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11 October 2018

Northern Beaches Council
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Attention: Lashta Haidari, lashta.Haidari@northernbeaches.nsw.gov.au

**Re: DA 2017/1274 – Objection to Amended Plans, LEC Appeal 2018
Objection to Amended Plans (and supporting documents) for a proposed
Seniors Housing (and associated works) at 52 Cabbage Tree Road Bayview,
NSW.**

Introduction and General Submissions

This submission objecting to the amended plans seeks to advocate the community concerns and environmental issues in the public interest, in the context of the Environmental Planning and Assessment Act 1979 (as amended).

The Mona Vale Residents Association objects to the amended plans and associated information on the basis that they do not overcome, in the association's view, the numerous reasons for refusal contained in the Notice of Determination dated 8 August 2018 issued by the Sydney North Planning Panel (SNPP).

This submission supports Sydney North Planning Panel's refusal of the development application and supports the "Reasons for Refusal" contained in the SNPP's Notice of Determination dated 8 August 2018.

This submission briefly considers the amended plans against the reasons for refusal, including the unresolved legal issues, and finds that, in the opinion of the association, the amended plans fail to adequately respond to, or overcome the numerous reasons for refusal. The amended plans are briefly considered in relation to the reasons for refusal in **ATTACHMENT 1 Amended Plans Considered in Relation to Reasons For Refusal.**

The reasons for refusal and particulars specified in the Notice of Determination, are used as a checklist to consider the amended plans from a community, local planning and environmental perspective. The association makes submissions in respect of each of the reasons for refusal in relation to the amended plans as a means of evaluating those plans.

It is submitted that the numerous reasons for refusal, including (but not limited to) those related to protecting the wildlife corridor and bio-diversity, desirable neighbourhood character, building typology, height of three (3) storey residential flat buildings and impacts of the large development footprint, are still matters applicable to the amended plans.

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Furthermore this submission raises important additional assessment matters specifically in relation to the amended plans for the proposed Seniors Housing Development (and associated works) now that the development has been characterized as “**serviced self-care housing**” to be operated as a “**retirement village**”, at 52 Cabbage Tree Road, Bayview NSW. This matter is discussed in detail under the heading **The Provision of On-site Care and Support Services as Required by Clause 42 of SEPP (SHPD) 2004** on page 5.

The Site Compatibility Certificate (SCC)

The Site Compatibility Certificate (SCC) does not prevent a consent authority from refusing a development application.

Advice was sought from the NSW Environmental Defenders Office (EDO) in relation to the development application. Significantly, on the question of the Site Compatibility Certificate, the EDO advised as follows:

“Whether a Site Compatibility Certificate (SCC) issued by the NSW Department of Planning limits the processing of the DA by the consent authority: we are not aware that the issuing of the SCC prevents a consent authority from refusing the development. The issuing of the SCC does not fetter the consent authority’s discretion to refuse or approve the DA under S 80 of the Environmental Planning and Assessment Act 1979 (NSW).”

According to the advice, the issuing of the Site Compatibility Certificate would not fetter the consent authority’s discretion from refusing a Development Application. Clause 24(3)(a)(ii) of SEPP SHPD (2004) is also very relevant to the wide discretion that a consent authority may exercise irrespective of the existence or otherwise of a SCC and the terms of the certificate.

“(3) Nothing in this clause:

(a) prevents a consent authority from:

(i) granting consent to a development application to which this clause applies to carry out development that is on a smaller (but not larger) scale than the kind of development in respect of which a site compatibility certificate was issued, or

(ii) refusing to grant consent to a development application to which this clause applies by reference to the consent authority’s own assessment of the compatibility of the proposed development with the surrounding environment, or

(b) otherwise limits the matters to which a consent authority may or must have regard (or of which a consent authority must be satisfied under another provision of this Policy) in determining a development application to which this clause applies.”

The consent authority (NSW LEC) may carry out and rely on its own assessment of the compatibility of the proposed development with the site itself and the surrounding environment. Similarly, “*nothing in Clause 24(3)(a)(ii) of SEPP SHPD (2004) otherwise limits the matters to which a consent authority may or must have regard (or of which a*

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consent authority must be satisfied under another provision of this Policy) in determining a development application to which this clause applies”.

