

28 June 2018

16321

David Kerr
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Northern Beaches Council
1 Park Street
Mona Vale NSW 2103

Dear David,

RE: SECTION 4.56 APPLICATION – PENINSULA GARDENS: 79 CABBAGE TREE ROAD, BAYVIEW

This Statement of Environmental Effects (SEE) is submitted to Northern Beaches Council in support of a Section 4.56 Application to modify a consent (Consent 82/149) that was granted by the Court at Peninsula Gardens, 79 Cabbage Tree Road, Bayview.

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. This will require the removal of four (4) trees.

This SEE has been prepared by Ethos Urban on behalf of Aveo. It should be read in conjunction with:

- Architectural plans provided by Jackson Teece (**Attachment A**);
- Survey plan provided by Waterview Surveying Services (**Attachment B**); and
- Arboricultural Impact Assessment provided by Eco Logical Australia (**Attachment C**).

This report describes the site, its environs, the proposed modification, and provides an assessment of the proposal in terms of the matters for consideration as listed under section 4.15 and section 4.56 of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

1.0 Consent Proposed to be Modified

The site has the benefit of a development consent issued by the Land and Environment Court (LEC) on 9 March 1982 (Consent 82/149) for the construction of 'a retirement village'. Specifically, the consent allowed for the development of:

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

The development plans, as approved under Consent 82/149, are shown in **Figure 1**.

