

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2018/0327
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<b>Responsible Officer:</b>	David Auster
<b>Land to be developed (Address):</b>	Lot 20 DP 632081, 79 Cabbage Tree Road BAYVIEW NSW 2104
<b>Proposed Development:</b>	Modification of Development Consent 82/149 granted for a retirement village comprising aged persons housing and additional car parking
<b>Zoning:</b>	RU2 Rural Landscape
<b>Development Permissible:</b>	No
<b>Existing Use Rights:</b>	Yes
<b>Consent Authority:</b>	Northern Beaches Council
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Aveo North Shore Retirement Villages Pty Ltd
<b>Applicant:</b>	Aveo North Shore Retirement Villages Pty Ltd

<b>Application Lodged:</b>	28/06/2018
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Seniors Living
<b>Notified:</b>	25/07/2018 to 12/08/2018
<b>Advertised:</b>	28/07/2018
<b>Submissions Received:</b>	8
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Refusal

### PROPOSED DEVELOPMENT IN DETAIL

The proposal involves construction of 10 at-grade car parking spaces adjacent to the existing concrete access road servicing the existing retirement facility. The spaces are located along the access road generally to the west of the reception area, which is relatively central to the site as a whole.

The car parking spaces will require earthworks to reshape the land adjacent to the driveway to provide a suitable parking platform. On the northern side of the access road, excavation supported by a retaining wall is proposed to provide parallel and perpendicular parking spaces. On the southern side of the access road, the car parking spaces are proposed to be suspended above the existing embankment with compacted backfill and vehicle barriers constructed to Australian Standards.

The proposed works will require the removal of four trees.

## 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

Environmental Planning and Assessment Act 1979 - Section 4.56 - Environmental Planning and Assessment Act 1979 - Section 4.56 - with S79C Assessment  
 Pittwater Local Environmental Plan 2014 - Zone RU2 Rural Landscape  
 Pittwater Local Environmental Plan 2014 - 7.6 Biodiversity protection  
 Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards  
 Pittwater 21 Development Control Plan - B1.4 Aboriginal Heritage Significance  
 Pittwater 21 Development Control Plan - B3.1 Landslip Hazard  
 Pittwater 21 Development Control Plan - B4.18 Heathland/Woodland Vegetation  
 Pittwater 21 Development Control Plan - B4.22 Preservation of Trees and Bushland Vegetation

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 20 DP 632081 , 79 Cabbage Tree Road BAYVIEW NSW 2104
<b>Detailed Site Description:</b>	<p>The site is a large, generally square shaped lot, zoned RU2 Rural Landscape. Access is from Cabbage Tree Road via the driveway in the north eastern corner.</p> <p>The site is located in a valley, with the land sloping down from north, south and west, and the lowest point located near the centre of the eastern boundary.</p> <p>There is an existing senior's living development on site, which is confined mainly to the south eastern corner and centre of the site. The south western corner, and northern portion of the site, is well vegetated and largely undisturbed.</p> <p>Surrounding development consists mainly of detached</p>

dwelling to the north, east and south. There is little or no development immediately to the west and south west.

Map:



## SITE HISTORY

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

Application N0198/02 for 82/149 (approved by the Land and Environment Court, dated 9 March 1982) for a retirement village comprised of aged persons housing.

The consent allowed for:

- 40 hostel suites;
- 185 self-care units;
- A village centre;
- Car parking (188 spaces);
- Recreational facilities; and
- Extensive landscaping.

Only stage 1 of this consent has been constructed to date. The modifications applied for under this application are minor and relate to some extra car spaces located off the driveway near the administration building near the centre of the site.

For the current modification application, the applicants have been requested to provide additional information (as discussed within this report) numerous times. After indicating this would be provided on a number of occasions, but not providing the information, the applicants were requested to withdraw the application. After indicating they would likely withdraw on a further number of occasions, but never actually withdrawing, the application is now recommended for refusal.

