

**N0322/14 – 2 and 4 Jenkins Street and 1679 Pittwater Road, Mona Vale
(Lots 1, 2, 3, and 4 DP 23373 and Lot 15 Section A DP 5464)**

Demolition of all existing site improvements and construction of a new residential care facility, comprising 77 bedrooms and 91 beds, under the provisions of SEPP (Housing for Seniors and People with a Disability) 2004

DETERMINATION LEVEL: Joint Regional Planning Panel

SUMMARY OF RECOMMENDATION: Refusal

APPLICATION SUBMITTED ON: 11 September 2014
APPLICATION SUBMITTED BY: Aquarius Health Pty Ltd
C/ Urbis Pty Ltd
OWNER: Aquarius Health Pty Ltd

1.0 INTRODUCTION

The proposal is for the demolition of all existing site improvements and the construction of a new residential care facility, comprising 77 bedrooms and 91 beds, under the provisions of State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004. The applicant has indicated a cost of works, or Capital Investment Value (CIV), of approximately \$23.1 million, and as such, the application must be referred to the Sydney East Joint Regional Planning Panel (JRPP) for determination.

2.0 SITE DETAILS

The works proposed within this application are located over five (5) separate allotments, as follows;

- 2 Jenkins Street, Mona Vale – Lots 1, 2 and 3 of DP 23373
- 4 Jenkins Street, Mona Vale – Lot 4 of DP 23373
- 1679 Pittwater Road, Mona Vale – Lot 15 in Section A of DP 5464.

2 Jenkins Street (Lots 1, 2 and 3 of DP 23373) has a frontage to both Pittwater Road (east) and Jenkins Street (south) and comprises a total area of 1814.7m². 2 Jenkins Street currently contains a one and two storey residential care facility, with pedestrian and vehicular access from Jenkins Street. The property lacks any significant vegetation and is primarily covered with hard surfaces and built form.

4 Jenkins Street (Lot 4 DP 23372) has a frontage to Jenkins Street (south) and comprises a total area of 607m². 4 Jenkins Street currently contains a single storey residential dwelling, with pedestrian and vehicle access from Jenkins Street. No significant vegetation is present on this property.

1679 Pittwater Road (Lot 15 Section A DP 5464) has a frontage to Pittwater Road (east) and comprises a total area of 1214m². 1679 Pittwater Road currently contains a two storey residential dwelling, with pedestrian and vehicular access from Pittwater Road. A variety of native canopy trees, of low-moderate significance, are situated within the front setback of this property.

When combined, the site will have a 56.67m wide frontage to Pittwater Road (east), a 57.30m wide frontage to Jenkins Street (south) and a total area of 3659m² (as calculated) and 3635.7m² (on title). The site experiences a fall of approximately 7.5m from the upper western boundary down

towards the eastern street frontage (Pittwater Road), with a slope of approximately 13%. A 1.5m wide battered and vegetated retaining wall runs parallel to Pittwater Road for the full frontage of the site, creating a 2m drop between the site and the Pittwater Road public road reserve. A 1m wide footpath is situated within the Pittwater Road public road reserve, which wraps around the corner into Jenkins Street, and continues along to a point approximately halfway along the site frontage. Existing significant canopy trees are located within the Jenkins Street public road reserve. Overhead electricity wires are located along the Pittwater Road street frontage.

Pittwater Road is a six-lane classified road with a reasonably wide medium strip and intermittent turning lanes. Bus lanes occupy the left lanes, heading in both a north and south direction, resulting in restricted on-street parking at certain times. Jenkins Street is a local road, with time restricted parking on the northern side and no stopping on the southern side of the street.

One and two storey residential dwellings are situated to the north and west of the site along both Jenkins Street and Pittwater Road. The opposite side of Pittwater Road contains one and two storey residential dwellings to the east, a two storey seniors housing development to the north-east and Mona Vale Golf Course to the south-east. A building supplies yard and a single storey dwelling are located on residential zoned land on the opposite side of Jenkins Street (south). Mona Vale Hospital is situated at a distance of approximately 300m to the south-east of the site, with Mona Vale Commercial Centre at a distance of approximately 500m to the north of the site.



