

---

**Sent:** 6/11/2020 10:08:06 AM

**Subject:** 54 Bardo Road Newport 2106 DA 2020/1172 WRITTEN SUBMISSION:  
LETTER OF OBJECTION Submission: Beggs

**Attachments:** Beggs WS 051120.pdf;

S U B M I S S I O N : B E G G S  
a written submission by way of objection to DA 2020/1172

Mr Scott Beggs  
PO Box 999  
Newport  
NSW 2106

56 Bardo Road  
Newport  
NSW 2106

5 November 2020

Chief Executive Officer  
Northern Beaches Council  
725 Pittwater Road  
Dee Why  
NSW 2099

Northern Beaches Council  
[council@northernbeaches.nsw.gov.au](mailto:council@northernbeaches.nsw.gov.au)

Dear Chief Executive Officer,

Re:  
54 Bardo Road Newport 2106  
DA 2020/1172

WRITTEN SUBMISSION: LETTER OF OBJECTION  
Submission: Beggs

This document is a written submission by way of objection to DA 2020/1172  
lodged under Section 4.15 of the EPAA 1979 [the EPA Act]

The DA seeks development consent for the carrying out of certain development, namely:

*“ the demolition of the existing site structures and the construction of a seniors housing development incorporating 6 units and 8 car parking spaces pursuant to the provisions of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (“SEPP HSPD”). “*

The subject site is zoned R2 Low Density Residential under the LEP, and there is no reason, unique or otherwise why a fully compliant solution to SEPP HSPD, LEP and DCP controls cannot be designed on the site.

## **Section 1: Executive Summary**

This Written Submission asks Council to REFUSE this DA.

We are being assisted by a very senior experienced consultant assisting me in the preparation of this Written Submission.

The proposed development brings medium density development into an R2 Low Density environment, and has a significant non-compliant FSR.

Our main amenity concerns are;

- Landscape: Preservation of Trees
- Biodiversity
- Urban Design
- Location and Access to Facilities
- Solar Access and Design for Climate
- Visual and Acoustic Privacy

The main non-compliances to controls are:

## SEPP HSPD

- Clause 2 Aims of Policy
- Clause 26 Location and Access to Facilities
- 30 Site Analysis
- 31 Design of Infill Self-Care Housing
- 33 Neighbourhood amenity and streetscape
- 34 Visual and acoustic privacy
- 35 Solar access and design for climate

The proposed development displays considerable non-compliance to controls, and a clear case of overdevelopment with **FSR** at 0.569:1 [**>13.8%** non-compliance].

Our amenity concerns are a direct result of the non-compliance to the above controls.

The Developer has not carried out an adequate Site Analysis under Clause 30 of SEPP HSPD to inform the design outcomes in respect to Clause 31 Design of Infill Self-Care Housing and Clause 33 Neighbourhood amenity and streetscape of the SEPP HSPD.

The site includes numerous high and very high valued trees and the Site Analysis has not recognised the importance of these trees and identified a design concept to the preservation of these trees.

The proposed development requires that four, healthy, major trees of 'high tree significance' and rated 'high retention value' by the Arborist, are to be removed.

A more skilful design would have designed two pavilions to fit comfortably around the trees.

We are concerned on solar access, privacy and urban design matters.

We are concerned that the proposed development fails the SEPP HSPD, LEP and DCP controls on six major issues:

### **1. Landscape: Preservation of Trees**

Council will already be aware that the Developer has already removed a number of trees from this site.

We see no reason why any further trees should be permitted to be removed, other than those that the Arborist and Council considers unsafe.

We ask Council to therefore REFUSE the DA due to the proposed removal of trees with high tree significance and rated high by the Arborist as a priority for retention.

Our particular concern are the following trees with 'high tree significance' and rated 'high retention value' by the Arborist:

- Tree 5: 16m high *Syncarpia glomulifera* [Turpentine]
- Tree 7: 16m high *Syncarpia glomulifera* [Turpentine]
- Tree 8: 22m high *Syncarpia glomulifera* [Turpentine]
- Tree 9: 16m high *Eucalyptus botryoides* [Southern Mahogany]

We ask Council to also consider the retention of:

- Tree 14: 10m high *Syncarpia glomulifera* [Turpentine]
- Tree 15: 10m high *Syncarpia glomulifera* [Turpentine]
- Tree 6: 5m high *Acer palmatum* [Japanese Maple]
- Tree 10: 4m high *Banksia serrata* [Old Man Banksia]

There is ample ability for the Developer to maintain these existing trees with 'high tree significance' and rated 'high retention value' by the Arborist.

All 12 trees rated High in *Tree Significance or Priority for Retention* must be not removed. Tree 2, 3, 4, 5, 7, 8, 9, 11, 12, 13, 16, 17. The proposed development is removing four of these trees, and is proposing development adjacent another four trees with major encroachment of TPZ and SRZ.

The FSR is excessive and therefore a reconfiguration of the site plan can easily avoid the TPZ and SRZ of these trees.

We ask for a full 3m side setback for all built form from the western boundary to enable canopy trees to provide softening of the proposed built form. The landscape proposal for the side setback is inadequate to provide privacy to our property. We ask for privacy planting to fully screen the proposed development.

We refer Council to the NSWLEC appeal at 27 & 29 North Avalon Road Avalon Beach - NSW Land and Environment Court Amended Plans DA 2019 1260 (Lot 32 & Lot 33 DP 8394) - Demolition works and construction of a Seniors Housing development comprising 10 self-contained dwellings and site consolidation, where the Developer has responded with a full 3m side setback to accord with considerations of landscape and privacy issues. This DA has exactly the same amenity concerns and requests Council to direct the Developer appropriately.

We contend the proposed development does not accord with:

- SEPP HSPD Clause 33 Neighbourhood Amenity and Streetscape
- SEPP HSPD Clause 34 Visual and Acoustic Privacy
- DCP B4.22 Preservation of Trees
- DCP C1.1 Landscaping
- DCP C1.21 Seniors Housing

We ask Council to REFUSE the DA on these grounds.

