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**Sent:** 28/02/2018 7:04:38 PM  
**Subject:** Comment on DA 2017/1274  
**Attachments:** Submission\_-\_Hornsby.pdf;

Sent from [Mail](#) for Windows 10

25 Utingu Place  
Bayview 2104  
27 February 2018

**Attention: Lashta Haidari  
DA 2017/1274**

Dear Lashta Haidari

Please find our submission in relation to the proposed Seniors Housing (and associated works) at 52 Cabbage Tree Road Bayview, NSW.

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

1. 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)."*

2. It is noteworthy that, according to the advice, the issuing of the Site Compatibility Certificate would not fetter the consent authority's discretion from refusing a DA. Clause 24(3)(a)(ii) of SEPP SHPD (2004) is noted.

**"(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 may carry out and rely on its own assessment of the compatibility of the proposed development with the surrounding environment**

3. Significantly, it is submitted, the “***compatibility of the site in relation to the surrounding environment***” should be fully assessed via the Development Application (DA) assessment process. It is submitted that this merit matter needs to be comprehensively assessed under Section 79C of the Environmental Planning and Assessment Act 1979 (as amended) by the consent authority at the DA stage taking into account the development proposal itself, a comprehensive assessment of all of the relevant environmental planning merit issues and impacts including Council and public objections and concerns.

4. We are of the opinion that the current development application for a seniors housing development at 52 Cabbage Tree Road is incompatible with the site itself and with the surrounding environment.

#### **Consideration of Ecologically Sustainable Development (ESD) Principles under 79C (1)(e) Public Interest**

5. Reference is made specifically to the proposed Seniors Housing (and associated works) at 52 Cabbage Tree Rd Bayview.

6. Ecologically Sustainable Development (ESD) principles under 79C (1)(e) Public Interest, of the EPA Act 1979 (as amended) should be considered in a comprehensive development assessment of the seniors housing proposal. This is particularly important given the proposal's environmentally sensitive site and surrounding environment, its environmental planning context and the nature of Council and community objections and concerns.

7. We submits that the golf course part of Development Application located at 1825 Pittwater Rd. Bayview, cannot realistically be used as a means of mitigating or justifying the adverse impacts of the proposed “retirement village” at 52 Cabbage Tree Rd Bayview in anyway at all or somehow used to justify the “retirement village” in environmental, economic or public interest terms.

#### **Clause 4.6 Variation Request: Variation of the 8.5 m height development standard of under PLEP 2014 is opposed**

8. Regarding the proposal for seniors' housing development, the applicant's Clause 4.6 request for variation of the height development standard of 8.5 m under PLEP 2014 is not supported.

9. It is submitted that, in line with community concerns, the Clause 4.6 request to vary the height development standard of 8.5 meters is not be well founded for many reasons, including (but not limited to) the following. It is submitted that such height variation, involving significant increases above 8.5 meters:

- would not result in better environmental planning outcomes,
- is not in the public interest, including ESD considerations,
- is not well founded, given the circumstances of the case,
- is not well founded given the adverse impacts of the increased height of the proposed development when combined with its significant footprint, scale, elevations, bulk 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.
- Is not well founded 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 amenity attributes that are valued by the community.

10. It is our understanding that, under current law, the consent authority has a broad discretion under clause 4.6(4) as to the degree of satisfaction required by that clause. The threshold may be as high as requiring the reasons for the variation to be particular to the development site or as broad as circumstances that might apply to a number of sites. (Ref: Clause 4.6 An Analysis of Recent Case Law by Michael Mantei) This broad discretion would apply when the consent authority is considering and ultimately refusing a Clause 4.6 variation request.

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

11. It is our opinion that the proposed retirement village, given its combined height, footprint, scale, bulk, 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.

12. It is also our submission that the applicant's visual analysis report does 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.

13. It is submitted that the retirement village, given the above, will adversely impact on the nature conservation, scenic and landscape values of the site and environs and will be inconsistent with maintaining the high residential amenity of the adjoining residential properties and neighborhood.

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

14. 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 draft North District Plan Oct 2017.