Figure 1 - Aerial photo with site overlay

3.0 PROPOSED DEVELOPMENT

The applicant seeks consent for the following development to the site;

- Demolition of all existing site improvements, including the existing residential care facility at 2 Jenkins Street, and the existing dwellings at 4 Jenkins Street and 1679 Pittwater Road
- Removal of existing canopy trees and landscaping
- Earthworks and excavation
- Removal of existing dividing fences
- Construction of a two-four storey residential care facility, comprising:
 - 77 bedrooms (63 single and 14 double) all with ensuite bathrooms,
 - 91 beds,
 - 20 off-street parking spaces,
 - Kitchen;
 - Laundry;
 - Two lifts;
 - Multiple internal and external living and dining areas,
 - Staff facilities,
 - Residents amenities including, a café, salon and library, and
 - Consultation rooms.
- Landscaping
- Removal of redundant driveway crossings
- Construction of new driveway crossings
- Construction of new pedestrian access pathways and stairs

4.0 LEGISLATION, PLANS AND POLICIES

The following relevant state and local policies apply:

- Environmental Planning and Assessment Act 1979 ('The Act')
- Environmental Planning and Assessment Regulation 2000
- Roads Act 1993
- State Environmental Planning Policy No.55 – Remediation of Land
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004 ('SEPP HSPD')
- State Environmental Planning Policy (Infrastructure) 2007
- Pittwater Local Environmental Plan 2014 ('PLEP 2014')
 - Height of buildings: 8.5m
 - Acid sulphate soils: Class 5
 - Minimum lot size: 550m²
- Pittwater 21 Development Control Plan ('P21 DCP')
 - Mona Vale Locality
 - Landscaped Area 3

5.0 PERMISSIBILITY

The site is zoned R2 Low Density Residential under the provisions of PLEP 2014, and the proposed residential care facility, being a form of seniors housing, is prohibited development. However, the applicant seeks consent for the proposed development under the provisions of SEPP HSPD, which allows for seniors housing on land where it may otherwise be prohibited.

As the site is zoned primarily for urban purposes and as dwelling houses are permissible on the site under the provisions of PLEP 2014, the proposal is consistent with the provisions of clause 4 of SEPP (HSPD), and the proposed seniors housing development is permissible with consent.

6.0 BACKGROUND

A prelodgement meeting was held in April 2014.

The subject application was lodged on 11 September 2014 and subsequently referred to Council's Development Engineer, Natural Environment Officer, Place Management Team, Health Officer, Reserves and Recreation Team, and Community Services.

A briefing meeting was held with the JRPP on 17 November 2014. Following the briefing meeting, additional information was requested of the applicant, which was subsequently provided to Council on 14 April 2015.

The application went before Council's JRPP Review Unit on 30 July 2015, and was deferred for further consideration of the development and clarification of timing from the Sydney East JRPP.

7.0 ADVERTISEMENT AND NOTIFICATION

The application was notified to seventy-seven (77) adjoining property owners for a period of thirty-one (31) days from 29 September 2014, in accordance with the regulations and Council's Notification Policy. The application was also advertised in the local paper on 24 September 2014. During the advertisement/notification period, submissions were received from nine (9) nearby or adjoining property owners, raising concerns with regards to the following;

- Impacts upon ocean views
- Parking
- Traffic in Jenkins Street
- Access arrangements
- Inconsistency with existing and desired future character
- Four storey nature of development
- Impacts upon amenity (visual and acoustic privacy)
- Overshadowing
- Height non-compliance
- Landscaping
- Bulk and scale
- Errors and inconsistencies in information provided by applicant
- Non-compliance with PLEP 2014, SEPP HSPD and P21 DCP
- Tree removal

Following receipt of amended plans, the application was re-notified for a further fourteen (14) days from 1 May 2015. During this time, two (2) further submissions were received, reiterating concerns highlighted in initial submissions. One (1) further submission was received outside the notification period, from a property owner who made contact during the first round of notification.