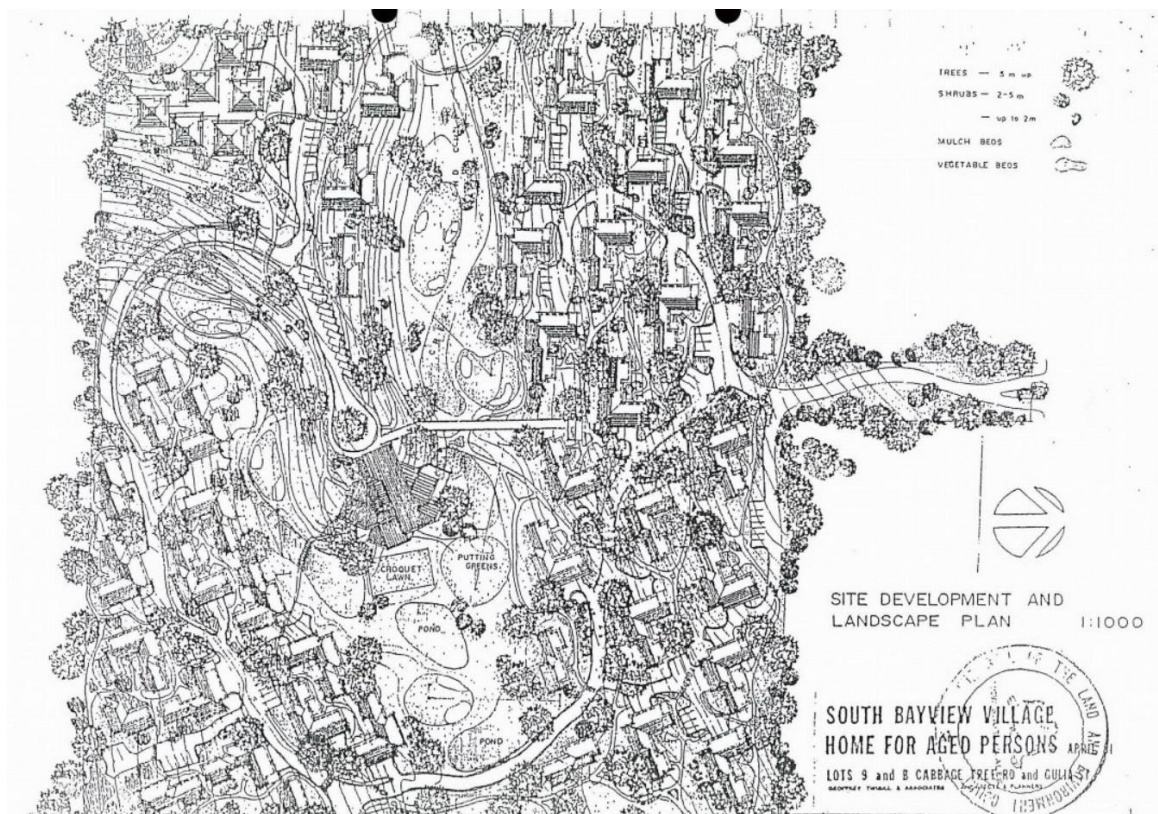


Figure 1 Development plans approved under Consent 82/149

Source: Plan referred to in condition 14 of the 1982 Consent (Exhibit H Plan)

Condition 14 of the 1982 Consent provided that the development was to be generally in accordance with plans tendered to the LEC as Exhibit 2 as amended by Exhibit H. The 1982 Consent permitted the development to be constructed in stages.

At the time the 1982 Consent was granted, the statutory regime required building approval to be granted after development consent was obtained. Usually design details would be set out in the building approval. On 4 March 1986 building approval 1464/86 was obtained. Consent was also granted prior to the amendments of the EP&A Act which introduced ‘integrated’ development. At this time, considerably less detail was required to be provided in development applications and in development consents than is currently needed, with much of the design detail controlled by way of subsequent building approvals and their conditions.

The 1982 Consent has been modified over time, as follows:

1. On 31 December 1986 the LEC granted a modification to condition 14. This had the effect of:
 - a. Modifying the plans to adopt some of those approved as part of the building approval, and an additional plan; and
 - b. Requiring a separate development application for the 112 self-contained units not included in stage 1, before building approval could be granted;
2. On 27 March 2002, the LEC granted a further modification to condition 14. This had the effect of requiring a separate s96 application for any redesign or relocation of the 112 self-contained units not included in stage 1, before a construction certificate could be issued; and
3. On 14 July 2005, the LEC granted a modification to stage 2, which involved small extensions to balconies, conversion of areas previously designated for storage into habitable area, alteration of the arrangement of upper and lower floor areas on two of the unit clusters and a reduction in self-care units in stage 2, from

112 to 73 (achieved through rearrangement of internal walls of approved buildings, to replace 1 bedroom units with 2 bedroom units. Refer to **Figure 2** for the amended plan.