## **2. Biodiversity**

The Natural Environment Unit Officer Response on nearby DA 2020/0502, another SEPP HSPD development states the case that:

*'the site is mapped as part of the high priority wildlife corridor 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, and to ensure at least 60% of any new planting incorporates native vegetation, and maximise linkage within the wildlife corridor'*

We hope the Natural Environment Unit Officer will be consistent in the referral response, and concur with the retention of the existing trees with 'high tree significance' and rated 'high retention value' by the Arborist, and maintain a full 3m side setback to encourage biodiversity.

All 12 trees rated High in *Tree Significance or Priority for Retention* must be not removed. Tree 2, 3, 4, 5, 7, 8, 9, 11, 12, 13, 16, 17. The proposed development is removing four of these trees, and is proposing development adjacent another four trees with major encroachment of TPZ and SRZ.

We contend the proposed development does not accord with:

- LEP Clause 6.4 Biodiversity
- DCP B4.22 Preservation of Trees
- DCP C1.1 Landscaping

We ask Council to REFUSE the DA on these grounds.

### 3. Urban Design

The Urban Design Officer Response on nearby DA 2020/0502, another SEPP HSPD development states the case that:

*'the locality is not typified by dense urban residential development and sits within a unique landscape of low rise detached dwellings.'*

The referral continues:

*" multi residential dwelling nominates 3m side setbacks, however in consideration of the site coverage and the bulk and scale of the development a minimum 3m setback to the side boundaries is highly recommended as a way to address several controls identified in these comments that assist to subvert the built form whilst a level of landscaped amenity and tree canopy coverage across the site.'*

We hope that the Urban Design Officer will be consistent with the same outcome on this DA, and would hope that support would also be given to retain the major trees, and maintain a 3m side setback.

All 12 trees rated High in *Tree Significance or Priority for Retention* must be not removed. Tree 2, 3, 4, 5, 7, 8, 9, 11, 12, 13, 16, 17. The proposed development is removing four of these trees, and is proposing development adjacent another four trees with major encroachment of TPZ and SRZ.

We contend the proposed development does not accord with:

- SEPP HSPD Clause 30 Site Analysis
- SEPP HSPD Clause 31 Design of Infill Self-Care Housing
- SEPP HSPD Clause 33 Neighbourhood Amenity and Streetscape
- LEP Clause 6.4 Biodiversity
- DCP B4.22 Preservation of Trees
- DCP C1.1 Landscaping

We ask Council to REFUSE the DA on these grounds.

#### **4. Location and Access to Facilities**

The Traffic Engineer Officer Response on nearby DA 2020/0502, another SEPP HSPD development states the case that:

*'The paths leading to and from the bus stops are not flat and hence deemed an imposition to HSPD.'*

We have concerned on these matters and ask Council to consider the suitability of the site.

We contend the proposed development does not accord with:

- SEPP HSPD Clause 26 [2][b] Location and Access to Facilities

We ask Council to REFUSE the DA on these grounds.

#### **5. Solar Access and Design for Climate**

We are concerned to the solar loss to our east facing windows, including our highly used study.

The proposed development can rectify the problem by reducing the proposed gutter lines to be 3m [single storey] and 6m [double storey] above the proposed ground floor levels, and increase side setback to accord with the previous commentary above.



We ask for the double storey building to have a reduced top of gutter facing west at RL 21.27, being 6m above the proposed ground floor level at RL 15.27.

We ask for the single storey building to have a reduced top of gutter facing west at RL 19.80, being 3m above the proposed ground floor level at RL 16.80.

Eaves to be reduced to 0.3m, and the roof pitch to reduce to 5 degree slope.

We ask for a full 3m side setback to allow for better solar access outcomes, and to accord with the deep soil landscape zone along the western boundary.

We contend the proposed development does not accord with:

- SEPP HSPD Clause 35 Solar Access and Design for Climate
- DCP C1.4 Solar Access

We ask Council to REFUSE the DA on these grounds, or condition any future consent accordingly.

## **6. Visual and Acoustic Privacy**

We are concerned to the privacy loss to our east facing windows, including our highly used study.

There are proposed windows that look directly into our residence. We ask for all windows to have 1.7m high sills to all opening to the western elevation.

There are proposed raised decks that look directly into our residence. We ask for all decks to have 1.7m high privacy screens to all decks to the western elevation.

We contend the proposed development does not accord with:

- SEPP HSPD Clause 34 Visual and Acoustic Privacy
- DCP C1.5 Visual Privacy
- DCP C1.6 Acoustic Privacy

We ask Council to REFUSE the DA on these grounds, or condition any future consent accordingly.

## SECTION 2: CHARACTERISTICS OF OUR PROPERTY

Key aspects of our property are as follows:

Our property shares a common boundary with the subject property. The subject site lies to the east of our property.

We enjoy good levels of privacy and solar access over the subject site's boundaries, and enjoy the canopy trees in the front setback zone and rear zones.



*Our property is to the west of the subject site*

### SECTION 3: MATTERS OF CONCERN

We are concerned that these impacts will negatively impact the level of amenity currently enjoyed.

The following aspects of the proposal are of concern:

- The extent of the proposed building envelopes
- The siting and extent of the proposed dwelling without having sufficient consideration for maintaining amenity, and the preservation of significant trees
- All 12 trees rated High in *Tree Significance or Priority for Retention* must be not removed. Tree 2, 3, 4, 5, 7, 8, 9, 11, 12, 13, 16, 17. The proposed development is removing four of these trees, and is proposing development adjacent another four trees with major encroachment of TPZ and SRZ.

We provide further details of these matters below and request Council's close consideration of these in the assessment of the application.

We are concerned that the SEE has failed to properly address our amenity concerns, and is suggesting that the DA accords with SEPP HSPD, LEP & DCP outcomes and controls when it clearly it does not.

The non-compliance to SEPP HSPD, LEP & DCP outcomes and controls forms the basis of our objection.

The subject site is of a large size, and there is no reason, unique or otherwise why a fully complaint solution to all outcomes and controls cannot be designed on the site.

This letter of objection will detail our concerns, and our amenity losses that have arisen as a direct result of the non-compliance to outcomes and controls.

## SECTION 4: SITE DESCRIPTION

The site is described within the Applicant's SEE.