8.0 ASSESSMENT ISSUES

Assessment of the application has found that aspects of the proposed development are non-compliant with a number of technical requirements and outcomes of SEPP HSPD, PLEP 2014 and P21 DCP. The key issues are summarised as follows;

- **Inadequate access to services**
 - Cl. 26 (Location and access to services) of SEPP HSPD
 - Cl. 38 (Accessibility) of SEPP HSPD
 - Cl. C1.9 (Adaptable Housing and Accessibility) of P21 DCP
 - Cl. 4.7 Integrated Development – Roads of P21 DCP
- **Incompatible character**
 - Cl. 33 (Neighbourhood amenity and streetscape) of SEPP HSPD
 - Cl. A4.9 (Mona Vale Locality) of P21 DCP

- Cl. D9.1 (Character as viewed from a public place) of P21 DCP
- Cl. D9.2 (Scenic Protection) of P21 DCP
- **Excessive height, bulk and scale**
 - Cl. 40 (Development standards – minimum sizes and building heights) of SEPP HSPD
 - Cl. 46 (Inter-relationship of Part with design principles in Part 3) of SEPP HSPD
 - Cl. 48 (Standards that cannot be used to refuse development consent for residential care facilities) of SEPP HSPD
 - Cl. 4.3 (Height of buildings) of PLEP 2014
 - Cl. C1.3 View Sharing of P21 DCP
 - Cl. D9.5 (Front building line) of P21 DCP
 - Cl. D9.9 (Building Envelope) of P21 DCP
 - Cl. D9.10 (Landscaped Area – General) of P21 DCP
- **Unacceptable residential amenity**
 - Cl. 34 (Visual and acoustic privacy) of SEPP HSPD
 - Cl. 35 (Solar access and design for climate) of SEPP HSPD

These issues, and other areas of concern and non-compliance, are identified in the following compliance tables and are discussed in greater detail further in the report.

9.0 SEPP HSPD COMPLIANCE TABLE

C - Can the proposal satisfy the technical and performance requirements of the clause?

Clause	Standard	Proposal	C
Chapter 1 - Preliminary			
2. Aims of Policy	<p>(1) This Policy aims to encourage the provision of housing (including residential care facilities) that will:</p> <ul style="list-style-type: none"> (a) increase the supply and diversity of residences that meet the needs of seniors or people with a disability, and (b) make efficient use of existing infrastructure and services, and (c) be of good design. <p>(2) These aims will be achieved by:</p> <ul style="list-style-type: none"> (a) setting aside local planning controls that would prevent the development of housing for seniors or people with a disability that meets the development criteria and standards specified in this Policy, and (b) setting out design principles that should be followed to achieve built form that responds to the characteristics of its site and form, and (c) ensuring that applicants provide support services for seniors or people with a disability for developments on land adjoining land zoned primarily for urban purposes. 	See discussion below.	N
4. Land to which the Policy applies	This Policy applies to land within NSW that is land zoned primarily for urban purposes or land that adjoins land zoned primarily for urban purposes, but only if development for the purpose of dwelling houses is permitted on the land.		Y
5. Relationship with other epi's	If this Policy is inconsistent with any other environmental planning instrument, made before or after this Policy, the Policy prevails to the extent of the inconsistency		Y
Chapter 2 – Key Concepts			
11. Residential Care Facilities	<p>In this Policy, a residential care facility is residential accommodation for seniors or people with a disability that includes:</p> <ul style="list-style-type: none"> (a) meals and cleaning services, and (b) personal care or nursing care, or both, and (c) appropriate staffing, furniture, furnishings and equipment for the provision of that accommodation and care, <p>not being a dwelling, hostel, hospital or psychiatric facility.</p>		Y

