicles.</p> <p>Access to facilities and services</p> <p>The Applicant is reliant on Keoride, an on-demand service, to meet the transport service requirements. Keo-ride is not considered adequate under SEPP Housing 2021, as Clause 93 (2)(b)(i), states that the transport service must not be an on-demand booking service for the transport of passengers for a fare. The site is not located within 400m of essential facilities and services, with no new pedestrian infrastructure proposed.</p> <p>The Applicant must provide a suitable accessible path from the site with the provision of additional pedestrian infrastructure to enable safe access across Bardo Road and convenient pedestrian links to the Gladstone Street bus stops.</p> <p>Design for Accessibility - Visitor Parking</p> <p>The proposal provides a total of 12 parking spaces in the basement level car park. The Basement Plan shows that two spaces are designated for each apartment within an enclosed garage, with no proposed visitor spaces. SEPP Housing 2021, Clause 104 (b) of Division 6 Design principles specifies that Seniors housing should provide attractive, yet safe, environments for pedestrians and motorists with convenient access and parking for residents and visitors. A consent authority must not consent to development for the purposes of seniors housing unless it is satisfied that the design of the seniors housing demonstrates adequate consideration given to the Design principles. The proposal does not provide any convenient on-site parking for visitors and as such, is reliant on on-street parking in Bardo Road. There are existing parking demands in Bardo Road from overflow of parking from residents, who do not have sufficient off-</p>

Internal Referral Body	Comments
	<p>street parking, as well as visitors to the area. The Bardo Road Kindergarten located at No.41 opposite the development also creates additional parking demands in the street.</p> <p>Two visitor parking spaces are required for the six (6) x three-bedroom self-contained independent living units according to Council's Pittwater 21 DCP and the RTA Guide to Traffic Generating Development. The required two visitor parking spaces can be accommodated within the existing parking spaces and basement car park. Spaces must be clearly marked as 'Visitor' and not behind a garage door.</p> <p>Traffic Generation</p> <p>The future traffic generation has been assessed in accordance with RTA Guide to Traffic Generating Developments (2002). The Traffic Impact Statement estimates that the development will generate a minimum of 6 trips and a maximum of 12 trips and the evening peak hour vehicle trips will be a minimum of 0.6 trips and a maximum of 1.2 trips. The overall traffic generation impact on the existing road network is considered to be low.</p> <p>The proposal is not acceptable in its current form due to inadequate access to facilities and services, and lack of visitor parking spaces. The Development Application could be considered if additional visitor parking spaces are provided along with new pedestrian infrastructure connecting the site to bus stops in Gladstone Street.</p>
Waste Officer	<p>Supported, subject to conditions</p> <p>Waste Management Assessment Supported, subject to conditions.</p>

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<p><i>Supported, with conditions</i></p> <p>The application was referred to Ausgrid who have raised no objections to the development, subject to compliance with standard requirements. Ausgrid's requirements have been endorsed via condition in the recommendation of this report.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1097224M_11 dated 16 December 2022). The BASIX Certificate is supported by an ABSA Assessor Certificate (see Certificate Nos. 0004783220, 0008286643, 0008286668, 0008286676-02, 0008286684 and 0008286692, all dated 9 December 2022).

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

Commitment	Required Target	Proposed
Water	40	43
Thermal Comfort	Pass	Pass
Energy	45	45

If approved, a condition would be included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

SEPP (Housing) 2021

Part 5 – Housing for seniors and people with a disability

Clause 84 – Development Standards (General)	
Standard	Compliance/Comment
2) Development consent must not be granted for the development unless:	
a) The site area of the development is at least 1,000m ² .	Compliant The site has a surveyed area of 1,226m ² .
b) The frontage of the site area of the development is at least 20m measured at the building line.	Compliant The frontage of the site measured at the building line is 20.115m.
c) For development on land in a residential zone where residential flat buildings are not permitted - the development will not result in a building: <ul style="list-style-type: none"> i) with a height of more than 9.5m, ii) excluding servicing equipment on the roof; and iii) if the roof of the building has serving equipment, that the development 	Non-Compliant The site is within the R2 Low Density Residential zone pursuant to the PLEP which prohibits residential flat buildings. The entire building, including servicing equipment on the roof, is below a height of 9.5m. The proposed development does not provide the

complies with subsection (3); and if the developments results in a building that is more than 2 storeys, that the additional storeys are set back within planes that project at an angle of 45 degrees inwards from all side and rear boundaries of the site.	upper third storey within a plane measured at 45 degrees from the side boundaries contrary to s.84 (2)(c)(iii) of SEPP Housing. The application is not accompanied by a written requests seeking a variation of this development standard.
3) The development may result in a building with a height of no more than 11.5m if servicing equipment on the roof of the building:	
a) Is fully integrated into the design of the roof or contained and suitably screened from view from public places.	Compliant The plans do not detail any rooftop servicing equipment (with the exception of a basement exhaust discharge and lift overrun. These elements are reasonably well contained within the roof and is not anticipated to be readily visible from any public places.
b) Is limited to an area of no more than 20% of the surface area of the roof.	Compliant The rooftop servicing equipment is less than 20% of the surface of the roof.

Clause 85 – Development Standards for Hostels and Independent Living (Self-Care) Units	
Standard	
1) Development consent must not be granted for development for the purposes of a hostel or an independent living unit unless the hostel or independent living unit complies with the following under Schedule 4.	
2) An independent living unit, or part of an independent living unit, located above the ground floor in a multi-storey building need not comply with the requirements in Schedule 4 (being Sections 2, 7 - 13 and 15 – 20) if the development application is made by, or by a person jointly with, a social housing provider.	

The proposal is for the construction of a seniors housing development comprising of Independent Living Units (ILUs). An assessment against Schedule 4 has been completed in the following tables:

Forenote: where an control is assessed as being 'capable of compliance' that indicates that details are not shown on the DA plans to demonstrate compliance, but that those details can readily be included in the Construction Certificate plans if approved, in accordance with the requirements of the Access Report, other reports, and Council's conditions of consent.

Part 1 - Standards applying to hostels and independent living units	
Section 2 - Siting Standards	
1) If the whole of the site has a gradient of less than 1:10, 100% of the dwellings must have wheelchair access by a continuous accessible path of travel (within the meaning of AS 1428.1) to an adjoining public road.	Compliant The whole of the site adjoins a public road and wheelchair access via a continuous accessible path of travel (incorporating lifts) is provided to all dwellings, as confirmed by the <i>Access Report</i> (ref: LP_22463) by Lindsay Perry Access.
2) If the whole of the site does not have a gradient of less than 1:10: a) the percentage of dwellings that must	N/A as (1) applies

<p>b) have wheelchair access must equal the proportion of the site that has a gradient of less than 1:10, or 50% (whichever is greater), and the wheelchair access provided must be by a continuous accessible path of travel (within the meaning of AS 1428.1) to an adjoining public road or an internal road or a driveway accessible to all residents.</p>	
<p>3) Access must be provided in accordance with AS 1428.1 so that a person using a wheelchair can use common areas and common facilities associated with the development.</p>	<p>N/A as no communal facilities are proposed</p>
<p>Section 3 - Security</p>	
<p>Pathway lighting:</p> <p>a) must be designed and located so as to</p> <p>b) avoid glare for pedestrians and adjacent dwellings, and must provide at least 20 lux at ground level.</p>	<p>Capable of compliance</p>
<p>Section 4 - Letterboxes</p>	
<p>Letterboxes:</p> <p>a) must be situated on a hard standing area and have appropriate wheelchair access</p> <p>b) by a continuous accessible path of travel,</p> <p>c) (within the meaning of AS 1428.1); and must be lockable, and must be located together in a central location adjacent to the street entry or, in the case of independent living units, must be located together in one or more central locations adjacent to the street entry.</p>	<p>Capable of compliance</p>
<p>Section 5 - Private Car Accommodation</p>	
<p>If car parking (not being car parking for employees) is provided:</p> <p>a) car parking spaces must comply with the requirements for parking for persons with a disability set out in AS 2890.6, and</p> <p>b) 10% of the total number of car parking spaces (or at least one space if there are fewer than 10 spaces) must be designed to enable the width of the spaces to be increased to 3.8 metres, and</p> <p>c) any garage must have a power-operated door, or there must be a power point and an area for motor or control rods to enable a power-operated door to be installed at a later date.</p>	<p>Compliant</p> <p>Each unit is provided with a double garage (12 spaces). The garage for Unit 6 provides an arrangement in keeping is AS2890.6, and all other garages are 6.5m in width, thus capable of accommodating accessible carparking.</p>
<p>Section 6 - Accessible Entry</p>	