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

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

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

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

The relevant matters for consideration under Section 4.56 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.56- Other Modifications	Comments
(1) A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	<p>The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those originally approved under Consent 82/149.</p> <p>The proposed modifications relate only to a small number of additional parking spaces, to be provided adjacent to the approved and constructed internal driveway. No modifications are proposed to any of the buildings approved or built on site, or the approved use of the site. Should the application be approved, the development as a whole will remain substantially the same as was previously approved.</p>
<p>(b) it has notified the application in accordance with:</p> <p>(i) the regulations, if the regulations so require,</p> <p>or</p> <p>(ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and</p>	<p>The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Pittwater Local Environment Plan and Pittwater 21 Development Control Plan.</p>



Section 4.56- Other Modifications	Comments
(c) it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, and	Written notices of this application have been sent to all adjoining neighbours, and advertised in the Manly Daily. Given the age of the original application, identifying and notifying original objectors was not possible.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on “Notification & Submissions Received” in this report.

### Section 4.15 Assessment

In accordance with Section 4.56 of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 96 the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application.

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

Section 79C '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	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<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 could be addressed via a condition if approval is granted.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to consultant reports as discussed in this report. The information requested was not provided.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent</p>

Section 79C 'Matters for Consideration'	Comments
	authority to consider the provisions of the Building Code of Australia (BCA). This matter may be addressed via a condition if approval is granted.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) 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. As discussed in the report, the application has not provided sufficient information to demonstrate that environmental impacts will be acceptable. As such, the application is recommended for refusal. (ii) The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed modifications.
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	Insufficient information has been provided by the applicants to demonstrate consistency with all relevant planning controls, in particular with regard to mapped hazards and environmental issues. As such, approval of the application would not be in the public interest.

## EXISTING USE RIGHTS

- **Does the existing use satisfy the definition of "existing use" under the *Environmental Planning and Assessment Act 1979* (the 'Act')?**

Section 4.65 of the Act defines an existing use as:

*"(a) the use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for Division 4A of Part 3 or Division 4 of this Part, have the effect of prohibiting that use, and*

*(b) the use of a building, work or land:*

- (i) for which development consent was granted before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use, and*
- (ii) that has been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse."*

This necessarily requires the following questions to be answered:

1. Was the use of the building, work or land a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for Division 4A of Part 3 or

Division 4 of this Part 4 of the Act, have the effect of prohibiting that use?

Comment:

The the use of the land commenced as a lawful purpose after approval by the Land and Environment Court in 1982, prior to the coming into force of Pittwater Local Environmental Plan 2013.

2. Was the use of the land granted development consent before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use?

Comment:

The use of the land was lawfully approved by the Land and Environment Court on 9 March 1982, prior to the coming into force of Pittwater Local Environmental Plan 2013.

3. Has the use of the land been carried out within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse?

Comment:

The use of the land has been carried out for many years up to the present, which is within one year from the date on which the provision having the effect of prohibiting the use commenced.

- **What is “the land on which the existing use was carried out” for the purposes of cl 42(2) (b) of the Environmental Planning and Assessment Regulation 2000 (“the Regulation”)?**

Meagher JA in *Steedman v Baulkham Hills Shire Council [No. 1] (1991) 87 LGERA 26* stated (at 27) the rule to be applied as follows: “if the land is rightly regarded as a unit and it is found that part of its area was physically used for the purpose in question it follows that the land was used for that purpose”.

Comment:

Having regard to the above case law, it is noted that a part of the area of the land was physically used for the purpose in question and therefore, it is considered that the land was used for that purpose and that existing use rights apply to the subject site.

- **What are the planning principles that should be adopted in dealing with an application to alter enlarge or rebuild and existing use?**

The judgement in *Fodor Investments v Hornsby Shire Council (2005) NSWLEC 71*, sets out the planning principles that should be applied in dealing with development applications seeking to carry out development on the basis of existing use rights.

The following four principles adopted by the NSW Land and Environment Court in this case will have general application in dealing with development applications that rely on existing use rights:

**1. How do the bulk and scale (as expressed by height, floor space ratio and setbacks) of**

## **the proposal relate to what is permissible on surrounding sites?**

*While planning controls, such as height, floor space ratio and setbacks do not apply to sites with existing use rights; they have relevance to the assessment of applications on such sites. This is because the controls apply to surrounding sites and indicate the kind of development that can be expected if and when surrounding sites are redeveloped. The relationship of new development to its existing and likely future context is a matter to be considered in all planning assessments.*

### Comment:

The proposal is generally compliant with the built form controls that would normally apply to development of the site. Insufficient information has been provided to make a full assessment of the exact amount of landscaped area. However, the proposal is for a relatively minor addition of hard surface area in the context of the entire site, and the additional parking spaces will not be visible from outside the site in terms of creating any bulk and scale or visual impacts. No concerns are raised in this regard.