*The subject property is legally described as Lot 44 in DP 4689, No. 54 Bardo Road, Newport. The allotment is rectangular in shape with frontage and address to Bardo Road of 20.115 metres, depth of 60.96 metre and an area of 1220m<sup>2</sup>. The site contains a number of trees located towards its frontage and down its eastern boundary and falls approximately 3.5 metres across its surface in a southerly direction.*

There are 12 trees rated High in *Tree Significance or Priority for Retention* on the subject site: Tree 2, 3, 4, 5, 7, 8, 9, 11, 12, 13, 16, 17

## SECTION 5: PROPOSED DEVELOPMENT

The proposed development is described within the Applicant's SEE.

### ***Basement Level***

*This floor plate incorporates car parking for 8 residential car parking spaces. The basement level also incorporates storage for the individual unit and services areas.*

*Separate lifts are proposed to directly access the 2 units within the rear building from the basement. A common lift is proposed from the basement to access the front building. Stair access is also provided to all unit from the basement level.*

### ***Ground Floor (RL 15.27 for front building; RL 16.80 for rear building)***

*There are 4 units proposed at this level. Both the front and the rear buildings will contain 1 x 2 bedroom unit and 1 x 3 bedroom unit. Each unit includes an open plan kitchen/dining/living area which opens to private open space areas.*

*An outdoor common open space area is proposed between the 2 buildings. The bin storage area is located at the front of the site.*

### ***First Floor (RL 18.37)***

*The front building includes 2 first floor units. 1 x 3 bedroom unit and 1 x 2 bedroom unit. Each unit contains an open plan kitchen/living/dining area which opens to a balcony.*

*The proposal also involves the implementation of an enhanced and integrated site landscape regime as depicted on the landscape plans prepared by Site Image with the required tree removal identified and appropriately addressed in the accompanying arborist advice prepared by Tree Survey. This report also contains recommendations in relation to tree protection to ensure the trees nominated for retention are appropriately protected. The landscape proposal incorporates appropriate deep soil perimeter landscape treatments which will soften and screen the development and ensure that the 1 and 2 storey buildings sit within a landscape setting.*

*The acceptability of accessibility is dealt with in the accompanying access report prepared by Accessibility Solutions with excavation addressed in the geotechnical report prepared by White Geotechnical Group. No objection is raised to the recommendations contained within these reports forming appropriate conditions of development consent.*

*All stormwater will be gravity drained to the street drainage system via the required on-site stormwater detention system as detailed on the accompanying stormwater drainage plans prepared by Loka Consulting Engineers.*

## SECTION 6: STATE ENVIRONMENTAL PLANNING POLICY (HOUSING FOR SENIORS OR PEOPLE WITH A DISABILITY) 2004

The following section of this Written Submission assesses the proposed development against the relevant provisions of the SEPP 2004 (as amended).

- 2 Aims of Policy
- 30 Site Analysis
- 31 Design of Infill Self-Care Housing
- 33 Neighbourhood amenity and streetscape
- 34 Visual and acoustic privacy
- 35 Solar access and design for climate

### 2 Aims of Policy

The stated aims of the SEPP at clause 2 are to encourage the provision of housing 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.*

The policy indicates that these aims will be achieved by:

- a) setting aside local planning controls that would prevent the development of housing for seniors or people with a disability that meets the development criteria and standards specified in the policy, and;*
- b) setting out design principles that should be followed to achieve built form that responds to the characteristics of its site and form, and*
- c) ensuring that applicants provide support services for seniors or people with a disability for developments on land adjoining land zoned primarily for urban purposes.*

We contend that the proposed development is:

- Not of 'good design', and

- The design principles that should be followed to achieve built form that responds to the characteristics of its site and form, have not been followed

### 30 Site Analysis

Pursuant to clause 30 of the SEPP, the Applicant should:

*A consent authority must not consent to a development application made pursuant to this Chapter unless the consent authority is satisfied that the applicant has taken into account a site analysis prepared by the applicant in accordance with this clause.*

*A site analysis must—*

*(a) contain information about the site and its surrounds as described in subclauses (3) and (4), and*

*(b) be accompanied by a written statement (supported by plans including drawings of sections and elevations and, in the case of proposed development on land adjoining land zoned primarily for urban purposes, an aerial photograph of the site)—*

*(i) explaining how the design of the proposed development has regard to the site analysis, and*

*(ii) explaining how the design of the proposed development has regard to the design principles set out in Division 2.*

*The following information about a site is to be identified in a site analysis—*

*(3) The following information about a site is to be identified in a site analysis—*

*(d) Existing vegetation:*

*(f) Location of pedestrian and vehicle access*

*(4) The following information about the surrounds of a site is to be identified in a site analysis—*

*(l) Adjoining bushland or environmentally sensitive land*



Pursuant to clause 30 of the SEPP a site analysis plan accompanies this application, but fails to address the preservation of existing vegetation and environmentally sensitive land including major trees.

The site analysis fails to consider site access to preserve these trees.

All 12 trees rated High in *Tree Significance or Priority for Retention* must be not removed. Tree 2, 3, 4, 5, 7, 8, 9, 11, 12, 13, 16, 17 and should have been considered for retention in the site analysis.

The following trees with 'high tree significance' and rated 'high retention value' by the Arborist:

- Tree 5: 16m high *Syncarpia glomulifera* [Turpentine]
- Tree 7: 16m high *Syncarpia glomulifera* [Turpentine]
- Tree 8: 22m high *Syncarpia glomulifera* [Turpentine]
- Tree 9: 16m high *Eucalyptus botryoides* [Southern Mahogany]

We ask Council to also consider the retention of:

- Tree 14: 10m high *Syncarpia glomulifera* [Turpentine]
- Tree 15: 10m high *Syncarpia glomulifera* [Turpentine]
- Tree 6: 5m high *Acer palmatum* [Japanese Maple]
- Tree 10: 4m high *Banksia serrata* [Old Man Banksia]

The Site Analysis fails to address the preservation of existing trees on the subject site

In this respect the site analysis of the proposed development fails:

*d) Existing Vegetation*

*f) Location of Site Features*

*h) Overshadowing*

On this matter the DA must be refused.

### **31 Design of Infill Self-Care Housing**

Pursuant to clause 31 of the SEPP the consent authority is to have regard to the Urban Design Guideline for Infill Development in its consideration of the application.