Every entry (whether a front entry or not) to a dwelling, not being an entry for employees, must comply with sections 4.3.1 and 4.3.2 of AS 4299.	Capable of compliance
Section 7 - Interior - General	
Internal doorways must have a minimum clear opening that complies with AS 1428.1.	Capable of compliance
Internal corridors must have a minimum unobstructed width of 1m.	Compliant
Circulation space at approaches to internal doorways must comply with AS 1428.1.	Capable of compliance
Section 8 - Bedroom	
<p>At least 1 bedroom within each dwelling must have:</p> <ul style="list-style-type: none"> a) an area sufficient to accommodate a wardrobe and a bed sized as follows: <ul style="list-style-type: none"> i) for a dwelling in a hostel - a single-size bed, ii) for an independent living unit - a queen-size bed, and b) a clear area for the bed of at least: <ul style="list-style-type: none"> i) 1.2m wide at the foot of the bed, ii) and 1m wide beside the bed between it and the wall, wardrobe or another obstruction, and c) 2 double general power outlets on the wall where the head of the bed is likely to be, and d) at least 1 general power outlet on the wall opposite the wall where the head of the bed is likely to be, and e) a telephone outlet next to the bed on the side closest to the door and a general power outlet beside the telephone outlet, and f) wiring to allow a potential illumination level of at least 300 lux. 	Capable of compliance
Section 9 - Bathroom	
<p>1) At least 1 bathroom within a hostel or independent living unit must be on the ground or main floor and have the following facilities arranged within an area that provides for circulation space for a wheelchair around sanitary facilities in accordance with AS 1428.1:</p> <ul style="list-style-type: none"> a) a slip-resistant floor surface, b) a washbasin with plumbing that 	Capable of compliance

<p>c) would facilitate clearances that comply with AS 1428.1, a shower that complies with AS 1428.1, except that the following must be able to be accommodated:</p> <ul style="list-style-type: none"> i) a grab rail, ii) a portable shower head, iii) a folding seat, <p>Note: Sub-section (1)(c) does not prevent the installation of a shower screen that can easily be removed to facilitate future accessibility.</p> <p>d) a wall cabinet sufficiently illuminated to be able to read the labels of items stored in it,</p> <p>e) a double general power outlet beside the mirror.</p>	
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Section 10 - Toilet

A dwelling must have at least 1 toilet on the ground (or main) floor and be a visitable toilet that complies with the requirements for sanitary facilities of AS 4299.	Capable of compliance
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Section 11 - Surface Finishes

Balconies and external paved areas must have slip-resistant surfaces.	Capable of compliance
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Section 12 - Door Hardware

Door handles and hardware for all doors, (including entry doors and other external doors), must be provided in accordance with AS 4299.	Capable of compliance
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Section 13 - Ancillary Items

Switches and power points must be provided in accordance with AS 4299.	Capable of compliance
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Part 2 - Additional Standards for Independent Living Units

Section 15 - Living Room and Dining Room

<p>1) A living room must have:</p> <ul style="list-style-type: none"> a) a circulation space in accordance with clause 4.7.1 of AS 4299, and b) a telephone adjacent to a general power outlet. 	Capable of compliance
2) A living room and dining room must have wiring to allow a potential illumination level of at least 300 lux.	Capable of compliance

Section 17 - Access to kitchen, Main Bedroom, Bathroom and Toilet

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In a multi-storey independent living unit, the kitchen, main bedroom, bathroom and toilet must be located on the entry level.	Compliant
Section 18 - Lifts in Multi-Storey Buildings	
In a multi-storey building containing separate independent living units on different storeys, lift access must be provided to dwellings above ground level of the building by way of a lift complying with clause E3.6 of the Building Code of Australia.	Compliant Each of the two buildings is serviced by one lift that serves both storeys.
Section 19 - Laundry	
An independent living unit must have a laundry that has: <ul style="list-style-type: none"> a) a circulation space at door approaches b) that complies with AS 1428.1, and c) provision for the installation of an d) automatic washing machine and a e) clothes dryer, and a clear space in front of appliances of at least 1,300mm, and a slip-resistant floor surface, and an accessible path of travel to any clothesline provided in relation to the dwelling. 	Capable of compliance Laundry is provided to each unit.
Section 20 - Storage for Linen	
Linen storage must be provided in accordance with clause 4.11.5 of AS 4299.	Capable of compliance
Section 21 - Garbage	
A garbage storage area must be provided in an accessible location.	Compliant

Clause 88 – Restrictions on Occupation of Seniors Housing	
Standard	Compliance/Comment
1) Development permitted under this Part may be carried out for the accommodation of only the following:	
a) seniors or people who have a disability,	Capable of conditional compliance
b) people who live in the same household with seniors or people who have a disability,	Capable of conditional compliance
c) staff employed to assist in the administration and provision of services to housing provided under this Part.	Capable of conditional compliance
2) Development consent must not be granted under this Part unless the consent authority is satisfied that only the kinds of people referred to in sub-section (1) will occupy accommodation to which the development relates.	Capable of conditional compliance The application is for the construction of seniors housing, and it is expected that, if approved, and upon completion, the six units would be sold off. A condition of consent is included in the recommendations of this consent to ensure that

	the occupancy of the development is consistent with clause 88, and thus the consent authority can be satisfied that the building will be occupied in accordance with clause 88.
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Clause 90 – Subdivision	
Standard	Compliance/Comment
1) Development consent may be granted for the subdivision of land on which development has been carried out under this Part.	N/A subdivision not sought in this application
2) Development consent must not be granted for the subdivision of a building resulting from development carried out under this Part on land in Zone E2 Commercial Centre or Zone B3 Commercial Core.	N/A R2 Low Density Residential core.

Clause 91 – Fire sprinkler systems in residential care facilities	
Standard	Compliance/Comment
1) A consent authority must not grant consent for development for the purposes of a residential care facility unless the facility will include a fire sprinkler system.	Capable of compliance A fire sprinkler system is capable of being provided in the development, however has not been demonstrated on the plans.
2) Development for the purposes of the installation of a fire sprinkler system in a residential care facility may be carried out with development consent.	Capable of compliance

Division 4 – Site-related requirements

Clause 93 – Location and access to facilities and services (independent living units)	
Standard	Compliance/Comment
1) Development consent must not be granted for development for the purposes of an independent living unit unless the consent authority has considered whether residents will have adequate access to facilities and services:	
a) by a transport service that complies with sub-section (2), or	Non-compliant* See commentary below in <i>Discussion on Clause 93 requirements</i>
b) on-site.	Not provided
Note: Facilities and services means:	
<ul style="list-style-type: none"> a) shops 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. 	
2) The transport service must:	
a) take the residents to a place that has adequate access to facilities and services, and	
b) for development on land within the Greater Sydney region:	Non-compliant The submitted Traffic & Transport Report states that the site is located approximately 450m from

<p>i) not be an on-demand booking service for the transport of passengers for a fare, and</p> <p>ii) be available both to and from the site at least once between 8am and 12pm each day and at least once between 12pm and 6pm each day.</p>	<p>bus stops in Gladstone Road to the south, and approximately 530m from bus stops in Barrenjoey Road to the east.</p> <p>As the site is not located within 400 metres of essential facilities, the applicant seeks to rely on Keoride, an on-demand public transport service operating across the Northern Beaches, to meet the requirements of SEPP Housing 2021. The written evidence provided by the applicant has failed to demonstrate Keoride meets the requirements of a transport service as specified by Clause 93 (2)(b)(i) of SEPP Housing 2021, which states that the transport service must not be an on-demand booking service for the transport of passengers for a fare.</p>
<p>3) For the purposes of sub-sections (1) and (2), access is adequate if:</p>	
<p>a) the facilities and services are, or the transport service is, located at a distance of not more than 400m from the site, and</p>	<p>Non-compliant</p> <p>The submitted Traffic & Transport Report states that the site is located approximately 450m from bus stops in Gladstone Road to the south, and approximately 530m from bus stops in Barrenjoey Road to the east.</p> <p>As the site is not located within 400 metres of essential facilities, the applicant seeks to rely on Keoride, an on-demand public transport service operating across the Northern Beaches, to meet the requirements of SEPP Housing 2021. The written evidence provided by the applicant has failed to demonstrate Keoride meets the requirements of a transport service as specified by Clause 93 (2)(b)(i) of SEPP Housing 2021, which states that the transport service must not be an on-demand booking service for the transport of passengers for a fare.</p>
<p>b) the distance is accessible by means of a suitable access pathway, and</p>	
<p>c) the gradient along the pathway complies with sub-section (4)(c).</p>	<p>Non-compliant</p> <p>The development application has not demonstrated that a suitable access pathway is available to the required transport service.</p>
<p>4) In sub-section (3):</p>	
<p>a) a suitable access pathway is a path of travel by means of a sealed footpath or other similar and safe means that is suitable for access by means of an electric wheelchair, motorised cart or the like, and</p>	<p>Non-compliant</p> <p>The development application has not demonstrated that a suitable access pathway is available to the required transport service.</p>
<p>b) the distance is to be measured by reference to the length of the pathway, and</p>	<p>Non-compliant</p> <p>The development application has not demonstrated that a suitable access pathway is</p>

	available to the required transport service.
c) the overall average gradient must be no more than 1:14 and the gradients along the pathway must be no more than: <ul style="list-style-type: none"> i) 1:12 for a maximum of 15m at a time, or ii) 1:10 for a maximum length of 5m at a time, or iii) 1:8 for a maximum length of 1.5m at a time. 	Non-compliant The development application has not demonstrated that a suitable access pathway is available to the required transport service.