## **2. What is the relevance of the building in which the existing use takes place?**

*Where the change of use is proposed within an existing building, the bulk and scale of that building are likely to be deemed acceptable, even if the building is out of scale with its surroundings, because it already exists. However, where the existing building is proposed for demolition, while its bulk is clearly an important consideration, there is no automatic entitlement to another building of the same floor space ratio, height or parking provision.*

### Comment:

The proposed parking spaces are additional to the existing development, which covers a large portion of the site. The additional works will come adjoining the existing internal access road, and no concerns are raised in this regard.

## **3. What are the impacts on adjoining land?**

*The impact on adjoining land should be assessed as it is assessed for all development. It is true that where, for example, a development control plan requires three hours of sunlight to be maintained in adjoining rear yards, the numerical control does not apply. However, the overshadowing impact on adjoining rear yards should be reasonable.*

### Comment:

The proposed works will have little or no impacts on any adjoining land, given the proposed location of the additional parking spaces.

## **4. What is the internal amenity?**

*Internal amenity must be assessed as it is assessed for all development. Again, numerical requirements for sunlight access or private open space do not apply, but these and other aspects must be judged acceptable as a matter of good planning and design. None of the legal principles discussed above suggests that development on sites with existing use rights may have lower amenity than development generally.*

### Comment:



N/A

## Conclusion

The use has been approved under a previous environmental planning instrument and, therefore, is a lawful use. Subsequently, the use can be retained under the current environmental planning instrument.

## BUSHFIRE PRONE LAND

The site falls within bush fire prone land. However, the proposed modifications, being for hardstand parking areas, do not contribute to any fire risk.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited 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 8 submission/s from:

Name:	Address:
Mr Grant Geoffrey Gordon	10 Woodside Grove FORESTVILLE NSW 2087
Mrs Jodie Blake	10 Lae Place ALLAMBIE HEIGHTS NSW 2100
Mr Dror Schmuely	92 Cabbage Tree Road BAYVIEW NSW 2104
Mr Peter Wheen	6 Sunlea Place ALLAMBIE HEIGHTS NSW 2100
Ms Gopala Maurer	18 Gladys Avenue FRENCHS FOREST NSW 2086
Mr Stephen Mark Monty	8 Old Samuel Street MONA VALE NSW 2103
Katandra Bushland Sanctuary Trust	Po Box 365 MONA VALE NSW 1660
Pittwater Natural Heritage Association	PO Box 187 AVALON BEACH NSW 2107

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

- Environmentally sensitive land - landslip, flood, riparian, wildlife corridor
- Impacts on trees, flora and fauna, threatened species, loss of natural environment, destruction of bushland
- Permissibility, setting of precedent in zone, existing use rights
- Development of Senior's housing not in public interest
- Development application not modification
- SEPP Seniors living
- Privacy, road noise, car headlights, loss of natural sunlight
- Encroachment over boundary

The matters raised within the submissions are addressed as follows:

- **Environmentally sensitive land - landslip, flood, riparian, wildlife corridor**  
Concerns were raised regarding the environmentally sensitive nature of the land, particularly

with regard to landslip, flood, riparian land and wildlife corridors.

Comment: The application was referred to Council's internal referral bodies in relation to the above matters (see Referrals section of this report). The applicants have not submitted sufficient information for these referral bodies to make a full and proper assessment, and as such, the application is recommended for refusal on that basis.

- **Impacts on trees, flora and fauna, threatened species, loss of natural environment, destruction of bushland**

Concerns were raised with impacts on the environmental matters listed above, and also that the Biodiversity Conservation Act should apply to the application.

Comment:

As above, the application was referred to the relevant departments within Council, who found that inadequate information had been submitted to make an adequate assessment on these matters. The application is recommended for refusal on this basis.

- **Permissibility, setting of precedent in zone, existing use rights**

Concerns were raised that senior's housing is a prohibited use in the zone.

Comment:

The submission is correct that senior's living is now a prohibited use. However, the application benefits from existing use rights (as discussed in this report). The proposal is for a very minor addition to the overall development, to provide a small amount of additional parking. The minor modification to the existing consent will not create any particular precedent that could be used to ignore the land zoning. Existing use rights are considered to apply, and the application could be approved in terms of permissibility (subject to other reasons for refusal being addressed).

- **Development of Senior's housing not in public interest**

Concerns were raised that the development of senior's housing in the area was not in the public interest.

