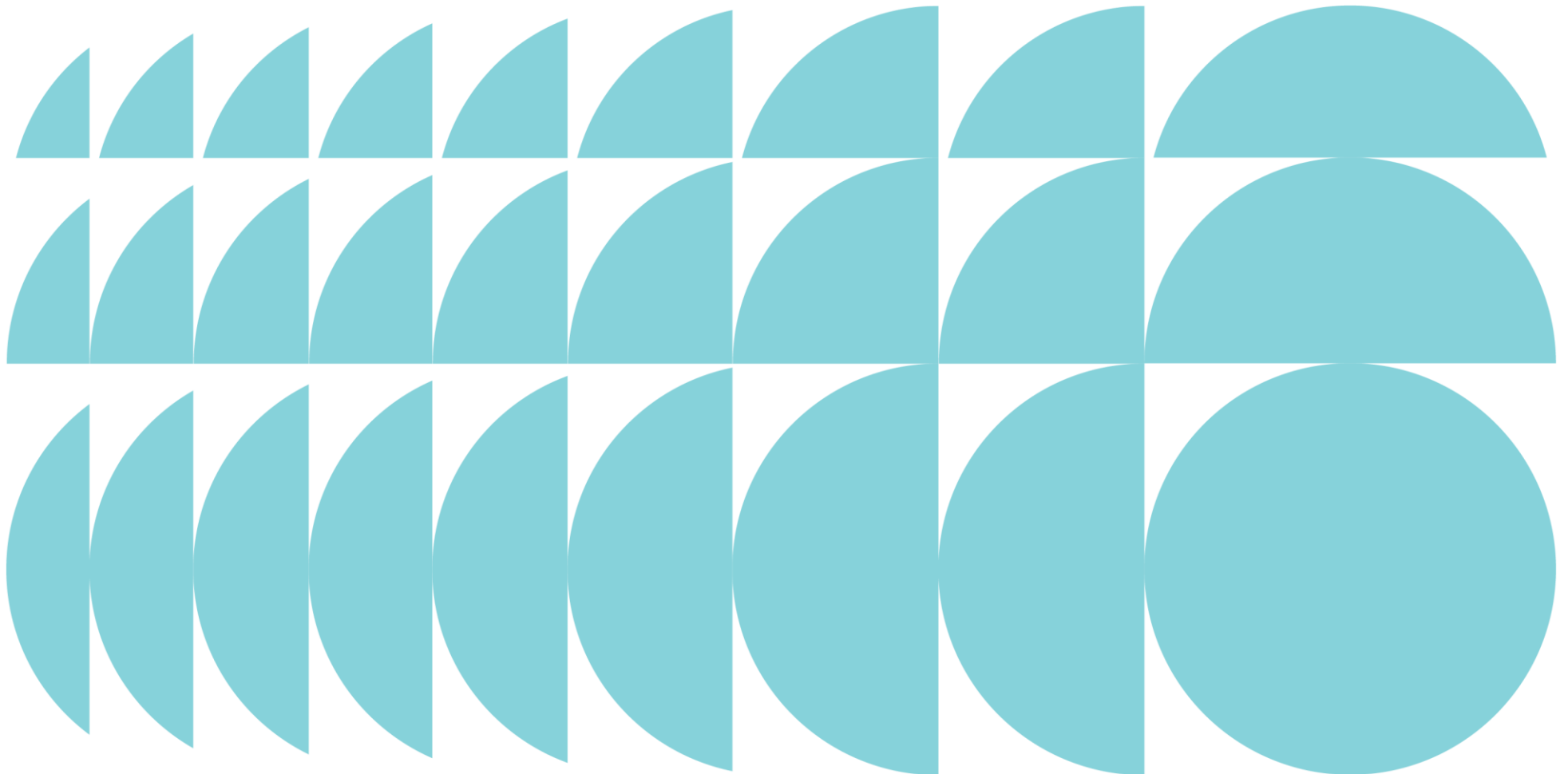


ETHOS URBAN

**Ethos Urban Response to NBC Letter
dated 30 April 2018**

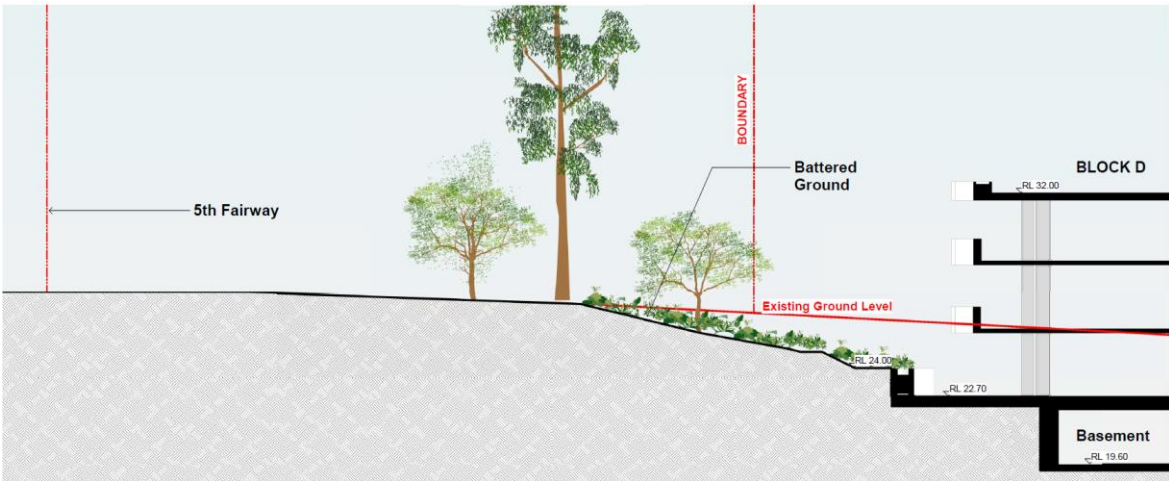
Waterbrook Bayview Development Application (DA
2017/1274)