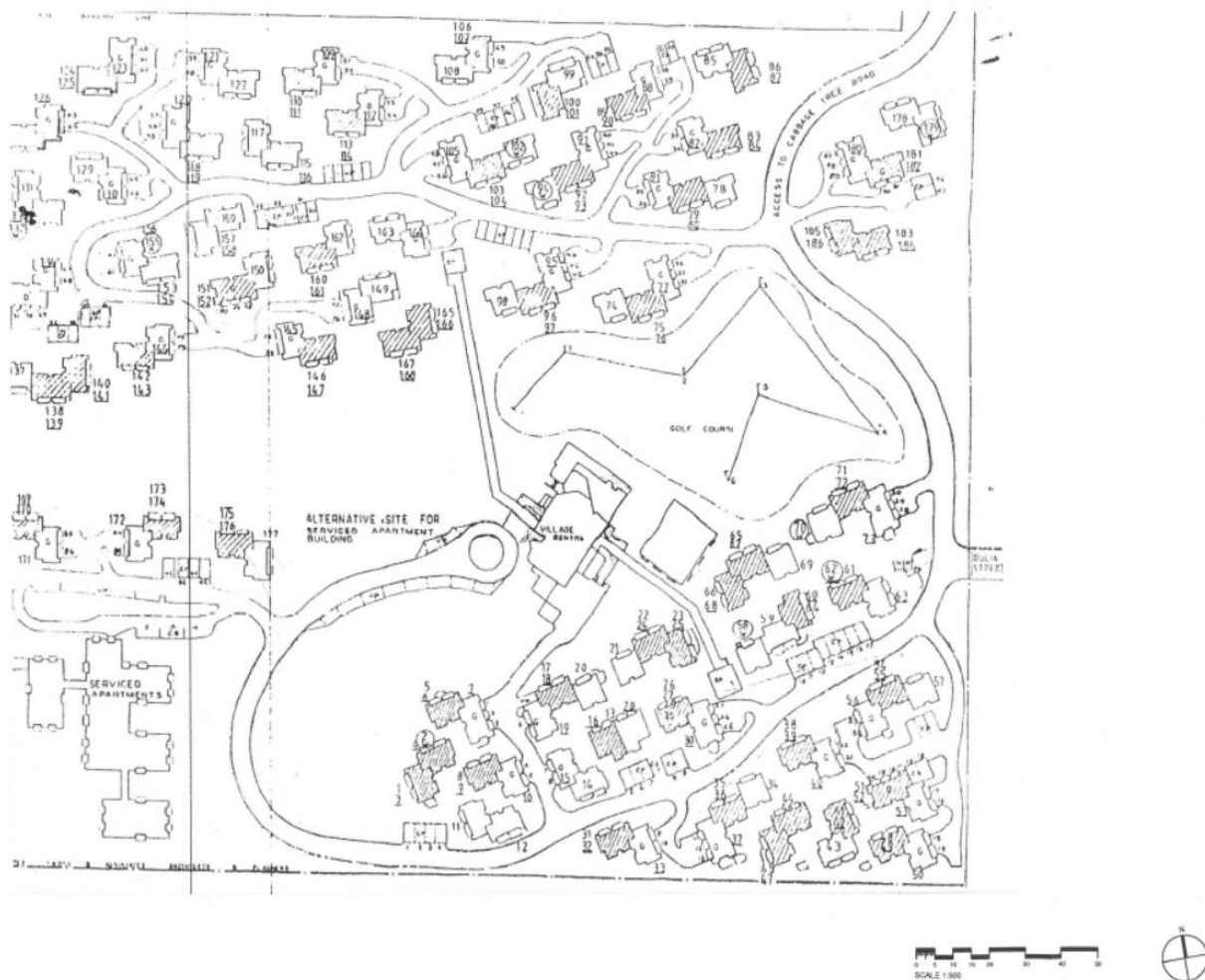


Figure 2 Development plans (as amended)

Source: 2005 LEC Modification

The scope of the 1982 Consent has been the subject of a determination by the LEC. On 11 December 2004, the LEC made a declaration that the plan referred to in condition 14 of the 1982 Consent was the 'All Stages Plan' (refer to **Figure 1**). This is relevant, in order to determine what was actually approved as part of the 1982 Consent, and as a result, what is being modified.

Since the 1982 Consent was granted, Stage 1 is complete but no units have been constructed within Stage 2. A Section 4.56 application (submitted under the former Section 96AA) is currently under assessment by Northern Beaches Council for the modification of the 1982 consent to permit the construction of 25 self-contained dwellings (Mod2018/0076).

2.0 Site Analysis

2.1 Site Location and Context

The site is located at 79 Cabbage Tree Road, Bayview within the Northern Beaches Local Government Area and is commonly known as Peninsula Gardens.

Bayview is located 31km north of the Sydney Central Business District, near to the southernmost extent of Pittwater. The suburb is heavily vegetated and is generally undulating, with steep inclines between Pittwater and Ku-ring-gai Chase National Park to the west. The site itself is located in the south-west section of Bayview, directly east of the Katandra Bushland Sanctuary. The site's locational context is shown at **Figure 3**.



 Aveo Peninsula Gardens

Figure 3 Locational Context

Source: Ethos Urban and Google Maps

2.2 Site Description

The site is legally described as Lot 20 DP 632081. The land is owned by Aveo.

