

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2020/0502
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<b>Responsible Officer:</b>	Renee Ezzy
<b>Land to be developed (Address):</b>	Lot 34 DP 4689, 36 Bardo Road NEWPORT NSW 2106 Lot 33 DP 4689, 34 Bardo Road NEWPORT NSW 2106
<b>Proposed Development:</b>	Demolition works and construction of Seniors Housing comprising 12 self-contained dwellings and site consolidation
<b>Zoning:</b>	R2 Low Density Residential
<b>Development Permissible:</b>	Yes, under State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	NBLPP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Wesley Warren James Beatriz James
<b>Applicant:</b>	Built Projects

<b>Application Lodged:</b>	19/05/2020
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Seniors Living
<b>Notified:</b>	29/05/2020 to 12/06/2020
<b>Advertised:</b>	29/05/2020
<b>Submissions Received:</b>	25
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Refusal

<b>Estimated Cost of Works:</b>	\$ 6,237,869.00
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### EXECUTIVE SUMMARY

Development Application DA2020/0502 has been made by Built Projects for demolition works and construction of a two storey development divided into two (2) buildings, containing twelve (12) self-contained dwellings pursuant to State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004. The development includes a basement carpark for twenty eight (28) vehicles. The works also include removal of thirty (30) trees and site consolidation.

Public exhibition of the development resulted in twenty-five (25) submissions objecting to the proposal

and raising concerns relating to overshadowing, traffic and parking, character, density, tree removal and compliance with SEPP HSPD.

The subject site is zoned R2 Low Density Residential under the Pittwater Local Environmental Plan 2014 (PLEP 2014). Development for the purposes of seniors housing is prohibited with the zone. The application has been lodged pursuant to SEPP HSPD.

The assessment of the application has found that the proposal in its current form cannot be supported as it fails to satisfy the requirements of both SEPP HSPD in terms of Clause 29 and Clause 50 and P21 DCP including front building line, side setback, landscaped open space and character.

Accordingly, the application is referred to the NBLPP with a recommendation for refusal and for the Panel to endorse the recommendation.

## **PROPOSED DEVELOPMENT IN DETAIL**

The proposal seeks approval for the consolidation of the two existing allotments into one lot, demolition of the existing structures followed by the construction of twelve (12) self-contained dwellings under the provisions of SEPP (Housing for Seniors and People with a Disability) 2004.

The proposed dwellings are to be contained within three separate buildings with the front two buildings being two storeys in height and the rear building being a combination of one and two storeys in height, with all buildings erected over a single level of basement parking. Vehicular access to the proposed basement is to be via a new single width driveway which runs parallel with the eastern side boundary.

The works also seek the removal of twenty nine (29) trees, twenty seven (27) from within the site and two (2) from the Council verge.

## **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 - Part 2 Permitted or prohibited development  
Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards  
Pittwater Local Environmental Plan 2014 - 7.2 Earthworks  
Pittwater 21 Development Control Plan - A4.10 Newport Locality  
Pittwater 21 Development Control Plan - B4.6 Wildlife Corridors  
Pittwater 21 Development Control Plan - C1.1 Landscaping  
Pittwater 21 Development Control Plan - C1.4 Solar Access  
Pittwater 21 Development Control Plan - C1.12 Waste and Recycling Facilities  
Pittwater 21 Development Control Plan - C1.20 Undergrounding of Utility Services  
Pittwater 21 Development Control Plan - C1.21 Seniors Housing

## SITE DESCRIPTION

<b>Property Description:</b>	<p>Lot 34 DP 4689 , 36 Bardo Road NEWPORT NSW 2106  Lot 33 DP 4689 , 34 Bardo Road NEWPORT NSW 2106</p>
<b>Detailed Site Description:</b>	<p>The subject site consists of two (2) allotment located on the northern side of Bardo Road, known as Lot 33 and Lot 34, Section 2 in DP 4689, known as Nos. 34 and 36 Bardo Road Newport.</p> <p>The site is regular in shape with a combined frontage of 40.23m along Bardo Road and a depth of 60.96m. The site has a total surveyed area of 2452m<sup>2</sup>.</p> <p>The site is located within the R2 Low Density Residential zone and each accommodates a single brick dwelling house. No. 34 has a separate garage on the eastern side of the site with an inground swimming pool between the garage and the dwelling and a number of ancillary sheds. No. 36 has a metal shed to the rear of the dwelling.</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 with some additional trees located at the rear of No. 36.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by a seniors housing development to the east, No 30-32 Bardo Road which contains five (5) detached dwellings, residential float buildings at No. 28 and No. 24-26, a residential flat building to the west at No. 38 Bardo Road. On the opposite side of the road, the character is mostly residential dwelling houses with a townhouse development opposit the site at No. 39.</p>

Map:



## SITE HISTORY

### Development Application DA2020/0502

Development Application DA2020/0502 was lodged with Council on 19 May 2020. The application seeks consent for demolition works, site consolidation and construction of twelve (12) self-contained dwellings pursuant to SEPP (Housing for Seniors and People with a Disability) 2004. It is noted that there was no pre-lodgement meeting sought for this development.

Following receipt of internal referral comments, the Applicant was sent a letter requesting the application be withdrawn due to a number of reasons including landscape, Urban Design, Bushland and Biodiversity and Waste including inconsistencies with the requirements of SEPP (HSPD) 2004.

On 9 November 2020, the applicant submitted amended plans and supporting documentation, however due to the late submission of the amended plans Council was unable re-notify the amended plans or to facilitate re-assessment by the various referral areas. The plans were not formally accepted under the provisions of the EP & A Act, 1979. Accordingly, this assessment addresses the application as it was lodged with Council.

## ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an



Section 4.15 Matters for Consideration'	Comments
	extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
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)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 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 50(1A)</u> of the EP&amp;A Regulation 2000 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 54 and 109</u> of the EP&amp;A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 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 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</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) <b>Environmental Impact</b></p> <p>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. A number of inconsistencies with the relevant controls have been identified which indicate the impact of the development on the built environment is not</p>

Section 4.15 Matters for Consideration'	Comments
	<p>acceptable.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> 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 site is not considered suitable for the proposed development given its location and proximity to access to the required services and facilities is in excess of 400m.
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 HSPD 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 29/05/2020 to 12/06/2020 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition process council is in receipt of 25 submission/s from:

Name:	Address:
Milena Bucalina	10 / 38 Bardo Road NEWPORT NSW 2106
Withheld	NEWPORT NSW 2106
Mr Shane Christopher Cox	14 / 38 Bardo Road NEWPORT NSW 2106
Details Withheld	NEWPORT NSW 2106

Name:	Address:
Mr Louis Christian Werth	8 / 45 - 53 Ocean Avenue NEWPORT NSW 2106
Mr Roger Taylor Russell	52 Bardo Road NEWPORT NSW 2106
Mrs Eleni Wellings	11 / 39 Bardo Road NEWPORT NSW 2106
Ms Megan Katharine Kennedy	PO Box 179 NEWPORT BEACH NSW 2106
Lee Anthony Charles McGlenn	11 / 38 Bardo Road NEWPORT NSW 2106
Mrs Susan Michele Casey	87 Dolphin Crescent AVALON BEACH NSW 2107
Amy Cuss	41 Bardo Road NEWPORT NSW 2106
Mr John Garth Kirkland	23 Irrubel Road NEWPORT NSW 2106
Mr Joseph John Cilia	45 Bardo Road NEWPORT NSW 2106
Mr David Stewart Sams	27 Irrubel Road NEWPORT NSW 2106
Ms Debbie Ann McHenry	6 / 38 Bardo Road NEWPORT NSW 2106
Anonymous	N/A
Justine Patricia Fitzsimmons	8 / 38 Bardo Road NEWPORT NSW 2106
Ms Eliza Jane Bryant	43 Bardo Road NEWPORT NSW 2106
Ms Susan Louise Stanton	2 / 38 Bardo Road NEWPORT NSW 2106
Mr Oliver Craig Sharp	12 / 38 Bardo Road NEWPORT NSW 2106
Ms Lauren Macladrie Boler	60 Bardo Road NEWPORT NSW 2106
Mr Lindsay Wellings	6 / 30 - 32 Bardo Road NEWPORT NSW 2106
Katherine Clarke	63 Palmgrove Road AVALON BEACH NSW 2107
Mr Paul Stuart Harrison Mrs Karin Christine Harrison	50 Bardo Road NEWPORT NSW 2106
Rebecca Bryant Mr Cameron Christopher Bryant	58 Bardo Road NEWPORT NSW 2106

The following issues were raised in the submissions and each have been addressed below:

- **Scale and density of development. Overdevelopment of the site.**

Comment: The proposed development does not comply with the density and scale as prescribed in Clause 50 of SEPP (HSPD). If a proposal complies with that standard it cannot be used to refuse consent. However, as the proposed development does not comply with that clause, the proposal can be considered to result in a scale and density which is an overdevelopment of the site if it's found to be incompatible with the character of the area, as established by the LEC in *Salanitro-Chafei v Ashfield Council* [2005] NSWLEC 366. The case establishes a threshold of density at paragraph 27, which states:

*27 The above [reference to SEPP Seniors and SEPP 53] suggests that there is a general acceptance by the planning profession that an open suburban character is most easily maintained when the FSR of buildings does not exceed 0.5:1. The question raised above may therefore be answered thus:*

*The upper level of density that is compatible with the character of typical single dwelling areas is around*

*0.5:1. Higher densities tend to produce urban rather than suburban character. This is not to say that a building with a higher FSR than 0.5:1 is necessarily inappropriate in a suburban area; only that once 0.5:1 is exceeded, it requires high levels of design skill to make a building fit into its surroundings.*

As detailed in this report, the proposed development in terms of built form is found not to be sympathetic to the character of the Newport Locality and its interface with low density residential development surrounding the site. In this regard, the proposal is considered to be over development of the site.