5 June 2018 | 17317



Council Comment	Response
<p>Urban Design Issues</p>	
<p><i>Council has engaged the services of an external urban design consultant, Hill Thalís Architecture, to peer review the proposed development in terms of urban design issues. A copy of the Hill Thalís report is attached.</i></p> <p><i>In summary, Hill Thalís have raised a number of important urban design issues, particularly in relation to how the proposed development relates to the site and its surrounds having regard to the requirement of SEPP (HSPD) 2004 and SEPP 65. The report concludes that the proposed development does not adequately address the fundamental concerns with regard to the excessive height, bulk, scale and mass of the new buildings proposed within the site.</i></p>	<p>From our review, the Hill Thalís urban design report is for the most part, focussed on statutory planning items such as traffic, trees and waste management, amongst other matters, which are all addressed in in this submission. Additionally, it includes an assessment of subdivision (despite it not being proposed), misrepresents the proposal’s solar access compliance, wrongly assumes the use of the adjacent fire trail as part of the development and does not correctly identify the number of trees proposed to be removed as part of the application.</p> <p>A detailed response to the urban design referral will be separately provided to Council, however, summarised responses to the key issues raised in the referral are provided below.</p> <ul style="list-style-type: none"> • Issue: Subdivision not proposed: As stated in the Statement of Environmental Effects (SEE), subdivision does not form part of this DA. In the absence of a proposal (or declared intention) to subdivide, the application must be assessed based on the current cadastral boundaries. • Building separation and pattern of built form-to-space: Attachment A includes a plan illustrating the separation distances between buildings. <p>Separation between buildings is driven by the ADG to ensure that privacy is maintained between buildings, typically through the interaction of active and non-active facades. For the purposes of privacy, separation distances of the proposal on average achieve the recommended criteria in the ADG for separation for buildings up to 4 storeys in height, particularly between Buildings A and B, Buildings C and D, and Buildings E and F.</p> <p>Thalís review notes that the proposed separation spaces between buildings do not sufficiently mitigate proposed building bulk. The actual range of separation between buildings fluctuates from the 9 – 12m separation between buildings A and B, and 7 – 20 m between buildings E and F (the closest residential buildings to Cabbage Tree Road). When considering the separation between buildings B, C and D a deliberate staggering of the buildings helps create a significant indentation, avoiding the perceived ‘wall site character’ (particularly between blocks B and C with a staggering of approximately 20m), breaking up the northern elevation.</p> <p>Large balconies also provide greater amenity to all the units in the development. Even though these balconies may reduce the apparent separation between buildings (not dissimilar to the separation of existing buildings on Annam Road), provide the opportunity to soften the edges of the blocks and emphasising the horizontal architectural expression of the development, with landscaped planters along the edges addressing the surrounding landscape and timber screens to ensure visual privacy. The upper storey is typically setback significantly, opening the gap between buildings as well over the 2nd storey for some of the buildings. Visual privacy is granted across the whole development as per ADG 3F and solar access to common areas is significantly over the minimum requirements.</p> <p>The pattern of “built form to space” and separation between buildings balances views through the site to and from areas of the golf course whilst breaking up building mass. Despite the skewed building geometries, which are a site specific response to the constraints of the site (i.e. slope), the tree line of the golf course will remain visible from within the site and contribute to the amenity of the communal space. Contrary to what is asserted to in the Hill Thalís review, the site will not present as a ‘walled’ precinct given the average separation above interconnecting ground floor apartments provides relief between buildings and given each of the buildings ‘step down’ the slope, appearing as separate and distinct from one another.</p>

Council Comment	Response
	<ul style="list-style-type: none"> <p data-bbox="705 272 943 296">Building typologies</p> <p data-bbox="763 304 2056 357">Hill Thalys maintain that the surrounding character is that of only low-density 1-2 storey dwellings. It is important that the character be considered in relation to the wider context; rather than narrowly relating the site to the adjoining properties only.</p> <p data-bbox="763 384 2085 437">The context of the site relevantly includes seniors housing development of greater than 2 storeys in height, with existing examples of development up to 4 storeys in height in proximity to the site.</p> <p data-bbox="763 464 2078 571"><i>A discussion on character is provided in the SEE with detailed reference given to Project Venture Developments v Pittwater Council whereby Commissioner Roseth stated that “there are many dictionary definitions of compatible. The most apposite meaning in an urban design context is capable of existing together in harmony. Compatibility is thus different from sameness. It is generally accepted that buildings can exist together in harmony without having the same density, scale or appearance”.</i></p> <p data-bbox="763 598 2078 705">Furthermore, Hill Thalys’ assessment that the proposal is not compatible with the surrounding character is made simply on the basis that the proposal is of a larger scale – i.e., that it is ‘different’ to surrounding development. We contend that the design, siting, scale, and materiality of the proposal results in an overall appearance which will exist together in harmony with its immediate and wider environment, complementing the character of the locality without it being the same.</p> <p data-bbox="763 732 2085 893">The design has sought to emphasise the desired elements of the character of Bayview (significant landscaping, a generally human scale of development, minimised site coverage and design excellence through high quality finishes and materials). Again, in <i>Project Venture Developments v Pittwater Council</i> Roseth stated that “buildings do not have to be the same height to be compatible. Where there are significant differences in height, it is easier to achieve compatibility when the change is gradual rather than abrupt. The extent to which height differences are acceptable depends also on the consistency of height in the existing streetscape”. The proposal’s distance from nearby development through the separation of the golf course ensures they will not be read together.</p> <p data-bbox="705 920 1043 944">Relationship to ground plane</p> <p data-bbox="763 952 2002 976">Attachment B includes a section diagram which illustrates the relationship of some ground floor units facing the golf course.</p> <p data-bbox="763 1010 2085 1088">Solar testing has confirmed that 67 apartments (70.5%) achieve more than 3 hours of direct solar access to living rooms and private open spaces in mid-winter, which is in accordance with the recommendations of the ADG. This includes the overwhelming majority of apartments at ground level, including those referenced in the Hill Thalys referral at ground level in Buildings B, C, D and E.</p> <p data-bbox="763 1118 2074 1273">The apartments which are referenced as being below existing ground level in Hill Thalys’ review will receive high levels of amenity, with terraces below the existing ground level to only a minor extent. All units at ground level facing north in Blocks B, C, D, E are provided with excellent amenity in terms of solar access and daylight to the private open space as shown in the new solar access diagrams provided below. Due to the slope of the ground, the necessary cut of the terrain creates not only an opportunity to reduce the bulk and scale of the blocks B, C, D, E to the north, but also to enjoy a terraced landscaped garden over a new gentle slope to the golf course.</p>