The site has an area of 5.6 hectares and is generally rectangular in shape, with two fragments of land connecting to Cabbage Tree Road. A survey plan is located at **Appendix B**.

Features of the property include the following:

- The site has frontages to Cabbage Tree Road and Gulia Street. Vehicle access to the village is available from Cabbage Tree Road. Access is currently restricted to/from Gulia Street.

- The southern part of the site contains 73 self-contained dwellings constructed in 'Stage 1' of the retirement village. The northern part of the site is currently undeveloped and is the area in which the approved 'Stage 2' of the village is located.
- The site is located across a valley, with land falling from its northern, western and southern boundaries into a central valley.
- The site is intersected on its western boundary by two watercourses originating on the western slope and converging to form one in the centre of the site, where it is then piped underground and connected to the street stormwater system further to the east.

Existing development on site represents 'Stage 1' of the approved retirement village, and comprises the following components:

- 21 building 'clusters' containing a total of 73 independent self-care units with associated parking.
- A 'village centre' and hostel building located in the central part of the site.
- Established landscaping along the periphery of the site and a network of internal pathways.
- The low lying area of the site contains outdoor recreational facilities including a croquet lawn and 6-hole chip and putting golf course which are generally turfed.
- The main access road from Cabbage Tree Road extends to the southern part of the site (servicing the existing Stage 1 development) meandering over a watercourse and terminating at the Village Centre building. In addition, pedestrian and emergency vehicle access is available from Gulia Street.

An aerial photo of the site which details the approximate location of the proposed car park is shown at **Figure 4**.

The entire site area of Peninsula Gardens is zoned RU2 Rural Landscape under the provisions of the Pittwater Local Environmental Plan 2014.



Figure 4 Lot 12 DP1081105 (site indicated by red circle)

Source: SIX Maps

2.3 Development site

As demonstrated in **Figure 5** below, the development site is located on the existing access road in the south west quadrant of the site. The access road terminates at a roundabout near the main reception of the Seniors Living facility. A multi storey brick unit building adjoins the concrete access road to the direct north, with all other sides of the access road being surrounded by dense vegetation.