Clause	Standard	Proposal	C
Chapter 3 – Development for seniors housing			
Part 1 – General			
14. Objectives of Chapter	The objective of this Chapter is to create opportunities for the development of housing that is located and designed in a manner particularly suited to both those seniors who are independent, mobile and active as well as those who are frail, and other people with a disability regardless of their age.		Y
15. What Chapter does	This Chapter allows for development on land zoned primarily for urban purposes for any form of seniors housing despite the provisions of any other environmental planning instrument if the development is carried out in accordance with this Policy.		Y
16. Development consent required	Development allowed by this Chapter may be carried out only with the consent of the relevant consent authority unless another environmental planning instrument allows that development without consent.		Y
18. Restrictions on occupation of seniors housing allowed under this chapter	<p>(1) Development allowed by this Chapter may be carried out for the accommodation of the following only:</p> <ul style="list-style-type: none"> (a) seniors or people who have a disability, (b) people who live within the same household with seniors or people who have a disability, (c) staff employed to assist in the administration of and provision of services to housing provided under this Policy. <p>(2) A consent authority must not consent to a development application made pursuant to this Chapter unless:</p> <ul style="list-style-type: none"> (a) a condition is imposed by the consent authority to the effect that only the kinds of people referred to in subclause (1) may occupy any accommodation to which the application relates, and (b) the consent authority is satisfied that a restriction as to user will be registered against the title of the property on which development is to be carried out, in accordance with section 88E of the <i>Conveyancing Act 1919</i>, limiting the use of any accommodation to which the application relates to the kinds of people referred to in subclause (1). 	Subject to conditions.	Y
Part 2 – Site-related requirements			
26. Location and access to facilities	The consent authority must be satisfied, by written evidence, that residents of the proposed development will have compliant access to: <ul style="list-style-type: none"> (a) shops, bank service providers and other retail and commercial services that residents may reasonably require, and (b) community services and recreation facilities, and (c) the practice of a general medical practitioner. 	See discussion below.	N
28. Water and sewer	The consent authority is satisfied, by written evidence, that the housing will be connected to a reticulated water system and have adequate facilities for the removal or disposal of sewage		Y
29. Site compatibility criteria to which clause 24 does not apply	<p>Applies to development not subject to clause 24.</p> <p>A consent authority must take into consideration and have regard for the criteria referred to in clause 25 (5) (b) (i), (iii) and (v).</p>		Y
Part 3 – Design requirements			
Division 1 - General			
30. Site analysis	The consent authority must not grant consent unless the consent authority is satisfied that the applicant has taken into account a site analysis prepared by the applicant in accordance with this clause.	See discussion below.	N
32. Design of residential	A consent authority must not consent to a development application unless satisfied that the proposed development demonstrates that	See discussion below.	N

Clause	Standard	Proposal	C
development	adequate regard has been given to the principles set out in Division 2.		
Division 2 - Design Principles			
33. Neighbourhood amenity and streetscape	<p>The proposed development should:</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 amenity and appropriate residential character 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. (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. 	See discussion below.	N
34. Visual and acoustic privacy	<p>The proposed development should consider the visual and acoustic privacy of neighbours in the vicinity and residents by:</p> <ul style="list-style-type: none"> (a) appropriate site planning, the location and design of windows and balconies, the use of screening devices and landscaping, (b) ensuring acceptable noise levels in bedrooms of new dwellings by locating them away from driveways, parking areas and paths. 	See discussion below.	N
35. Solar access and design for climate	<p>The proposed development should:</p> <ul style="list-style-type: none"> (a) ensure adequate daylight to the main living areas of neighbours in the vicinity and residents and adequate sunlight to substantial areas of private open space, and (b) involve site planning, dwelling design and landscaping that reduces energy use and makes the best practicable use of natural ventilation, solar heating and lighting by locating the windows of living and dining areas in a northerly direction. 	See discussion below.	N
36. Stormwater	<p>The proposed development should:</p> <ul style="list-style-type: none"> (a) control and minimise the disturbance and impacts of stormwater runoff on adjoining properties and receiving waters by, for example, finishing driveway surfaces with semi-pervious material, minimising the width of paths and minimising paved areas, and (b) include, where practical, on-site stormwater detention or re-use for second quality water uses. 	Subject to condition.	Y
37. Crime prevention	<p>The proposed development should provide personal property security for residents and visitors and encourage crime prevention by:</p> <ul style="list-style-type: none"> (a) site planning that allows observation of the approaches to a dwelling entry from inside each dwelling and general 	See discussion below.	N