**The seniors housing proposal is Inconsistent with the greening, scenic protection and nature conservation priorities of the revised Draft District Plan (Oct 2017) and should be refused.**

15. It is submitted that the development proposal for the "retirement village" and associated works is inconsistent with the greening, scenic protection and nature conservation priorities of the revised Draft North District Plan (Oct 2017).

16. Loss of mature trees and urban green space is unacceptable. Further the adverse impacts on biodiversity and native species are unacceptable.

#### **Council Objections and Concerns not adequately addressed**

17. Council objections and concerns (as noted in the SEE) and also expressed in response to the applications for Site Compatibility Certificates by the applicant are referred to. We generally support Council's stated objections and concerns in relation to the seniors housing proposal including subdivision and permissibility questions. Council objections are outlined in **Attachment 1. Objections and Concerns Raised by Northern Beaches Council.**

18. It is submitted that the applicant via the Development Application for a seniors housing development including a full set of architectural design drawings, Statement of Environmental Effects (SEE) and other supporting material has not adequately responded to the Council's specific objections and concerns (see Attachment 1.) and additional valid community objections and concerns.

#### **Poor Planning Precedent: Approval of the Seniors Housing proposal will create a Poor Planning and Development Precedent.**

19. If approved, the seniors housing proposal at 52 Cabbage Tree Road Bayview NSW will create a poor planning precedent for Northern Beaches Council area in general and Pittwater Ward and the suburb of Bayview in particular.

#### **Questions and anomalies around the DA documentation and supporting reports**

20. Questions and anomalies also arise around the DA documentation and supporting reports. It is suggested these matters be clarified and scrutinized by the assessment officer or officers. For example the development application form describes the "retirement village" part of the development proposal as 95 "in-fill self-care" units not "serviced self-care units" that appears to better characterize the "retirement village" under SEPP SHPD (2004).

21. Other crucial questions concern the actual staging of development and possible conflicting information in the DA documents concerning the landscape plan, shadow diagrams, visual analysis and bush fire analysis and other matters. It is recommended that the Council's assessment officers carefully scrutinize these matters as part of the development assessment.

#### **On-site Care and Support Services needs to be clarified by the applicant**

22. It is noted that the seniors housing part of the DA will be operated as a "retirement village". 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 on-site (including GP consulting room/s etc). Also 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 and some undertaking that it will remain while the centre is in use.

**Access to Public Transport: Does the Seniors Housing Development Proposal actually comply with SEPP SHPD (2004)?**

23. Pedestrian access to public transport will not be easy considering the age profile of the residents (indicated in supporting reports) and slope of the site including the winding walk-ways, sloping site and steep driveway. A conceptual pedestrian link (apparently through the remaining golf course and public park), to bus stops at Annam Road, serving Bayview Gardens retirement village and the adjoining residential neighborhood has not been adequately thought through or designed at this stage. Site, drainage and legal constraints would be issues. This concept clearly needs to be developed further and properly validated. Also there would be a clear need for the onsite provision of village transport, run by the retirement village operator, given the sloping terrain and inaccessibility of the site combined with the likely age profile of the future residents.

**The applicant's responses to merit issues already in contention (and valid community objections) are considered inadequate**

24. It is submitted that the applicant's responses (included in the Statement of Environmental Effects and supporting reports) to issues, already in contention and additional community concerns, although involving numerous expert opinions seeking to respond to those matters, do not on the whole, adequately answer, respond to or overcome the numerous valid environmental planning objections, concerns and anomalies.

**Measures seeking to mitigate or justify the significant adverse impacts of the seniors housing proposal are considered inadequate.**

25. Furthermore it is submitted that the proposed measures that seek to mitigate the significant adverse impacts of the seniors' housing development proposal (on balance) are considered completely inadequate.

**Our Recommendation: That development consent is refused.**

26. It is recommended that the Northern Beaches Council assessment officer or officers should recommend the unconditional refusal of development application DA 2017/1274 dated 19 Dec 2017.

## **ATTACHMENT 1**

### **Objections and Concerns Raised By Northern Beaches Council**

*(As outlined in the applicant's supporting documents)*

**Source:** Statement of Environmental Effects

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-lodgment 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.

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 (Neighborhood 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 neighborhood 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 “(T)he bulk, scale built form and character of the proposed development contrasts with the 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.

Yours faithfully,  
Chris and Julia Hornsby