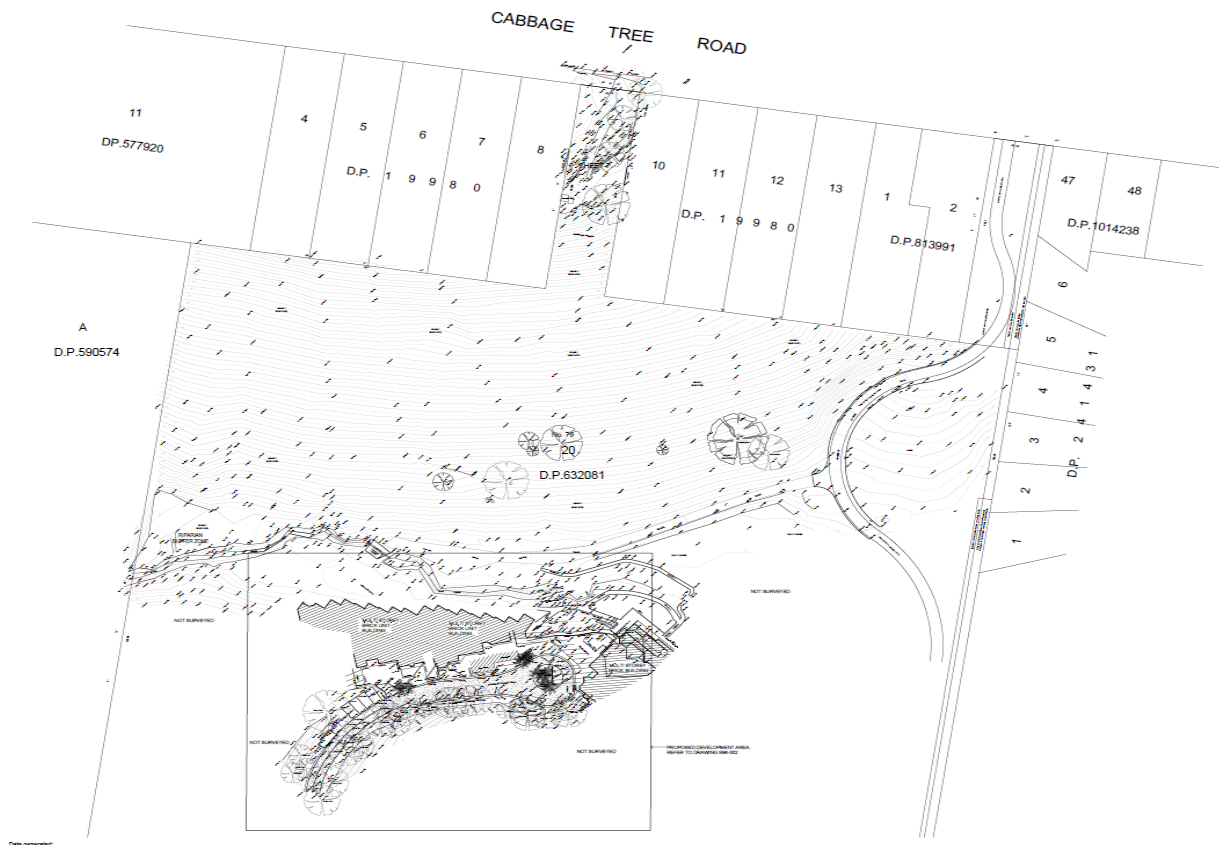


Figure 5 Site Location Plan

Source: Jackson Teece

3.0 Proposed Modifications

The proposal seeks to modify development consent 82/149 pursuant to Section 4.56 of the *Environmental Planning and Assessment Act 1979*.

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, as shown in **Figure 6** below.