Council Comment	Response
	

Seniors Living Policy – Urban Design Guidelines for infill development

The Design Guidelines are called up under the SEPP and are an important assessment tool in determining the suitability and appropriateness of the proposed development. In this regard, the proposal is found to be inconsistent with the Urban Design Guidelines, particularly in relation to the section that deals with site planning and design, for the following reasons:

- The proposal results in a development that does not allow for sufficient physical separation between the proposed buildings to provide a visual appearance that is sympathetic and compatible to the predominant character of surrounding residential development. The proposed built form creates a development of unreasonable bulk, scale and mass and one that is not in harmony with the surrounding area.
- The proposed development will introduce a significantly different visual presentation, being in the form of large residential flat

Applicability of the Guidelines

The provisions of Clause 31 of the Seniors SEPP do not apply to this DA. This is because the proposed development is, in accordance with the SCC, for *in-fill self-care units and ancillary facilities for the purpose of seniors living*, which will be operated as a retirement village (within the meaning of the *Retirement Villages Act 1999*), including the provision of services including meals, cleaning services, personal care; and nursing care. Clause 31 applies to in-fill self-care housing, being an alternative example of self-contained dwellings, which is seniors housing that consists of 2 or more self-contained dwellings where **none** of the services listed above are provided on site as part of the development.

In this regard, as the development will offer services associated with the operation of a retirement village, the Seniors Living Policy is not specifically applicable to this development.

Relevance of the Guidelines

Additionally, we note that the key provisions of the Seniors Living Policy are not directly applicable to the subject DA. The Seniors Living Policy relates to 'infill' developments that are proposed on existing residential sites. It seeks to minimise impacts on neighbouring properties and allow for a development that fits within the streetscape.

The proposal, however, is not being 'fit' onto an existing residential site. Rather, it is proposed on golf course land (as allowed by the SCC) with minimal impacts on neighbouring sites. Trees and vegetation will form part of the extensive landscaping and revegetation of the site, ensuring that the built form will remain largely inconspicuous.

In this regard, the development has been designed to respond to its setting rather than seeking to 'improve' or 'reduce' the impacts of the development relative to the existing context. It ensures a high level of amenity will be provided to future occupants whilst having minimal impact on surrounding residences and remaining largely unobtrusive when viewed from adjoining sites and the public domain.

Council Comment	Response
<p><i>building type development with inadequate building separation and articulation, which will translate into an unacceptable visual impact and hence render the outcome incompatible with the predominantly low density residential area bordering a significant portion of the site.</i></p>	<p>Consistency with the Guidelines</p> <p>Notwithstanding the above, the development meets the key design requirements in seeking to minimise the visual impacts of the development and to provide for a development that is sympathetic and compatible with the surrounding local character. In particular, it is noted that the specific design requirements for the Seniors Living Policy have been met in the following manner:</p> <ul style="list-style-type: none"> • The provision of car parking within a basement garage; • Well selected, endemic vegetation will be enhanced on site to screen the development and provide a buffer to the adjoining dwellings; • Site design has been driven in a manner which ensures there will be extremely limited impact on neighbouring sites, including; <ul style="list-style-type: none"> – A stepped and separated built form which follows the sloping contour of the land; – Building height which is well below the surrounding tree line; – Buildings which are separated to promote visual connectivity to and from the golf course surrounds; • Allowing for a development that falls with the slope of the land, down towards Cabbage Tree Road; • The development will not be overly visible from Cabbage Tree Road; • Separation between buildings ensures that privacy is maintained between buildings, typically through the interaction of active and non-active facades. <p>We note that the adjacent residential sites do not face the same topographical challenges as imposed by the subject site. Whilst the visual presentation differs from adjoining sites, the built form has appropriately responded to the design requirements of the Seniors Living Policy including the objectives of site planning in responding to the context and natural features of the site.</p> <p>The compatibility and visual appearance of the built form are discussed in more detail below.</p>
<p>Planning Issues</p>	
<p>State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP HSPD 2004)</p>	
<p><i>Schedule 1 – Permissibility of Seniors Housing Component of the Development</i></p>	
<p><i>As you are aware Council has previously contended that SEPP HSPD is not applicable to the subject site as it is affected by natural hazards and is therefore considered to be "Environmentally Sensitive Land" pursuant to Schedule 1 of the SEPP.</i></p> <p><i>Whilst the actual development is located outside the affected area, the APZ of the proposed development encroaches into the geotechnical hazard zone. Based on the fact the APZ forms part of the 'development' within the meaning of the Environmental Planning and Assessment Act 1979, Council therefore maintains its position</i></p>	<p>As the land mapped as geotechnical hazard in the Pittwater LEP does not form part of the site the subject of the development application, no Asset Protection Zone (APZ) is proposed in this zone. However, a number of bushfire protection methods are proposed on golf course land to ensure safety of life and to meet RFS requirements. The applicant is currently working with the NSW RFS to finalise the proposed strategy which includes an APZ outside land mapped as geotechnical hazard. A detailed response will be provided to Council in due course including an updated bushfire strategy, landscape plan, arborist report and ecology report.</p>