The SEPP states:

*In determining a development application made pursuant to this Chapter to carry out development for the purpose of in-fill self-care housing, a consent authority must take into consideration (in addition to any other matters that are required to be, or may be, taken into consideration) the provisions of the Seniors Living Policy: Urban Design Guideline for Infill Development published by the Department of Infrastructure, Planning and Natural Resources in March 2004.*

We contend that the proposed development fails under the main headings:

- Context
- Responding to Context
- Site Planning & Design
- Impacts on Streetscape
- Impacts on Neighbours

#### Context

The six unit 1 and 2 storey detach forms are not complimentary and compatible with the single 1 and 2 storey detached dwelling house built form context in which the site is located.

#### Site Planning & Design

The proposed development positions the built form in locations to remove significant trees on the subject site.

#### Impacts on Streetscape

The proposal does not provide for the retention of the mature tree canopy vegetation in the streetscape. All 12 trees rated High in *Tree Significance or Priority for Retention* must be not removed. Tree 2, 3, 4, 5, 7, 8, 9, 11, 12, 13, 16, 17. The proposed development is removing four of these trees, and proposing development on another four trees with major encroachment of TPZ and SRZ.

#### Impacts on Neighbours

Privacy and solar loss are a concern, and the removal of tree canopy impacts on neighbours amenity.

As stated elsewhere in this Submission, the Site Analysis has failed to inform the design on two fundamental issues.

- Preservation of the existing landscape on the site
- Preservation of the vehicle access to preserve existing trees

The following trees with 'high tree significance' and rated 'high retention value' by the Arborist:

- Tree 5: 16m high Syncarpia glomulifera [Turpentine]
- Tree 7: 16m high Syncarpia glomulifera [Turpentine]
- Tree 8: 22m high Syncarpia glomulifera [Turpentine]
- Tree 9: 16m high Eucalyptus botryoides [Southern Mahogany]

We ask Council to also consider the retention of:

- Tree 14: 10m high Syncarpia glomulifera [Turpentine]
- Tree 15: 10m high Syncarpia glomulifera [Turpentine]
- Tree 6: 5m high Acer palmatum [Japanese Maple]
- Tree 10: 4m high Banksia serrata [Old Man Banksia]

These matters do not accord with a design that responds to the context of the site, does not respond with a sensitive consideration to site planning and design, impacts the streetscape very poorly by the removal of high amenity trees, and has unacceptable and unreasonable solar loss, privacy loss, and general amenity loss.

Pursuant to clause 31 of the SEPP, we contend the proposed development does not accord with the Urban Design Guideline for Infill Development

On this matter the DA must be refused.

## **32 Design of residential development**

The SEPP states:

*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.*

On this matter the DA must be refused.

## **Division 2 Design Principles**

### **33 Neighbourhood amenity and streetscape**

Pursuant to clause 33 of the SEPP, the proposed development should:

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

We contend that the proposed development fails to accord with these principles.

The commentary to Clause 31 above is equally relevant under this Clause.

Major existing major trees are removed.

The following trees with 'high tree significance' and rated 'high retention value' by the Arborist:

- Tree 5: 16m high Syncarpia glomulifera [Turpentine]
- Tree 7: 16m high Syncarpia glomulifera [Turpentine]
- Tree 8: 22m high Syncarpia glomulifera [Turpentine]
- Tree 9: 16m high Eucalyptus botryoides [Southern Mahogany]

We ask Council to also consider the retention of:

- Tree 14: 10m high Syncarpia glomulifera [Turpentine]
- Tree 15: 10m high Syncarpia glomulifera [Turpentine]
- Tree 6: 5m high Acer palmatum [Japanese Maple]
- Tree 10: 4m high Banksia serrata [Old Man Banksia]

The building has not been designed to respond to the context, by removing large canopy trees, and not allowing sufficient canopy zone along the side boundary. The building was excessive eaves heights, and excessive FSR.

Consistent with the conclusions reached by the Senior Commissioner in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191, we have formed the opinion that most observers would find the proposed development offensive, jarring or unsympathetic to the streetscape or having regard to the built form characteristics of development throughout the immediate locality.

The physical impacts of the development have been found to be unacceptable with inappropriate levels of residential amenity maintained to adjoining residential properties and to that extent it can be reasonably concluded that the proposal is incompatible with its surroundings.

Of significant concern the destruction of the tree canopy, and the failure to provide a sufficient side setback to allow for canopy trees is a major shortcoming, and fails to accord with the clause:

*(c) maintain reasonable neighbourhood amenity and appropriate residential character by:*

*(i) providing building setbacks to reduce bulk and overshadowing, and*

*(f) retain, wherever reasonable, major existing trees,*

The principle highly used rooms, including a highly used study facing the proposed development, has significant solar loss and fails to achieve a 3 hour provision from 9am.

On this matter the DA must be refused.

### **34 Visual and acoustic privacy**

Pursuant to clause 34 of the SEPP 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.*

We contend that the proposed development fails to accord with these principles.

The commentary to Clause 31 and 33 above is equally relevant under this Clause.

The proposal does not maintain appropriate levels of both aural and visual privacy through appropriate building design.

Major existing trees are removed that assist in providing privacy.

There are large windows with low sills looking directly into our habitable rooms. We ask for all sills to be raised to 1.7m high, and have obscured glass.

On this matter the DA must be refused.