This issue constitutes a reason for the refusal of the application.

- ***Visual impact - not in keeping or compatible with other development***

Comment: The proposed development does not present a cohesive or consistent form of development which is reflected by the Urban Design comments.

- ***Landscaped area non-compliance out of character with the Newport locality***

Comment: While the development provides landscaping on the site which satisfies the numerical requirement of the SEPP, the Pittwater21 DCP requires a landscape provision of 50% of the site in order to

- ***Non-compliance with SEPP HSPD maximum 400m distance to services.***

Comment: This issue has been raised by Council's Traffic Engineer and is not supported. Further, the Applicant has submitted a Clause 4.6 variation to this development standard which is not considered satisfactory. This issue forms a reason for refusal.

- ***Side boundary setback non-compliance***

Comment: The development includes non-compliances with both the western and eastern elevations with the front building section to the west providing a 1.615m setback at ground and first floor level and to the east at first floor level a 1.615m setback. It is also noted that the proposed basement structure provides less than 0.5m setback from both boundaries with some retaining wall elements to the east extending with a nil setback. This is considered excessive and is not supported.

- ***Height and FSR non-compliance - (proposed 0.717:1)***

Comment: The proposed development complies with both the height requirement under SEPP HSPD and Pittwater LEP at a maximum height of 7.76m. The development does result in a non-compliance with the FSR requirement under the SEPP of 0.5:1. The development has an FSR of 0.717:1. While a Clause 4.6 request for variation has been submitted for the distance to services, there is not 4.6 request for FSR.

- ***Safety - parked cars and narrow single car width, kindergarten across the road - truck movements at drop off and pick up times.***



Comment: The Traffic Impact Assessment submitted with the application discounts the need for any assessment of parking or vehicle behaviour within Bardo Road due to the number of spaces provided within the development. While the site provides a numerically compliant number of parking spaces, the existing conditions within the vicinity of the site do not appear to have been acknowledged.

- ***Traffic - dispute figures based on 18 year old policy***

Comment: The application is accompanied by a Traffic Impact Assessment prepared by Auswide Consulting dated May 2020. The report provides an assessment of the impact of the traffic increase resulting from the development based on the traffic generation rates contained within the RTA Guide to Traffic Generating Development (2002). While this document is old, it is still the current industry reference in relation to these matters. The report concludes that the development would increase traffic movements by up to 24 trips per day which the report considers 'negligible'. Notwithstanding the applicant's traffic report, the site fails to satisfy the minimum distance from public transport and is therefore not supported by Council's Traffic Engineer.

- ***Loss of bush and scenery - tree vandalism investigated by compliance***

Comment: Following complaints in relation to purported tree poisoning, a compliance investigation was commenced. At the time of writing, no definitive conclusions had been made in relation to these claims.

- ***Misleading DA submission details - reported as 12 x 3 bed actually 10 x 3 bed and 2 x 4 bed. Aboricultural report states that the development includes 6 x 2 storey and 2 x single storey apartments plus basement totally incorrect.***

Comment: The supporting documents provide conflicting descriptions of the development form. In its originally submitted form the development includes 10 x 3 bedroom dwellings and 2 x 4 bedroom dwellings. The two x 4 bedroom dwellings are two storey, with two (2) single storey dwellings within the rear (Apartments 7 and 8)

- ***Construction Management Plan recommends trucks to do a right hand turn from Bardo into Seaview Road. No RHT permitted***

Comment: As identified within this submission, the methodology detailed for construction traffic is flawed and ill considered. Traffic conditions in this location do not support a right hand turn into Seaview Avenue to access Barrenjoey Road.



- ***Construction Traffic Management Plan states excavation to start at 6.00am, not acceptable in a residential area. construction zone referred to in report not shown on plans. Proposal states a 50 week build. Is there a penalty if the build takes longer? Site workers are to park in Bardo Road or Bishop Street both of which are devoid of parking spaces***

Comment: In relation to proposed excavation start times, Council's standard conditions restrict excavation works before 8.00am Monday to Friday. Council are unlikely to support amended excavation work times to 6.00am within a residential location. In terms of the length of the construction period, there is no legislated period within which construction should must be confined. As the Traffic Report fails to provide any audit or assessment of on-street parking availability within Bardo Road or the surrounding street network, no reliance should be given to support the availability for on-street parking for construction related vehicles.

- ***Overshadowing impacts on the properties on the western side of 30-32 Bardo Road, 38 Bardo Road***

Comment: The drawing submitted with the application provide limited detail to inform the full extent of overshadowing from the proposed development. It appears that additional overshadowing will impact the eastern facade of No. 38 Bardo Road in the morning from 9am till before midday. Likewise in the afternoon, additional overshadowing will impact on the properties at No. 32 Bardo Road. Insufficient detail has been provided to accurately demonstrate the full impact of the development on the adjoining properties.

- ***Fauna and Wildlife impacts***

Comment: As identified within the Bushland and Biodiversity referral, the site is mapped as part of the high priority wildlife corridor. The proposal fails to provide any wildlife corridors. This forms a reason for refusal.

- ***Landscape plan not included in the development documentation. No screen planting provided between the site and 38 Bardo Road.***

Comment: A Landscape Plan is provided in the submitted set of drawings L01 Issue A Landscape Planting Plan prepared by Susan Read Landscapes. This plan identifies that planting is proposed along the western boundary of the site consisting of a row of 24 Syzygium Straight and Narrow adjacent to Apartment 001 and 003, 6 Syzygium Resilience adjacent to Apartment 005 and 11 Waterhousea Floribunda 'Sweeper' adjacent to Apartment 007. All species provide a mature height of 5-8m located behind a 1.8m high timber fence. This planting is considered acceptable as screen planting.

- ***Garbage bins and collection***

Comment: Council's Waste team have reviewed the proposed development and do not support the development as detailed.

- ***Plans note excavation to the basement at 5.3m, auger holes only show a depth of 1.4m and DCP tests were to a maximum of 2.7m. Geotechnical report recommendations - deep excavation.***

Comment: The Geotechnical report indicates that the proposed development provides a risk to life and property is 'unacceptable' in its proposed form. Further details relating to excavations should be identified to satisfy the requirements identified

- ***Footpath currently only on part of the road and no path from 39 to 47 Bardo, Gladstone only has a path on the northern side no traffic lights or pedestrian crossing or footpath to cross safely***

Comment: The footpath from the site along Bardo Road is not adequate and will require upgrading to provide a suitable pathway 1.5m in width for the entire access route to the bus stops. It is noted that footpaths in Bishop Street and Gladstone Street have already been upgraded.

- ***Acoustic impacts from the single driveway on the eastern side services 24 vehicles plus guests***

Comment: No acoustic assessment has been provided in relation to the basement carpark and the location of the single access in close proximity to the dwellings at No. 30-32 Bardo Road. Given the intensification of this site from two (2) dwellings to twelve (12) dwellings and up to 28 vehicles, there is insufficient information provided to support the proposal in this regard.

- **Loss of property values**

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

- **Asbestos risk**

Comment: Should the application be considered for approval, a condition of consent may be imposed which reinforces the responsibility of the developer under Work Cover requirements to deal with any asbestos on the site in accordance with the requirements of the legislation.

- ***Note the recent Application for Development (under the same SEPP) of the residential site at 60 Binalong Road, Allambie Heights which was intended to be suitable for people with a disability and low income which was completed in January 2020. That Development is currently being sold by the Developer and once it is sold there is nothing which forces the new owner to comply with the original intent of the Development***

Comment: In accordance with Section 18(2) of SEPP HSPD, consent to a development pursuant to this EPI must not be granted unless specific conditions are imposed on the consent. Section 18(2) states:

(2) A consent authority must not consent to a development application made pursuant to this Chapter unless—

(a) a condition is imposed by the consent authority to the effect that only the kinds of people referred to in subclause (1) may occupy any accommodation to which the application relates, and

(b) the consent authority is satisfied that a restriction as to user will be registered against the title of the property on which development is to be carried out, in accordance with section 88E of the [Conveyancing Act 1919](#), limiting the use of any accommodation to which the application relates to the kinds of people referred to in subclause (1).

In accordance with this requirement, restrictions are incorporated on the land title so that when they are sold, this limitation on the occupants is clearly divulged. This issue is not considered a determining element for this development.

- **Damage to adjoining properties as a result of the construction works.**

Comment: The proposed basement excavation is extensive and is identified within the Geotechnical Report prepared by White Geotechnical Group as: "This level of risk to life and property is 'UNACCEPTABLE'. To move the risk to 'ACCEPTABLE' levels, the recommendations in Section 13 are to be followed."

While delapidation surveys would be conditioned on a consent to establish a pre-development condition report of adjoining properties, it is considered that further investigation and information is required to provide certainty around the method of excavation. Excavation depth is identified to be approximately 5.3m however testing on the site occurred to a depth of only 2.7m. Given the proximity of the

excavation to the side boundaries of the site and the neighbouring properties, the likelihood of damage to these properties is considered high. This issue is a reason for refusal.

- ***Additional run off and overland flow.***

Comment: Council's Development Engineer has reviewed the proposed stormwater management for the site and has accepted the proposed design.

## REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p><b>SUPPORTED</b></p> <p>The proposed development comprises of a basement with two level residential dwellings at the front portion and single level at the rear portion. Additionally</p> <p>No objections are raise subject to conditions to ensure compliance with the Building Code of Australia (BCA). It is noted that the proposed development may not fully comply with some requirements of the BCA however it is considered that these matters may be readily determined at Construction Certificate Stage and by way of an acceptable 'Alternate Solution' Design.</p>
Landscape Officer	<p><b>NOT SUPPORTED</b></p> <p>The development application proposes the demolition of existing buildings and structures and the construction of a 12 dwelling seniors housing development under SEPP65 - Seniors Housing, including the consolidation of the two existing allotments into one lot.</p> <p>In the landscape assessment of this application, consideration of the submitted Landscape Plan prepared by Susan Read Landscapes and the Arboricultural Impact Assessment &amp; Tree Protection Plan prepared by Joshua's Tree Service is assessed against the following relevant controls:</p> <ul style="list-style-type: none"> <li>• Housing for Seniors or People with a Disability: clause 33 Neighbourhood amenity and streetscape, clause 34 Visual and acoustic privacy, and clause 50 Standards that cannot be used to refuse development consent for self-contained dwellings</li> <li>• Pittwater 21 DCP Controls: B4.22 Preservation of Existing Trees and Bushland Vegetation, C1.1 Landscaping, C1.21 Seniors Housing, and C1.24 Public Road Reserve - Landscaping and infrastructure</li> </ul> <p>The following landscape outcomes are to be achieved to satisfy the relevant Housing for Seniors or People with a Disability controls:</p> <ul style="list-style-type: none"> <li>• clause 33 Neighbourhood amenity and streetscape: the</li> </ul>



Internal Referral Body	Comments
	<p>proposed development should: (e) embody planting that is in sympathy with, but not necessarily the same as, other planting in the streetscape, and (f) retain, wherever reasonable, major existing trees</p> <ul style="list-style-type: none"> <li>• clause 34 Visual and acoustic privacy, the proposed development should: consider the visual and acoustic privacy of neighbours in the vicinity and residents by: (a) appropriate site planning, the location and design of windows and balconies, the use of screening devices and landscaping</li> <li>• clause 50 Standards that cannot be used to refuse development consent for self-contained dwellings: on any of the following grounds (c) landscaped area: if (ii) in any other case - a minimum of 30% of the area of the site is to be landscaped; (d) Deep soil zones: if, in relation to that part of the site (being the site, not only of that particular development, but also of any other associated development to which this Policy applies) that is not built on, paved or otherwise sealed, there is soil of a sufficient depth to support the growth of trees and shrubs on an area of not less than 15% of the area of the site (the deep soil zone). Two-thirds of the deep soil zone should preferably be located at the rear of the site and each area forming part of the zone should have a minimum dimension of 3 metres</li> </ul> <p>In consideration of clause 33 (e) it is considered that the available deep soil area on the surface will only permit the establishment of small and possibly medium sized trees and not the large tall-trunk canopy trees that existed upon the site and as evident in the locality, including large Turpentines, Stringy Barks, and Spotted Gums, which require substantial surface areas.</p> <p>The control intent of clause 34 to provide visual privacy to neighbours is able to be achieved along the rear boundary, subject to selection of appropriate tree species, but is not able to be achieved for much of the side boundaries where basement alignment close to the boundaries will limit the possibility for planting of a size that will offer screening. Concern is raised that for the proposed ground floor apartments 1, 2, 3, 4 and part 5 and 6, insufficient landscape garden width and soil volume is available to support planting capable of providing privacy to adjoining neighbours.</p> <p>Whilst the numerical compliance of the proposal confirms that clause 50 is not a reason for refusal, the area allocated as deep soil to support the growth of trees is limited to the rear boundary area, albeit that only small to medium sized trees may be possible in this area. The front setback planting opportunities within deep soil is limited to one tree in the south west area as the front setback contains built elements within the deep soil area preventing planting of trees with the inclusion of the following elements in to the deep soil area: underground OSD encroachment, basement stairs, walling, entry path, and an extensive ramp. These elements reduce the deep soil</p>

Internal Referral Body	Comments
	<p>area capable of supporting trees and as such only shrub and groundcover planting would be capable to establish. Concern is raised that the built form is not softened by this proposal and does not meet the requirements of Clause 33 Neighbourhood amenity and streetscape, of SEPP65, nor the requirements to minimise the bulk and scale as referenced in C1.1 Landscaping and C1.21 Seniors Housing of the Pittwater 21 DCP.</p> <p>The following landscape outcomes are to be achieved to satisfy Pittwater 21 DCP:</p> <ul style="list-style-type: none"> <li>• C1.1 Landscaping: retention of canopy trees; a range of low lying shrubs, medium to high shrubs and canopy trees shall be retained or provided to soften the built form; the front of buildings shall be landscaped to screen those buildings from the street by 50%, with consideration for clause 37 Crime prevention under SEPP65 - Seniors Housing; screening shall be of vegetation (not built items) when viewed directly onto the site</li> <li>• C1.21 Seniors Housing: visual bulk and scale of development is limited</li> <li>• C1.24 Public Road Reserve - Landscaping and infrastructure: a 1.5m footpath across the development site frontage shall be provided, noting a footpath of less width exists to Seaview Ave; street tree planting at 6m centres is to be provided within the road verge</li> </ul> <p>In its current design layout, the front setback to Bardo Rd of 6m is inadequate to support planting of trees to soften the built form as the frontage is occupied by OSD encroachment, basement stairs, entry path, front boundary walling, services, and an extensive ramp, that reduces the deep soil area capable of supporting canopy trees to the eastern end of the site frontage where one tree is proposed. The proposed tree planting of <i>Angophora costata</i> (a large canopy tree capable of attaining 20 metres and more) is located in close proximity to the building, walling, stairs and services, such that its long term establishment and survival is unlikely. The remaining landscape area proposes shrub and groundcover planting. Thus the built form is not softened by this proposal and does not meet the requirements of Clause 33 Neighbourhood amenity and streetscape, of SEPP65, nor the requirements to minimise the bulk and scale as referenced in C1.1 Landscaping and C1.21 Seniors Housing of the Pittwater DCP. To support the application proposal, deep soil area within the front setback shall be provided that will be of sufficient surface area to allow for the establishment of canopy trees. Under C1.1 Landscaping, references are provided including the requirement for each tree planted to have a minimum of 3 metres x 3 metres of ground area, and located a minimum of 5 metres from existing and proposed built structures.</p>

Internal Referral Body	Comments
	<p>The rear setback is 6.11m, excluding the paved terrace areas that reduce the rear setback to approximately 4.8m from paved terraces to the boundary. The landscape proposal includes the planting of four tall-trunk canopy trees, two located close to each other at the north-east boundary, one at the north-west boundary, and one forward of the paved terraces to apartment 7, and in consideration of the location of existing trees. Concern is raised that this setback distance is not adequate to support such large tall-trunk canopy trees and in fact is only suitable for small to medium sized trees, which with their canopy density are likely to impact upon solar access to the apartments.</p> <p>The landscape proposal for the side setbacks is inadequate to provide privacy to adjoining properties, with the exclusion of the landscape proposal shown along the side boundaries for apartments 7 and 8. The landscape proposal along the remaining side boundaries contain planters or at-grade gardens of insufficient width to support planting to achieve privacy. Planters and at-grade gardens are to be increased in width to provide sufficient soil volume to support planting capable of achieving at least 3 metres in height at maturity, as well as small tree planting, and removal or reduction of the proposed lawn areas shall be undertaken.</p> <p>The development proposal retains five trees of medium or high significance within the site identified in the Arboricultural Impact Assessment &amp; Tree Protection Plan as trees 6, 7, 8, 16 and 32. Tree 6 - Norfolk Island Pine located at the front of No. 36, and tree 39 - Cheese Tree located at the rear of No. 34 are trees of high significance. Two of the existing street trees are proposed for retention, and no trees on adjoining properties are to be impacted upon.</p> <p>Concern is raised in regard to the protection of the high retention value Norfolk Island Pine. In the first instance, the existing Norfolk Island Pine shall be retained and Council requires the development is to be designed to accommodate the future health and growth of this tree by aligning built elements such as basement excavation, building setback, paved terraces, ramps and the like to a distance away from the Norfolk Island Pine as determined by the structural root zone and tree protection zone requirements.</p> <p>Council does not accept the Arboricultural Impact Assessment &amp; Tree Protection Plan statement <i>"If the development is approved in its current form the retention of this tree will need to be considered flexible by Council, as there is no way to determine the impact the basement will have on its structural integrity until excavation takes place, and actual roots can be observed and assessed."</i> The arboricultural assessment and recommendations, instead, shall be revised to provide a definitive setback distance from the Norfolk Island Pine where no development activity is permitted, and this advice will be reflected in the design layout of any proposed basement excavation, building setback, paved terraces, ramps and the like. The structural root zone is calculated at 3.01m and the tree protection</p>