Comment: The proposal is for a minor modification to a relatively large overall existing senior's housing development. The proposal will not intensify the use in any significant way, and it is noted that there is another previously approved stage of the development which is yet to be constructed. The proposal is not supported for other reasons as discussed throughout this report, however, if those issues can be adequately resolved in future, the proposed extra parking spaces are not considered to be inconsistent with the public interest in general.

- **Development application not modification**

Concerns were raised that the application was not 'substantially the same development' and should be made as a Development Application, as opposed to a modification application.

Comment:

The proposal is for a minor change to the original approval, simply adding a small amount of additional parking adjacent to the internal access road, and does not create any change to the overall use as originally approved, nor a significant change to the overall location or extent of development and built form on site. If the current modification application were approved, the overall development would certainly remain 'substantially the same' as was originally approved. As such, this is not a recommended reason for refusal.

- **SEPP Seniors living**

Concerns were raised that State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 should apply to the development.

Comment: The modification proposed represents a minor addition to the overall approval, and is confined to providing some extra parking beside the existing internal driveway. It would not be reasonable to require changes to the already constructed housing, which is not proposed to be modified in any way, to comply with the SEPP.

- **Privacy, road noise, car headlights, loss of natural sunlight**

General concerns were raised regarding impacts on privacy, noise, headlights and solar access.

Comment:

The proposed modification relates to adding a relatively small number of extra car spaces adjacent to the existing internal driveway on site. This parking is situated generally towards the approximate centre of the site, well away from any neighbouring residences, and in a location where neighbouring residences are not visible to the eye due to surrounding trees. The extra parking is not likely to create any significant increase in traffic on site, nor will it impact in any significant way on solar access, privacy, or noise.

- **Encroachment over boundary**

Concerns were raised that the proposal encroached over the boundary of the site.

Comment: The proposed additional car spaces are adjacent to the existing internal driveway, and to be located near the approximate centre of the site. No boundary encroachment is proposed under this modification.

## REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The proposal seeks to modify development consent 82/149. The proposed modification will involve the construction of 10 at-grade car parking spaces adjacent to an existing concrete access road servicing the existing retirement facility.</p> <p>The assessment of existing impacts of development to existing trees is contained to the five trees within the arboricultural impact assessment. There are many more trees within five metres of development that require assessment, and this shall be provided in an amended arboricultural impact assessment report. The Northern Beaches Council's DA Lodgement requirement determines that trees within 5.0m of works shall be reported upon.</p> <p>As the report stands, Landscape accepts the arboricultural impact assessment for removal of T3 and T4 due to their low retention value, subject to replacement tree planting, and accepts that T1 will not be impacted by the works, subject to arboricultural attendance and</p>

Internal Referral Body	Comments
	<p>recommendations on site.</p> <p>Additionally, further information by way of a sensitive root investigation, is required to definitely assess the impact upon existing trees T2 and T5 from excavation and construction works.</p>
NECC (Bushland and Biodiversity)	<p>Council's Bushland &amp; Biodiversity division has assessed the proposal against Pittwater LEP 2014 Control 7.6 Biodiversity Protection &amp; Pittwater 21 DCP 2014 Control B1.4 Aboriginal Heritage Significance, B4.18 Heathland/Woodland Vegetation and believes the proposed development requires additional information submitted prior to understanding the impacts of such.</p> <p>The following documentation is required prior to assessment:</p> <ul style="list-style-type: none"> <li>• A complete survey of all vegetation within 5m of any proposed works;</li> <li>• Assessment against the requirements of the Biodiversity Conservation Act 2016 in relation to any proposed removal of native vegetation (including native tree canopy);</li> <li>• An updated Arborist Report (AIA) including all newly surveyed vegetation and the impacts of works on this vegetation. Where the Arboriculturist is unsure of the works impact on trees, proposed excavation zones are to be marked out onsite and root mapping or non-destructive investigative digging is required. This information is to be submitted to Council to provide through impacts on trees to be retained and which trees require removal. All works will need to be to provide a minimum 300mm clearance of tree stems once built. Pruning specification is to be provided if appropriate.</li> </ul> <p><u>Further comments provided 22/7/19</u></p> <p><b>Pittwater LEP Clause 7.6 – Biodiversity Protection</b> The objective of this clause is to maintain terrestrial, riparian and aquatic biodiversity by:</p> <ul style="list-style-type: none"> <li>• protecting native fauna and flora, and</li> <li>• protecting the ecological processes necessary for their continued existence, and</li> <li>• encouraging the conservation and recovery of native fauna and flora and their habitats.</li> </ul> <p><b>Pittwater DCP Clause B4.18 Heathland/Woodland Vegetation</b></p> <ul style="list-style-type: none"> <li>• Development shall retain and enhance habitat and wildlife corridors for threatened species, endangered populations, endangered ecological communities and other locally native species.</li> <li>• Development shall not reduce or degrade habitat for locally native species, threatened species, endangered populations or endangered ecological communities.</li> <li>• Water entering heathland from the development shall be free</li> </ul>

