

DATE OF DETERMINATION	Wednesday 8 August 2018
PANEL MEMBERS	Peter Debnam (Chair), Sue Francis, Julie Savet Ward, Annelise Tuor, Marcus Sainsbury
APOLOGIES	John Roseth
DECLARATIONS OF INTEREST	Annelise Tuor noted that speaker James Colman is appointed on the Woollahra Independent Hearing and Assessment Panel of which she is a chair.

Public meeting held at Northern Beaches Council Chambers, 725 Pittwater Road Dee Why on 8 August 2018, opened at 5.30pm and closed at 11.10pm.

MATTER DETERMINED

2018SNH001 – Northern Beaches – DA2017/1274 at 1825 Pittwater Road & 52 Cabbage Tree Road Bayview (as described in Schedule 1)

PANEL CONSIDERATION AND DECISION

The Panel considered: the matters listed at item 6; the material listed at item 7; the material presented at meetings and the matters observed at site inspections listed in item 8 in Schedule 1.

The Panel determined to refuse the development application as described in Schedule 1 pursuant to Section 4.16 (previously Section 80) of the Environmental Planning and Assessment Act 1979.

The Panel adjourned the meeting at 9.50 pm to deliberate on the matter. The Panel reopened the meeting at 10.50 pm and advised the meeting that the matter would not be resolved that evening but would be determined by Tuesday 14th August. The Panel subsequently discussed the matter further and the majority of the Panel resolved to refuse the application while Sue Francis would defer determination for the reasons outlined below.

REASONS FOR THE DECISION

The Panel heard from both the Applicant and Submitters (both supporters and objectors) in relation to the development and considered the planning assessment report provided by Council Staff.

The Panel heard from many supporters of the proposal in terms of the need for quality and innovative seniors housing on the Northern Beaches. The Panel also acknowledges the role the Bayview Golf Club has for members and the wider community of the Northern Beaches and the need for the facility to have a sustainable future.

The issues raised by supporters and objectors relate to:

- Permissibility;
- Impact on natural environment;
- Typology, scale, footprint and density of the proposal;
- Inconsistency with the character of the area;
- Concerns regarding the Asset Protection Zone (APZ);
- Retention and renewal of the Club;
- Visual Impact;

- Excavation and geotechnical concerns re groundwater and acid sulfate soils;
- The need for and provision of quality aged care in the Northern Beaches.

The Panel notes that a Site Compatibility Certificate (SCC) under State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP HSPD) was issued for the Golf Club site on 27 March 2017. The SCC permits "95 infill self care units and ancillary facilities" within a defined area of land on the Golf Club site. The SCC clearly requires the resolution of issues relating to form, height, bulk, scale, setbacks and landscaping, flood risk, car parking, access and potential ecology impacts before determination of the application.

Objectors have raised concerns about the SCC and the permissibility of the proposal. The Panel notes that the SCC remains valid unless found to be otherwise through a legal challenge and decision of the Court. Furthermore, the Panel notes the legal advice from Mills Oakley lawyers dated 1 August 2018 and 9 October 2017. However, it considered that there remains unresolved issues relating to the permissibility of the proposal and considered that it would require independent legal advice before it could approve or amend the application.

In particular, the SCC permits "infill self care units and ancillary facilities". However, it is unclear whether the proposal is for "serviced self care housing" (as stated in Mills Oakley lawyers dated 1 August 2018) or "infill self care units", as defined under SEPP HSPD and, consequently, whether the type of Seniors Housing that is proposed is permissible and whether the relevant provisions have been satisfied. Also, whether the requirement of Clause 5 of SEPP HSPD is satisfied as whilst the Golf Course, being the 'site' may adjoin land zoned for urban purposes, the 'land' on which the Seniors Housing is allowed pursuant to the SCC may not be so described. The construction and maintenance of an APZ for the purpose of Seniors Housing outside the "land" designated for this purpose in the SCC also raises issues of permissibility. Furthermore, there is concern as to the applicability of Schedule 1 – Environmentally Sensitive Land of the SEPP HSPD as it might relate to the land, which is identified in the Pittwater Local Environmental Plan 2014 (PLEP) as being an area of Biodiversity to which Clause 7.6 applies. The purpose of this mapping is to 'protect' and 'conserve' native flora, fauna, and 'ecological processes'.

However, importantly in addition to the above legal issues, which need conclusive resolution, the Panel unanimously considers the proposed development an overdevelopment of the site.

The Panel is concerned with the proposed typology, scale, height, footprint and density of the proposal. The form of the proposed buildings, their length, height and basement parking produce a built form which is incompatible with the existing and desired future character of the area. The visual impact of the proposed buildings when viewed from neighbouring properties and the Golf Course itself is incongruous to the existing low scale and recreational character of the area.

The Panel also has concerns that the proposed typology, scale, footprint and density of development will have a substantial adverse impact on the biodiversity of the site and area, noting that the whole of Bayview Golf Club is mapped as Biodiversity under PLEP. The Panel does believe that the proposal could be designed, sited and managed to further reduce the substantial adverse impacts on the biodiversity. The Panel acknowledges that an appropriate development on this site would also fund an upgrade to the Golf Course, as well as provide resources for regeneration of the local environment to benefit flora and fauna.

The Panel carefully considered whether to defer the determination to resolve the legal issues and seek amended plans to address the above concerns. But the Panel, with the exception of Sue Francis, concluded that the design modifications required to satisfy the above were too significant to defer the application and therefore refuses the application.