It is noted that the consent authority does not appear to be fettered by the issuing of a SCC in its full assessment, consideration and determination of the development application, including the amended plans. This includes consideration and determination of the permissibility and merits of the development application via the full development assessment process under Clause 4.15 of the EP&A Act1979.

The amended plans and supporting information, appear to be attributing too much weight to the SCC and the Department’s SCC report in order to justify the development proposal. In particular, the applicant seems to be overly relying on the Department’s SCC report and the SCC itself in relation to permissibility and overall merits, that are better and fully assessed under Clause 4.15 of the EP&A Act1979.

Public Interest

The association recommends the consideration of the Ecologically Sustainable Development (ESD) Precautionary Principle under Clause 4.15 (1)(e) Public Interest in relation to the amended plans for the proposed Seniors Housing (and associated works) at 52 Cabbage Tree Rd Bayview.

It is submitted that Ecologically Sustainable Development (ESD) principles under 4.15 (1)(e) Public Interest, of the EPA Act 1979 (as amended) should be considered. This is justified given the proposal’s environmentally sensitive site and likely adverse environmental impacts of the proposed development on the site and surrounding environment, landscape and bio-diversity. Also relevant is the SNPP’s development assessment and grounds for refusal in relation to the environmental planning and bio-diversity context and the nature of both Council and community objections and concerns in relation to the protection of the Wild Life Corridor.

Relevance of the golf course improvements (including tree planting) part of Development Application located at 1825 Pittwater Rd. Bayview to the assessment of amended plans for the Seniors Housing part of the development application at 52 Cabbage Tree Rd Bayview.

The Association submits that the golf course part of amended Development Application located at 1825 Pittwater Rd. Bayview, can not realistically be used as a means of mitigating or justifying the likely adverse impacts of the amended plans for the proposed “retirement village” at 52 Cabbage Tree Rd Bayview in anyway at all or somehow used to justify the seniors housing “retirement village” in environmental, economic or public interest terms.

Building Height Limit of 8.5 metres with 3 Storey Residential Flat Buildings?

The Clause 4.6 request for variation of the 8.5 m height development standard under PLEP 2014 was refused by the SNPP.

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The amended plans consist mainly of three (3) storey residential flat buildings i.e. apartments and this has been both a surprise and a disappointment to many local residents.

A question posed by community members is how is it possible to achieve a 3 storey residential flat building (or apartments) within a limited building height of 8.5 metres, using current design best practice, with floor to ceiling heights of 2.7 metres minimum for habitable areas with minimum floor to floor heights of 3.15 metres? Thus a three (3) storey residential flat building or apartments would require a minimum height of 9.45 metres. This would appear to be well in excess of the 8.5 metre height development standard under Pittwater LEP 2014 and would appear to breach that standard when height is calculated according to the definition of height in the LEP.

It is submitted the theoretical 8.5 metre height plane, lodged as supporting information on behalf of the applicant, is possibly incorrect and needs to be checked and independently validated. It is suggested that the methodology and the resulting 8.5 metre height plane itself, should strictly apply the definition of height in PLEP 2014 to measure height i.e. *“building height” (or “height of building”) means: (a) in relation to the height of building in metres – the vertical distance from ground level (existing) to the highest point of the building... “*

In relation to the amended plans the association is concerned about the adverse impacts of the proposed, mainly three (3) storey apartment development, when combined with its significant footprint, elevations and building type (residential flat buildings) at this particular location and given the site’s environmental planning context and its prominent location on a spur overlooking the golf course below.

The amended plans as proposed are not supported given the site’s environmental planning contexts involving the special environmental characteristics of the site itself and environs and the scenic, landscape and nature conservation values of the site and surrounding environment including the high residential character and amenity attributes that are valued by the community.

Visual impact and loss of landscape and scenic quality (the site and environs has high nature conservation, landscape and scenic quality value)

The Association submits that the proposed retirement village (including the amended plans), given its combined height, footprint, elevations and building type (i.e. residential flat buildings) will be obvious, visually dominant and intrusive when constructed. Furthermore the proposed development will be out of character and inconsistent with the surrounding environment irrespective of the landscape plan.

Visual Analysis

It is also our submission that the applicant’s visual analysis reports do not convey a realistic impression of what the retirement village is likely to look like in a highly modified landscape, after completion of the development and associated works.