### **35 Solar access and design for climate**

Pursuant to clause 35 the proposed development should:

*a) ensure adequate daylight to the main living areas of neighbours in the vicinity and residents and adequate sunlight to substantial areas of private open space, and*

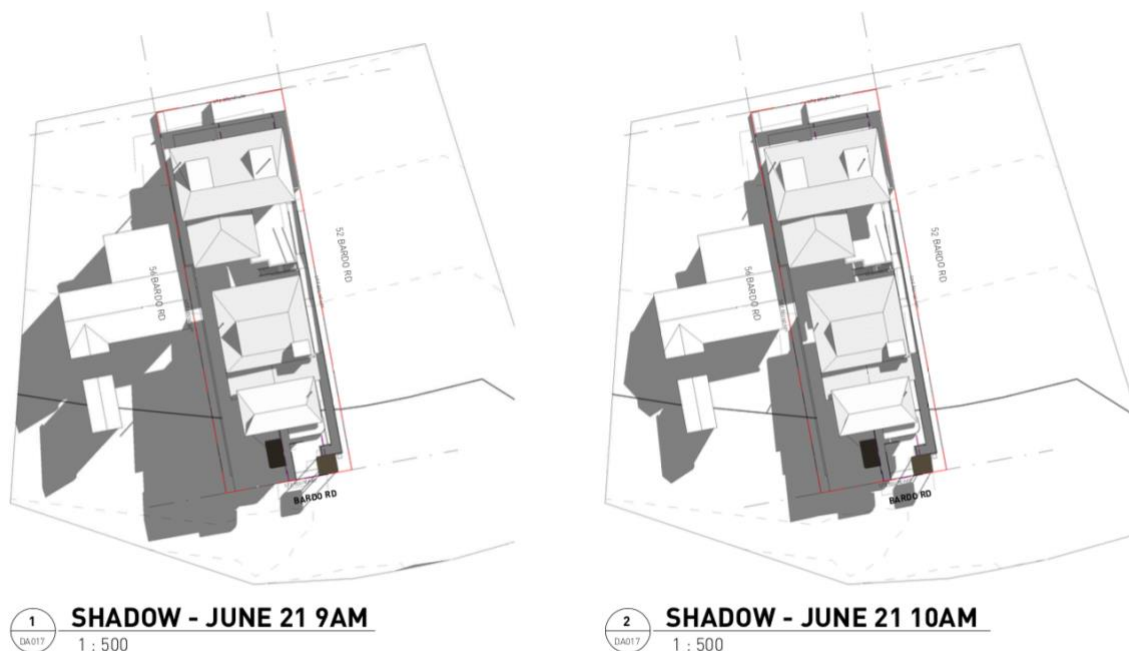
b) involving site planning, dwelling design and landscaping that reduces energy use and makes the best practicable use of natural ventilation solar heating and lighting by locating the windows of living and dining areas in a northerly direction.

We contend that the proposed development fails to accord with these principles.

The commentary to Clause 31 and 33 above is equally relevant under this Clause.

This is a major concern for us, as our property lies to the west of the subject site, and therefore has the greatest impact to solar loss in the morning.

The shadow diagrams show considerable morning solar loss to the eastern windows between 9am and 12 noon.



On this matter the DA must be refused.

### 38 Accessibility

Pursuant to clause 38 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.*

We contend that the proposed development fails to accord with these principles.

We are concerned on steep uneven paths to bus stops.

On this matter the DA must be refused.



## SECTION 7: LOCAL ENVIRONMENTAL PLAN

The land is zoned R2 Low Density Residential. Seniors housing as defined by the LEP is a prohibited use in the zone. However, the use remains permissible with consent via the operation of SEPP (HS&PD) 2004 and the operation of Clause 1.9 of the LEP.

The following matters are relevant to the development under the LEP:

| Provision                       | Compliance | Consideration   |
|---------------------------------|------------|---|
| Part 1 Preliminary              |            |   |
| 1.2 Aims of Plan                | No         | The proposal does not comply with the aims of the plan.       |
| Land Use Table                  |            |   |
| Zone R2 Low Density Residential | No         | The proposal does not satisfy the zone objectives.            |
| Clause 6.4 Biodiversity         | No         | Major Trees removed, inadequate side setback for native trees |

### 1.2 Aims of Plan

We contend that the proposed development does not accord with the Aims of the Plan:

The particular aims of the Plan that significantly fail are as follows:

*(2) The particular aims of this Plan are as follows—*

- (a) to promote development in Pittwater that is economically, environmentally and socially sustainable,*
- (b) to ensure development is consistent with the desired character of Pittwater's localities,*
- (c) to support a range of mixed-use centres that adequately provide for the needs of the Pittwater community,*
- (d) to retain and enhance land used for employment purposes that is needed to meet the economic and employment needs of the community both now and in the future,*
- (e) to improve access throughout Pittwater, facilitate the use of public transport and encourage walking and cycling,*

- (f) to encourage a range of housing in appropriate locations that provides for the needs of the community both now and in the future,*
- (g) to protect and enhance Pittwater's natural environment and recreation areas,*
- (h) to conserve Pittwater's European and Aboriginal heritage,*
- (i) to minimise risks to the community in areas subject to environmental hazards including climate change,*
- (j) to protect and promote the health and well-being of current and future residents of Pittwater.*

The overdevelopment of the site fails to meet the aims of LEP under residential development and environmental outcomes.

The poor amenity outcomes of lack of preservation of existing canopy trees, loss of sunlight, privacy and building bulk, do not protect and enhance the residential use and amenity of existing residential environments in this R2 Zone.

There are adverse effects on the character and amenity of the area by removing:

The following trees with 'high tree significance' and rated 'high retention value' by the Arborist:

- Tree 5: 16m high *Syncarpia glomulifera* [Turpentine]
- Tree 7: 16m high *Syncarpia glomulifera* [Turpentine]
- Tree 8: 22m high *Syncarpia glomulifera* [Turpentine]
- Tree 9: 16m high *Eucalyptus botryoides* [Southern Mahogany]

We ask Council to also consider the retention of:

- Tree 14: 10m high *Syncarpia glomulifera* [Turpentine]
- Tree 15: 10m high *Syncarpia glomulifera* [Turpentine]
- Tree 6: 5m high *Acer palmatum* [Japanese Maple]
- Tree 10: 4m high *Banksia serrata* [Old Man Banksia]

The streetscape presents a very poor urban design.

The poor under provision of landscape does not protect and manage biodiversity and the natural environment.

The non-compliance to controls is a prime example of overdevelopment in a R2 zone.

The proposal is excessive in height, bulk and scale; and does not have adequate regard to the maintenance of residential amenity. The assessment finds that the development standards contraventions do not satisfy the public interest, that the building envelope is excessive, and inadequate spatial separation is afforded to adjoining properties.

The proposed development brings medium density development into an R2 Low Density environment, and has a significant non-compliant FSR.

## **Zone R2 Low Density Residential**

### **Objectives of zone**

- To provide for the housing needs of the community within a low density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To provide for a limited range of other land uses of a low intensity and scale, compatible with surrounding land uses.