Clause	Standard	Proposal	C
	<p>observation of public areas, driveways and streets from a dwelling that adjoins any such area, driveway or street, and</p> <p>(b) where shared entries are required, providing shared entries that serve a small number of dwellings and that are able to be locked, and</p> <p>(c) providing dwellings designed to allow residents to see who approaches their dwellings without the need to open the front door.</p>		
38. Accessibility	<p>The proposed development should:</p> <p>(a) have obvious and safe pedestrian links from the site that provide access to public transport services or local facilities, and</p> <p>(b) provide attractive, yet safe, environments for pedestrians and motorists with convenient access and parking for residents and visitors.</p>	See discussion below.	N
39. Waste management	The proposed development should be provided with waste facilities that maximise recycling by the provision of appropriate facilities.	Subject to condition.	Y
Part 4 – Development standards to be complied with			
Division 1 - General			
40. Development standards – minimum sizes and building heights	<p>(1) A consent authority must not consent to a development application made pursuant to this Chapter unless the proposed development complies with the standards specified in this clause.</p>		
	<p>(2) Site size</p> <p>The size of the site must be at least 1,000m².</p>		Y
	<p>(3) Site frontage</p> <p>The site frontage must be at least 20 metres wide measured at the building line.</p>		Y
	<p>(4) Height in zones where residential flat buildings are not permitted. If the development is proposed in a residential zone where residential flat buildings are not permitted:</p> <p>(a) the height of all buildings in the proposed development must be 8 metres or less, and</p> <p>(b) a building that is adjacent to a boundary of the site (being the site, not only of that particular development, but also of any other associated development to which this Policy applies) must be not more than 2 storeys in height, and</p> <p>(c) a building located in the rear 25% area of the site must not exceed 1 storey in height.</p> <p>Note: Building height is defined as the distance measured vertically from any point on the ceiling of the topmost floor to the existing ground level below.</p>	<p>Max. height: 9.5m</p> <p>Ranging in height from one to three storeys adjacent to boundary.</p> <p>Buildings up to two storeys in height in rear 25% of site.</p>	N
Division 2 – Residential care facilities			
	Note. Development standards concerning accessibility and useability for residential care facilities are not specified in this Policy. For relevant standards, see the Commonwealth aged care accreditation standards and the <i>Building Code of Australia</i> .	See discussion below.	N
Part 5 – Development on land adjoining land zoned primarily for urban purposes			
44. Availability of facilities and services	A consent authority must be satisfied that any facility or service provided as a part of a proposed development to be carried out on land that adjoins land zoned primarily for urban purposes will be available to residents when the housing is ready for occupation.		Y
Part 7 – Development standards that cannot be used as grounds to refuse consent			
Division 1 - General			
46. Inter-relationship of Part with design principals in Part 3	Nothing in this Part permits the granting of consent to a DA made pursuant to this Chapter if the consent authority is satisfied that the proposed development does not demonstrate that adequate regard has been given to the principles set out in Division 2 of Part 3.	See discussion below.	N

Clause	Standard	Proposal	C
Division 2 – Residential care facilities			
48. Standards that cannot be used to refuse development consent for residential care facilities	A consent authority must not refuse consent to a development application made pursuant to this Chapter for the carrying out of development for the purpose of a residential care facility on any of the following grounds:		
	(a) building height: if all proposed buildings are 8 metres or less in height (and regardless of any other standard specified by another environmental planning instrument limiting development to 2 storeys),	Max. height: 9.5m	N
	(b) density and scale: if the density and scale of the buildings when expressed as a floor space ratio is 1:1 or less	1.17 : 1	N
	(c) landscaped area: if: if a minimum of 25 square metres of landscaped area per residential care facility bed is provided.	14.4m ² per bed. 17.7m ² per bed (inc. terraces above ground)	N
	(d) parking for residents and visitors: if at least the following is provided: (i) 1 parking space for each 10 beds in the residential care facility; and (ii) 1 parking space for each 2 persons to be employed in connection with the development and on duty at any one time; and (iii) 1 parking space suitable for an ambulance.	Residents: 10 Staff: 10 Ambulance: 0	N
Chapter 4 - Miscellaneous			
55. Residential care facilities- fire sprinkler systems	A consent authority must not grant consent to carry out development for the purpose of a residential care facility for seniors unless the proposed development includes a fire sprinkler system.	Subject to condition.	Y

Issues marked with an (-) are not applicable for the subject application.