Council Comment	Response
<p><i>that SEPP (HSPD) 2004 is not applicable to the proposed development.</i></p> <p><i>Notwithstanding, the issue of permissibility, the Seniors Housing component of the development is made pursuant to SEPP (HSPD) 2004 and so a full assessment has been undertaken with that policy. In this regard, the assessment has found the proposed development to be inconsistent with following Clauses of the SEPP:</i></p>	
<p><u>Site Compatibility Certificate</u></p>	
<p><i>A comparison of the SCC plans that was submitted to the Department and the plans submitted with the DA has revealed that the size of the development has increased size and is therefore a larger scale development, which has an unacceptable visual impact and hence render the outcome incompatible with the predominantly low density residential area bordering a significant portion of the site.</i></p>	<p>A legal opinion has been prepared by Mills Oakley which confirms the plans submitted to the Department to obtain the site compatibility certificate are not relevant to any assessment of the scale and visual impact of the development proposed by the development application. (see Attachment D).</p> <p>The SCC issued by the Department of Planning and Environment (the Department) was issued for the purposes of '95 in-fill self-care units and ancillary facilities for the purposes of seniors living'. The proposed development is for 95 in-fill self-care units and ancillary facilities.</p> <p>It is important to note that the plans and material submitted to the Department as part of the SCC application do not form part of the certificate unless specifically called up within the certificate. The certificate has been issued for 95 in-fill self-care units within a defined footprint. Therefore, the plans submitted with the DA, which propose 95 in-fill self-care units, are consistent with the terms of the SCC, and do not represent development of a larger scale than the kind of development in respect of which the SCC was issued.</p> <p>Whilst there has been some further design development and adjusting of building layouts, measuring the dimensions of the proposal against plans submitted with the SCC (at concept stage) is not a relevant matter. The proposal is a further developed design which is consistent with the terms and requirements of the SCC, and there should be a reasonable expectation that the proposal would evolve from the concept drawings issued to the Department.</p>
<p><u>Division 2 – Design Principles</u></p>	
<p><i>The proposed development is found to be inconsistent with the requirements of the Design Principles as outlined within Division 2 of the SEPP. This is because the bulk, scale, and mass of the development do not reflect the predominant character of the area.</i></p> <p><i>The siting of the seven (7) new seniors housing buildings creates a massing that is not consistent with neighbouring residential development, which is predominately characterised by low density residential development.</i></p>	<p>It is not agreed that the proposal is inconsistent with the Design Principles of the Seniors SEPP, nor do the Design Principles mandate that scale of seniors development identically reflect the scale of development in its vicinity. The Design Principles set out in Division 2 of Part 3 of the Seniors SEPP relate to:</p> <ul style="list-style-type: none"> • Neighbourhood amenity and streetscape; • Visual and acoustic privacy; • Solar access and design for climate; • Stormwater; • Crime prevention; • Accessibility; and • Waste management.

Council Comment	Response
	<p>Council's perception of the proposal's inconsistency with the requirements of the Design Principles is informed by the Design Principle for 'Neighbourhood Amenity' which is in Clause 33. This Clause states as follows:</p> <p>33 Neighbourhood amenity and streetscape <i>The proposed development should:</i></p> <ul style="list-style-type: none"> (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 <u>amenity</u> and appropriate residential <u>character</u> by: <ul style="list-style-type: none"> (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. <p>Council's view that the proposal is inconsistent with the design principles "because the bulk and scale of the development do not reflect the predominant character of the area" is not the threshold established by Clause 33. Rather, Clause 33 is a guideline which directs the designers to ensure neighbourhood amenity and streetscape are considered as part of the design process.</p> <p>With respect to building heights, it directs proponents to adopt building heights "that are compatible in scale with adjacent development". The proposal is considered to achieve all detailed requirements of Clause 33. Again, compatibility is discussed at length in the SEE and further below.</p> <p>Compatibility Council has formed the view that because the development is higher and of a different typology than development in the area, that it does not reflect the predominant character, and is therefore not compatible. Put simply, Council's view is that because the development is different to neighbouring development, that it is unacceptable. This is evident through a persistent contention that the development is 'inconsistent' with neighbouring development in the area.</p> <p>However, this is not the test in determining the compatibility of a scheme. The test is whether the development is in harmony with the built form and environment around it, in accordance with the planning principle for compatibility established in <i>Project Venture Developments Pty Ltd v Pittwater Council</i> [2005] NSWLEC 191. In that case, it was identified by SC Roseth that harmony between development can be achieved despite a difference in scale. Key questions which arose in determining compatibility in the case law were:</p> <ul style="list-style-type: none"> • Are the proposal's physical impacts on surrounding development acceptable? The physical impacts include constraints on the development potential of surrounding sites. • Is the proposal's appearance in harmony with the buildings around it and the character of the street?