Internal Referral Body	Comments
	<p>zone is calculated at 9.24m, and with a 10% intrusion into the tree protection zone as permitted under Australian Standard 4970-2009 Protection of Trees on Development Sites, it is feasible to provide advice on the "no-go" surface areas that shall not have built elements proposed upon, and further to advise of the tree protection measures required should intrusion occur over and above the 10% encroachment limit.</p> <p>It appears that the alignment of the basement wall considers the impact upon structural root zone through an indication that vertical pile construction shall be utilised, however the extent of any batter shall be provided to allow the arboricultural assessment to be accurate. The impact to the Norfolk Island Pine from excavation for paved terraces, ramp walls, and the front boundary wall will potentially impact upon the Norfolk Island Pine. The proposal shall provide definitive construction methodology to ensure minimal impact to the Norfolk Island Pine including an alternative design layout to reduce the built elements within the tree protection zone.</p> <p>In it's current form and in consideration of the landscape and arboricultural concerns raised, the application can't be supported.</p>
NECC (Bushland and Biodiversity)	<p><b>NOT SUPPORTED</b></p> <p>The proposed development has been assessed against Pittwater LEP 2014 cl.7.6 Biodiversity and P21 DCP B4.6 Wildlife Corridors. As identified within the Landscape Referral response, impacts of the development on trees, likely issues with trees to be retained, and the landscape treatment proposed is insufficient. The site is mapped as part of the high priority wildlife corridor, and therefore the development is to be amended to satisfy the objective to provide wildlife corridors via creation, restoration, and / or regeneration of habitat. The proposal is to address the relevant controls to ensure no net loss in native canopy trees, ensure that at least 60% of any new planting incorporates native vegetation (as per species listed in Native Plant Species Guide available on the Council website), not include environmental weeds, and maximise linkage within the wildlife corridor.</p> <p>Based on the information provided Bushland and Biodiversity are not satisfied that the development is designed, sited and will be managed to avoid, minimise or appropriately manage any adverse environmental impact.</p>
NECC (Development Engineering)	<p><b>NOT SUPPORTED</b></p> <p>The submitted Geotechnical report certifies that an acceptable risk is achievable for the development. The access and stormwater management is acceptable. However the Council's Traffic Officer has refused the application as result of unsuitable pathway access to public transport. As a result the application cannot be supported.</p>

Internal Referral Body	Comments
Strategic and Place Planning (Urban Design)	<p><b>NOT SUPPORTED</b>  <b>Pittwater DCP - D10 Newport Locality</b></p> <p><b>D10.1 Character as Viewed from a Public Space</b></p> <p><i>To achieve the desired future character of the Locality.  To ensure new development responds to, reinforces and sensitively relates to the spatial characteristics of the existing built form and natural environment. (En, S, Ec)  To enhance the existing streetscapes and promote a scale and density that is in scale with the height of the natural environment.  The visual impact of the built form is secondary to landscaping and vegetation, or in commercial areas and the like, is softened by landscaping and vegetation. (En, S, Ec)  High quality buildings designed and built for the natural context and any natural hazards. (En, S)  Buildings do not dominate the streetscape and are at 'human scale'.  Within residential areas, buildings give the appearance of being two-storey maximum. (S)</i></p> <p>The proposed development is for a Seniors Housing development at 34 Bardo Road. This street is on the fringe of the local commercial area however sits within the R2 zone.</p> <p>The locality is not typified by dense urban residential development and sits within a unique landscaped setting of low rise detached dwellings.  And whilst adjacent to another Seniors Development the overall built form bulk and massing is not acceptable within the context.</p> <p><b>D10.3 Scenic Protection</b></p> <p><i>Bushland landscape is the predominant feature of Pittwater with the built form being the secondary component of the visual catchment. (En, S)</i></p> <p>The proposed development is distinctly primarily built form with little landscaping across the site to mitigate the effects of the intensity of the built form.</p> <p>The single vertical circulation lobby connecting the two buildings has the effect of connecting the two blocks, what is described as two buildings, into one whole development when read from the street. Thus an extensive elevation to the southern elevation street frontage on Bardo Road has a perceived notion of a large singular structure.</p> <p>Separation of the two buildings with a clear and significantly landscaped treatment through the middle, with separate entry lobbies to each building is recommended.</p>



Internal Referral Body	Comments
	<p><b>D10.7 Front Building Line</b></p> <p><i>Achieve the desired future character of the Locality. (S)</i>  <i>Equitable preservation of views and vistas to and/or from public/private places. (S)</i>  <i>The amenity of residential development adjoining a main road is maintained. (S)</i>  <i>Vegetation is retained and enhanced to visually reduce the built form. (En)</i>  <i>Vehicle manoeuvring in a forward direction is facilitated. (S)</i>  <i>To enhance the existing streetscapes and promote a scale and density that is in keeping with the height of the natural environment.</i>  <i>To encourage attractive street frontages and improve pedestrian amenity.</i>  <i>To ensure new development responds to, reinforces and sensitively relates to the spatial characteristics of the existing urban environment.</i></p> <p>The ground level apartments fronting Bardo Road sit almost a full storey (2 metres) above street level with the entrance to the front of the site dominated by the ramp access way. Whilst it is understood that testing of levels to provide access to the building requires compliance under DDA, the ramp has the effect of creating a walled community sitting high above the ground/street level. This is a direct result of the topography. And whilst access is a critical requirement the effect is that the whole 10 metre setback zone to the Front building line is dominated by hard structures rather than landscaping and subversion of the built form.</p> <p>The relationship to the built form from a pedestrian scale is somewhat overwhelming. Coupled with the full width street frontage of built form elevation to the street frontage the human scale connection is somewhat diminished.</p> <p>Additionally there are private terraces that encroach the front setback zone by approximately 4 metres which cannot be supported.</p> <p><b>D10.8 Side and Rear Building Line</b></p> <p><i>To achieve the desired future character of the Locality. (S)</i>  <i>The bulk and scale of the built form is minimised. (En, S)</i>  <i>Equitable preservation of views and vistas to and/or from public/private places. (S)</i>  <i>To encourage view sharing through complimentary siting of buildings, responsive design and well-positioned landscaping.</i>  <i>To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties. (En, S)</i>  <i>Substantial landscaping, a mature tree canopy and an attractive streetscape. (En, S)</i></p>

Internal Referral Body	Comments
	<p><i>Flexibility in the siting of buildings and access. (En, S)</i>  <i>Vegetation is retained and enhanced to visually reduce the built form. (En)</i>  <i>To ensure a landscaped buffer between commercial and residential zones is established. (En, S)</i></p> <p>The control for R2 low density nominates 2.5m setback to one boundary and 1m setback to the other. However given the intensity of development proposed and the ground plan footprint/coverage a preferable setback would allow for the incorporation of deep soil planting zones and a sufficient buffer to the neighbouring properties.</p> <p>Multi residential dwelling nominates 3m side setbacks, however in consideration of the site coverage and the bulk and scale of the development a minimum 3 metre setback to the side boundaries is highly recommended as a way to address several of the controls identified in these comments that assist to subvert the built form whilst providing a level of landscaped amenity and tree canopy coverage across the site.</p> <p>The drawings show hard surface structures within the setback zone. The zones should be free of hard surface paving and the like to allow for planting.</p> <p><b>Plan Arrangement Ground Level (Upper Level)</b></p> <p>The drawings demonstrate Apartments 003 and 004 have private outdoor BBQ and paved terrace areas which are immediately adjacent to bedrooms of the northern block of apartments, separated only by a minimal planting zone no more than 900mm, insignificant enough to allow for acoustic and privacy issues to be mitigated between the two main north south block of apartments.</p> <p>A greater separation that is defined by shared outdoor gardens and green space allowing for substantial green canopy cover is highly recommended on the east west axis as a separation strategy between the apartments, as well as on the north/south axis to allow for through site visual and green links to broader view aspects, creating a finer grain approach to the site.</p> <p>This strategy would no doubt have a knock on effect to the upper level apartments which would require testing to develop the most appropriate planning strategy.</p> <p>Overall, the site would benefit from a significantly reduced footprint at ground level to allow for the creation of four smaller blocks of built form that have a strong green/landscaped framework that addresses the concept of a connected and green seniors living community. Aesthetics, palette of materials and articulation across the front elevation and general built form is well articulated and can be supported.</p>

Internal Referral Body	Comments
Traffic Engineer	<p><b>NOT SUPPORTED</b></p> <p>In accordance with 'Housing for Seniors or people with a disability' a seniors living development must be within 400m of public transport.</p> <p>The applicant has identified that the local bus services are located approximately 450m which exceed the maximum allowance. Further, the paths leading to and from the bus stops are not flat and hence any additional distance beyond the maximum allowable would be deemed an imposition on the residents/tenants.</p> <p>Therefore the application cannot be supported.</p>
Waste Officer	<p><b>NOT SUPPORTED</b></p> <p>This proposal <b>does not comply</b> with Council design requirements. Specifically, the bin storage room is in the basement car park which has resulted in the following non-compliances with Council's waste handling and storage policy</p> <ul style="list-style-type: none"> <li>• Access to the bin storage room is via the vehicular driveway - <i>Unacceptable - access to bin storage rooms must be via a separate dedicated path way.</i></li> <li>• Access to the bin storage room is obstructed by the vehicle security door - <i>Unacceptable - access to bin storage rooms must be unimpeded by vehicular security or other locked doors</i></li> <li>• Bin storage room door opens inwards - <i>unacceptable - bin room access doors must open outwards.</i></li> <li>• Bin storage room is too far from the property boundary with the street. - <i>unacceptable - maximum permitted distance is 6.5 metres.</i></li> </ul> <p>A suitably designed bin room is required at street level no more than 6.5 metres from the property boundary with the street.</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<p><b>SUPPORTED</b></p> <p>The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.</p>

## ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)\*

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

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

operational provisions which the proposal is considered to be acceptable against.

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

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

### **SEPP 55 - Remediation of Land**

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

### **SEPP (Building Sustainability Index: BASIX) 2004**

A BASIX certificate has been submitted with the application (see Certificate No.1097224M dated 28 April 2020).