10.0 DISCUSSION OF ISSUES – SEPP HSPD

Location and access to facilities

- **Clause 26 (Location and access to facilities) of SEPP HSPD**
- **Clause 38 (Accessibility) of SEPP HSPD**

Clause 26(1) of SEPP HSPD identifies that the consent authority must be satisfied, by written evidence, that residents of the resultant development will have access to necessary services. Subclause 2(b) of clause 26 of SEPP HSPD specifies that access is seen to comply with clause 26(1) if:

In the case of a proposed development on land in a local government area within the Sydney Statistical Division—there is a public transport service available to the residents who will occupy the proposed development:

- that is located at a distance of not more than 400 metres from the site of the proposed development and the distance is accessible by means of a suitable access pathway, and*
- that will take those residents to a place that is located at a distance of not more than 400 metres from the facilities and services referred to in subclause (1), and*
- that is available both to and from the proposed development at least once between 8am and 12pm per day and at least once between 12pm and 6pm each day from Monday to Friday (both days inclusive), and the gradient along the pathway from the site to the public transport services (and from the public transport services to the facilities and services referred to in subclause (1)) complies with subclause (3).*

Clause 26(3) identifies appropriate gradients for access pathways, as follows;

For the purposes of subclause (2) (b) and (c), the overall average gradient along a pathway from the site of the proposed development to the public transport services (and from the transport services to the facilities and services referred to in subclause (1)) is to be no more than 1:14, although the following gradients along the pathway are also acceptable:

- i. a gradient of no more than 1:12 for slopes for a maximum of 15 metres at a time*
- ii. a gradient of no more than 1:10 for a maximum length of 5 metres at a time*
- iii. a gradient of no more than 1:8 for distances of no more than 1.5 metres at a time*

Clause 26(4) defines a suitable access pathway as follows:

*a **suitable access pathway** is a path of travel by means of a sealed footpath or other similar and safe means that is suitable for access by means of an electric wheelchair, motorised cart or the like.*

At the time that the application was lodged, the proposal was reliant upon the use of the existing footpath in Jenkins Street in order to provide access to bus stops in the vicinity of the proposal. However, as the gradient of the existing footpath exceeds the maximum gradients referred to in clause 26(3), the proposal was seen to fail in this regard. In order to address this issue, the applicant has amended the proposal to include an excavated pathway between the basement parking area and Pittwater Road, therefor eliminating the need to rely upon the Jenkins Street footpath. However, as currently proposed there are design issues and inconsistencies in the information provided thus far, including;

- The design of the pathway and entrance area does not comply with the provisions of the BCA and AS1428.1 – *Design for access and mobility*;
- There is no separate designated pathway between the lift and proposed level pathway, and pedestrians will be forced to share the driveway/parking aisle; and
- The entrance way and pathway are not demonstrated on the eastern elevation or the 3D visual representations provided.

Although, even if these issues were corrected by means of amendments to the design, there is still a fundamental issue as to whether the “back door” design solution through the basement carpark is an equitable and dignified way for seniors and people with a disability people to enter and exit the building. There is also a question as to whether it would be seen as the obvious egress point, noting that clause 38 of SEPP HSPD requires an obvious and safe link to relevant public transport services and local facilities, for residents of the building and for visitors alike. Given the design treatment and facilities at the “main entry” area on Jenkins Street, the subterranean passage way from Pittwater Road, which will be hidden from view by large retaining walls, is not considered to be an obvious entrance point to the building.

Concern is also raised in regards to the southbound bus stop relied upon by the applicant in order to achieve compliance with subclause 2(b) of clause 26 of HSPD. The accessibility report nominates that residents will be able to utilise an existing bus stop on the eastern side of Pittwater Road that is situated at a distance of 75m from the site. Whilst relatively close and within view of the site, requiring seniors or people with a disability to cross a six lane classified road, without the aid of a pedestrian crossing, to access this bus stop is not seen to be a safe or appropriate outcome in this regard. It is also noted that there are no ramps along the kerb/gutter or pedestrian refuges in the medium strip, and as such, people in a wheel chair would not be able to cross the road.