Council Comment	Response
	<p>The first question can be easily addressed given the substantial distance between the proposed development and the surrounding residential land uses. The planting and revegetation of the site (and existing vegetation) will help screen the site and ensure that the development largely remains below the tree line and not visually impactful. Additionally, there will be no impacts on the adjacent golf course as the proposal is set back from the course and appropriately screened by vegetation and other devices to not impact on the golf course's operations. In lieu of any impacts on the amenity of surrounding sites, this aspect is considered to be met.</p> <p>Secondly, harmony is achieved between the proposed development and surrounding land uses, as well as the character of the locality through sympathetic height, bulk and scale to development in the locality. Harmony is also achieved as the siting and relationship of the proposed built form to surrounding space is of a lesser or consistent extent compared to other buildings in the locality, particularly nearby seniors housing developments.</p> <p>The significance of the vegetation will mean the development is barely "read" from both private and public viewpoints. Therefore, it is in harmony with its surrounds and could be argued, more harmonious than a golf course.</p> <p>The proposed design, siting, and materiality will also result in an overall development with an appearance existing together in harmony with its immediate and wider environment. The design has sought to emphasise the desired elements of the character of Bayview (significant landscaping, a generally human scale of development and minimised site coverage). The 3-4 storey elements of the proposal retain a human scale, given their design, orientation, separation and materiality, ensuring the proposal does not appear to be out of context.</p> <p>Furthermore, similarities can be drawn from the <i>Project Venture</i> case, which involved a project with graduating heights and where the proposal was different in height to neighbouring development. The Council planner in that case argued that the proposal was different from its surroundings and therefore incompatible, however, it was determined that difference in development did not automatically render it incompatible.</p> <p>Therefore, the development is very much capable of existing together in harmony with the surrounding sites.</p>
<p>State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development (SEPP 65)</p>	
<p><i>The development is considered to be inconsistent with the following Design Quality Principles, which specifically deals with Context and Neighbourhood Character, and Built Form and Scale for the following reasons:</i></p> <ul style="list-style-type: none"> <i>The immediate area of the site is currently characterised by 1-2 storey detached dwellings in landscaped settings. In this context, the proposed development is not considered to be consistent with the key built features of the area.</i> <i>The desirable elements of the locality character is identified in Clause A4.9 Desired Future Character Statement in Pittwater Development Control Plan 21 (PDCP 21) which is discussed later in this letter where it was found that the</i> 	<p>As per the discussion above (Design Principles), the proposed development has been designed to respond to the surrounding context. Specifically, the wider character is not only defined by low-density, single residential dwellings; but rather is also informed by nearby seniors housing developments. There are a number of ways in which the built form consistency of this development can be demonstrated.</p> <p>It is important that the character be considered in relation to the wider context; rather than narrowly relating the site to the scale of adjoining properties. Whilst development to the north-east is characterised by single and two storey dwelling houses, a number of nearby seniors housing developments and the nearby neighbourhood centre maintain a greater number of storeys than those considered by Council as forming the character of the area. Therefore, it cannot be simply maintained that the development is inconsistent with the character of the area, without fully considering the existing character of the wider area.</p> <p>SEPP 65 includes nine (9) design quality principles that apply to residential apartment developments. The two design principles that form part of Council's contentions are:</p> <ul style="list-style-type: none"> Principle 1: Context and neighbourhood character; and Principle 2: Built form and scale.

Council Comment	Response
<p><i>development, as proposed, is inconsistent with the Statement.</i></p> <ul style="list-style-type: none"> <i>The proposed development introduces a considerable building bulk and structural massing. Therefore, the proposed scale of the development in terms of bulk is not regarded as a considered response to the scale of existing development.</i> 	<p>Therefore, similar to the issues raised by Council and discussed elsewhere within this document, issues of context, character and scale have been cited as Council's primary concerns with the proposal.</p> <p>Principle 1 places a particular focus upon the following:</p> <ul style="list-style-type: none"> <i>Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions.</i> <i>Responding to context involves identifying the desirable elements of an area's existing or future character. Well-designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood.</i> <i>Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.</i> <p>The desirable elements of the local context and neighbourhood character formed a key consideration in the design of the proposal. The character of the wider area is not only characterised by 1-2 storey residential dwellings but also by 3-4 storey seniors housing development and significant landscaping, a generally human scale of development and minimised site coverage.</p> <p>Whilst the site is within an urban area, it is currently used for a golf course. It therefore presents opportunities and constraints that would not be present on a typical in-fill site. In this way, the development was not constrained by existing streetscapes, setbacks or amenity impacts on adjoining sites. The design has sought to provide for a development that will exist in harmony with its surrounds, builds on the desirable elements of the area and contributes to the character of the area.</p> <p>In a similar manner to nearby seniors housing developments, the proposal will contribute to the social and economic impacts of the area through:</p> <ul style="list-style-type: none"> the provision of additional seniors housing in a location with a recognised need for this form of housing due to an ageing population; The creation of additional employment opportunities within the local area both during and following construction. <p>However, the Bayview proposal will also provide some significant environmental improvements for the local area, through vegetation works providing for a more natural creek line, allowing for an improved fauna passage through the golf course and providing more than sufficient offsets to tree removal.</p> <p>Therefore, it is considered that the proposal responds to context and neighbourhood character as required by Principle 1 of SEPP 65.</p> <p>Principle 2 seeks to achieve improved built form as follows:</p> <ul style="list-style-type: none"> <i>Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.</i> <i>Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements.</i> <i>Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.</i>