It is submitted that the amended plans for the retirement village, given the above, will be visually intrusive and adversely impact on the nature conservation, scenic and

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landscape values of the site and environs and will be inconsistent with maintaining the high residential amenity of the adjoining residential properties and neighbourhood.

The retirement village site is designated as a High Priority Habitat and Wildlife Corridor and the development application is opposed.

The site is designated as a High Priority habitat and wildlife corridor in the former Pittwater Council's Habitat and Wildlife Corridors: A Conservation Strategy 1995. This important Council conservation strategy still applies and is entirely consistent with the conservation priorities contained in the revised Objects of the Environmental Planning Assessment Act 1979 (as amended), Pittwater DCP, PLEP 2014. and the final North District Plan 2018.

Loss of mature trees, tree canopy and urban green space is completely unacceptable. Furthermore the adverse impacts on biodiversity and native species are completely unacceptable.

The Provision of On-site Care and Support Services as Required by Clause 42 of SEPP (SHPD) 2004

It is submitted that the applicant's apparent confirmation of, or shift in usage of the proposal from infill self care housing to "**serviced self-care housing**" to be operated as a "**retirement village**" and at the same time the scaling down of the proposal from 95 to 85 units i.e. apartments, raises the important planning assessment issue of the adequacy (and viability) of the provision of onsite care and support services as required by Clause 42 of SEPP (HSDP) 2004.

"Clause 42

(1) A consent authority must not consent to a development application made pursuant to this chapter to carry out development for the purpose of serviced self care housing on land that adjoins land zoned primarily for urban purposes unless the consent authority is satisfied by written evidence that residents of the proposed development will have reasonable access to:

- (a) home delivered meals. and**
- (b) personal care and home nursing, and**
- (c) assistance with housework".**

A professional report specifying the onsite provision of care and support services to the aged residents of the seniors housing development was not included with the original DA plans or the amended plans. It is understood that the lodging of such a written onsite care and support services report as part of a DA for a "serviced self care" retirement village proposal of this size is a both a requirement of SEPP (SHPD) 2004 and normal practice. The marketing document lodged with the original DA is not considered adequate for purpose of planning assessment as required by Clause 42 of SEPP (HSPD) 2004

It is submitted that a separate On-site Care and Support Services Report should be submitted showing actual on-site care and support services, level of provision, staffing, means of provision, detailed plans indicating how and where services will be provided



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on-site (including GP consulting room/s etc). Also included would be a detailed Care and Support Services Management Plan including a sustainability statement showing how the on-site care and support services would be financially accomplished.

Mitigation measures, including height reduction, are inadequate

Regarding the amended plans, it is submitted that the proposed measures that seek to mitigate the significant adverse impacts of the seniors housing development proposal, when considered against the SNPP's reasons for refusal, are completely inadequate.

Refusal of the Development Application by Sydney North Planning Panel

The Sydney North Planning Panel (SNPP), as the consent authority pursuant to Clause 4.16 (1)(b) of the EPA Act 1979 (as amended) refused to grant consent to Development Application No. DA2017/1274 for construction of Seniors Housing consisting of 95 units including golf course upgrades and infrastructure works at 1825 Pittwater Road and 52 Cabbage Tree Road, Bayview.

Source: Reasons for Refusal in the Notice of Determination by SNPP (dated 8 August 2018)

Recommendation: That the development application DA 2017/1274 dated 19 Dec 2017, as amended, not be supported by the Northern Beaches Council and the Sydney North Planning Panel and be refused by the NSW Land and Environment Court.

Sincerely Yours
Kelvin Auld

Mona Vale Residents Association

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ATTACHMENT 1

Amended Plans Considered in Relation to Reasons For Refusal

The reasons for refusal and particulars specified in the Notice of Determination, are applied as a checklist to consider the amended plans from a community, local planning and environmental perspective. The association makes submissions in respect of each

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of the reasons for refusal in relation to the amended plans as a means of evaluating those plans.

1. State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development (SEPP 65) and Associated Apartment Design Guide (ADG)

The proposed development should not be approved in its current form as it fails the principles of SEPP 65 insofar as they apply to context and neighbourhood character, built form, scale, density, landscaping, amenity, and aesthetics:

SUBMISSION: The amended plans do not overcome or resolve these reasons for refusal as the proposed development is still out of context and inconsistent with neighbourhood character, built form, scale, density, landscaping, amenity, and aesthetics.