***Discussion on Clause 93 Requirements**

The site is located 450m from a bus stop in Gladstone Road and 530m to a bus stop in Barrenjoey Road. However, the application seeks to rely on "Keoride" Service. Keoride is an app-based on-demand transport service which allows customers to order a vehicle when they want to travel to key hubs across the Northern Beaches. The written evidence provided by the applicant has failed to demonstrate Keoride meets the requirements of a transport service as specified by Clause 93 (2)(b)(i) of SEPP Housing 2021, which states that the transport service must not be an on-demand booking service for the transport of passengers for a fare. The application has also failed to demonstrate the exact location of the pick up and drop location of Keoride and if suitable access pathway of a sufficient gradient will be available to this location.

Clause 93 (3)(b) & (c) of SEPP Housing 2021 requires that the proposed development must have a suitable access pathway of a sufficient gradient to the required transport service. The development application has not demonstrated that a suitable access pathway is available to the required transport service.

Clause 95 – Water and sewer	
Standard	Compliance/Comment
1) A consent authority must not consent to development under this Part unless the consent authority is satisfied the seniors housing will:	
a) be connected to a reticulated water system, and	Capable of compliance The subject site is serviced by existing water and sewerage infrastructure.
b) have adequate facilities for the removal or disposal of sewage.	Capable of compliance
2) If the water and sewerage services will be provided by a person other than the consent authority, the consent authority:	
a) must consider the suitability of the site in relation to the availability of reticulated water and sewerage infrastructure, or	Capable of compliance
b) if reticulated services are not available—must satisfy the relevant authority that the provision of water and sewerage infrastructure, including environmental and operational considerations, is satisfactory for the development.	N/A

Division 5 – Design requirements

Clause 97 – Design of in-fill self-care housing	
Standard	Compliance/Comment
<p>In determining a development application for development for the purposes of in-fill self-care housing, a consent authority must consider the <i>Seniors Living Policy: Urban Design Guideline for Infill Development</i> published by the Department of Infrastructure, Planning and Natural Resources in March 2004.</p>	<p>Non-compliant - see discussion below</p> <p>1. Responding to Context The area surrounding the site is characterised by residential land uses, with the predominant form of development being low-density, detached dwelling houses within landscaped settings. Interposed in the area are walk-up residential flat buildings, multi-dwelling housing and seniors living developments. Newer forms of medium density scale development in the area, including more recently approved seniors living developments, have been predominantly designed to reflect the desired low density character of the area. This has generally been achieved through the breaking up of built form using varied setback, changes in height and roof formation and utilising of a mixture of one and two storey buildings across the site.</p> <p>It is acknowledged that there are examples of residential flat buildings of considerable mass and scale in the vicinity, most notably, that adjoining the subject site at No.38 Bardo Road. However, these residential flat buildings are historical forms of development and are generally atypical to Bardo Road and present a built form, scale and density that should be discouraged in future development.</p> <p>It is considered that the proposed development does not appropriately minimise the medium density character of the proposal. The substantial FSR of 0.75:1 reflects an overdevelopment of the site, contributes to excessive bulk and scale of the built form, and amenity impacts to adjoining neighbours. The proposed building form represents a substantial building mass oriented from north to south and as such, provides a presentation of a 'residential flat building style' appearance. The development provides insufficient separation, breaks in the built form and visual relief, particularly as viewed from adjoining properties.</p> <p>Overall, it is considered the scale, density, bulk and overall massing of the proposed development does not reflect the desired low density residential character of the locality and does not</p>

appropriately respond to the context of the area.

2. Site Planning and design

It is considered that the proposal has failed to meet the following relevant requirements of these guidelines:

- Provide a mix of dwelling sizes and variety of massing and scale of built form within the development.
- Development located towards the rear of the site should be more modest in scale.

3. Impacts on streetscape

The proposed development does not respond to the desirable streetscape character of Bardo Road, contrary to Part 3 of the Seniors Living Policy. The proposed development does not have an identifiable pedestrian entry and has a front elevation dominated by the basement entry. Additionally, the non-compliant front building setback fails to maximise landscaped area to provide additional vegetation to reduce the built form and enhance the existing streetscape. This is discussed in Clause *D10.7 Front building line* of this report.

4. Impacts on neighbours

The proposed building form represents a substantial building mass oriented from north to south. The development provides insufficient separation, breaks in the built form and visual relief as viewed from adjoining properties, particularly No. 38 Bardo Road. This would result in solar access, privacy, and visual impacts due to its scale and proximity to side facing windows and balconies on the side elevation of the adjoining residential flat building at No. 38 Bardo Road. The proposal will not protect sun access or mitigate direct overlooking to private open space of neighbouring development as required by these guidelines and fails to meet the following requirements and objectives:

- *to reduce the apparent bulk of development and its impact on neighbouring properties*
- *to minimise overshadowing*

	<ul style="list-style-type: none"> • <i>to reduce impacts of unrelieved walls</i> • <i>to minimise impacts on the privacy and amenity of adjoining dwellings</i> <p>5. Internal site amenity The internal site layout provides appropriate access to each unit.</p> <p>As address within this report, concern is raised that Apartment 02 and Apartment 05 do not provide appropriate visibility to the approach to the entry from inside the dwellings to encourage crime prevention.</p>
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Clause 98 – Design of seniors housing	
Standard	Compliance/Comment
A consent authority must not consent to development under this Part unless the consent authority is satisfied that the development demonstrates adequate regard has been given to the principles set out in Division 6 (see table below).	Non-compliant - See table below

Division 6 – Design Principles

Clause 99 – Neighbourhood amenity and streetscape	
Standard	Compliance/Comment
Development for the purposes of seniors housing should:	
a) recognise that the operational, functional and economic requirements of residential care facilities typically require a different building shape from other residential accommodation, and	-
b) recognise the desirable elements of: <ul style="list-style-type: none"> i) the location's current character, or ii) for precincts undergoing a transition - the future character of the location so new buildings contribute to the quality and identity of the area, 	<p>Non-compliant</p> <p>The area surrounding the site is characterised by residential land uses, with the predominant form of development being low-density, detached dwelling houses within landscaped settings. Interposed in the area are walk-up residential flat buildings, multi-dwelling housing and seniors living developments.</p> <p>Newer forms of medium density scale development in the area, including more recently approved seniors living developments, have been</p>

	<p>designed to reflect the desired low density character of the area. This has generally been achieved through the breaking up of built form using varied setback, changes in height and roof formation and utilising of a mixture of one and two storey buildings across the site.</p> <p>It is considered that the proposed development does not appropriately minimise the medium density character of the proposal. The substantial FSR of 0.75:1 reflects an overdevelopment of the site, contributes to excessive bulk and scale of the built form, and amenity impacts to adjoining neighbours. The proposed building form represents a substantial building mass oriented from north to south and as such, provides a presentation of a 'residential flat building style' appearance. The development provides insufficient separation, breaks in the built form and visual relief, particularly as viewed from adjoining properties.</p> <p>Overall, it is considered the scale, density, bulk and overall massing of the proposed development does not reflect the desired low density residential character of the locality.</p>
c) complement heritage conservation areas and heritage items in the area, and	N/A
<p>d) maintain reasonable neighbourhood amenity and appropriate residential character by:</p> <ul style="list-style-type: none"> i) providing building setbacks to reduce ii) bulk and overshadowing, and iii) using building form and siting that relates to the site's land form, and iv) adopting building heights at the street frontage that are compatible in scale with adjacent buildings, and considering, where buildings are located on the boundary, the impact of the boundary walls on neighbours, and 	<p>Non-compliant</p> <p>The excessive gross floor area of the development and inadequate separation distances to adjoining properties would result in adverse visual and amenity impacts. The proposed building form represents a substantial building mass and bulk oriented from north to south. The development provides insufficient separation, breaks in the built form and visual relief as viewed from adjoining properties, particularly No. 38 Bardo Road. The proposed development would result in solar access, privacy, and visual impacts due to its scale and proximity to side facing windows and balconies on the side elevation of the adjoining residential flat building at No. 38 Bardo Road. This is discussed further throughout this report.</p>
e) be designed so the front building on the site is set back generally in line with the existing building line, and	<p>Non-compliant</p> <p>The proposed development provides a setback of 6.0 metres to apartments 01 and 04 in contravention of the 6.5m front building requirement of P21 DCP. This is discussed</p>

	further within Clause <i>D10.7 Front building line</i> of P21 DCP in this report.
f) include plants reasonably similar to other plants in the street, and	Compliant The proposal has been reviewed by Council's Landscape Officer and Bushland and Biodiversity Officer who raise no objections, subject to conditions.
g) retain, wherever reasonable, significant trees, and	Compliant The proposal has been reviewed by Council's Landscape Officer and Bushland and Biodiversity Officer who raise no objections to the proposed tree removal. The Arboricultural Impact Assessment recommends: the retention of the prominent Norfolk Island Pine identified as T5 including the provision of tree protection measures such as engagement of a project arborist to supervise any excavation in proximity The areas identified as soft landscaping provide a satisfactory level of landscaping.
h) be designed so no building is constructed in a riparian zone.	Compliant