Council Comment	Response
	<p>Similar to Principle 1, the designers of the proposal sought to respond to the opportunities and constraints offered by the subject site.</p> <p>The built form and scale is appropriate to the proposed purpose and use of the site, ensuring a development that is viable and that will generate enough revenue and long-term maintenance funds to deliver ongoing services and maintain infrastructure to preserve the value of the community, and ensuring:</p> <ul style="list-style-type: none"> • the proposed services can be delivered affordably to residents over the long term; and • the development meets the market need for seniors housing independent living units by providing the highest level of service, and thereby, continue to provide an attractive and diverse proposition to current market offerings. <p>The proposal's built form and scale, the majority of which is 3 storeys in height, is considered to be appropriate to the existing and desired character of the area, given it draws upon the key attributes which make the area a desirable location to live, and does not detract from the experience and appreciation of these elements as enjoyed by existing residences in the locality. Furthermore, the impacts of the scheme are minimal, particularly with regard to views and shadows, as evidenced through the DA package.</p>
<p><u>Apartment Design Guide (ADG)</u></p> <p><i>Insufficient information has provided with the application to demonstrate compliance with the following controls within the ADG:</i></p> <ul style="list-style-type: none"> • <i>Clause 2F - Minimum Building Separation for the proposed development;</i> • <i>Clause JG - Pedestrian Access - the plans indicate a pedestrian access to be located on the adjoining private (being owned by the Community Association DP270239 - Barkala Estate) and no owners consent has been submitted with the application;</i> • <i>Clause 4A - Solar access and daylight; and</i> • <i>Clause 4G - Storage</i> 	<p>In order to address Council's comments with regards to the ADG, the following information is provided:</p> <ul style="list-style-type: none"> • Building Separation: As discussed previously, whilst it is acknowledged that the separation distances between Blocks B and C, D and E are less than recommended in the ADG when measured at certain points, no privacy issues arise as a result of the careful design which ensures an interface of habitable to non-habitable areas / inactive facades, and privacy treatments to ensure privacy is maintained between buildings. Furthermore, the design of the development is such that no bulk and scale impacts ensue from the proposed separation distances. Attachment A includes a plan illustrating the separation distances between buildings. • No pedestrian access is proposed across the adjacent private land (Lot 1 DP270239); • Solar Access: An ADG Solar Access and Direct Sunlight Compliance Report has been prepared by Marchese and included in Attachment C which concludes: <ul style="list-style-type: none"> - The proposed number of units to receive at least 3h of direct sunlight between 9am and 3pm is 67 units (70.5%), which meets the recommendations of the ADG - As per ADG 4A-1(3) "A maximum on 15% of the apartments in a building receive no direct sunlight between 9am and 3pm at mid winter, the proposed development provides 91 units (95.78%) with direct sunlight to habitable rooms and only the 4.22% of the development does not receive direct sunlight. • A storage compliance plan is currently being prepared by Marchese Architects and will be issued separately to Council shortly. This will demonstrate that all units will achieve well in excess of the recommended storage per unit in the ADG. Given the significant oversized apartments, all units will comfortably achieve the minimum recommended.

Council Comment	Response
<p>Pittwater Local Environmental Plan 2014</p>	
<p>The Development Application is subject to the remaining provisions of the PLEP 2014 which are not inconsistent with SEPP (HSPD) 2004 and SEPP 65. The following details the areas of the Plan the proposed development does not comply with:</p>	
<p><u>Permissibility</u></p>	
<p>The proposed development includes significant upgrade works to the Golf Course which includes <u>Flood Mitigation Works</u>. Flood Mitigation works is defined under PLEP 2014 as:</p> <p>Flood mitigation work means work designed and constructed for the express purpose of mitigating flood impacts. It involves changing the characteristics of flood behaviour to alter the level, location, volume, speed or timing of flood waters to mitigate flood impacts. Types of works may include excavation, construction or enlargement of any fill, wall, or levee that will alter riverine flood behaviour, local overland flooding, or tidal action so as to mitigate flood impacts</p> <p>The subject site zone RE2 – Private Recreation only permits:</p> <p>Community facilities; Environmental facilities; Environmental protection works; Kiosks; Marinas; Recreation areas; Recreation facilities (indoor); Recreation facilities (outdoor); Registered clubs; Roads; Signage.</p> <p>All other uses that are not listed above are prohibited in the zone (which includes Flood Mitigation works) unless they are specifically permissible under State Environmental Planning Policies such as the State Environmental Planning Policy (Infrastructure) 2007.</p> <p>SEPP (Infrastructure) permits Flood Mitigation works in <u>any zone</u> but provided it's carried out by or on behalf of a public authority.</p>	<p>A legal opinion has been prepared by Mills Oakley which confirms that the proposed works are permissible (see Attachment D).</p> <p>The flood mitigation works are being carried out for the purposes of facilitating the recreation facility (outdoor) land use (golf course), being a permissible use in the RE2 Private Recreation zone. The flood mitigation works are being undertaken as part of the golf course upgrade works.</p> <p>Bayview Golf Club is seeking to improve the playability and drainage of the golf course by undertaking the following works:</p> <ul style="list-style-type: none"> • Rehabilitation of the creek lines through the course, in order to return the watercourses closer to likely pre-development alignments, elevations and forms of vegetation; • Creation of flora and fauna passages that will better connect the upper catchment with the lower portion of the golf course; • An increase in the capacity of the watercourse on the southern side of the golf course in order to lower flood levels for the adjoining residential properties along Parkland Road; and • Minor raising of the fairways to reduce inundation and improve the playability of the golf course, which would benefit the community in general. <p>All of these works seek to improve the playability of the golf course. They should not be considered an independent use as their primary purpose is to facilitate the recreational use of the land for golf.</p> <p>In our view, flood mitigation works would be ordinary and incidental to the main land use (being a golf course) and should be viewed as being as the carrying out of work rather than as a land use.</p>