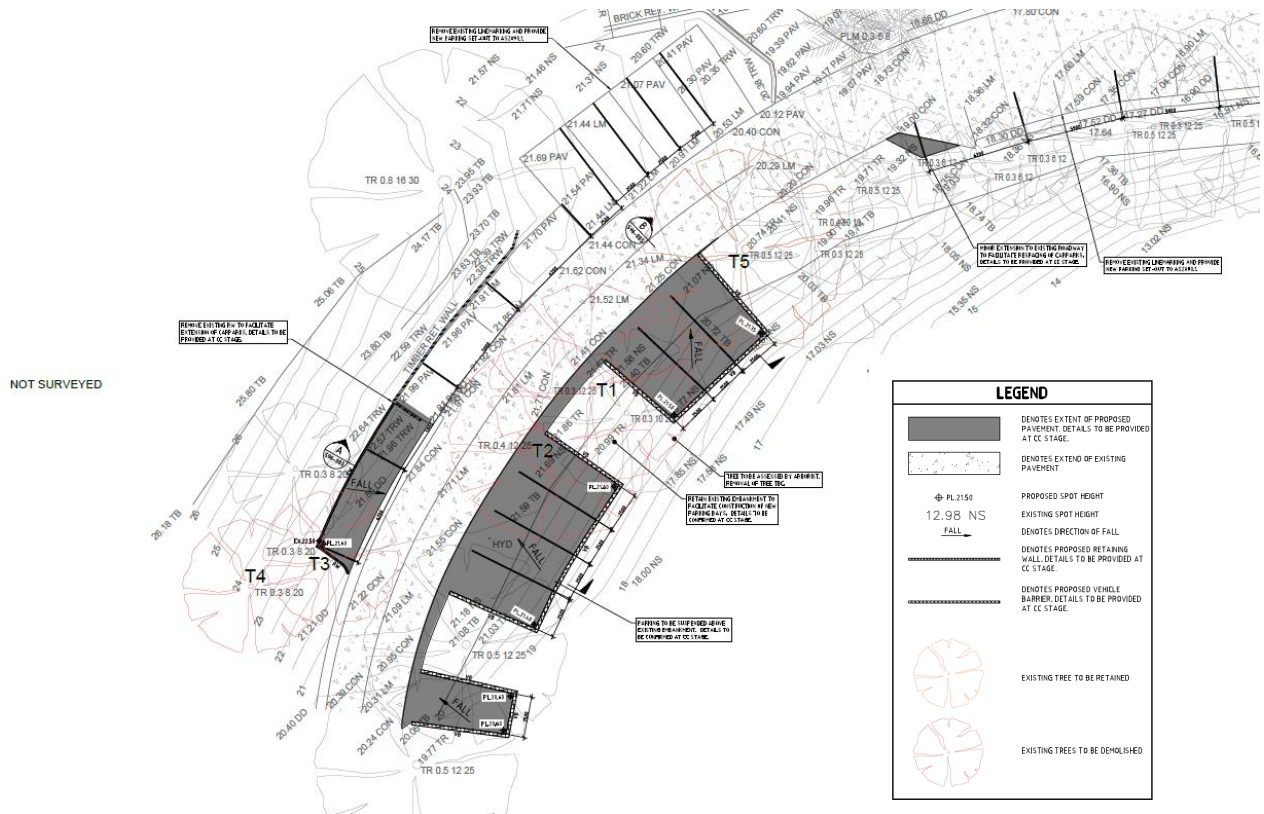


Figure 6 Proposed additional car parking spaces

Jackson Teece

The proposed additional car spaces will provide additional car parking capacity to the development, which is required to respond to increased demand for car parking within the site.

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 (4) trees.

4.0 Substantially the Same Development

Section 4.56 of the EP&A Act states that a consent authority may modify a development consent if *“it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all)”*.

In considering whether the proposed modification constitutes substantially the same development, the following aspects of the original development and that as modified are noted:

- The proposed modification does not change the purpose for which development is being carried out (being a seniors living facility);
- Car parking already exists on the site and therefore, the proposal is for an alteration or extension to that existing use;
- The proposed modification will provide car parking adjacent to an existing access way which is used for vehicular transport;
- The proposed modification is within the existing development footprint of the site; and
- The access locations (ingress and egress points) for the development remain the same.

In light of the above, the proposed development remains substantially the same as the approved development.

5.0 Environmental Assessment

Section 4.56 of the EP&A Act states that a consent authority may modify a development consent if *‘it is satisfied that the proposed modification is of minimal environmental impact.’*

The following assessment demonstrates that the development, as proposed to be modified, will be of minimal environmental impact.

5.1 Compliance with Statutory Plans

5.1.1 Pittwater Local Environmental Plan 2014

The site is zoned RU2 Rural Landscape under the *Pittwater Local Environmental Plan 2014*. The proposed car parking is ancillary to the existing retirement village which is defined as ‘seniors housing’. Seniors housing is prohibited under the RU2 Zone. Car park as its own use (i.e. if not considered ancillary to seniors housing) is also a prohibited use in the RU2 Zone. Therefore, the proposal relies on existing use rights under development consent 82/149.

Clause 4.65 of the EP&A Act states that an existing use means:

- (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 this Division, 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*

In other words, nothing in a later EPI can prohibit the carrying out of development in accordance with a consent that has been granted and is in force and therefore, the proposal can be approved as a modification to the existing consent.

5.1.2 State Environmental Planning Policy (Housing for Seniors of People with a Disability) 2004

State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 does not apply given that the proposed development will relate to a site that is affected by environmental constraints. Additional car parking can therefore not be approved under this SEPP.

5.1.3 Water Management Act 2000

Whilst an existing watercourse runs through the wider the site, the proposed development is in excess of 40m proximity to the watercourse and therefore is not classified as integrated development under the *Water Management Act 2000*.