The proposal is excessive in bulk and scale, is inconsistent with the desired future character of the area and will have adverse impacts on the streetscape. Its built form will dominate the site and will cause adverse amenity impacts.

The proposed development does ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Pittwater, by the removal of major trees including:

- Tree 5: 16m high *Syncarpia glomulifera* [Turpentine]
- Tree 7: 16m high *Syncarpia glomulifera* [Turpentine]
- Tree 8: 22m high *Syncarpia glomulifera* [Turpentine]
- Tree 9: 16m high *Eucalyptus botryoides* [Southern Mahogany]

The proposal fails to provide a suitable balance between landscaping and built form

A more skilful design would respond to the site constraints and deliver a development that is compliant with the relevant development standards. The proposed development is out of character with the area. The proposed development will result in adverse amenity impacts on adjoining properties

The Objectives of Zone R2 have clearly not been met.

## SECTION 8: DEVELOPMENT CONTROL PLAN

The following relevant DCP 2011 controls have been addressed with respect to consideration of the proposed Seniors Housing Development.

The very poor adherence to the WDCP controls, confirms the lack of consistency of the proposed development with the likely future character of the area.

We are particularly concerned to the poor compliance to the following controls, and we will address each item separately:

The following matters are relevant to the development under DCP:

| Provision             | Compliance with Control | Compliance with Objectives |
|-----------------------|-------------------------|----------------------------|
| C1.1 Landscaping      | No                      | No                         |
| C1.4 Solar Access     | No                      | No                         |
| C1.4 Visual Privacy   | No                      | No                         |
| C1.6 Acoustic privacy | No                      | No                         |
| C1.21 Seniors Housing | No                      | No                         |
| D10 Newport Locality  | No                      | No                         |

The above matters have been discussed in previous sections.

We highlight our concerns within D10.1.

D10.1 Character as viewed from a public place

We are concerned that the proposed development fails to meet the outcomes of this clause

Outcomes

*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, (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'.*

*To preserve and enhance district and local views which reinforce and protect Pittwater's natural context.*

*To enhance the bushland vista of Pittwater as the predominant feature of the landscape with built form, including parking structures being a secondary component.*

*To ensure that development adjacent to public domain elements such as waterways, streets, parks, bushland reserves and other public open spaces, compliments the landscape character, public use and enjoyment of that land. (En, S)*

## SECTION 9: NSW LEC PLANNING PRINCIPLES

We bring to the attention of Council numerous **NSW LEC Planning Principles** that have relevance to this DA.

In **Meriton**, [**Meriton v Sydney City Council 2004**], NSW LEC considered Privacy. Meriton suggest that Council should consider:

*“When visual privacy is referred to in the context of residential design, it means the freedom of one dwelling and its private open space from being overlooked by another dwelling and its private open space.”*

### **Commentary:**

The freedom of neighbour’s property from being overlooked simply has not been properly and fully considered.

In **Davies**, [**Davies v Penrith City Council 2013**], NSW LEC considered General Impact. Davies suggest that Council should consider:

*“Would it require the loss of reasonable development potential to avoid the impact?”*

*Could the same amount of floor space and amenity be achieved for the proponent while reducing the impact on neighbours?*

*Does the proposal comply with the planning controls? If not, how much of the impact is due to the non-complying elements of the proposal?”*

### **Commentary:**

The proposals do not comply with planning controls, and the impact is due to the non-complying element of the proposal.

In **Veloshin**, [**Veloshin v Randwick Council 2007**], NSW LEC considered Height, Bulk & Scale. Veloshin suggest that Council should consider:

*“Are the impacts consistent with impacts that may be reasonably expected under the controls? For non-complying proposals the question cannot be answered unless the difference between the impacts of a complying and a non-complying development is quantified.”*

**Commentary:**

The impacts are not consistent with the impacts that would be reasonably expected under the controls.

In **Project Venture Developments v Pittwater Council (2005) NSW LEC 191**, NSW LEC considered character:

*“whether most observers would find the proposed development offensive, jarring or unsympathetic in a streetscape context, having regard to the built form characteristics of development within the site’s visual catchment”*

**Commentary:**

The non-compliant elements of the proposed development, would have most observers finding *‘the proposed development offensive, jarring or unsympathetic in a streetscape context’*

## SECTION 10: MORE SKILFUL DESIGN

It is not the case that an alternative design does not exist, that allows the Developer to redevelop this site.

The Developer is directed by the SEPP HSPD, LEP and DCP to maintain the large trees on the subject site.

The Developer can easily maintain the existing trees and position new built form to clear of the trees SRZ and most of the TPZ.

The Developer can provide the 3m side setback zone as required on the nearby SEPP HSPD development.

Unfortunately, the Developer has not presented this type of more compliant outcome.

We suggest the Council advise the Developer to withdraw this DA, and resubmit a new DA based upon these principles or submit amended plans to the following:

- Retain all 17 trees on the subject site, other than those considered unsafe by Council and Arborist.
- All 12 trees rated High in *Tree Significance or Priority for Retention* must be not removed. Tree 2, 3, 4, 5, 7, 8, 9, 11, 12, 13, 16, 17
- 3m side setback zone to western boundary
- No excavation in side setback zone
- Reduce top of gutter levels to be 6m above FFL in two storey zones, and 3m above FFL in single storey zones
- double storey building to have a reduced top of gutter facing west at RL 21.27, being 6m above the proposed ground floor level at RL 15.27.
- single storey building to have a reduced top of gutter facing west at RL 19.80, being 3m above the proposed ground floor level at RL 16.80.
- Eaves to be reduced to 0.3m, and the roof pitch to reduce to 5 degree slope.
- 1.7m high sills to all windows facing west
- 1.7m privacy screens on all decks facing west
- Increased landscaping in side setback zone to screen proposed development, and for all new planting to be designed to reach full mature height at top of gutter levels



## **SECTION 11:**

### **ENVIRONMENTAL PLANNING AND ASSESSMENT REGULATION 2000**

Applicable regulation considerations including demolition, fire safety, fire upgrades, compliance with the Building Code of Australia and *Home Building Act 1989*, PCA appointment, notice of commencement of works, sign on work sites, critical stage inspections and records of inspection may be addressed by appropriate consent conditions in the event of an approval.