Council Comment	Response
<p><i>Given the above, the Flood Mitigation works as proposed within the application is a prohibited Land use.</i></p>	
<p><u>Clause 4.3 – Height of Buildings</u></p> <p><i>Clause 4.3 requires buildings to not exceed a maximum height of 8.5m above the existing ground level.</i></p> <p><i>The development exhibits a significant non-compliance to the permitted 8.5m building height as permitted under Clause 4.3 of PLEP 2014 and equates to a requested variation of up to 64%.</i></p> <p><i>The Clause 4.6 Variation request to vary the building height under Clause 4.3 cannot be supported as the development is found to be inconsistent with the objectives of the zone and there are insufficient environmental grounds to justify contravening the development standard.</i></p>	<p>Clause 5(3) of the Seniors SEPP mandates that the SEPP prevails to the extent of an inconsistency with another environmental planning instrument (in this case the Pittwater LEP 2014), and therefore it is questionable as to whether a Clause 4.6 Variation is required in this instance to vary the LEP height limit. <u>The SEPP does not impose a height limit in the circumstances.</u> In particular the Seniors SEPP includes an aim of ‘setting aside local planning controls that would prevent the development of housing for seniors or people with a disability’. It is apparent that the height limit of the site has been developed for the recreational zoning of the site, and not the seniors housing that is permissible under the Seniors SEPP through the SCC.</p> <p>However, for abundant caution, the Clause 4.6 Variation Request has been prepared to vary the Pittwater LEP 2014 development standard for building height under Clause 4.3 given the proposal seeks development consent for buildings of a height which exceeds this standard.</p> <p>Council’s only observation of the Clause 4.6 variation request is that the development “exhibits a significant non-compliance” and that the development is inconsistent with the objectives of the zone (without an explanation as to why). Council’s letter also states that there are insufficient environmental planning grounds to justify contravening the development standard.</p> <p>These aspects have been comprehensively addressed within the Clause 4.6 Variation request.</p> <p>It is therefore not clear whether Council has given adequate consideration to whether the proposed variation request satisfies the various tests under Clause 4.6 of the Pittwater LEP.</p> <p>The Clause 4.6 Variation Request submitted is comprehensive, providing a detailed assessment of why the proposed development is consistent with the objectives of the zone despite the variation, and also provides three key environmental planning grounds which justify the proposed variation.</p> <p>It is important to put the variation into context. Those elements of the proposed buildings which exceed the 8.5m LEP height control are:</p> <ul style="list-style-type: none"> • The majority of the 4th storey floor plates of Buildings E and F only; • Minor roof elements of Buildings A to D; and • A very minor portion of the Facilities Building roof. <p>There are also sufficient environmental planning grounds to justify contravening the development standard, including:</p> <ul style="list-style-type: none"> • The proposed variation will not result in unacceptable environmental impacts and is therefore within the environmental capacity of the site. • The proposed variation to the height limit is a better planning outcome as it results in the environmentally sustainable delivery of the number of dwellings (and therefore the economies of scale) required to: <ul style="list-style-type: none"> – ensure the proposed services can be delivered affordably to residents over the long term; and

Council Comment	Response
	<ul style="list-style-type: none"> - ensure the development meets the market need for seniors housing independent living units by providing the highest level of service, and thereby, continue to provide an attractive and diverse proposition to current market offerings. • The proposed non-compliant development is a better planning outcome than a compliant development, as it better achieves the aims set out in Clause 1.2(f) and 1.2(j) of the Pittwater LEP 2014 and Clause 2(1)(a) and 2(1)(b) of the Seniors SEPP. <p>Therefore, it is unreasonable to expect strict compliance with the development standard given the development is capable of meeting the objectives of the development standard and zone. It is also unnecessary given the Seniors SEPP prevails over the Pittwater LEP 2014, and does not impose a height limit on the development of seniors housing. Therefore, the proposed variation is considered acceptable.</p>
Pittwater 21 Development Control Plan 2014 (PDCP)	
<p><i>The site is located with the A4.9 Mona Vale Locality under the PDCP. The proposed development is considered to be inconsistent with the Desired Character Statement in the following regards:</i></p> <ul style="list-style-type: none"> • <i>The development does not represent the character of primarily low - density within a landscaped setting;</i> • <i>The development will not maintain the visual pattern and predominant scale of the development within the locality;</i> • <i>The development does not maintain the landforms, landscapes and natural environment of the site, as the proposal includes substantial excavation, removal of significant and well-established trees and vegetation within the development area and from the road reserve to accommodate the development; and</i> • <i>The height, scale and character of the proposed development is completely inconsistent with both the existing and desired characteristics of the site and locality, would not be adequately integrated with the landform and landscape and is not consistent with the recreational purposes for which the site is zoned</i> 	<p>The design of the seniors housing development has been informed by a variety of documents including the desired future character outlined in the Pittwater DCP. The Pittwater DCP Character statement for the 'Mona Vale Locality' in which the site is located, states that "<i>The Mona Vale locality will contain a mix of residential, retail, commercial, industrial, recreational, community, and educational land uses.</i>" The existing character is defined by low density residential dwellings, a number of seniors housing developments and the nearby Mona Vale Town Centre.</p> <p>The desired future character of the locality must take into account a number of factors, including, but not limited to, the height controls which apply to individual sites. Also relevant in determining the desired future character of the locality are the zone objectives, and in the circumstances of the Bayview locality, other factors must be considered, such as any SCC which has been issued, the aims and objectives of the LEP and the aims and objectives of the Seniors SEPP which are applicable to the site and the proposal.</p> <p>Accordingly, the proposed buildings, by virtue of their height and scale are consistent with the desired future character of the locality:</p> <ul style="list-style-type: none"> • Because they are enabled by the Seniors SEPP and the issue of the SCC for the land. The desired future character must be understood by reading the LEP in combination with the Seniors SEPP, as well as LEC precedence, particularly because it is the provisions of the Seniors SEPP which have envisaged, through the SCC process, that seniors housing of the kind proposed would be carried out on land of this kind. This is clearly evidenced: <ul style="list-style-type: none"> - through the wording of Clause 25(5)(iv), which makes provisions for seniors housing, through the SCC assessment process, "...in the case of applications in relation to land that is zoned open space or special uses"; and - because the Seniors SEPP aims to increase the supply and diversity of residences for seniors (Cl. (1)(a)) by setting aside local planning controls that would prevent the development of seniors housing that meets the criteria and standards set out in the Policy (Cl. (2)(b)). • Because they are consistent with the intention in the Pittwater DCP 21 that the desired character of future development in the Mona Vale Locality maintain a building height limit below the tree canopy and minimise bulk and scale". The proposed buildings are also consistent with the following desired character elements of the DCP: <ul style="list-style-type: none"> - <i>Existing and new native vegetation, including canopy trees, will be integrated with the development.</i> - <i>Contemporary buildings will utilise facade modulation and/or incorporate shade elements, such as pergolas, verandahs and the like. Building colours and materials will harmonise with the natural environment.</i> - <i>Development on slopes will be stepped down or along the slope to integrate with the landform and landscape, and minimise site disturbance.</i> - <i>Development will be designed to be safe from hazards"</i> <p>As discussed throughout the SEE and in this response, the proposal is considered to respect and complement the existing and desired future character of the locality and to this end, the DCP should be given appropriate weight as a guide in the assessment of the application.</p>