Clause 100 – Visual and acoustic privacy	
Standard	Compliance/Comment
Development for the purposes of seniors housing should consider the visual and acoustic privacy of adjacent neighbours and residents by:	
a) appropriate site planning, the location and design of windows and balconies, the use of screening devices and landscaping, and	Non-compliant The proposed development has not provided sufficient separation or privacy measures to mitigate overlooking into the principle private open space and windows of the neighbouring units at No.38 Bardo Road (west) and the private open space of the dwelling at 25 Irrubel Road (north). The design also results potential privacy impacts to the occupants of the proposed development from the the neighbouring units at No.38 Bardo Road. As such, it is considered that the proposal does not optimise privacy through good design, and will result in unacceptable privacy impacts to the adjoining site at No.38 Bardo Road and 25 Irrubel Road. This is discussed further within Clause <i>C1.5 Visual Privacy of P21 DCP</i> in this report.
b) ensuring acceptable noise levels in bedrooms of new dwellings by locating them away from driveways, parking areas and paths.	Compliant

Clause 101 – Solar access and design for climate	

Standard	Compliance/Comment
Development for the purposes of seniors housing should:	
a) for development involving the erection of a new building provide residents of the building with adequate daylight in a way that does not adversely impact the amount of daylight in neighbouring buildings, and	Non-compliant The proposal would result in the principle private open space (balconies) of the ground floor units of the adjoining neighbour to the west (No. 38 Bardo Road) receiving less than 3 hours of sunlight between 9am and 3pm on June 21st as required by P21 DCP. This is discussed further within Clause <i>C1.4 Solar Access of P21 DCP</i> in this report.
b) involve site planning, dwelling design and landscaping that reduces energy use and makes the best practicable use of natural ventilation, solar heating and lighting by locating the windows of living and dining areas in a northerly direction.	Compliant

Clause 102 – Stormwater	
Standard	Compliance/Comment
Development for the purposes of seniors housing should aim to:	
a) control and minimise the disturbance and impacts of stormwater runoff on adjoining properties and receiving waters by, for example, finishing driveway surfaces with semi-pervious material, minimising the width of paths and minimising paved areas, and	Non-compliant Inadequate details have been provided to address the management of stormwater in terms of the additional impact of water runoff associated with the site changes. The proposal would significantly increase the total impervious area of the site. Stormwater plans have been provided without supporting evidence that the required water quality and water balance parameters will be met. Inadequate details have been provided to address Water Sensitive Urban Design requirements for water quality, including submission of the water quality model (MUSIC model files or equivalent).
b) include, where practical, on-site stormwater detention or re-use for second quality water uses.	

Clause 103 – Crime prevention	
Standard	Compliance/Comment
Development for the purposes of seniors housing should be designed in accordance with environmental design principles relating to crime prevention, provide personal property security for residents and visitors and encourage crime prevention by:	
a) site planning that allows observation of the approaches to a dwelling entry from inside each dwelling and general observation of public areas, driveways and streets from a dwelling that adjoins the area, driveway or street, and	Non-compliant Apartments 02 and 05 not comply with the requirements of this clause as they do not provide any visibility to the approach to the entry from inside the apartment.
b) providing shared entries, if required, that serve a small number of dwellings and that are able to be locked, and	Compliant
c) providing dwellings designed to allow residents to see who approaches their dwellings without the	Non-compliant Apartments 02 and 05 not comply with the

need to open the front door.	requirements of this clause as they do not provide any visibility to the approach to the entry from inside the apartment.
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Clause 104 – Accessibility	
Standard	Compliance/Comment
Development for the purposes of seniors housing should:	
a) have obvious and safe pedestrian links from the site that provide access to public transport services or local facilities, and	Non-compliant The development application has not demonstrated that a suitable access pathway is available to the required transport service.
b) provide attractive, yet safe, environments for pedestrians and motorists with convenient access and parking for residents and visitors.	Non-compliant The proposal does not provide any convenient on-site parking for visitors and as such, is reliant on on-street parking in Bardo Road. There are existing parking demands in Bardo Road from overflow of parking from residents, who do not have sufficient off-street parking; as well as visitors to the area.

Clause 105 – Waste management	
Standard	Compliance/Comment
Development for the purposes of seniors housing should include waste facilities that maximise recycling by the provision of appropriate facilities.	Compliant The proposed development is supported by an acceptable bin storage areas to the front of the site.

Division 7 – Non-Discretionary Development Standards

Clause 106 – Interrelationship of Division with design principles in Division 6	
Standard	Compliance/Comment
Nothing in this Division permits the granting of consent to development under this Part if the consent authority is satisfied that the development does not demonstrate that adequate regard has been given to the principles set out in Division 6.	Non-compliant - See table above

Clause 108 – Non-discretionary development standards for independent living units	
Standard	Compliance/Comment
2) The following are non-discretionary development standards in relation to development for the purposes of an independent living unit :	
Height	
a) no building exceeds a height of 9.5m, excluding servicing equipment on the roof of a building,	Compliant The entire building, including servicing equipment on the roof, is below a height of 9.5m.
b) servicing equipment on the roof of a building, which results in the building exceeding a height of 9.5m:	

<ul style="list-style-type: none"> i) is fully integrated into the design of the roof or contained and suitably screened ii) from view from public places, and iii) is limited to an area of no more than 20% of the surface area of the roof, and does not result in the building exceeding a height of 11.5m. 	
Density and Scale (FSR)	
c) the density and scale of the buildings when expressed as a floor space ratio is 0.5:1 or less.	<p>Non-compliant</p> <p>Clause 108 (2)(c) of SEPP Housing 2021 requires that the density and scale of the buildings when expressed as a Floor Space Ratio (FSR) is 0.5:1 (610 m²) or less. The proposal would result in a FSR of 0.75:1 (915.76 m²), which exceeds this requirement by 50.12%.</p> <p>The substantial FSR variation reflects an overdevelopment of the site, contributes to excessive bulk and scale of the built form, and contributes amenity impacts to adjoining neighbours. The development application does not include a written request pursuant to cl.4.6 of PLEP 2014, to justify the exceedance of the Floor Space Ratio development standard.</p> <p>As such this will form a reason for refusal of the application.</p>
Landscaped Area	
d) for a development application made by a social housing provider - at least 35m ² of landscaped area per dwelling,	N/A
e) if (d) does not apply - at least 30% of the site area is landscaped,	<p>Compliant</p> <p>37.7% (462.8sqm)</p>
f) a deep soil zone on at least 15% of the site area, where each deep soil zone has minimum dimensions of 3m and, if practicable, at least 65% of the deep soil zone is located at the rear of the site.	<p>Compliant</p> <p>Deep Soil: 194.6sqm (15.9%)</p> <p>Deep Soil Rear: 119.68sqm (65.4%)</p>
Solar Access	
g) at least 70% of the dwellings receive at least 2 hours of direct solar access between 9am and 3pm at mid-winter in living rooms and private open spaces.	<p>Compliant</p> <p>83.3%</p>
Private Open Space	
h) for a dwelling in a single storey building or a dwelling located, wholly or in part, on the ground floor of a multi-storey building: <ul style="list-style-type: none"> i) at least 15m² of private open space per ii) dwelling, and 	<p>Compliant</p>

<p>at least 1 private open space with minimum dimensions of 3m accessible from a living area located on the ground floor.</p> <p>Note: The open space needs to be accessible only by a continuous accessible path of travel, within the meaning of AS 1428.1, if the dwelling itself is an accessible one (see Schedule 4, section 2).</p>	
<p>i) for a dwelling in a multi-storey building not located on the ground floor – a balcony accessible from a living area with minimum dimensions of 2m and:</p> <ul style="list-style-type: none"> i) an area of at least 10m², or ii) for a 1 bedroom dwelling - an area of at least 6m². 	<p>Non-compliant Apartment 05 and Apartment 06 have balconies of 9m² in contravention of this standard. The area of the balcony with a width of less than 2m is excluded from the calculation.</p>
Car Parking	
<p>j) for a development application made by, or made by a person jointly with, a social housing provider - at least 1 parking space for every 5 dwellings,</p>	N/A
<p>k) if (j) does not apply - at least 0.5 parking space for each bedroom.</p>	<p>Compliant 12 parking spaces are provided.</p>

Ausgrid

Section 2.48 of Chapter 2 requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

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

Comment:

The proposal was referred to Ausgrid who raised no objections, subject to conditions which have been included in the recommendation of this report.