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

<b>Commitment</b>	<b>Required Target</b>	<b>Proposed</b>
<b>Water</b>	40	41
<b>Thermal Comfort</b>	Pass	Pass
<b>Energy</b>	45	45

A condition may be included requiring compliance with the commitments indicated in the BASIX Certificate should the application be considered for approval.

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

The development application has been lodged pursuant to State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP (HSPD)) as the development is for twelve (12) self contained seniors housing apartments.

## **Chapter 1 – Preliminary**

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

This Policy aims to encourage the provision of housing (including residential care facilities) that will:

- (a) increase the supply and diversity of residences that meet the needs of seniors or people with a disability, and
- (b) make efficient use of existing infrastructure and services, and
- (c) be of good design.

Comment: The proposed development is considered to be consistent with aim (a) of the Policy as the development for Seniors Housing will provide an increase supply of accommodation to meet the needs

of seniors or people with a disability.

However, the proposed development fails to satisfy aims (b) and (c) in terms of the provision for efficient use of existing infrastructure and services. The site is short of the required 400m to the closest bus stop providing services to the required facilities. The Applicant's Access Report prepared by Accessibility Solutions states that the site is 394m and 447m from the two bus stops on the northern and southern sides of Gladstone Street near the intersection with Barrenjoey Road. The report fails to adequately detail the route and the how these distances are achieved. It is considered that non-compliance with this requirement for proximity to services is not adequately supported. The applicant has submitted a Clause 4.6 request to vary this requirement.

When considered against the aim of achieving a good design, the development must also be considered in context with the provisions of SEPP (HSPD). The aim of the policy is to encourage seniors housing achieving a good design outcome which respects the character of the locality it is located in and seeks to minimise the impacts on amenity and the character of the area. The proposed built form does not minimise impacts on the character as detailed within this report and is therefore considered inconsistent with the aims of this policy. This issue is included as a reason for refusal.

## Chapter 2 – Key Concepts

Comment: The proposed development is consistent with the key concepts contained within SEPP (HSPD). The development comprises self-contained dwellings which are to be occupied by seniors or people with a disability. On this basis, the proposed development is considered consistent with Chapter 2 of SSEPP (HSPD).

## Chapter 3 – Development for seniors housing

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

Development Criteria			
Clause	Requirement	Proposal	Complies
<b>PART 2 - Site Related Requirements</b>			
26(1)	Satisfactory access to: (a) shops, banks and other retail and commercial services that residents may reasonably require, and (b) community services and recreation facilities, and (c) the practice of a general medical practitioner	There are identified bus services which provide access or connections to small centres north and south of the site as well as connections to Manly and the Sydney CBD.	Yes
26(2)	Access complies with this clause if: (a) the facilities and	394m to the southbound bus stop on Gladstone Street. 447m to the northbound bus stop.	No



Development Criteria			
Clause	Requirement	Proposal	Complies
	services referred are located at a distance of not more than 400 metres from the site or (b) there is a public transport service available to the residents not more than 400metres away.		
27	If located on bush fire prone land, consideration has been given to the relevant bushfire guidelines.	N/A	N/A
28	Consideration is given to the suitability of the site with regard to the availability of reticulated water and sewerage infrastructure.	Reticulated water and sewerage infrastructure is presently available to the site. The proposed seniors housing development is capable of connecting to a reticulated water system, in accordance with the provisions of Clause 28.	Yes
29	<p>Consideration must be given to whether the proposal is compatible with the surrounding land uses having regard to the following criteria specified in Clauses 25(5)(b)(i), 25(5)(b)(iii), and 25(5)(b)(v):</p> <ul style="list-style-type: none"> <li>i) the natural environment and the existing uses and approved uses of land in the vicinity of the proposed development</li> <li>iii) the services and infrastructure that are or will be available to meet the demands arising from the proposed development and any proposed financial arrangements for infrastructure provision,</li> <li>v) the impact that the bulk, scale, built form</li> </ul>	<p>The development as proposed is considered inconsistent with the requirements contained within Clause 25 (5) for the following reasons:</p> <ul style="list-style-type: none"> <li>i) The site is located within a low density residential area where there is a mix of historical building forms including small walk up apartment buildings, detached dwellings in a seniors housing development and single dwelling houses. Notwithstanding this, the site and the adjoining properties are impacted by an identified high priority wildlife corridor. No acknowledgement or consideration is apparent in the proposed building design for the future retention and enhancement of this environmental feature.</li> <li>iii) While the Applicant has provided an Access Report to support the extension of the maximum travel distance to a bus stop, the justification provided to support this non-compliance fails to provide adequate cause to support this variation. In addition, the report fails to identify the condition of the existing pedestrian path from the site along Bardo Road to Bishop Street which not constructed to current standards and would need upgrading to 1.5m width.</li> </ul>	No

Development Criteria			
Clause	Requirement	Proposal	Complies
	and character of the proposed development is likely to have on the existing uses, approved uses and future uses of land in the vicinity of the development.	v) The proposed development included twelve (12) apartments constituting ten (10) x 3 bedroom and two (2) x 4 bedroom apartments with a significant basement parking structure for twenty eight (28) vehicles. The proposed bulk and scale of the development is considered excessive and inconsistent with the character within the immediate locality which is demonstrable with the non-compliant FSR of 0.717:1 and the uncharacteristic landscaped area provision of 32.6%.	
<b>PART 3 - Design Requirements – Division 1</b>			
30	A site analysis is provided.	A Site Analysis Plan and Statement of Environmental Effects submitted with the application satisfactorily address the requirements of this clause.	Yes

### Clause 31 Design of in-fill self-care housing

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

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

Section	Requirements	Comment
1. Responding to context	<p>Built Environment – New development is to follow the patterns of the existing residential neighbourhood in terms of built form.</p> <p>Policy environment – Consideration must be given to Councils own LEP and/or DCPs where they may describe the character and key elements of an area that contribute to its unique character.</p>	<p>The proposed development provides a two storey development with basement parking. The building form represents a substantial building mass oriented east west across the site providing no integration with the natural environment or achieving a balance between landscapes and built form.</p> <p>The Desired Character for the Newport locality is clearly identified:</p> <p><i>"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. "</i></p>

Section	Requirements	Comment
		The proposed built form is considered inconsistent with the desired character of the locality which seeks low density development forms. The scale of the development is excessive even allowing for the additional density discretions provided by SEPP HSPD and the beneficial and facultative nature of this instrument.
2. Site Planning and design	<p>Objectives of this section are to:</p> <ul style="list-style-type: none"> <li>-Minimise the impact of new development on neighbourhood character</li> <li>-Minimise the physical and visual dominance of car parking, garaging and vehicular circulation.</li> </ul>	<p>The proposed development does not minimise the impact on the neighbourhood character which integrates older established medium density developments with single low density forms of development.</p> <p>The developments presentation to Bardo Road is reflective of a large residential flat building elevated above street level and framed by a large wall seeking to obscure the substantial ramp access required for the site.</p> <p>The residual undeveloped sections of the site provide limited potential to support a tree canopy supporting the existing wildlife corridor which affects the site.</p>
3. Impacts on streetscape	<p>Objectives of this section are to:</p> <ul style="list-style-type: none"> <li>-Minimise impacts on the existing streetscape and enhance its desirable characteristics</li> <li>-Minimise dominance of driveways and car park entries in streetscape.</li> </ul>	As identified above, the development does not provide a sympathetic presentation to the street or integration with the landform in a landscaped setting. The building does not reflect a low density residential character.
4. Impacts on neighbours	The proposal is generally in accordance with the requirements of this section.	As identified by the public submissions received, the proposed development fails to respond to the character of development in this locality and results in numerous impacts on the neighbouring properties.
5. Internal site amenity	<p>Objectives of this section are to:</p> <ul style="list-style-type: none"> <li>-Provide safe and distinct pedestrian routes to all dwellings and communal facilities.</li> </ul>	The site layout creates pedestrian access which is overwhelming the front setback of the site and channels occupants into a single gun barrel access path..

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

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

Control	Requirement	Proposed	Compliance
CL33 Neighbourhood amenity and streetscape	a. Recognise the desirable <i>elements of the location's current character so that new buildings contribute to the quality and identity of the area.</i>	<p>The Newport Locality statement provides the following identification of character:</p> <p><i>The residential areas are of a diverse style and architecture, a common thread being the landscaped, treed frontages and subdued external finishes.</i></p> <p><i>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.</i></p>	No
	b. Retain, complement and sensitively harmonise with any heritage conservation area in the vicinity and any relevant heritage items that re identified in a local environmental plan.	Not applicable.	N/A
	<p>c. Maintain reasonable neighbour amenity and appropriate residential character by;</p> <p>(i) providing building setbacks to reduce bulk and overshadowing</p> <p>(ii) using building form and siting that relates to the site's land form, and</p> <p>(iii) adopting building heights at the street frontage that are</p>	<p>The proposed development does not provide compliant setbacks to the adjoining properties, particularly within the front half of the site.</p> <p>The building form at the front of the site is not considered to adequately respond to the land form with an elevated ground floor above a basement level and imposing front wall structure forming a barrier to the extensive accessible ramp which requires a substantial amount</p>	No