### **LIKELY IMPACTS OF THE DEVELOPMENT**

This assessment has found that the proposal will have a detrimental impact on the natural and built environments pursuant to Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*.

### **SUITABILITY OF THE SITE**

The site is not suitable for the proposal pursuant to Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*.

### **PUBLIC INTEREST**

The proposal is not in the public interest because it results in a development of excessive bulk and scale which has adverse amenity impacts on adjoining properties and the broader locality.

This Written Submission asks Council to REFUSE this DA.

## SECTION 12: CONCLUSION

This Written Submission asks Council to **REFUSE this DA**.

There is no reason, unique or otherwise, why a fully complaint solution cannot be designed on the site, to avoid amenity loss

In consideration of the proposal and the merit consideration of the development, we contend that the proposals are considered to be:

- Inconsistent with the SEPP HSPD
- 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 EPAA 1979

The design of the proposals and the poor amenity outcomes render the proposal inappropriate and unsuitable for the site and the location.

The SEE has not adequately addressed solar loss and privacy loss issues of neighbour's amenity.

The subject site is of sufficient size, and there is no reason, unique or otherwise, why a fully complaint solution cannot be designed on the site, to avoid amenity loss.

We ask Council, that unless the Applicant addresses these matters completely within an Amended Plan resubmission, then Council must **REFUSE** Development Consent to Development Application for the reasons outlined as follows:

Section 4.15[1] [a][i] Provisions of any Environmental Planning Instrument, the development is inconsistent with WLEP 2014

### SEPP HSPD

- 2 Aims of Policy
- 30 Site Analysis
- 31 Design of Infill Self-Care Housing
- 33 Neighbourhood amenity and streetscape

- 34 Visual and acoustic privacy
- 35 Solar access and design for climate

Section 4.15[1] [b][i] Likely Impacts of the development. The proposal will have a detrimental impact on both the natural and built environments pursuant to Section 4.15(1)(b)(i) of the *Environmental Planning and Assessment Act 1979*.

The site is not suitable for the proposal pursuant to Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*.

The site is not suitable for the proposal pursuant to Section 4.15(1)(d) of the *Environmental Planning and Assessment Act 1979*.

The proposal is not in the public interest pursuant to Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*.

For the reasons set out above the Development Application should be refused by Council.

There is no excuse that neighbours amenity must suffer due to non-compliance to the controls.

The proposed development brings medium density development into an R2 Low Density environment, and has a significant non-compliant FSR.

The Architect has not responded with a design concept that preserves the main canopy trees on the site, and has failed to follow the principles of concern raised with the 3m side setback dimensions that the neighbouring SEPP HSPD development was required to follow.

Consistent with the conclusions reached by the Senior Commissioner in the matter of *Project Venture Developments v Pittwater Council* (2005) NSW LEC 191, we have formed the opinion that most observers would find the proposed development offensive, jarring or unsympathetic to the streetscapes or having regard to the built form characteristics of development within immediate proximity of the site, due to the numerous non-compliances, excessive FSR, and removal of canopy trees particularly in the front setback zone.

Having given due consideration to the matters pursuant to Section 4.15 of the *Environmental Planning and Assessment Act, 1979* as amended, it is considered that there are numerous matters which would prevent Council from granting consent to this proposal in this instance.

This Written Submission asks Council to REFUSE this DA.

Yours faithfully,

**Mr Scott Beggs**  
PO Box 999  
Newport  
NSW 2106

56 Bardo Road  
Newport  
NSW 2106

### **SECTION 13: APPENDIX A**

We ask Council to refuse this DA.

If any consent is considered we ask for the following conditions of consent

#### **Proposed Conditions to any Consent**

Compliance with other Departments, Authority or Service Requirement

Prescribed Conditions

General Requirements

#### **Approved Land Use**

*Nothing in this consent shall authorise the use of the site as detailed on the approved plans for any land use of the site beyond the definition, as defined within the LEP. Any variation to the approved land use and/occupancy beyond the scope of the above definition will require the submission to Council of a new DA.*

**Conditions to be satisfied prior to the issue of the CC**

## Amendments to the approved plans

- Retain all 17 trees on the subject site, other than those considered unsafe by Council and Arborist.
- All 12 trees rated High in *Tree Significance or Priority for Retention* must be not removed: Tree 2, 3, 4, 5, 7, 8, 9, 11, 12, 13, 16, 17
- 3m side setback zone to western boundary
- No excavation in side setback zone
- Reduce top of gutter levels to be 6m above FFL in two storey zones, and 3m above FFL in single storey zones
- double storey building to have a reduced top of gutter facing west at RL 21.27, being 6m above the proposed ground floor level at RL 15.27.
- single storey building to have a reduced top of gutter facing west at RL 19.80, being 3m above the proposed ground floor level at RL 16.80.
- Eaves to be reduced to 0.3m, and the roof pitch to reduce to 5 degree slope.
- 1.7m high sills to all windows facing west
- 1.7m privacy screens on all decks facing west
- Increased landscaping in side setback zone to screen proposed development, and for all new planting to be designed to reach full mature height at top of gutter levels

Surrender of any prior Consent

All windows facing neighbours to have full height obscured glazing

All fixed privacy screens shall be of horizontal louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development, or the glass is to be fitted with obscured glazing.

Pre-commencement Dilapidation Report

Compliance with standards [demolition]

Compliance with standards

Boundary Identification Survey

BCA Report

Structural Adequacy & Excavation Work

Geotechnical Report Recommendations to be incorporated into designs and structural plans

Engineering Assessment

Engineers Certification of Plans, including all retaining walls

Shoring of Adjoining Property

Compliance with Ecologists Recommendations pre construction  
Tanking of Basement Level  
Installation & Maintenance of Sediment & Erosion Control

Demolition Traffic Management Plan  
Construction Traffic Management Plan  
Construction Management Program  
Waste Management Plan  
Preparation of Erosion and Sedimentation Plan  
Waste & Recycling Requirements  
Public Domain Plan  
Soil and Water Management Program

Shoring of Council's Road Reserve  
Vehicle Crossing Application  
Pedestrian sight distance at property boundary  
Location of security gate and intercom system  
Minimum driveway width  
Vehicle Driveway Gradients  
Access driveway  
Allocation of parking spaces