Internal Referral Body	Comments
	<p>from pollutants and elevated nutrients.</p> <ul style="list-style-type: none"> <li>Development shall ensure long-term sustainability of wetlands and must include an appropriate buffer - minimum of 10 metres from wetland edge.</li> </ul> <p><b>Required Information</b></p> <p>There is insufficient information provided to assess the modification's compliance with the relevant controls. In accordance with the technical requirements for Pittwater DCP Clause B4.18 Heathland/Woodland Vegetation, development that disturbs between 40m<sup>2</sup> and 500m<sup>2</sup> of vegetation and/or more than five native trees requires:</p> <ul style="list-style-type: none"> <li>An arborist report, prepared by a minimum AQF 5 Level arborist and assessing every tree within the development footprint. The arborist report is to identify which trees are to be proposed to be removed and include tree protection measures to enable safe retention of trees not proposed to be removed.</li> <li>An ecological assessment, prepared by a suitably qualified ecologist. The assessment may take the form of a letter or brief report, addressing the proposal's compliance with Pittwater LEP Clause 7.6 (Biodiversity Protection), Pittwater DCP Clause B4.18 (Heathland/Woodland Vegetation), and including any applicable Tests of Significance for threatened entities listed under the NSW BC Act 2016. The letter/report should address the presence of <i>Rhodamnia rubescens</i> and any other relevant entities within the development footprint, including potential indirect effects.</li> </ul>
NECC (Development Engineering)	No objections to the proposed additional carparking spaces subject to conditions.
NECC (Riparian Lands and Creeks)	<p>The application is recommended for approval with conditions. The applicant has not supplied a sediment and erosion control plan for the work. Given the close proximity to a watercourse, this must be submitted prior to issue of the construction certificate. Sediment controls should be installed prior to commencement of any work and maintained for the duration of work.</p> <p>The applicant has not addressed Pittwater 21 DCP B5.9 - Water quality. Filtration devices to capture litter, organic matter and sediments prior to discharge of stormwater from the land or into the watercourse should be incorporated into the design.</p> <p><b>Planner Comments</b></p> <p>A class 1 creek, as defined under the Water Management Act 2000 (WM Act), is located within close proximity to the development. The creek becomes class 2 where it is piped under the golf links at the entrance of the property. The development itself only impacts the riparian zone where the driveway passes over the creek, and crossings are allowed on class 1 and 2 creeks as long as the flow is</p>



Internal Referral Body	Comments
	not disrupted. The development does not impede or interrupt the flow of the creek. Therefore, the proposal does not constitute a controlled activity and referral to the Office of Water is not required.
Traffic Engineer	<p>This Section 4.56 application seeks approval for an additional ten (10) at-grade car parking spaces along an existing concrete access road within the development.</p> <p>Traffic: No change to the development yield will not produce any notable traffic implications. Traffic team raise no objection.</p> <p>Parking: Traffic raises no objection subject to the Development Engineer's comments/conditions.</p> <p>No further alterations to the site.</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	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.

### **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 (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?	Yes
zone objectives of the LEP?	Yes

Principal Development Standards

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.5m	3m	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
6.1 Warriewood Valley Release Area	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.3 Flood planning	Yes
7.4 Floodplain risk management	Yes
7.6 Biodiversity protection	No
7.7 Geotechnical hazards	No
7.10 Essential services	Yes

Detailed Assessment

## Zone RU2 Rural Landscape

Seniors housing is no longer permissible in the current zoning of the site. However, the proposal is for a minor modification to a previous approval from 1982, and therefore benefits from existing use rights.

### 7.6 Biodiversity protection

The applicant has not provided the necessary information to make an assessment against this clause (see referral comments from Council's Bushland & Biodiversity division). As such, refusal is recommended as the application has not demonstrated consistency with the requirements of this clause.