Control	Requirement	Proposed	Compliance
	<p>compatible in scale with adjacent development, (iv) and considering, where buildings are located on the boundary, the impact of the boundary walls on neighbors.</p> <p>d. Be designed so that the front building of the development is set back in sympathy with, but not necessarily the same as, the existing building line,</p>	<p>of the front setback.</p> <p>The location of the front facade of the building provides elements which are considered inconsistent with the required setback. Apartment 001 and Apartment 002 encroach the front setback and introduce additional bulk into this location which is considered unsympathetic and unnecessary.</p>	No
	<p>e. embody planting that is in sympathy with, but not necessarily the same as, other planting in the streetscape.</p>	<p>In relation to this requirement, Council's Landscape Architect provided the following assessment:</p> <p><i>"In consideration of clause 33 (e) it is considered that the available deep soil area on the surface will only permit the establishment of small and possibly medium sized trees and not the large tall-trunk canopy trees that existed upon the site and as evident in the locality, including large Turpentines, Stringy Barks, and Spotted Gums, which require substantial surface areas."</i></p>	No
	<p>f. retain , wherever reasonable, major existing trees, and</p>	<p>The proposed development seeks removal of 30 trees out of the 37 surveyed within the Arborist Report. Concerns are raised over the potential impact on a high retention Norfolk Island Pine (Tree 6). The Landscape assessment of this application does not support the proposal on a</p>	No



Control	Requirement	Proposed	Compliance
	g. be designed so that no building is constructed in a riparian zone.	number of levels. The site is not within a riparian zone.	No
CL 34 Visual and acoustic privacy	The proposed development should consider the visual and acoustic privacy of neighbours in the vicinity and residents by: (a) Appropriate site planning, the location and design of windows and balconies, the use of screening devices and landscaping, and (b) Ensuring acceptable noise levels in bedrooms of new dwellings by locating them away from driveways, parking areas and paths.	<p>Council's Urban Designer has raised concerns in relation to the location and proximity of the private outdoor BBQ entertaining areas to adjacent apartment bedrooms:</p> <p><i>The drawings demonstrate Apartments 003 and 004 have private outdoor BBQ and paved terrace areas which are immediately adjacent to bedrooms of the northern block of apartments, separated only by a minimal planting zone no more than 900mm, insignificant enough to allow for acoustic and privacy issues to be mitigated between the two main north south block of apartments.</i></p> <p><i>A greater separation that is defined by shared outdoor gardens and green space allowing for substantial green canopy cover is highly recommended on the east west axis as a separation strategy between the apartments, as well as on the north/south axis to allow for through site visual and green links to broader view aspects, creating a finer grain approach to the site.</i></p> <p><i>This strategy would no doubt have a knock on effect to the upper level apartments which would require testing to develop the most appropriate planning strategy.</i></p>	No
CL35 Solar access and design for climate	The proposed development should: (a) ensure adequate daylight to the main	The solar diagrams submitted with the application indicate that 83% of the apartments receive a minimum of 3 hours	No

Control	Requirement	Proposed	Compliance
	living areas of neighbours in the vicinity and residents and adequate sunlight to substantial areas of private open space, and (b) involve site planning, dwelling design and landscaping that reduces energy use and makes the best practicable use of natural ventilation solar heating and lighting by locating the windows of living and dining areas in a northerly direction.	<p>sunlight.</p> <p>The level of detail in relation to demonstrating solar access to each apartment is considered insufficient. Apartments 001, 003, 004 and 005 appear to have very restricted areas for outdoor private open space which is impacted by the building design. The two building elements provide little separation to enable sunlight penetration into these ground floor areas and the overall amenity of these spaces appears compromised.</p>	
CL 36 Stormwater	Control and minimise the disturbance and impacts of stormwater runoff and where practical include on-site detention and water re-use.	No objections have been raised by Council's Development Engineers in relation to the proposed stormwater and OSD design.	Yes
CL 37 Crime prevention	The proposed development should provide personal property security for residents and visitors and encourage crime prevention by: (a) site planning that allows observation of the approaches to a dwelling entry from inside each dwelling and general observation of public areas, driveways and streets from a dwelling that adjoins any such area, driveway or street, and (b) where shared entries are required, providing shared entries that serve a small number of dwellings that are able to be locked, and (c) providing dwellings	The entry to the ground floor apartments do 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. Each entry is tucked into a recess which is generally surrounded by solid walls. Apartment 005 and 006 may be afforded greater visibility and security as they each have glazing with an oblique sight line to the entry approach.	No

Control	Requirement	Proposed	Compliance
	designed to allow residents to see who approaches their dwellings without the need to open the front door.		
CL 38 Accessibility	The proposed development should: (a) have obvious and safe pedestrian links from the site that provide access to public transport services or local facilities, and (b) provide attractive, yet safe environments for pedestrians and motorists with convenient access and parking for residents and visitors.	The proposed development has failed to adequately demonstrate that suitable compliant access can be provided from the site to the closest public transport links to access essential services. These deficiencies are detailed within this report and include inadequate footpath width and provision from the site to Gladstone Street and access for a return trip with 400m.	No
CL 39 Waste management	The proposed development should be provided with waste facilities that maximise recycling by the provision of appropriate facilities.	The proposed waste storage area does not satisfy the requirements of Council's Waste Management Guidelines.	No

#### Part 4 - Development standards to be complied with

##### Clause 40 – Development standards – minimum sizes and building height

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

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

Control	Required	Proposed	Compliance
Site Size	1000 sqm	2452m <sup>2</sup>	Yes
Site frontage	20 metres	40.23m	Yes
Building Height	8m or less (Measured vertically from ceiling of topmost floor to ground level immediately below)	>8m	Yes
	A building that is adjacent to a boundary of the site must not be more than 2 storeys in height.	Maximum 2 storeys	Yes

Control	Required	Proposed	Compliance
	A building located in the rear 25% of the site must not exceed 1 storey in height (development within 15.51 metres of the rear boundary).	Rear 25% single storey	Yes

#### Clause 41 Standards for hostels and self contained dwellings

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

Control	Required	Proposed	Compliance
Wheelchair Access	If the whole site has a gradient less than 1:10, 100% of the dwellings must have wheelchair access by a continuous path of travel to an adjoining public road. If the whole of the site does not have a gradient less than 1:10 the percentage of dwellings that must have wheelchair access must equal the proportion of the site that has a gradient of less than 1:10 or 50% whichever is the greater.	Wheelchair access has been provided to all apartments. Apartment 008 and 009 require the use of a stair lift to gain access to the front entry of these apartments which is not considered an ideal or preferred design outcome on a site where these constraints could be better considered.	Yes
Security	Pathway lighting (a) must be designed and located so as to avoid glare for pedestrians and adjacent dwellings, and (b) Must provide at least 20 lux at ground level	Lighting may be conditioned to ensure compliance with glare and reflection should the application be considered for approval.	Yes
Letterboxes	Letterboxes: (a) must be situated on a hard standing area and have wheelchair access and circulation by a continuous accessible path of travel, and (b) must be lockable,	The letter boxes are located adjacent to the front boundary of the site and are at the bottom of the accessible pedestrian ramp.	Yes

Control	Required	Proposed	Compliance
	and (c) must be located together in a central location adjacent to the street entry.		
Private car accommodation	(a)Carparking space must comply with AS2890 (b)One space must be designed to enable the width of the spaces to be increased to 3.8 metres, and (c) any garage must have a power operated door or there must be a power point and an area for motor or control rods to enable a power operated door to be installed at a later date.	Each apartment is provided with a space that measures 3.8m and is provided with a garage door. The power operation of the garage door may be subject to a condition of consent should the application be supported.	Yes
Accessible entry	Every entry to a dwelling must comply with Clause 4.3.1 and 4.3.2 of AS4299	Complies	Yes
Interior general	Widths of internal corridors and circulation at internal doorways must comply with AS1428.1.	The plans indicate compliance in this regard.	Yes
Bedroom	At least one bedroom within each welling must have: (a) An area sufficient to accommodate a wardrobe and a queen size bed (b) A clear area for the bed of at least 1200 mm wide at the foot of the bed and 1000mm wide beside the bed between it and the wall, wardrobe or any other obstruction. (c) Power and telephone outlets and wiring described in Clause 8 of Schedule 3.	Complies in accordance with the Access Report	Yes
Bathroom	The bathroom is to comply with the requirements described	Complies in accordance with the Access ReportYes	Yes



Control	Required	Proposed	Compliance
	in Clause 9 of Schedule 3.		
Toilet	The toilet is to comply with the requirements described in Clause 9 of Schedule 3.	Complies in accordance with the Access Report	Yes
Surface finishes	Balconies and external paved areas must have slip resistant surfaces.	Complies in accordance with the Access Report	Yes
Door hardware	Door handles and hardware for all doors must be provided in accordance with AS4299.	Complies in accordance with the Access Report	Yes
Ancillary items	Switches and power points must be provided in accordance with AS4299.	Complies in accordance with the Access Report	Yes
Living & dining room	A living room must have a circulation space in accordance with Clause 4.7.1 of AS4299, and a telephone adjacent to a general power outlet. Also a living and dining room must have a potential illumination level of at least 300 lux.	Complies in accordance with the Access Report	Yes
Kitchen	The kitchen must comply with the requirements of Clause 16 of Schedule 3	Complies in accordance with the Access Report	Yes
Access to kitchen, main bedroom, bathroom & toilet	The kitchen, main bedroom, bathroom and toilet must be located on the entry level.	Complies in accordance with the Access Report	Yes
Laundry	The laundry must comply with the requirements of Clause 19 of Schedule 3.	Complies in accordance with the Access Report	Yes
Storage	A self-contained dwelling must be provided with a linen storage in accordance with Clause 4.11.5 of AS4299	Complies in accordance with the Access Report	Yes
Garbage	A garbage storage area must be provided in an accessible location.	Complies in accordance with the Access Report	Yes