5.1.4 Rural Fires Act 1997

Whilst the subject land is identified as 'bushfire prone land', development for the purposes of a car park is not within the definition of being a 'Special Fire Protection Purpose' development by s100B of the *Rural Fires Act 1997* and therefore is not classified as integrated development under this Act.

5.1.5 Pittwater 21 Development Control Plan 2014

Off-street vehicle parking requirements are addressed in Section B6.3 of the Pittwater 21 Development Control Plan 2014 (PDCP 2014). In response to the respective controls under this clause, the following points are made:

- The cross-fall in any direction of the proposed parking spaces is less than 1:20 (V:H) as per the site works sections at **Attachment A**;
- The design of all parking areas is in accordance with the current editions of Australian standards; and
- The proposal retains a number of trees throughout the development site to maintain a minimum of 20% of the car parking area.

The construction of retaining walls, terracing and undercroft areas within the Warriewood locality are addressed in Section D14.17 of PDCP 2014. In response to the respective controls under this clause, the following points are made:

- Lightweight construction and pier and beam footings are used to reduce the impact on the environment;
- Details of the retaining wall are to be provided at Construction Certificate stage, however, are not to be visible from outside of the site; and
- Undercroft areas from the elevated sections of the parking facilities are approximately 2.5m in height (less than the maximum 3.5m height) and are to be screened by existing vegetation.

5.2 Section 4.15 Matters for Consideration

Under Section 4.15(b) of the EP&A Act, in determining a development application, a consent authority is to take into consideration the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality. A summary of the proposed impacts are provided below.

Traffic Access and Parking

The proposal will result in the increase of off-street parking provision within Seniors Housing facility. It responds to a demand for such spaces and will therefore reduce on-street parking on public roads. The access road on which the

car parking is proposed to be provided is a private road and will not impact on the ability of cars to pass through the development.

Arboriculture

An Arboricultural Impact Assessment has been prepared by Eco Logical Australia and is available at **Attachment C**. The purpose of this report is to:

- identify the trees within the site that are likely to be affected by the proposed works;
- assess the current overall health and condition of the subject trees; and
- evaluate the significance of the subject trees and assess their suitability for retention.

Five (5) trees were included within the assessment, labelled T1-T5 as shown in **Figure 7** below.