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the continued residential use of the site.

Pittwater Local Environmental Plan 2014

Is the development permissible?	No
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	
zone objectives of the LEP?	Yes

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings	8.5m*	Max**: 9.5m	-	Yes (under SEPP)
Floor Space Ratio	Nil under PLEP (refer to SEPP (Housing) 2021)	N/A	N/A	N/A

***Note:** The PLEP 2014 *Height of buildings map* indicates that the maximum height of building on this site is 8.5m, however clause 84(2)(c) of the SEPP (Housing) 2021, which permits a maximum height of 9.5m (excluding servicing equipment on the roof of the building) prevails, and therefore the maximum height permitted is 9.5m.

****Note:** Maximum height is measured to the ridge of the projecting skylight at RL24.57 as seen in DWG 0628-DA112 01 by Popov Bass below:

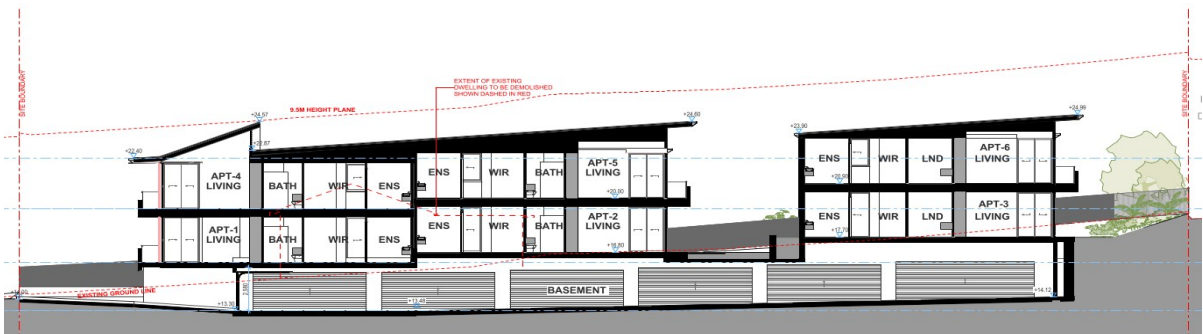


FIGURE 1: Extract of DWG 0628-DA112 01 (longitudinal section) showing 9.5m building height plane and building relationship

Compliance Assessment

Clause	Compliance with Requirements
Part 1 Preliminary	No
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	Yes
4.6 Exceptions to development standards	No
5.10 Heritage conservation	Yes
5.21 Flood planning	Yes
7.1 Acid sulfate soils	N/A
7.2 Earthworks	No
7.6 Biodiversity protection	Yes
7.10 Essential services	Yes

Detailed Assessment

4.3 Height of buildings

The development application has been lodged pursuant to State Environmental Planning Policy (Housing) 2021. Clause 84 of the SEPP outlines development standards for the site, including height. This specifies that the height requirement for development on land in a residential zone where residential flat buildings are not permitted is 9.5m, excluding servicing equipment on the roof of the building. The proposal complies with this requirement.

4.6 Exceptions to development standards

Description of Non-compliance

Development Standard	1. Section 93 of SEPP (Housing) 2021 - Location and access to facilities and services—independent living
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	<p>units - Proximity to transport service</p> <p>2. Section 108(2)(c) of SEPP (Housing) 2021 Non-discretionary development standards for independent living units - Floor Space Ratio (FSR)</p> <p>3. Section 84(2)(c)(iii) of SEPP (Housing) 2021 - Building Envelope</p>
Requirement	<p>1. Section 93 of SEPP (Housing) 2021 requires that facilities and services are, or the transport service is, located at a distance of not more than 400m from the site and the distance is accessible by means of a suitable access pathway of compliant gradients.</p> <p>2. Section 108(2)(c) of SEPP (Housing) 2021 requires the density and scale of the buildings when expressed as a floor space ratio is 0.5:1 or less.</p> <p>3. Section 84(2)(c)(iii) of SEPP (Housing) 2021 requires that if the development results in a building with more than 2 storeys—the additional storeys are set back within planes that project at an angle of 45 degrees inwards from all side and rear boundaries of the site.</p>
Proposed	<p>1. Proximity to Transport Service: Reliance on Keoride Service or 450m to Bus Stop</p> <p>2. FSR: 0.75:1</p> <p>3. The proposed development does not</p>

	provide the upper third storey within a plane measured at 45 degrees from the side boundaries
Percentage variation to requirement	1. Proximity to Transport Service: 12.5% 2. FSR: 50.12% 3. Exceed requirement by up to 3m on the western elevation and 4.8m on the eastern elevation

Assessment of request to vary a development standard

Clause 4.6 Exceptions to development standards

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

(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,

(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

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

Comment:

Section 93 of SEPP (Housing) 2021 - Proximity to Transport Service; Section 108(2)(c) of SEPP (Housing) 2021 - Floor Space Ratio (FSR); and Section 84(2)(c)(iii) - Building Envelope of SEPP (Housing) 2021 development standards are not expressly excluded from the operation of this clause.

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

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

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

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

(a) the consent authority is satisfied that:

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

(b) the concurrence of the Secretary has been obtained.

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

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

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

Comment:

1. Proximity to Transport Service

Section 93 of SEPP Housing specifies that a consent authority cannot consent to a development application for the purposes of an independent living unit unless it is satisfied that residents will have adequate access to facilities and services. The site is not located within 400 metres of essential facilities and as such, is reliant on Keoride, an on-demand public transport service operating across the Northern Beaches, to meet the requirements of SEPP Housing 2021. The written evidence provided by the applicant has failed to demonstrate Keoride meets the requirements of a transport service as specified by Section 93 (2)(b)(i) of SEPP Housing 2021, which states that the transport service must not be an on-demand booking service for the transport of passengers for a fare. Section 93 (3)(b) & (c) of SEPP Housing 2021 requires that the proposed development must have a suitable access pathway of a sufficient gradient to the required transport service. The development application has failed to demonstrate that a suitable access pathway is available to the required transport service.

The development application does not include a written request to vary Section 93 of SEPP Housing 2021.

2. Floor Space Ratio

Section 108 (2)(c) of SEPP Housing 2021 requires that the density and scale of the buildings when expressed as a Floor Space Ratio (FSR) is 0.5:1 or less. The proposal would result in a FSR of 0.75:1, which exceeds this requirement by 50.12%.

The development application does not include a written request to justify the exceedance of the Floor Space Ratio development standard.

3. Building Envelope

Section 84(2)(c)(iii) of SEPP (Housing) 2021 requires that if the development results in a building with more than 2 storeys—the additional storeys are set back within planes that project at an angle of 45 degrees inwards from all side and rear boundaries of the site. The proposal comprises of 3 storeys, including the basement level. SEPP (Housing) 2021 does not specifically exclude basement levels when calculating the number of storeys. The proposed development does not provide the upper third storey within a plane measured at 45 degrees from the side boundaries contrary to s.84(2)(c)(iii) of SEPP Housing. The upper level would exceed requirement by up to 3m on the western elevation and 4.8m on the eastern elevation.

The development application does not include a written request to vary Section 84(2)(c)(iii) of SEPP Housing 2021.

The proposal therefore fails the threshold test pursuant to Clause 4.6 (4)(a)(i), which warrants the refusal of the application. In the absence of this, and the requirement for Council to be satisfied with the Applicant's written request, no further assessment against the provisions of Clause 4.6 is possible.

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the Director-General may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the absence of a written request the concurrence of the Director-General for the variation to the Development Standard cannot be assumed.

7.2 Earthworks

The objective of Clause 6.2 - 'Earthworks' requires development to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

In this regard, before granting development consent for earthworks, Council must consider the following matters:

(a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality of the development

Comment: Inadequate details have been provided to address the management of stormwater in terms of the additional impact of water runoff associated with the site changes.