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

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

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

Control	Required	Proposed	Compliance
Building height	8m or less (Measured from ceiling of topmost floor to ground level immediately below)	7.76m	Yes
Density and scale	0.5:1	0.717:1	<p>No. The extent of non-complying floor space is approximately 532m<sup>2</sup> and represents approximately an additional 43% floor space beyond the requirements within Clause 50 which is not supported. The extent of non-compliance contributes to the bulk and scale of the building form which is considered inconsistent with the character of the locality both established and future character.</p> <p>The extent of site coverage also contributes to the deficient landscaped provision and lack of consideration for wildlife corridors impacting the site. The proposal cannot be supported in this regards and this issue forms a reason for refusal.</p>
Landscaped area	30% of the site area is to be landscaped	798m <sup>2</sup> (32.6%)	Yes
Deep soil zone	15% (367.8m <sup>2</sup> ) of the site area Two	377.27m <sup>2</sup> (15.4%)	Yes

Control	Required	Proposed	Compliance
	thirds of the deep soil zone should be located at the rear of the site. Each area forming part of the zone should have a minimum dimension of 3 metres.		
Solar access	Living rooms and private open spaces for a minimum of 70% of the dwellings of the development receive a minimum of 3 hours direct sunlight between 9am and 3pm in mid winter	Applicants documentation indicates 10 of the 12 dwellings (83%) receive 3 hours solar access to the living areas and private open space. Insufficient detail is provided to demonstrate this is correct.	No
Private open space	<p>(i) in the case of a single storey dwelling or a dwelling that is located, wholly or in part, on the ground floor of a multi-storey building, not less than 15 square metres of private open space per dwelling is provided and, of this open space, one area is not less than 3 metres wide and 3 metres long and is accessible from a living area located on the ground floor, and</p> <p>(ii) in the case of any other dwelling, there is a balcony with an area of not less than 10 square metres (or 6 square metres for a 1 bedroom dwelling), that is not less than 2 metres in either length or depth and</p>	Complies	Yes

Control	Required	Proposed	Compliance
	that is accessible from a living area		
Parking	0.5 car spaces per bedroom (38 bedrooms proposed – 19 carparking spaces required)	24 resident spaces and 4 visitor spaces. 28 spaces in total.	Yes

## SEPP (Infrastructure) 2007

### Ausgrid

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

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

### Comment:

The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

## 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?	No
zone objectives of the LEP?	No

### Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Minimum subdivision lot size:	700sqm	No. 34 - 1226m2 No. 36 - 1226m2	N/A	Yes
Height of Buildings:	8.5m	7.76m	N/A	Yes

### Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
Part 2 Permitted or prohibited development	No
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
4.6 Exceptions to development standards	No
7.1 Acid sulfate soils	Yes
7.2 Earthworks	No
7.3 Flood planning	Yes
7.4 Floodplain risk management	Yes
7.6 Biodiversity protection	No
7.10 Essential services	Yes

#### Detailed Assessment

### **Part 2 Permitted or prohibited development**

The proposal is permissible pursuant to State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004.

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

Description of non-compliance:

Development standard:	Proximity to Bus Stop
Requirement:	400m
Proposed:	447m
Percentage variation to requirement:	12%

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:**

**The distance to services (bus stop) development standard is not expressly excluded from the**



**operation of this clause.**

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

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

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

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

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

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

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

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

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

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

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

Comment:

The Applicant's written request (attached to this report as an Appendix) states that the development is consistent with the aims of the SEPP and provides that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard. The applicant relies on the Access Report prepared by Accessibility Solutions P/L to justify the proposed non-compliant access.

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

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

Comment:

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

*'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written*

*request under cl 4.6 must be “environmental planning grounds” by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase “environmental planning” is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.’*

s 1.3 of the EPA Act reads as follows:

*1.3 Objects of Act(cf previous s 5)*

*The objects of this Act are as follows:*

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

The applicants written request argues, in part:

*"It is noted that the relevant public transport services are Bus Routes 188, 199 & L90 and that each service relies upon both Bus Stop A & B identified on the Bus Stop Distance Plan prepared by Popov Bass, Drawing No. 0565-DA140 and dated 28/4/20. Both Bus Stops are relied upon noting that the bus services are not loop services and therefore service both sides of the street.*

*Bus Stop A is identified as being 394.1m from the site whilst Bus Stop B is located 447.6m from the site.*

*In determining that strict compliance with the 400m development standard is unreasonable in the circumstances of this case, reference is made to the Access Report prepared by Accessibility Solutions (NSW) P/L and which accompanies the Development Application. That report at Section 2.4 states that:*

*While clause 26(4) of the SEPP HS requires a concrete footpath or similar for measuring “distance”, predominantly for motorized wheelchairs and scooters then the users of these devices are not adversely impacted by the 447 metre trip and hence the variation is acceptable.*

*For ambulant pedestrians it is noted that the most direct pedestrian route along the western side of Bishop Street reduces the distance by 35 metres making the journey to southbound services 412 metres with the extra 12 metres beyond the 400 metre target negligible and satisfactory to accept the variation.*

*Notwithstanding the above comment, given the gradual, almost level footpath along Gladstone Street it is my opinion that the additional 47 metres would have negligible impact on pedestrians and is a reasonable variation to the requirements of Clause 26 of the SEPP HS to warrant a clause 4.6 (SEPP*

1) application.

*The presence of multiple seniors living developments in Bardo Road directly adjacent and opposite the subject site confirms the general locality is suitable for the proposed development."*

This assessment does not support the justification provided as sufficient environmental planning grounds. The intent of the SEPP is to provide opportunities for Seniors housing in locations that are able to support the needs of the occupants being 'seniors or people with a disability'.

The return trip distance is 12% beyond the maximum 400m required and is considered to be pushing the limitation of the suitability of this site for this form of development by understating the non-compliance as 'negligible'.

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

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

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of SEPP HSPD . An assessment against these objectives is provided below.

**Objectives contained within SEPP (HSPD):**

*14 Objective of Chapter*

*The objective of this Chapter is to create opportunities for the development of housing that is located and designed in a manner particularly suited to both those seniors who are independent, mobile and active as well as those who are frail, and other people with a disability regardless of their age.*

Comment: The proposed development does not provide enough consideration of occupants of this form of development who are not able bodied or independently mobile. The maximum distance to access a bus service to essential services beyond 400m is not considered acceptable.

### **Zone objectives**

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

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

Comment:

The proposed development will provide an increase in the availability of housing for seniors and people with a disability in this locality. While the site is located within a low density residential environment the built form and scale of the development fails to satisfy a low density character anticipated by the local controls and character statement for this locality.

It is considered that the development does not satisfy this objective.

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

Comment:

The proposed seniors housing development fails to demonstrate that it is within 400m of access to a transport service to essential services. This is an essential requirement for this form of housing required to meet the day to day needs of its residents.

It is considered that the development does not satisfy this objective.

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

Comment:

The proposed development is not considered to be one of low intensity or scale which fits compatibly with surrounding land uses.

It is considered that the development does not satisfy this objective.

### Conclusion:

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

### **Clause 4.6 (4)(b) (Concurrence of the Secretary) assessment:**

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

Planning Circular PS 18-003 dated 21 February 2018, 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 inconsistency of the variation to the objectives of the zone, the concurrence of the Director-General for the variation to Clause 26 Location and access to facilities within SEPP HSPD Development Standard can not be assumed.

## 7.2 Earthworks

The proposed basement excavation extends to a depth of approximately 5.3m. The proposed development fails to satisfy the requirements of Part 7.2 (3)(d) as insufficient detail has been provided by the initial site testing to accurately prescribe the necessary excavation methods. Site testing within the Geotechnical Report prepared by White Geotechnical Group did not extend as deep as the proposed excavation resulting in a risk profile of 'unacceptable'. Accordingly, further resolution of the true extent of ground conditions and subsequent methods for excavation are required to provide certainty around this issue.

## Pittwater 21 Development Control Plan

### Built Form Controls

Built Form Control Site Area - 2452m <sup>2</sup>	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	6.0m to Apartment 002 and partially enclosed terrace of 002 and 001 1.0m to access ramp	7.7% 83%	No No
Rear building line	6.5m	6.1m 4.8m to paved terrace	6.2%	No
Side building line (multi-dwelling housing)	East - 3m	1.6m to Apartment 001 23.2m	47%	No
	West - 3m	3m to face of building	N/A	Yes
Building envelope	East - 3.5m	Up to 2.9m Outside envelope	N/A	No
	West - 3.5m	Up to 2.7m Outside envelope	N/A	No
Landscaped area	50% (1226m <sup>2</sup> )	32.6% (798.92m <sup>2</sup> )	17.4%	No

### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	No	No
A4.10 Newport Locality	No	No
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B3.11 Flood Prone Land	Yes	Yes
B4.6 Wildlife Corridors	No	No
B5.7 Stormwater Management - On-Site Stormwater Detention	Yes	Yes
B5.9 Stormwater Management - Water Quality - Other than Low Density Residential	Yes	Yes
B5.10 Stormwater Discharge into Public Drainage System	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.7 Transport and Traffic Management	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	No	No
B8.2 Construction and Demolition - Erosion and Sediment Management	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	No	No
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	No	No
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	No	No
C1.7 Private Open Space	Yes	Yes
C1.9 Adaptable Housing and Accessibility	Yes	Yes
C1.10 Building Facades	Yes	Yes
C1.12 Waste and Recycling Facilities	No	No
C1.13 Pollution Control	Yes	Yes
C1.15 Storage Facilities	Yes	Yes
C1.18 Car/Vehicle/Boat Wash Bays	No	No
C1.20 Undergrounding of Utility Services	Yes	Yes
C1.21 Seniors Housing	No	No
C1.23 Eaves	Yes	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
C5.17 Pollution control	Yes	Yes
C5.21 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D10.1 Character as viewed from a public place	No	No
D10.4 Building colours and materials	Yes	Yes
D10.7 Front building line (excluding Newport Commercial Centre)	No	No
D10.8 Side and rear building line (excluding Newport Commercial	No	No



Clause	Compliance with Requirements	Consistency Aims/Objectives
Centre)		
D10.11 Building envelope (excluding Newport Commercial Centre)	No	No
D10.12 Landscaped Area - General	No	No
D10.14 Fences - General	No	No
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 Avalon Beach 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. Secondary Dwellings can be established in conjunction with another dwelling to encourage additional opportunities for more compact and affordable housing with minimal environmental impact in appropriate locations. Any dual occupancy dwellings will be located on the valley floor and lower slopes that have less tree canopy coverage, species and habitat diversity and fewer other constraints to development. 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 even present as low density residential development. The proposed development presents as medium density development such as a residential flat building which would be anticipated closer to and around the commercial centres.