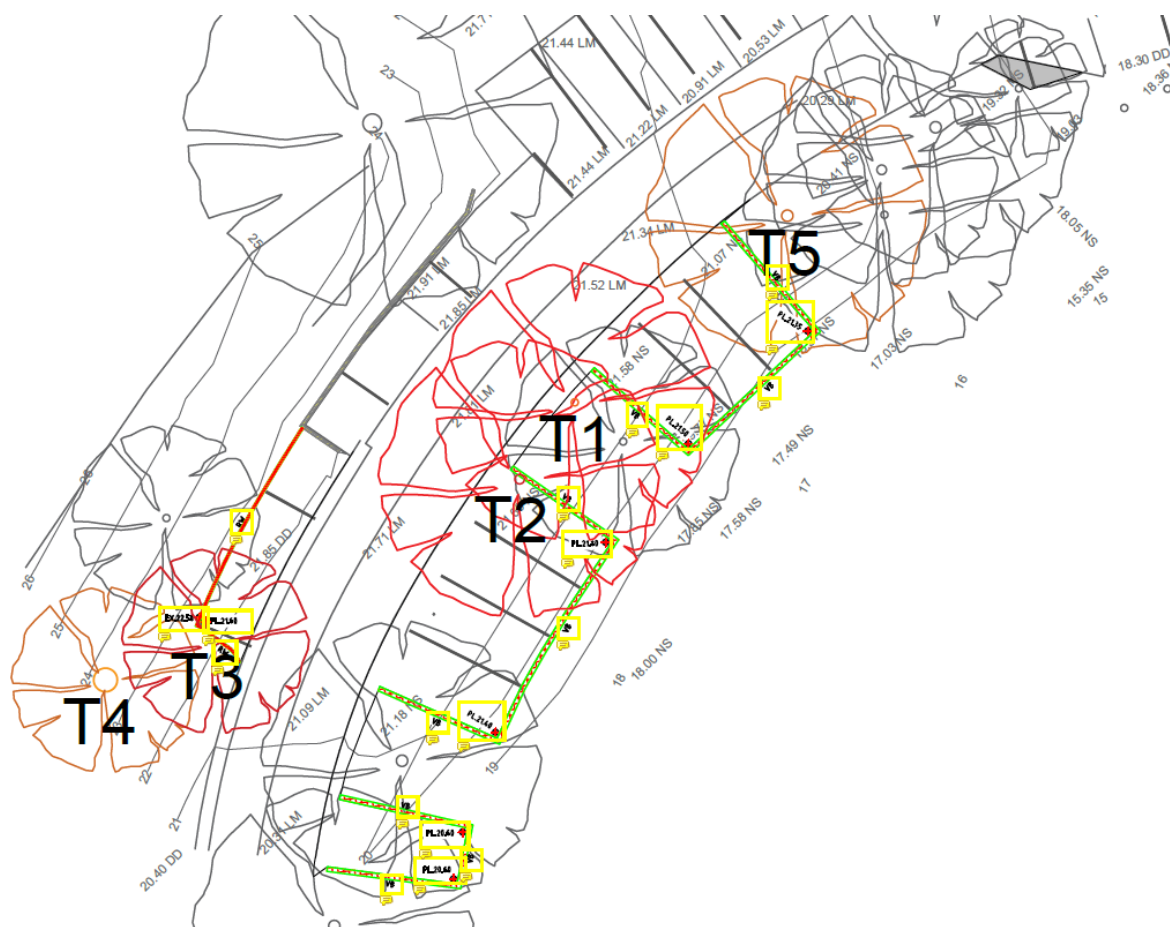


Figure 7 Location of trees assessed under Arboricultural Impact Assessment

Source: Eco Logical Australia

The results of the assessment are included in **Table 1** below. The results indicate that two (2) trees are of low retention value and are recommended to be removed.

Table 1 Results of the Arboricultural Impact Assessment

No	Botanical Name	Trees in Group	Height (m)	Spread	Health	Retention Value	DBH (mm)	SRZ	TPZ	Encroachment into TPZ	Recommendation
T1	<i>Eucalyptus microcorys</i>	1	15	10	Fair	Medium	400	2252	4800	High Impact: >20%	Retained if possible
T2	<i>Eucalyptus microcorys</i>	1	15	10	Fair	Medium	400	2252	4800	High Impact: >20%	Retained if possible
T3	<i>Allocasuarina torulosa</i>	1	14	4	Poor	Low	200	1683	2400	High Impact: >20%	Removal
T4	<i>Allocasuarina torulosa</i>	1	13	4	Poor	Low	300	1996	3600	Medium Impact: <20%	Removal
T5	<i>Eucalyptus microcorys</i>	1	13	8	Good	Medium	500	2474	6000	Medium Impact: <20%	Retain if possible following further assessment

Following the recommendations of the Assessment, four trees are proposed to be removed (Trees T1-T4). Tree T5 is proposed to be retained.

The Public Interest

The proposed car parking will assist in meeting demand for car parking within the site and prevent an overspill of parking within the public streets surrounding the seniors housing facility and is therefore in the public interest.

6.0 Conclusion

In accordance with Section 4.56 of the EP&A Act, the modified development will be substantially the same as the originally approved development. The proposed modifications will provide an additional ten (10) car parking spaces to meet ongoing demand for parking within an existing seniors housing development, and will not result in any adverse environmental impacts or raise any additional environmental issues.

In light of the above, we recommend that Council approve the proposed modification as described above. We trust that this information is sufficient to enable assessment of the proposed modifications.

Should you have any queries about this matter, please do not hesitate to contact me on 9956 6962, or cpatfield@ethosurban.com.

Yours sincerely,



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