Amendment of Stormwater Concept Design  
On-site Stormwater Detention Details  
Stormwater Disposal  
Stormwater Drainage  
Sydney Water  
Water Quality Management

External finishes to Roof  
Colours & Materials

New Landscaping Plan  
Amendment of Landscape Plans  
Project Arborist  
Tree Protection  
Tree Trunk, Root and Branch Protection  
Root Mapping  
Tree Removal within the Road Reserve

On slab landscape planting and associated works

Mechanical plant location

AC Condenser Units

Design Impact on processes and public/private amenity

No excavation within 3m of boundary

Protection of Neighbours assets

Accessway Protection

Pool fencing shall be located entirely within the subject site and be set back a minimum of 2.0m from the boundary

Internal Acoustic Treatment

Plant room and equipment for operational conditions - Noise and vibrations

Noise from all plant rooms including roof top mechanical plant room, mechanical ventilation for car parks, extraction units and exhaust fans, air condition units and any motors of other equipment associated with the building must not generate noise above 5dBA at the property boundary and not be audible within habitable rooms of units within complex and surrounding premises including when doors and windows to those rooms are open.

Above equipment must not create vibrations that can be detected within habitable rooms of units within complex and surrounding premises.

### **Conditions that must be addressed prior to any commencement**

Pre-Construction Dilapidation Report

Installation and maintenance of sediment and erosion control

Pedestrian Sight Distance at Property Boundary

Demolition and Construction Traffic Management Plan

On Street Work Zones and Permits

Kerbside Parking Restrictions

TfNSW Conditions of Consent

Project Arborist

Tree Removal

Tree Removal in the road reserve  
Tree Trunk, Branch, and Root Protection  
Tree protection  
Tree and vegetation removal from property

### **Conditions to be complied with during demolition and building works**

Road Reserve  
Removing, handling and disposing of asbestos  
Demolition works – Asbestos

Property Boundary levels  
Survey Certificate

Implementation of Demolition Traffic Management Plan  
Implementation of Construction Traffic Management Plan  
Traffic Control during Road Works  
Vehicle Crossings  
Footpath Construction

Geotechnical issues  
Detailed Site Investigation, Remedial Action Plan & Validation  
Installation and maintenance of sediment controls  
Acid Sulphate Testing prior to excavation  
Building materials  
Rock Breaking  
Protection of adjoining property  
Requirement to notify about new contamination evidence  
Contamination Investigation  
Vibration  
No excavation within 3m of boundary

Ecologists Recommendations during construction  
Waste Management during development  
Waste/Recycling Requirements  
No Material or Waste Storage in protected areas  
Implementation of Erosion and sediment Control Plan



Project Arborist  
Implementation of Landscape Plan  
Tree Protection – Arborist Supervision of Works  
Tree and vegetation protection  
Tree Condition  
Native vegetation protection  
Protection of rock and sites of significance  
Aboriginal heritage

Protection of Sites of Significance  
Notification of Inspections

**Conditions which must be complied with prior to the issue of the OC**

Post Construction Dilapidation Report

Certification of Structures  
Geotechnical Certificate  
Environmental Reports Certification  
Landscape Completion Certification  
Certification of Civil Works & Works as executed data on council land  
Certification Elevated Parking Facility Work  
Certification of Erosion and Sediment Control Plan  
Fire Safety Matters  
Retaining Wall

Required Planting

Positive Covenant and Restriction as to User for On-site stormwater disposal structures  
Positive Covenant for the maintenance of stormwater pump out facilities

Contamination Remediation, Validation and Site Audit Statement  
Reinstating the damaged road reserve during construction

Condition of retained vegetation  
Stormwater disposal  
Works as executed drawings – stormwater  
Acid Sulphate Soil Certification

Installation of solid fuel burning heaters: No approval is granted for the installation of a solid/fuel burning heater. Certification of solid fuel burning heaters

Required Tree Planting

Required Planting

Priority Weed Removal and Management

Acoustic treatment of pool filter

Noise Nuisance from plant

Lighting Nuisance

Swimming pool requirements

Garbage and Recycling Facilities

House number Building Number

Waste Management Confirmation

Waste and Recycling Facilities Certificate of Compliance

Waste/Recycling Compliance Documentation

Positive Covenant for Waste Services

Authorisation of legal documentation required for waste services

Fixed fixed privacy screens

Reinstatement of Kerbs

Control of noise, odour and vibrations from equipment within plant rooms and ventilation systems connected with the building to ensure noise and vibration from this equipment does not impact on the health and well-being of persons living within the complex and other surrounding premises.

Plant room and equipment for operational conditions - Noise and vibrations. Noise from all plant rooms including roof top mechanical plant room, mechanical ventilation for car parks, extraction units and exhaust fans, air condition units and any motors of other equipment associated with the building must not generate noise above 5dBA at the property boundary and not be audible within habitable rooms of units within complex and surrounding premises including when doors and windows to those rooms are open. Above equipment must not create vibrations that can be detected within habitable rooms of units within complex and surrounding premises.

Mechanical Ventilation certification: Prior to the issuing of any interim / final occupation certificate, certification is to be provided from the installer of the mechanical ventilation system that the design, construction and installation of the mechanical ventilation system is compliant with the requirements of AS1668: the use of mechanical ventilation.

## Ongoing Conditions that must be complied with at all times

Approved Land Use

Any installation of any item on the roof requires additional consent

Maintenance of solid fuel heater

Operation of solid fuel heaters

Landscape maintenance

Landscaping adjoining vehicular access

Maintenance of stormwater treatment measures

Retention of Natural Features

No additional trees or scrub planting in viewing or solar access corridors of neighbours

Environmental and Priority Weed Control

Control of weeds

No planting environmental weeds

Maintain fauna access and landscaping provisions

Compliance with ecologists recommendation

Works to cease if heritage item found

Dead or injured wildlife

Noise

Noise Nuisance from plant

Swimming pool filter, pump and AC units [noise]

New installation of ducting or structures on the roof require DA consent

Waste Collection & Delivery Times

Outdoor lighting

Lighting Nuisance

Plant room and equipment for operational conditions - Noise and vibrations

Loading and Unloading vehicles