The scale of the development and the site coverage is uncharacteristic and incompatible with the

surrounding locality.

The proposal is inconsistent with the aims set out in cl 1.2 (b) Aims of the Plan of PLEP 2014 as the excessive removal of existing trees and vegetation on the site and lack of new replacement plantings to form canopy coverage is considered inconsistent with the Newport Locality as it fails to maintain the continuity of the wildlife corridor which crosses the site.

The broader public benefit of providing seniors housing on this site does not in this instance outweigh the concerns in relation to site coverage, built form and the impact within the localised context.

#### **B4.6 Wildlife Corridors**

The application has been considered in detail in terms of its compliance with the requirements of this control by Council's Bushland and Biodiversity section. The proposal is unsupported for the following reasons:

*"... impacts of the development on trees, likely issues with trees to be retained, and the landscape treatment proposed is insufficient. The site is mapped as part of the high priority wildlife corridor, and therefore the development is to be amended to satisfy the objective to provide wildlife corridors via creation, restoration, and / or regeneration of habitat. The proposal is to address the relevant controls to ensure no net loss in native canopy trees, ensure that at least 60% of any new planting incorporates native vegetation (as per species listed in Native Plant Species Guide available on the Council website), not include environmental weeds, and maximise linkage within the wildlife corridor*

Part B 4.6 seeks to provide for the retention and enhancement of wildlife corridors ensuring/providing the connection of flora and fauna habitats. The controls specify the following expectations:

- Development shall not directly impact on / or significantly reduce / degrade habitat for locally native species, threatened species, endangered populations or endangered ecological communities.
- Development shall retain, and provide an adequate buffer to, wildlife corridors.
- Development shall provide wildlife corridors via creation, restoration, and / or regeneration of habitat.
- Development shall not result in a significant loss of canopy cover or a net loss in native canopy trees.
- 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.

The proposed development removes 30 trees from the site. This issue forms a reason for refusal of the application.

#### **C1.1 Landscaping**

The proposed landscaping on the site has been assessed by Council's Landscape Architect as unacceptable. Some of the key areas where the proposal fails to satisfy the requirements of Section C1.1 Landscaping.

*"The area allocated as deep soil to support the growth of trees is limited to the rear boundary area, albeit that only small to medium sized trees may be possible in this area.*

*The front setback to Bardo Rd of 6m is inadequate to support planting of trees to soften the built form as the frontage is occupied by OSD encroachment, basement stairs, entry path, front boundary walling, services, and an extensive ramp, that reduces the deep soil area capable of supporting canopy trees to the eastern end of the site frontage where one tree is proposed.*

*The proposed tree planting of *Angophora costata* (a large canopy tree capable of attaining 20 metres and more) is located in close proximity to the building, walling, stairs and services, such that its long term establishment and survival is unlikely. The remaining landscape area proposes shrub and groundcover planting. Thus the built form is not softened by this proposal.*

*Concern is raised in regard to the protection of the high retention value Norfolk Island Pine. In the first instance, the existing Norfolk Island Pine shall be retained and Council requires the development is to be designed to accommodate the future health and growth of this tree by aligning built elements such as basement excavation, building setback, paved terraces, ramps and the like to a distance away from the Norfolk Island Pine as determined by the structural root zone and tree protection zone requirements."*

These issues form a reason for refusal.

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

The information submitted with the application in relation to overshadowing and solar access are considered insufficiently detailed to adequately assess the actual extent of solar access and impact on private open space areas and glazing to windows within the development and adjoining properties.

The solar access diagrams are at a scale of 1:500 and it appears from those diagrams that the ground floor apartments within the front building pavilion fail to receive adequate solar access in accordance with the requirements of the clause. This issue forms a reason for refusal.

#### **C1.12 Waste and Recycling Facilities**

The application was referred to Council's Waste Officer who does not support the proposed waste arrangement on the site. This issue forms a reason for refusal.

#### **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 State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.

## **Controls**

### Cumulative Impact

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

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

In terms of the development's response to the outcomes and controls of this requirement, it is noted that there are 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). A further twelve (12) dwellings on the subject site raises concerns in relation to the cumulative impact of these Seniors housing development within this street. The appearance of this development however differs from the other developments within this street providing a streetscape more aligned with a residential flat building than single dwellings that the aforementioned developments present.

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

## **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.

## **NORTHERN BEACHES SECTION 7.12 CONTRIBUTIONS PLAN 2019**

Were the application to be approved, the proposal would be subject to the application of Northern Beaches Section 7.12 Contributions Plan 2019.

A monetary contribution of \$62,378.85 would be required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$6,237,869.

## **CONCLUSION**

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;

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

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

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

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

This report provides a comprehensive assessment of the application for the redevelopment of the site as a seniors housing development containing twelve (12) dwellings.

The site has been inspected and the application assessed having regard to the provisions of Section 4.15 of the EP&A Act, 1979, the provisions of relevant EPIs, including SEPP (HSPD) 2004, SEPP 55, SEPP (Infrastructure), PLEP 2014, the relevant codes and policies of Council, the relevant provisions of the Pittwater 21 DCP.

#### Public Exhibition

The public exhibition of the DA resulted in a very significant response from the community. Objections to the proposed development include concerns relating to FSR, erosion of the natural environmental character through the extensive removal of trees, amenity impacts, over-development of the site, insufficient landscaping and inadequate access to suitable transport infrastructure and essential services.

The issues raised in the submissions have been addressed in the 'Public Exhibition & Submissions' section of this report and are generally concurred with.

While it is acknowledged that the Applicant has submitted some amended plans seeking to address the issues raised by Council in its referral comments and issues letter, the amendments were provided a week before this report was required to be finalised for the agenda. This unfortunately did not provide sufficient time for a detailed assessment or re-notification. Based on an initial review, while the amended proposal appears to reduce the FSR on the site, the proposal still seeks a substantial site coverage at 0.63:1. The amendments do improve some of the issues identified with the location of the driveway and the front accessible ramp however the resolution of the front facade of the development requires further resolution to provide a more discreet transition into a low density residential area.

The application was referred to a number of internal departments. Fundamental concerns have been raised by Council's Landscape Architect, Development Engineer, Waste Officer, Urban Designer and issues raised within the traffic Engineers comments.

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

Based on the assessment contained in this report, it is recommended that the Northern Beaches Local Planning Panel refuse the application for the reasons detailed within the recommendation of this assessment, and any amendments to those reasons.

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 DA2020/0502 for the Demolition works and construction of Seniors Housing comprising 12 self-contained dwellings and site consolidation on land at Lot 34 DP 4689,36 Bardo Road, NEWPORT, Lot 33 DP 4689,34 Bardo Road, NEWPORT, for the reasons outlined as follows:

1. The Panel is not satisfied that:

1) the applicant's written requests under clause 4.6 of the Pittwater Local Environmental Plan 2014 seeking to justify contraventions of clause 26 under the SEPP (Housing for Seniors and People with a Disability) 2004 development standards has adequately addressed and demonstrated that:

a) compliance with the standards is unreasonable or unnecessary in the circumstances of the case; and

b) there are sufficient environmental planning grounds to justify the contraventions.

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

2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Pittwater Local Environmental Plan 2014.

3. Pursuant to Section 4.15(1)(a) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the following provisions of the State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2014:

Clause 26(2) Access

Clause 29 Character

Clause 31 Design of in-fill self-care housing

Clause 32 Design of residential development

Clause 33 Neighbourhood Amenity and streetscape

Clause 34 Visual and Acoustic privacy

Clause 38 Accessibility

Clause 39 Waste Management

4. 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:

Clause A4.10 Newport Locality

Clause B4.6 Wildlife Corridors

Clause B8.1 Construction and Demolition - Excavation and Landfill

Clause C1.1 Landscaping

Clause C1.4 Solar Access

Clause C1.6 Acoustic Privacy

Clause C1.12 Waste and Recycling Facilities

Clause C1.18 Car/Vehicle/Boat Wash Bays

Clause C1.21 Seniors Housing

Clause D10.1 Character as viewed from a public place

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

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

Clause D1.15 Fences

Built Form Control Side building line (multi-unit housing)

Built Form Control Landscaped areas

5. Pursuant to Section 4.15(1)(b)(i) of the Environmental Planning and Assessment Act 1979, the proposed development will result in unacceptable impacts on the natural environment (wildlife corridors) of the Newport Locality.
6. 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.
7. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the local public interest.