Particulars:

a) The proposed building is not compatible with the context of the site that currently contemplates buildings of a scale significantly less than that proposed.

SUBMISSION: The amended plans and supporting information do not overcome or resolve these reasons for refusal. The Association considers that the proposed retirement village (including the amended plans), given its combined height, footprint, elevations and building type (i.e. residential flat buildings) will be obvious, visually dominant and intrusive when constructed. Furthermore the proposed development will be out of character and inconsistent with the surrounding environment

b) The development does not provide sufficient landscape area within the boundaries of the site (boundaries as identified within the Site Compatibility Certificate) commensurate with the bulk and scale of the proposed built form.

SUBMISSION: The amended plans and supporting information do not overcome or resolve these reasons for refusal. There is still insufficient landscape area within the boundaries of the site (boundaries as identified by the Site Compatibility Certificate) commensurate with the bulk and scale of the proposed built form.

c) The proposal is inconsistent with a number of the requirements as contained in the ADG referenced in SEPP 65

SUBMISSION: The amended plans and supporting information do not overcome or resolve these reasons for refusal in relation to the compliance with the requirements of ADG. For example the design of the apartments does not appear to comply with best practice regarding a desirable floor to ceiling height of 2.7 metres or more.

2. State Environmental Planning Policy (Housing for seniors or People with a Disability) 2004 (SEPP HSPD 2004).

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The proposed development is unsatisfactory in respect to Section 4.15 of the EPA Act, as the application is found to be inconsistent with the provisions of SEPP (HSPD) 2004.

SUBMISSION: The amended plans do not overcome or resolve these reasons for refusal regarding the inconsistency of the plans with the provisions of SEPP (HSPD) 2004.

Particulars:

a) The permissibility of the proposal under the Site Compatibility Certificate (SCC) and the SEPP (SHPD) 2004 is not fully resolved.

SUBMISSION: The amended plans and supporting information do not overcome or resolve these reasons for refusal. The legal questions around the interpretation of Schedule 1 of the SCC, the uses specified and their permissibility under SEPP (SHPD) 2004 should be considered and decided by a judge of the NSW LEC.

b) The requirements imposed on determination of the proposal under the SCC are not appropriately resolved.

SUBMISSION: The amended plans and supporting information do not overcome or resolve these reasons for refusal including that the requirements imposed by Schedules 1 and 2 of the SCC on the determination have not been appropriately resolved. The legal questions around the interpretation of Schedule 1, the uses specified and their permissibility under SEPP (HSPD) should be considered and decided by a judge of the NSW LEC. It is also considered that the amended plans do not satisfy or resolve the requirements specified in Schedule 2 of the SCC.

Schedule 1 indicates the SCC is for “95 in-fill self-care units and ancillary facilities for the purpose of seniors living.”

Schedule 2 specifies the following requirements imposed on determination:

“1. Seniors housing is to be limited to the development footprint area within the site, as nominated under map Figure 4: New Study Boundary prepared by Cardno and dated February 2017.

*2. The final layout, number of **in-fill self-care living units and onsite facilities** in the proposed seniors housing development will be subject to the resolution of issues relating to:*

- form, height, bulk, scale, setbacks and landscaping;*
- flood risk management and evacuation design responses;*
- car parking and access requirements for all existing and proposed land uses on the site; and*
- potential ecological impacts.”*

SUBMISSION: It is submitted that the amended plans do not adequately address and resolve the above matters specified in Schedule 2 including “potential ecological impacts”.

c) The works (including construction and asset protection zone) associated with the proposed development will occur outside the “land’ approved for seniors housing

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under the SCC. Construction related works will occur within the Environmentally Sensitive portion of the site (being defined as natural hazard within Schedule 1), therefore the SEPP is not applicable to the proposed development.

SUBMISSION: The amended plans and supporting information do not appear to overcome or resolve these merit and legal reasons for refusal.

d) The proposed development is inconsistent with Aims of Policy (namely Clause 2c) and the requirement of Clause 24 in relation to design and compatibility.

SUBMISSION: The amended plans and supporting information do not overcome or resolve these reasons for refusal that relate to best practice design and compatibility.

e) 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) 2004.