Further, the Panel concluded that the Clause 4.6 variation in relation to the breach of the PLEP height limit does not adequately justify the variation and is not well founded.

The Panel considers the reasons for refusal are:

1. The permissibility of the proposal under the SCC and SEPP HSPD is not fully resolved.
2. The requirements imposed on determination of the proposal under the SCC are not appropriately resolved.
3. The typology, scale, bulk and height of the proposal is not compatible with the existing and future character of the area and does not contribute to the quality and identity of the area as required by Clause 33 (a) of SEPP HSPD. This fails the principles of context and neighbourhood character, built form, scale, density, landscaping, amenity and aesthetics of State Environmental Planning Policy 65.
4. The impacts on biodiversity are substantial and adverse. The proposal fails to comply with the requirement of the PLEP and PDCP in this regard.
5. The visual impact of the proposed buildings when viewed from neighbouring residential development and within the Golf Course is incongruous to the existing low scale residential and recreational character of the area.
6. The building height does not comply with the PLEP and the Clause 4.6 variation is not justified or well founded.






The Panel considers the reasons for refusal provided in the Council’s planning assessment report should be amended to delete reasons 1, 5(c) and 7(a).

Sue Francis would have deferred the application for amended plans following receipt of independent legal advice as to the issues of permissibility which were not provided by the Council in their assessment. In terms of amended plans Sue Francis would have sought the following: -

- Reduction in the length of the built forms with consequential increase in the ‘gaps between buildings’
- Reduction in the extent of excavation for basement parking and a reduction in car parking to be consistent with the SEPP HSPD
- Reduction in height so that no building is higher than 3 storeys

Conditions

Not applicable.

PANEL MEMBERS	
 Peter Debnam (Chair)	 Sue Francis
 Julie Savet Ward	 Annelise Tuor
 Marcus Sainsbury	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	2018SNH001 – Northern Beaches – DA2017/1274
2	PROPOSED DEVELOPMENT	Construction of Seniors Housing consisting of 95 units including Golf Course upgrades and infrastructure works.
3	STREET ADDRESS	1825 Pittwater Road & 52 Cabbage Tree Road, Bayview
4	APPLICANT/OWNER	Waterbrook Bayview Pty Ltd
5	TYPE OF REGIONAL DEVELOPMENT	General development over \$30 million
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> • Environmental planning instruments: <ul style="list-style-type: none"> ○ State Environmental Planning Policy (State and Regional Development) 2011 ○ State Environmental Planning Policy No.65 – Design Quality of Residential Apartment Development ○ State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 ○ State Environmental Planning Policy No.55 – Remediation of Land ○ State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 ○ State Environmental Planning Policy No.44 – Koala Habitat ○ Pittwater Local Environmental Plan 2014 • Draft environmental planning instruments: Nil • Development control plans: <ul style="list-style-type: none"> ○ Pittwater Development Control Plan 2014 • Planning agreements: Nil • Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i>: Nil • Coastal zone management plan: Nil • The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality • The suitability of the site for the development • Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations • The public interest, including the principles of ecologically sustainable development
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> • Council assessment report: 27 July 2018 • Applicants response to refusal (excluding Dr Richard Lamb Report as not assessed by Northern Beaches Council): 7 August 2018 • Council memo: 8 August 2018 • Written submissions during public exhibition: 567 • Verbal submissions at the public meeting: <ul style="list-style-type: none"> ○ Support – Robert Langbein, Ken Fitzpatrick, David Stone, Liz Kelly, Richard Dewhurst, Andrew Tiede, Christine Clarke, Andrew Tiede, Bill Allard, Paul Blenkhorn, Councillor Pat Daley, Philip Pitt, Holland Touw, David Sparks, Marten Touw, Ella Mcully, Steve O’Brien, David Clark ○ Object – Marita Macrae on behalf of Pittwater Natural Heritage Association, Kelvin Auld on behalf of Mona Vale Residents Association, Dean Priebee on behalf of Barkala Estate Association, Chris Fletcher on behalf of Bayviewlife.com, James Colman,

		<p>Gopala Maurer on behalf of Northern Beaches Strategic Community Group, Sandra Murdock, Chris Hornsby, Diane Matheson, John Matheson, David James, John Eustace, John Cockbill, Penny Cockbill, Marcia Rackham, Julia Hornsby, Dean Priebee on behalf of John Peterson, Warren Moss, John Cockbill on behalf of Ian Westaway</p> <ul style="list-style-type: none"> ○ On behalf of the applicant – Tom Goode, Dr Richard Lamb, Dr Anne-Maree Clements, Eugene Marchese, Kevin Ryan, Chris Ferreira, Aaron Gadiel
8	MEETINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> ● Site inspection and briefing meeting: 27 February 2018 ● Final briefing meeting to discuss council’s recommendation, 8 August 2018 at 4.30pm. Attendees: <ul style="list-style-type: none"> ○ <u>Panel members</u>: Peter Debnam (Chair), Sue Francis, Julie Savet Ward, Annelise Tuor, Marcus Sainsbury ○ <u>Council assessment staff</u>: Lashta Haidari, Anna Williams, Peter Robinson, Brendan Smith,
9	COUNCIL RECOMMENDATION	Refusal
10	DRAFT CONDITIONS	Not prepared