(b) the effect of the proposed development on the likely future use or redevelopment of the land

Comment: The proposal will not unreasonably limit the likely future use or redevelopment of the land.

(c) the quality of the fill or the soil to be excavated, or both

Comment: The excavated material will be processed according to the Waste Management Plan for the development.

(d) the effect of the proposed development on the existing and likely amenity of adjoining properties

Comment: If approved conditions could be included in the recommendation of this report to limit impacts during excavation/construction.

(e) the source of any fill material and the destination of any excavated material

Comment: The excavated material will be processed according to the Waste Management Plan for the development.

(f) the likelihood of disturbing relics

Comment: The site is not mapped as being a potential location of Aboriginal or other relics.

(g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area

Comment: The site is not located in the vicinity of any watercourse, drinking water catchment or environmentally sensitive areas.

(h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.

Comment: If approved, conditions could be included in the recommendation of this report that will

minimise the impacts of the development.

(i) the proximity to and potential for adverse impacts on any heritage item, archaeological site or heritage conservation area.

Comment: The site is not a heritage item, in the vicinity of a heritage item or in a conservation area or archaeological site.

Note:

The applicant has not provided sufficient information to enable a complete and proper assessment of the proposed excavation. The geotechnical report submitted with the development application references plans dated 26/10/22. The plans with the development application are dated 17/01/2023. In this regard, there is an inconsistency in the documentation. The geotechnical report also specifies that *“the excavation will reach a maximum depth of ~4.6m and, 1.0m from the W common boundary”*. The proposed basement plan indicates that there will be separation of 1.5m from the western boundary. In this regard, there is a discrepancy in the documentation.

7.6 Biodiversity protection

Before determining a development application for development on land to which this clause applies, this clause requires the consent authority to consider:

(a) whether the development is likely to have:

- (i) any adverse impact on the condition, ecological value and significance of the fauna and flora on the land, and*
- (ii) any adverse impact on the importance of the vegetation on the land to the habitat and survival of native fauna, and*
- (iii) any potential to fragment, disturb or diminish the biodiversity structure, function and composition of the land, and*
- (iv) any adverse impact on the habitat elements providing connectivity on the land, and*

Comment:

The development has been assessed by Council's Biodiversity Team, who raised no objections to approval. Therefore, Council can be satisfied that the development will not have any adverse impact on the condition, ecological value and significance of the fauna and flora on the land; the importance of the vegetation on the land to the habitat and survival of native fauna; or the habitat elements providing connectivity on the land. Council is also satisfied that the development will not unreasonably fragment, disturb, or diminish the biodiversity structure, function, or composition of the land.

(b) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.

Comment:

The development has been assessed by Council's Biodiversity Team, who raised no objections to approval. Therefore, Council can be satisfied that the proposal includes appropriate measures to avoid, minimise, or mitigate the impacts of the development.

Before granting development consent, this clause also requires the consent authority to be satisfied that:

(a) the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or

- (b) if that impact cannot be reasonably avoided by adopting feasible alternatives—the development is designed, sited and will be managed to minimise that impact, or
- (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

Comment:

The development has been assessed by Council's Biodiversity Team, who raised no objections to approval. Therefore, Council can be satisfied that the development is designed, sited and will be managed to any significant adverse environmental impact.

Pittwater 21 Development Control Plan

Built Form Controls

Below is a summary of the developments compliance when measured against the Built Form Controls of the PDCP. As discussed earlier in this report, where there is an inconsistency between a control in the PDCP and the SEPP (Housing) 2021, the latter will prevail as the applicable standard.

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	Terrace and Balcony: 6m Facade: 7.37 - 9.39m Basement: 11.1m	7.7% -	No Yes
Rear building line (multi-dwelling housing)	Ground: 3m Upper floor: 4m	Terrace and Balcony: 5.85m Facade: 6.95m Basement: 6m	N/A	Yes
Side building line (multi-dwelling housing)	<u>Front Building (West):</u> Ground: 3m Upper floor: 4m - 4.3m	Basement: 1.5m Facade: 3.2 - 3.7m	50% (Max)	No
	<u>Rear Building (West):</u> Ground: 3m Upper floor: 3.85m - 4.08m	Basement: 1.5m Facade: 3.2m - 3.63m	50% (Max)	No
	<u>Front Building (East):</u> Ground: 3m Upper floor: 3.97m - 4.3m	Pathway: 0.6m Basement: 1.1m - 3m Facade: 2.9m - 3.7m	80% (Max)	No
	<u>Rear Building (East):</u> Ground: 3m Upper floor: 3.825m - 4.23m	Basement: 2.2m- 3m Facade: 2.9m - 3.7m	26.7% (Max)	No
Building envelope	(east) 4.2m	Within Envelope	N/A	Yes
	(west) 4.2m	Within Envelope	N/A	Yes
Landscaped area	50% (613m ²)*	37.7% (462.8m ²)	24.6% (to PDCP)	No (to PDCP) *Complies with SEPP Housing 2021 which overrides P21

				DCP
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***Note: SEPP (Housing) 2021 requires 30% Landscaped Area, and 15% Deep Soil Zone (inclusive)**

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.10 Newport Locality	No	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.6 Wildlife Corridors	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B5.15 Stormwater	No	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	No	Yes
B6.7 Transport and Traffic Management	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	No	No
C1.5 Visual Privacy	No	No
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	No	No
C1.9 Adaptable Housing and Accessibility	Yes	Yes
C1.10 Building Facades	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.14 Separately Accessible Structures	Yes	Yes
C1.15 Storage Facilities	Yes	Yes
C1.18 Car/Vehicle/Boat Wash Bays	No	Yes
C1.20 Undergrounding of Utility Services	Yes	Yes
C1.21 Seniors Housing	No	No
C1.23 Eaves	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C1.24 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D10.1 Character as viewed from a public place	Yes	Yes
D10.3 Scenic protection - General	Yes	Yes
D10.4 Building colours and materials	Yes	Yes
D10.7 Front building line (excluding Newport Commercial Centre)	No	Yes
D10.8 Side and rear building line (excluding Newport Commercial Centre)	No	Yes
D10.11 Building envelope (excluding Newport Commercial Centre)	Yes	Yes
D10.12 Landscaped Area - General	Yes	Yes
D10.14 Fences - General	Yes	Yes
D10.16 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes

Detailed Assessment

A4.10 Newport Locality

The desired character outlined in the Locality Statement for the Newport Locality within P21 DCP provides clear guidance on the form of development anticipated for the future. The anticipated character includes:

The Newport locality will remain primarily a low-density residential area with dwelling houses a maximum of two storeys in any one place in a natural landscaped setting, integrated with the landform and landscape. Any medium density housing will be located within and around commercial centres, public transport and community facilities. Retail, community and recreational facilities will serve the community.

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 building 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 on slopes will be stepped down or along the slope to integrate with the landform and landscape, and minimise site disturbance. Development will be designed to be safe from hazards.

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, to provide feed trees and undergrowth for koalas and other animals, and to enhance wildlife corridors.

Comment

The proposed development is not considered complementary to the desired character for this locality as it does not propose or present as low density residential development. It is considered that the

proposed development does not appropriately minimise the medium density character of the proposal. The substantially non-compliant FSR of 0.75:1 reflects an overdevelopment of the site, contributes to excessive bulk and scale of the built form, and amenity impacts to adjoining neighbours. The proposed building form represents a substantial building mass and as such, provides a presentation of a 'residential flat building style' appearance.

The scale of the development and the site coverage is uncharacteristic and incompatible with the desired character of the locality.

B5.15 Stormwater

Inadequate details have been provided to address the management of stormwater in terms of the additional impact of water runoff associated with the site changes. The proposal would significantly increase the total impervious area of the site. Stormwater plans have been provided without supporting evidence that the required water quality and water balance parameters will be met. Inadequate details have been provided to address Water Sensitive Urban Design requirements for water quality, including submission of the water quality model (MUSIC model files or equivalent). This will form a reason for refusal of the application.

B6.3 Off-Street Vehicle Parking Requirements

Two (2) visitor parking spaces are required for the six (6) x three-bedroom self-contained independent living units in accordance with Pittwater 21 DCP and the Roads and Maritime Services Guide to Traffic Generating Development. The proposal does not provide any convenient on-site parking for visitors and as such, is reliant on on-street parking in Bardo Road. Councils Traffic Engineer has raised objection on these grounds. As such, insufficient visitor parking will form a reason for refusal of the application.

B8.6 Construction and Demolition - Traffic Management Plan

If the application were approved, a condition could be imposed requiring the Applicant to submit an application for a Construction Traffic Management Plan to Council for approval prior to issue of the Construction Certificate. This Construction Traffic Management Plan could be appropriately conditioned to mitigate adverse disruption or nuisance to adjoining residences.