Council Comment	Response
<p>Additional Matters The following is a list of matters that requires further clarification:</p>	
<p>1. Clarification is required on type on type of seniors housing that is proposed. In this regard, there are many reports submitted with the application that describe the development as "Retirement Village" whilst other reports describe the development as "In-fill Self Care" units.</p>	<p>The proposal is as described in the SCC, being for:</p> <ul style="list-style-type: none"> • 95 in-fill self-care units and ancillary facilities for the purpose of seniors living, including: <ul style="list-style-type: none"> ○ Site preparation works; ○ Construction and use of seven (7) separate buildings of predominantly 3-4 storeys in height, to be operated as a retirement village (within the meaning of the <i>Retirement Villages Act 1999</i>); ○ Basement parking for 186 cars, loading and servicing; ○ Landscaping works, including ground level landscaping for the creation of a communal open space area for future residents; and ○ Extension/augmentation of services and utilities to service the development. <p>We note that the two expressions used within the SEE, namely 'in-fill self-care units' and 'retirement village' are not mutually exclusive. A retirement village can be described as 'in-fill self-care units'.</p>
<p>2. Clarification is required as to actual site area of the subject site for the purpose of calculating the landscape open space, site coverage and FSR for the seniors housing component. In addition, clarification is also required as to whether a subdivision for the senior's housing component is planned for the future, this information is essential for the complete assessment to be carried out.</p>	<p>It is noted that no FSR development standard applies to the subject site. However, for the purposes of calculating the landscaped open space and site coverage, an area of 18,791.8m² has been utilised, representing the SCC boundary, being the area outlined in red in Drawing DA1.04 'Envelope Comparison', in the Architectural Drawing Set, included in Appendix A of the submitted drawings, and as stated within the SEE.</p> <p>If FSR was to be calculated based on the <i>actual</i> site area of the seniors housing (98,847m²), the FSR would be 0.18:1. The smaller site area has been utilised to determine a relevant site coverage and landscaped open space calculation, and to demonstrate that, within the SCC boundary, the metrics of the development comply with relevant requirements.</p> <p>As stated within the SEE, no land subdivision is proposed as part of this DA.</p>
<p>3. The landscape plan appears to conflict with other supporting documents including the recommendation from the NSW Rural Fire Services.</p>	<p>An updated Landscape Plan, ecology report and arborist report is currently being prepared and will be provided to Council shortly. This will rectify any conflicts between other supporting documentation and detail the Asset Protection Zone that will be provided in coordination with the RFS. All reports will be updated to confirm that no works are proposed within the land mapped geotechnical hazard under the LEP, which is excluded from the site.</p>
<p>4. There is conflicting information in relation to the various reports about the site area of the development. For example, the Geotechnical Report, prepared by Martens on page 6 cites the site area as being 6.35ha, compared to 9.85ha cited within the SEE. In addition, there is also a number of other conflicting information between the different expert reports.</p>	<p>The seniors housing site comprises a total area of approximately 98,847m² (9.85ha), as described on pg. 18 of the SEE.</p>
<p>5. The plans submitted with the application notes a pedestrian link, which appears to be on the adjoining private land that is currently designated as an emergency vehicle access trail for the Barkala estate.</p>	<p>No pedestrian link has been provided on the adjoining private land.</p>

Council Comment	Response
<p>6. It is noted that the proposed driveway for the senior's housing is in close proximity to the emergency vehicle access trail for the Barkala estate. In this regard, additional information is required to determine if there is any conflict between the proposed development and the adjoining access trail during emergency evacuation situation</p>	<p>A letter response has been prepared by the consultant traffic engineer which responds to this issue. Refer to Attachment E for the traffic letter.</p> <p>The response confirms that the proposed access driveway is located south-west of the existing emergency access trail, and that the proposed access would not interfere with an emergency evacuation event using the trail. In fact, the proposed roundabout will act to slow the vehicle movements through the area which would be used for an emergency evacuation and the refuge island will assist pedestrians being evacuated to cross the road safely.</p>
<p>7. An Emergency Evacuation Plan has not been submitted with the application, to demonstrate that the residents of the proposed development can evacuate the site safely in the event of the emergency situation.</p>	<p>An emergency evacuation plan has been prepared and is included in Attachment F.</p> <p>As per the documentation submitted to date, residents of the seniors development would not be evacuated during a flood event as the site is flood free in the PMF and will constitute a place of refuge.</p>
<p>8. Council's Traffic Engineer response has recommended that additional trees are required to be removed to improve sight lines etc. The removal of trees within road reserve is unlikely to be supported by Council.</p>	<p>A letter response has been prepared by the consultant traffic engineer which responds to this issue. Refer to Attachment E for the traffic letter.</p> <p>The response confirms that Cabbage Tree Road is relatively straight at this location that the available sight distances in relation to vehicles accessing the proposed driveway:</p> <ul style="list-style-type: none"> • will satisfy the sight distance criteria specified in AS2890.1 and Austroads Road Design Guide • will not require the removal of any additional trees in order to increase the sight distances which will be available.

Attachment A: Separation Distance Plan

Attachment B: Ground level terrace section diagram

Attachment C: Solar access compliance report

Attachment D: Legal review

Attachment E: Traffic response letter

Attachment F: Emergency evacuation plan