SUBMISSION: The amended plans do not overcome or resolve these reasons for refusal as the plans are not compatible with the existing and future character of the area and do not contribute to the quality and identity of the Bayview area.

f) The proposed development does not comply with the requirement of Clause 50 with regards Density and scale and Landscape Area.

SUBMISSION: The amended plans do not overcome or adequately resolve these reasons for refusal relating to the issues of density, scale and landscaped area.

3. Building Height

The proposed building height does not comply with clause 4.3 Height of Building development standard of the Pittwater Local Environmental Plan 2014 (PLEP 2014), and the contravention of the development standard is not justified under clause 4.6 of this instrument.

SUBMISSION: The amended plans show mainly three (3) storey residential flat buildings (i.e. apartments). How are three (3) storey buildings possible under an 8.5 metre height control?

- *A question posed by community members is how is it possible to achieve a three (3) storey residential flat building (or apartments) within a limited building height 8.5 metres. A three (3) storey residential flat building or apartments would require a minimum height of 9.45 metres (3.15 m/storey) based on a minimum floor to ceiling height of 2.7 metres. This would appear to be well in excess of the 8.5 metre height development standard under Pittwater LEP 2014 and would appear to breach that standard.*
- *It is submitted the theoretical 8.5 metre height plane, lodged as supporting information on behalf of the applicant, is possibly incorrect and needs to be checked and independently validated. It is suggested that the methodology and the resulting 8.5 metre height plane itself, should strictly apply the definition of*

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height in PLEP 2014 to measure height i.e. “building height” (or “height of building”) means: (a) in relation to the height of building in metres – the vertical distance from ground level (existing) to the highest point of the building... “

Particulars:

a) The height of the proposed development is contrary to clause 4.6 and it is not consistent with the objectives of the development standard in Clause 4.3 of PLEP 2014 and therefore not in the public interest.

SUBMISSION: The amended plans and supporting information do not appear overcome or resolve these reasons for refusal relating to height of buildings.

b) The written request seeking to justify contravention of the development standard under clause 4.6 PLEP 2014 is not well founded and does not satisfy the matters in clause 4.6 (5) of the PLEP 2014.

SUBMISSION: The amended plans and supporting information do not overcome or resolve these reasons for refusal. Refer to the above points.

4. Pittwater Local Environmental Plan (PLEP 2014)

The proposed development is unsatisfactory in respect to Section 4.15 (1) (a) (i) of the EPA Act, as the application is found to be inconsistent with the provisions of PLEP 2014.

SUBMISSION: The amended plans and supporting information do not adequately overcome or resolve these reasons for refusal.

Particulars:

a) The development is inconsistent with the aims of the Plan, as it relates to its environmental impact and inconsistency with the desired character of Pittwater’s localities.

SUBMISSION: The amended plans and supporting information do not overcome or resolve these reasons for refusal. It is considered that the amended plans are inconsistent with the aims of the PLEP 2014, as it relates to the environmental impact of the development and its inconsistency with the desired character of Pittwater’s localities.

b) The development is inconsistent with the objectives of the RE2 Private Recreation zone.

SUBMISSION: The amended plans do not overcome or resolve this reason for refusal as they are completely inconsistent with the objectives of the RE2 Private Recreation zone.

c) The development fails to comply with the requirement of Clause 7.6 Biodiversity Protection,

SUBMISSION: The amended plans and supporting information do not overcome or resolve these reasons for refusal in that they would fail to comply with the requirement of Clause 7.6 Biodiversity Protection.

5. Non-compliance with Pittwater 21 Development Control Plan (P 21 DCP)

Particulars:

a) The proposed development fails to comply with key environmental objectives of P21 DCP.

SUBMISSION: The amended plans do not overcome or resolve these reasons for refusal.

b) The development is inconsistent with the Desired Character of A4.9 Mona Vale Locality;

SUBMISSION: The amended plans and supporting information do not overcome or resolve this reason for refusal. They are inconsistent with the desired character of the locality.

c) The proposed development fails to comply with the following clauses of P 21 DCP:

- Clause B4.22 -Preservation of Trees and Bushland Vegetation

SUBMISSION: The amended plans and supporting information do not overcome or resolve these reasons for refusal.