C1.4 Solar Access

Description of Non-compliance

Clause C1.4 of the P21DCP states that private open space of adjoining dwellings are to receive a minimum of three hours sunlight between 9am and 3pm on June 21 (winter solstice). When considering equitable solar access it is noted that at least 50% of private open space should receive sunlight.

Eye of the sun diagrams, have been prepared by a suitably qualified person to assist with the assessment of solar access.

The site most affected by overshadowing with respect to the proposed development is the adjoining neighbour to the west (No.38 Bardo Road, Newport). No.38 Bardo Road consists of three storey residential flat building (including a basement/lower ground floor garage) comprising of 16 units. Of these 16 units, 12 have balconies (and principle private open space) located facing east towards towards the subject site (as demonstrated in figure 1 below). The submitted shadow diagrams demonstrate that all of these balconies currently receive direct solar access at 9am and 10am and a portion of these units receive sunlight at 11am. These balconies do not receive sunlight after 11am.

As demonstrated in Figure 2 below, the proposal would result in four of the ground floor unit balconies (and principle private open space) receiving no sunlight at 9am. This would result in the private open space of four adjoining dwellings receiving less than three hours of sunlight between 9am and 3pm on June 21, which does not comply with the requirements of this control.

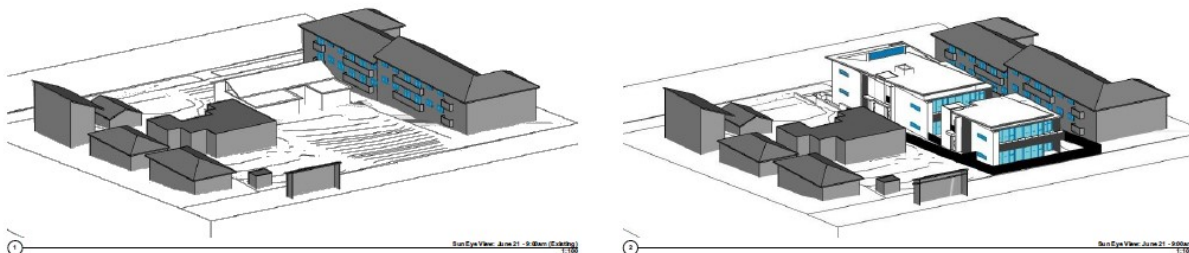


Figure 2 - June 21 9am Eye-of-the-Sun View (Existing on left and proposed on the right).

Merit Consideration

Overall, it is considered that the development has not been designed to maximise solar access for the adjoining dwellings at No.38 Bardo Road. The proposed built form represents a substantial building mass oriented from north to south and the development provides insufficient side setback and breaks in the built form, particularly at the upper levels. Additionally, the proposal would exceed the 0.5:1 Floor Space Ratio requirement as required by *SEPP Housing 2021* by over 50% and would not comply with side setbacks required for multi-dwelling housing as required by P21 DCP. This is not considered to meet the objectives of this control which seek to ensure residential development is sited and designed to maximise solar access and maintain a reasonable level of solar access to adjoining development. The proposal is not considered to achieve the objectives of this control and therefore this will form a reason for refusal of the application.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant Outcomes of the Pittwater 21 Development Control Plan and the objectives specified in s1.3 of the Environmental Planning and Assessment Act 1979. Accordingly, this assessment finds that the proposal is unsupported in this particular circumstance

C1.5 Visual Privacy

Clause *C1.5 Visual Privacy* of P21 DCP requires private open space areas and living rooms of proposed and any existing adjoining dwellings are to be protected from direct overlooking within 9 metres.

The adjoining neighbour to the west (No.38 Bardo Road, Newport) consists of a three storey residential flat building (including a basement/lower ground floor garage) residential flat building comprising of 16 units. Of these 16 units, 12 have balconies (and principle private open space) and living room windows located facing east towards the subject site.

Windows

The following proposed windows on the western elevation of the proposal will be within 9m of balconies and windows of No.38 Bardo Road:

- Apartment 01 (Floor level RL16.2) - Ground floor windows to Bed 1 and Bed 2 (01W001 & 01W002)
- Apartment 02 (Floor level RL16.8) - Ground floor windows to Bed 1 and Bed 2 (02W007 & 02W006)
- Apartment 03 (Floor level RL17.7) - Ground floor windows to Bed 1 and Bed 2 (03W001 & 03W002)

- Apartment 04 (Floor level RL19.4) - First floor windows to Bed 1 and Bed 2 (04W001 & 04W002)
- Apartment 05 (Floor level RL20.0) - First floor windows to Bed 1 and Bed 2 (05W007 & 05W006)
- Apartment 06 (Floor level RL20.9) - First floor windows to Bed 1 and Bed 2 (06W001 & 06W002)

Private Open Space

The following proposed terrace areas on the western elevation of the proposal will be within 9m of balconies and windows of No.38 Bardo Road:

- Apartment 01 and Apartment 02 would have raised terrace/lawn areas along the western boundary which would result in the potential for privacy impacts to the adjoining balconies and windows No. 38 Bardo Road.
- Apartment 5 has an elevated terrace/balcony. The proposed privacy screen on the western elevation does not extend for the full extent of this terrace. As such there is potential for direct overlooking into the adjoining balconies and windows of No. 38 Bardo Road.

Additionally, the proposed first-floor terrace and principle private open space of Apartment 04 would be within 6m of the adjoining northern neighbours (25 Irrubel Road) rear boundary and private open space.

Merit Assessment

Overall, the proposed development has not provided sufficient separation or privacy measures to mitigate overlooking into the principle private open space and windows of the units at No.38 Bardo Road (west) and the private open space of 25 Irrubel Road (north) as required by this control. The design also results potential privacy impacts to the occupants of the proposed units. As such, it is considered that the proposal does not optimise privacy through good design, and will result in unacceptable privacy impacts to the adjoining site at No.38 Bardo Road and 25 Irrubel Road.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant outcomes of the Pittwater 21 Development Control Plan and the objectives specified in s1.3 of the Environmental Planning and Assessment Act 1979. Accordingly, this assessment finds that the proposal is unsupported in this particular circumstance.

C1.7 Private Open Space

State Environmental Planning Policy (Housing) 2021 requirements for private open space for each apartment prevail over the DCP requirements. Clause 108 (2)(i) of SEPP Housing 2021 requires that for a dwelling in a multi-storey building not located on the ground floor – a balcony accessible from a living area with minimum dimensions of 2m and 10m² is provided. Apartment 05 and Apartment 06 have balconies with dimensions of 2m and 9m². The area of the balcony with a width of less than 2m cannot be included within the 10m² requirement. Therefore, the proposed development does not provide sufficient private open space in accordance with the requirements of SEPP Housing 2021.

C1.18 Car/Vehicle/Boat Wash Bays

No wash bay has been identified on the plans. However, if approved condition could be imposed to provide a wash bay in accordance with C1.18.

C1.20 Undergrounding of Utility Services

Should the application be considered for approval, a condition of consent would be imposed requiring the provision of underground services to the site.

C1.21 Seniors Housing

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

- Visual bulk and scale of development is limited.
- Restricted footprint of development on site.
- Retention of the natural vegetation and facilitate planting of additional landscaping where possible.
- Achieve desired future character of the locality.
- Social mix of residents in the neighbourhood.
- Minimal cumulative impact from seniors housing.

Controls

Cumulative Impact

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

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

In terms of the development's response to the outcomes and controls of this requirement, it is noted that there are number of existing and historical seniors housing developments currently within this streetscape at No. 30-32 Bardo Road (7 dwellings), No. 24-26 Bardo Road (10 dwellings) and No 49 Bardo Road (5 dwellings), No. 54 Bardo Road (6 dwellings).

The appearance and density of this development however differs from the other developments within this street providing scale and density aligned with a residential flat building. The excessive gross floor area proposed and building massing across the site, as well as insufficient front and side setbacks does not adequately minimise the visual bulk and scale of development and is not compatible with character of the locality, which is primarily low density residential.

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

D10.7 Front building line (excluding Newport Commercial Centre)

Clause D10.7 – *Front Building Line (excluding Newport Town Centre)* of P21 DCP requires a front

setback of 6.5metres. The proposed development provides a setback of 6.0 metres to Apartments 01 and 04 in contravention of this requirement. Additionally, a large portion of the front setback area is dominated by hard surface area which limits potential for substantial landscaping to mitigate the bulk and scale of the built form as viewed from the street.

Given the proposed non-compliance with the Floor Space Ratio and requirement for access pathways for seniors living development, it is considered that the non-compliance with front setback further limits opportunity to provide additional vegetation to reduce the built form and enhance the existing streetscape as required by the outcomes of this clause. As such, this has been included as a reason for refusal of the application.