A pedestrian crossing is situated further to the south along Pittwater Road, at a distance of approximately 400m from the site. This pedestrian crossing provides a safe crossing point to a different southbound bus stop further along the street. However, this path of travel would exceed 400m in distance, and would not be the obvious choice for the use of residents and visitors to the site, noting that it is not readily visible from the site and a closer alternative is available.

These concerns raised in relation to non-compliance with clause 26 and clause 38 of SEPP HSPD are shared by Council's Community Service Department, who are not in a position to support the proposal until these issues are addressed.

Overall, the proposal is not seen to provide adequate or safe access to services and facilities as required by clause 26 and clause 38 of SEPP HSPD and as such, the application cannot be supported in this regard.

Accessibility and useability for residential care facilities

- **Part 4 – Division 2 – Note of SEPP HSPD**

SEPP HSPD contains a note in Division 2 of Part 4, as follows;

Development standards concerning accessibility and useability for residential care facilities are not specified in this Policy. For relevant standards, see the Commonwealth aged care accreditation standards and the Building Code of Australia.

This note is in a section of the policy which provides development standards relating to the design of seniors housing development. Division 3 of the same part of the policy (Part 4) outlines very specific development standards that relate to the usability and accessibility of hostels and self-contained dwellings.

In reading this note in its context, it can be seen that the policy does not outline specific development standards relating to usability and accessibility for residential care facilities as it does for hostels and self-contained dwellings. However, it does not mean that other sections of the policy that provide accessibility requirements are not applicable for residential care facilities. For example, nothing in this note prevents the application of clause 26 (location and access to facilities) of SEPP HSPD for residential care facilities, even though it contains standards relating to accessibility.

This approach is supported by relevant case law including *Oreison Pty Ltd v Hurstville City Council* [2012] NSWLEC 1210 and *Cranbrook Care RACF Pty Limited v City of Canada Bay Council* [2014] NSWLEC 1232, in which the application of the accessibility requirements of clause 26 of SEPP HSPD are seen to be applicable for residential care facilities.

Site analysis

- **Clause 30 (Site analysis) of SEPP HSPD**

Clause 30(1) of SEPP HSPD prescribes that a consent authority must not consent to a development unless satisfied that the applicant has taken into account a detailed analysis of the site and its surrounds. Clause 30(2) of SEPP HSPD identifies that this should be done in writing, supported by architectural drawings, specifically addressing how the design has regard to this site analysis and how the development meets the principles set out in Division 2 of the policy.

Despite clear direction in the policy, the applicant has not provided a written statement in response to the requirements of clause 30 of SEPP HSPD, and a number of key areas of consideration have not been addressed. The lack of satisfactory consideration of the site and its surrounds is evident in the proposal and its non-compliance with development standards and design principles prescribed by SEPP HSPD.

Character

- **Clause 33 (Neighbourhood amenity and streetscape) of SEPP HSPD**

Clause 33 of SEPP HSPD identifies that a seniors housing development should recognise the desirable elements of the locations current character and contribute to the quality and identity of the area. The development should also provide setbacks to adequately reduce bulk and

overshadowing, and adopt building heights at the street frontage that are compatible with adjacent development. A seniors housing development should also adopt a front building line that is in sympathy with, but not necessarily the same as, the existing building line and utilise plantings that are in sympathy with other planting in the streetscape. Ultimately, the seniors housing development should also retain major existing canopy trees.

Pittwater Road is characterised by one and two storey buildings sited below the established tree canopy, with deep landscaped front setbacks. Jenkins Street, and other surrounding local streets, primarily contains one and two storey dwellings in a landscaped setting, with varied setbacks to the street frontage. The subdivision pattern, which comprises allotments ranging between 450m² - 1100m², is reflected by the built form, with reasonable breaks between adjoining buildings. Whilst there are other land uses within the vicinity of the site, including a building supplies yard and a seniors housing development, the built form is generally limited in scale and landscaping is the dominant feature of the streetscape.