- Clause B4.6 -Wildlife Corridors

SUBMISSION: The amended plans and supporting information do not overcome or resolve these reasons for refusal in any way.

- Clause B5.1 -Water Management Plan

SUBMISSION: The amended plans and supporting information do not overcome or fully resolve this reason for refusal.

- Clause B5.9 -Stormwater Management -Water Quality

SUBMISSION: The amended plans and supporting information do not overcome or fully resolve this reason for refusal.

- Clause B5.10 -Stormwater Discharge into Public Drainage System

SUBMISSION: The amended plans and supporting information do not overcome or fully resolve this reason for refusal.

- Clause C1.21 – Seniors Housing

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SUBMISSION: The amended plans and supporting information do not overcome or fully resolve this reason for refusal.

- Clause C5.1-Landscaping

SUBMISSION: The amended plans and supporting information do not overcome or fully resolve this reason for refusal.

- Clause D9.1 – Character as viewed from a public place

SUBMISSION: The amended plans and supporting information do not overcome or resolve this reason for refusal.

- Clause D9.2 – Scenic Protection

SUBMISSION: The amended plans and supporting information do not overcome or resolve this reason for refusal.

7. Public Interest

The proposal is not in the public interest

SUBMISSION: The amended plans and supporting information do not overcome or resolve these reasons for refusal.

Particulars

a) The site is not considered to be suitable for the development given its location within an area which renders the development, as proposed, to be inconsistent with its desired character.

SUBMISSION: The amended plans and supporting information do not overcome or resolve this reasons for refusal.

b) The development is inconsistent with the scale and intensity of development that the community can reasonably expect to be provided on this site and within the respective localities.

SUBMISSION: The amended plans and supporting information do not overcome or resolve this reasons for refusal.

8. Inadequate Information

The proposal is deficient in a number of respects with regard to the information submitted.

Particulars

a) Insufficient information provided to determine tree impacts, particularly as it relates

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to the Asset Protection Zone associated with the development.

SUBMISSION: The amended plans and supporting information do not overcome or fully resolve these reasons for refusal.

b) Owners consent has not been provided to Council from the Community Association DP270239 – Barkala Estate which is proposed to be used for access in an emergency situation as identified in the Bushfire Report.

SUBMISSION: The amended plans and supporting information do not overcome or this reason for refusal.

Additional Matter Recommended by the Association

Inadequate Information: On-site Care and Support Services

SUBMISSION: There is inadequate information relating to the provision of on-site care and support services as required by Clause 42 of SEPP (SHPD) 2004. See page 5.

ATTACHMENT 2

Objections and Concerns Raised By Northern Beaches Council

(As outlined in the applicant's supporting documents)

Source: **Statement of Environmental Effects**

SUBMISSION: It is considered that the amended plans and supporting information do not adequately overcome or resolve the following objections and concerns.

1. The site is zoned as an RE2 Private Recreation zone. Residential development (including seniors housing) is prohibited within this zone, However it is acknowledged that a Site Compatibility Certificate (SCC) has been issued for the site by the NSW Department of Planning and Environment (DPE).
2. In this regard, Council notes the applicable test, being that development should be “compatible with the surrounding environment and surrounding land uses”. With particular reference to impacts of bulk, scale, built form and character on existing uses, approved uses and future uses of land in the vicinity of the development, it is not agreed that the proposed development is compatible with the one and two storey character of development in the vicinity.
3. Council does not agree with the Department’s position that the scale of the proposal is consistent with other seniors housing developments within the former Pittwater Local Government Area. It is considered that the contrast and incompatibility of the proposal with the character of land uses in the vicinity is unlikely to be overcome by screening, and to date this has not been demonstrated.

4. Council's position is that the proposed seniors housing development would be inconsistent with the objectives of the RE2 zone as follows:

- The proposed development would consist of a land use that is inconsistent with, and would reduce land available for, recreational purposes;
- Whilst it is acknowledged that the proposed development would include other environmental and remediation works, the proposal includes substantial removal of significant and well-established trees and vegetation within the development area; and
- The proposed development would include three-to-four storey residential flat buildings. The height, scale and character of these structures would be 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.

5. 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. Based on information provided at the pre-lodgement stage, it is noted that a large proportion of the southern side of development remains situated within the geo-technical zone.