D10.8 Side and rear building line (excluding Newport Commercial Centre)

Description of Non-Compliance

Clause *D10.8 – Side and Rear Building Line (excluding Newport Town Centre)* of P21 DCP requires side and rear setbacks of 3 metres where the wall height of the building is 3 metres or less. This control also requires that where the wall height is more than 3 metres above ground level (existing), the minimum distance from any point on the external wall and a side/rear boundary is greater than 3 metres (based on the wall height). The proposed development has wall heights of up to 7.3 metres, which requires setbacks of between 4 metres and 4.3 metres for the upper floor. The proposed building has side setbacks of 3.2m – 3.7m on the western elevation and 2.9m – 3.7m on the eastern elevation which does not comply with this control.

The proposed basement would have a side setback of 1.5m from the western boundary and 1.1m - 3m from the eastern boundary.

Additionally, the proposed pathway along the eastern boundary would have a side setback of 0.6m.

Merit Assessment

With regard to the request for a variation, the development is considered against the underlying Outcomes of the Control as follows:

- *To achieve the desired future character of the Locality.*

Comment:

As discussed in clause A4.10 in this report, the proposal is not considered to achieve the desired future character of the locality.

- *The bulk and scale of the built form is minimised.*

Comment:

The proposed building form represents a substantial building mass oriented from north to south. The development provides insufficient separation, modulation, breaks in the built form and visual relief, particularly as viewed from adjoining properties. As such, the bulk and scale of the built form is not adequately minimised.

- *Equitable preservation of views and vistas to and/or from public/private places.*

Comment:

The proposal does not result in unreasonable view loss from surrounding private and public places.

- *To encourage view sharing through complimentary siting of buildings, responsive design and well-positioned landscaping.*

Comment:

The proposal does not result in unreasonable view loss from surrounding private and public places.

- *To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties.*

Comment:

The proposal does not provide adequate modulation of building bulk and physical separation to ensure that there would be no unreasonable impact on amenity. The proposal would result in the principle private open space (balconies) of the ground-floor units of the adjoining neighbour to the west (No. 38 Bardo Road) receiving less than 3 hours of sunlight between 9am and 3pm on June 21st as required by P21 DCP. This is discussed further within Clause C1.4 *Solar Access of P21 DCP* in this report. The proposal will also result in unreasonable privacy impacts, particularly to the units of the adjoining neighbour to the west (No. 38 Bardo Road). This is discussed further within Clause C1.5 *Visual Privacy of P21 DCP* in this report.

- *Substantial landscaping, a mature tree canopy and an attractive streetscape.*

Comment:

The proposal has been reviewed by Council's Landscape Officer and Bushland and Biodiversity Officer who raise no objections.

- *Flexibility in the siting of buildings and access.*

Comment:

In regard to the identified amenity impacts and visual bulk of the development, a greater level of flexibility in the siting of the development, particularly the upper levels, should be employed by the applicant, to achieve this outcome.

- *Vegetation is retained and enhanced to visually reduce the built form.*

Comment:

The location of the access path along the eastern boundary limits opportunities for vegetation and landscaping to be provided to minimise building bulk.

- *To ensure a landscaped buffer between commercial and residential zones is established.*

Comment:

N/A

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the

proposal is **not supported**, in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of \$47,715 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$4,771,508.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- All relevant and draft Environmental Planning Instruments;
- Pittwater Local Environment Plan;
- Pittwater Development Control Plan; and
- Codes and Policies of Council.

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

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

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

PLANNING CONCLUSION

The proposal, for demolition works and construction of a seniors housing development comprising of six dwellings, has been referred to the Northern Beaches Local Planning Panel (NBLPP) as 10 submissions have been received and the development involves variations to development standards

under SEPP Housing 2021 in relation to; Floor Space Ratio; Proximity to Transport Service; and Building Envelope.

This report has provided a detailed assessment of the proposed development and has found that the proposal, in its current form, is unsuitable and inappropriate for the site. Additionally, the absence of Clause 4.6 Variations are fatal to the application, as they are a precondition to the granting of consent.

Overall, the proposed development is considered to be of excessive bulk, scale and mass, and would result in unreasonable impacts upon the amenity of adjoining properties and inconsistency with the desired character of the locality.

The application has also failed to demonstrate by written evidence that residents of the proposed development will have satisfactory access to services and facilities. The proposal involves a number of variations to critical planning controls, within both SEPP Housing 2021 and Pitwatter 21 DCP, which are intended to ensure a suitable impact and scale and intensity of development.

It is noted that a Class 1 Appeal has been lodged in the Land and Environment Court against the deemed refusal of the application.

For the reasons set out in this report, it is recommended that the application be refused.

It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council , as the consent authority REFUSE Development Consent to Development Application No DA2023/0045 for the Demolition works and construction of a seniors housing development including basement car parking on land at Lot 34 DP 4689,36 Bardo Road, NEWPORT, for the reasons outlined as follows:

1. Reasons For Refusal

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the following provisions of Pittwater Local Environmental Plan 2014:

- **Clause 1.2 Aims of Plan**
- **Clause 7.2 Earthworks**
- **Clause 4.6 Exceptions to development standards**

Particulars:

i) The proposed development fails to achieve consistency with the objectives of Clause 1.2 Aims of the Plan of the LEP 2014 in that the proposal is inconsistent with the desired character of Pittwater's localities.

ii) The applicant has not provided sufficient information to enable a complete and proper assessment of the proposed excavation and earthworks.

iii) The proposal is not accompanied by a written request pursuant to Clause 4.6 Exceptions to Development Standards seeking to justify contraventions of Section 93; Section 108(2)(c) and Section 84(2)(c)(iii) of State Environmental Planning Policy (Housing) 2021

2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the following provisions of the State Environmental Planning Policy (Housing) 2021:

- **Section 84(2)(c)(iii) -Development Standards (Building Envelope)**
- **Section 93 - Location and access to facilities and services**
- **Section 97 - Design of in-fill self-care housing**
- **Section 99 - Neighbourhood amenity and streetscape**
- **Section 100 - Visual and acoustic privacy**
- **Section 101- Solar access and design for climate**
- **Section 104 - Accessibility**
- **Section 103 - Crime prevention**
- **Section 108 (2)(c) - Floor Space Ratio**
- **Section 108 (2)(i) - Private Open Space**

Particulars:

i) The application has failed to demonstrate, by written evidence, that residents of the proposed development will have satisfactory access to services and facilities.

ii) The floor area of the proposed development is excessive and results in associated impacts on the character of the locality and the amenity of adjoining properties.

iii) The proposed development has excessive bulk and scale which would result in unreasonable impacts upon the amenity of adjoining properties and inconsistency with the desired character of the locality.

iii) The application has failed to demonstrate that the design of the proposed development provides adequate consideration for accessibility, in particularly provisions for visitor parking and access to services.

iv) The proposed development does not provide sufficient private open space for Apartment 05 and Apartment 06.

v) The proposed development has not been designed to encourage crime prevention.

3. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the following provisions of the Pittwater 21 Development Control Plan:

- **A4.10 Newport Locality**
- **B5.15 Stormwater**
- **B6.3 Off-Street Vehicle Parking Requirements**
- **C1.4 Solar Access**
- **C1.5 Visual Privacy**
- **C1.7 Private Open Space**
- **C1.21 Seniors Housing**
- **D10.7 Front building line (excluding Newport Commercial Centre)**
- **D10.8 Side and rear building line (excluding Newport Commercial Centre)**

Particulars:

i) The proposed development fails to meet the numerical requirements of the front building line and side building line controls. The numerical non-compliances result in a cumulative impact, that increases the built form, resulting in an overdevelopment of the site.

ii) The excessive gross floor area, bulk and scale and building mass of the proposal is not compatible with character of the locality, which is primarily low density residential.

iii) The proposed development presents unacceptable amenity impacts to adjoining properties by way of solar access impacts, and visual privacy impacts, that arise because of the excessive bulk and scale of the proposal.

iv) Inadequate details have been provided to address the management of stormwater in terms of the additional impact of water runoff associated with the site changes.

v) The proposed development does not provide sufficient private open space for Apartment 05 and Apartment 06.

vi) The proposal does not provide any convenient on-site parking for visitors.

4. Pursuant to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, the proposed development is not consistent with the Desired Future Character of the location and is an over-development of the site.

5. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not within the public's interest.

Particulars:

The proposed development is contrary to the provisions of relevant environmental planning

instruments, development control plans and design guidelines. Notification of the development application has generated a number of submissions for residents in objection to the proposed development. The consent authority could not be satisfied that s.4.15(1)(e) of the Act has been satisfied.