### 7.7 Geotechnical hazards

The site falls within area mapped as H1 and H2 on the Pittwater Geotechnical Hazard Map. A geotechnical report was not provided with the application. As such, the application is recommended for refusal based on lack of information in this regard.

## Pittwater 21 Development Control Plan

### Built Form Controls

Built Form Control	Requirement	Approved	Proposed	Complies
Front building line	20m	150m approx	unaltered by proposed modification works	Yes
Rear building line	7.5m	4m approx	unaltered by proposed modification works	Yes
Side building line	7.5m	West 40m approx	unaltered by proposed modification works	Yes
Landscaped area	96% of the site area minus 400 square metres	Compliant	insignificant change	Yes

\*The proposal is subject to existing use rights, which means that the above built form controls do not strictly apply to the development (see discussion under Existing Use Rights in this report).

### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.14 Warriewood Locality	Yes	Yes
A5.1 Exhibition, Advertisement and Notification of Applications	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	No	No
B3.1 Landslip Hazard	No	No
B3.2 Bushfire Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.18 Heathland/Woodland Vegetation	No	No
B4.22 Preservation of Trees and Bushland Vegetation	No	No

Clause	Compliance with Requirements	Consistency Aims/Objectives
B5.9 Stormwater Management - Water Quality - Other than Low Density Residential	Yes	Yes
B5.12 Stormwater Drainage Systems and Natural Watercourses	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
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
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.9 Adaptable Housing and Accessibility	Yes	Yes
C1.13 Pollution Control	Yes	Yes
D14.1 Character as viewed from a public place	Yes	Yes
D14.2 Scenic protection - General	Yes	Yes
D14.3 Building colours and materials	Yes	Yes
D14.7 Front building line	Yes	Yes
D14.8 Side and rear building line	Yes	Yes
D14.14 Landscaped Area - Non Urban	Yes	Yes
D14.17 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes

### Detailed Assessment

#### **B1.4 Aboriginal Heritage Significance**

The applicant has not provided the necessary information to make an assessment against this clause (see referral comments from Council's Bushland & Biodiversity division). As such, refusal is recommended as the application has not demonstrated consistency with the requirements of this clause.

#### **B3.1 Landslip Hazard**

The site falls within area mapped as H1 and H2 on the Pittwater Geotechnical Hazard Map. A geotechnical report was not provided with the application. As such, the application is recommended for refusal based on lack of information in this regard.

#### **B4.18 Heathland/Woodland Vegetation**

The applicant has not provided the necessary information to make an assessment against this clause (see referral comments from Council's Bushland & Biodiversity division). As such, refusal is recommended as the application has not demonstrated consistency with the requirements of this clause.

#### **B4.22 Preservation of Trees and Bushland Vegetation**

The applicant has not provided the necessary information to make an assessment against this clause (refer to comments from Council's Landscape officer in this report). As such, refusal is recommended as the application has not demonstrated consistency with the requirements of this clause.

#### **THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

The proposal will not significantly effect 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.

#### **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
- Consistent with the objectives of the relevant EPIs
- Inconsistent with the objects of the Environmental Planning and Assessment Act 1979

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 Council, as the consent authority REFUSE Modification Application No. Mod2018/0327 for Modification of Development Consent 82/149 granted for a retirement village comprising aged persons housing and additional car parking on land at Lot 20 DP 632081,79 Cabbage Tree Road, BAYVIEW, subject to the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the application has not demonstrated consistency with the provisions of Clause 7.6 Biodiversity protection of the Pittwater Local Environmental Plan 2014.
2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 7.7 Geotechnical hazards of the Pittwater Local Environmental Plan 2014.
3. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the application has not demonstrated consistency with the provisions of Clause B1.4 Aboriginal Heritage Significance of the Pittwater 21 Development Control Plan.
4. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the application has not demonstrated consistency with the provisions of Clause B4.18 Heathland/Woodland Vegetation of the Pittwater 21 Development Control Plan.
5. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause B4.22 Preservation of Trees and Bushland Vegetation of the Pittwater 21 Development Control Plan.

In signing this report, I declare that I do not have a Conflict of Interest.

**Signed**



**David Auster, Planner**

The application is determined on 17/04/2020, under the delegated authority of:



**Matthew Edmonds, Manager Development Assessments**