6. Council's view is that unless it can be demonstrated that no natural hazards (including a geo-technical hazard) affect the proposed allotment and/or development, then the provisions of SEPP HSPD cannot be applied to the seniors living portion of the development.

7. In order for the Seniors Housing proposal to be permissible under the SEPP HSPD, the site upon which the Seniors Housing is to be located must be free of any geo-technical affectation. Additionally, it follows that any Torrens title subdivision that would produce that outcome would need to be proposed at the initial application stage – Concept Approval and Stage 1 DA. Any such subdivision must be considered at Stage 1, as permissibility issues potentially arising cannot be deferred to a later stage and may prevent a Concept Approval being issued.

8. In the event that it can be demonstrated that the SEPP is applicable to the seniors living portion of the development, then the following would need to be appropriately addressed:

- Building height (see below for further information);
- Design Principles within Division 2.

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9. Noting concerns below regarding consistency with applicable development controls and both the existing and desired character of the area, it is unclear how the development would comply with Cl. 33 (Neighbourhood amenity and streetscape) of the SEPP.

10. Based on submitted information, it is unclear whether at least 70% of dwellings within the development would receive sufficient solar access in accordance with Division 4 of the SEPP.

11. Need to demonstrate how access to transport, services and facilities would be provided to residents both in accordance with the SEPP and in perpetuity; reliance on private transport (i.e. residents' personal vehicles) would not be seen as an acceptable means of obtaining access to these services.

12. As the proposed residential flat buildings are three or more storeys in height, the provisions of State Environmental Planning Policy No. 65 apply. Any future development application would therefore need to consider the provisions of this SEPP.

13. Concern is raised as to how the proposed seniors living development would be capable of addressing the principles within Schedule 1 of the SEPP, particularly those relating to context and neighbourhood character, built form and scale and amenity. Further, it is unclear whether the seniors living development would satisfy provisions relating to building setbacks and separation requirements (and associated issues such as visual privacy).

14. Irrespective of comments provided above in relation to SEPP HSPD, zone objectives and height, the proposal is largely inconsistent with local planning controls.

15. Noting other non-compliances, the proposed development would be largely inconsistent with the desired characteristics of the area. The proposed buildings would be of a height, bulk and scale that are grossly disproportionate to the surrounding area (particularly with regard to the use of the surrounding recreational-zoned sites), and significant excavation beneath these buildings suggests a form of development that would not be well integrated into the landform or landscape.

16. The lack of consistency with the desired characteristics of the area and applicable development standards and controls is reflected in comments made by the Department of Planning and Environment in their report regarding the Site Compatibility Certificate. Such comments indicate that "The bulk, scale built form and character of the proposed development contrasts with the

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existing surrounding character of Bayview, which is predominately single detached housing with a maximum of two (2) storeys.”

17. References to other seniors living developments are not considered to be an acceptable justification for substantial variations to local planning controls and associated outcomes.

18. Concern is raised that the proposed development is excessively high and would present bulk and scale to surrounding areas that is highly inconsistent with the development standard and both existing and desired development within the locality.

19. A variation to a development standard(s) would need to satisfy the criteria of Clause 4.6 (Exceptions to development standards) of Pittwater Local Environment Plan 2014, as Cl. 4.6(2) of the LEP applies to development standards “imposed by this or any other environmental planning instrument”.

20. Any such variation pursuant to Clause 4.6 of PLEP 2014 would need to address all provisions of clause 4.6 of PLEP 2014 and relevant case law/Land and Environment Court (LEC) planning principles.

21. Council continues to contend that the proposal would not be in the public’s interest as it would be inconsistent with the RE2 Public Recreation zoning of the site and that compliance with the 8m height standard would not be unreasonable if a more appropriately sized development were proposed. Aside from inconsistencies with the objectives of the RE2 zone, the proposed development would also be inconsistent with the objectives of the height standard, noting the lack of compatibility with surrounding development, building designs that are not integrated with the landscape due to significant excavation, and likely adverse impacts on the natural environment.

22. Further, it should be noted that the presence of existing aged care facilities within [Sic] locality should not be used to justify the height and/or scale of the proposed development; such existing developments were not approved under current planning provisions including SEPP HSDP, are not consistent with the desired future character of the former Pittwater Local Government Area and should not be considered as such.