The desired future character of the locality is prescribed by clause A4.9 (Mona Vale Locality) of P21 DCP, which emphasises a preference to retain this low density residential setting, with dwelling houses a maximum of two storeys in one place, in a landscaped setting, with minimal bulk and scale. Future development is to be integrated with the landform, and should be designed to follow the slope of the land.

In *Project Venture Developments v Pittwater Council [2005] NSWLEC 191*, a planning principle was developed to assist in assessing the visual impact of a new development and its compatibility with the existing streetscape. The planning principle emphasises the importance of the relationship of built form to surrounding spaces, with the relationship created by building height, setbacks, landscaping and in some locations, architectural style and materials. The planning principle also places weight on the importance of photomontages, which have not been provided by the applicant in this instance.

In *GPC No 5 (Wombarra) Pty Ltd v Wollongong City Council [2003] NSWLEC 268*, a four step planning principle was developed for assessing whether or not a seniors housing development was compatible with the surrounding low density residential area. It is noted that the second step of the planning principle emphasises that when a seniors housing development is larger than other buildings in the street, it should be broken up so that it does not appear as one building and sections of the building should be separated by generous breaks and landscaping.

Pittwater Road

The proposed development presents as a three storey development to Pittwater Road, inconsistent with the building height development standard of SEPP HPSP in regards to both the 8m numerical control and also the number of storeys adjacent to a boundary, and the 8.5m building height development standard of PLEP 2014 (which would apply to surrounding development). The three storey presentation is continued along the entire 47m wide façade, the scale of which is further emphasised by the existing 2m high retaining wall along the front property boundary.

Although the proposal has been amended to provide further articulation to the Pittwater Road façade, the proposal is seen to dwarf surrounding buildings in regards to both building height and width, and is not seen to be in harmony with the scale of adjacent development. It is also noted that the majority of elements introduced in an attempt to provide further articulation are situated forward of the minimum front building line, in closer proximity of the streetscape, acting to emphasise non-compliant elements of the building.

The visual impact of the width of the proposal has been somewhat broken down by the reduction of the horizontal massing featured in the original design. However, the setbacks introduced into the front façade are not seen to be of sufficient dimensions to provide relief in the built form, or to reflect the rhythm and scale of surrounding built form or the existing subdivision pattern.

The proposed landscape treatment is not seen to be sympathetic with the character of the streetscape, which contains a number of mature Eucalypts, and other tall canopy trees. Furthermore, the plant species selection and quantities proposed along the Pittwater Road frontage do little to assist the visual impact of the proposal, noting that the three (3) proposed canopy trees (Grass Leaf Hakia), which have a 2.5m spread and a 5m maturity height, will in no way screen or soften the three storey, 47m wide building proposed.

It is noted that the applicant justifies the scale of the Pittwater Road frontage based upon the classification of the road, and the speed at which vehicles travel through this stretch of Pittwater Road (being a maximum of 70km/h). Whilst Pittwater Road is a classified road, the zoning of the site is low density residential, and existing and potential future development within the vicinity of the site will remain low density residential. The visual impact of the proposed building, which is larger than most buildings within the Mona Vale Commercial Centre, has not been minimised, and the difference between the scale of the proposed building and adjoining residences will be readily apparent, irrespective of the speed at which vehicles travel along Pittwater Road.

Jenkins Street

The proposed development presents as a part two, part three storey development to Jenkins Street. The upper two levels of the proposal extend along the entire frontage, with a lower floor introduced halfway along the Jenkins Street façade, partly excavated into the slope. The three storey component of the development, which is non-compliant with the building height development standards prescribed by both SEPP HSPD and PLEP 2014, will be highly visible, with little opportunity for screen planting given the location of the proposed access driveway.

Whilst the lower floors have been designed to appear as though they step down the slope of the land, the upper floor is a continual plane. As such, the proposal has been designed with large parapets, reaching up to 2.6m above the ceiling of the upper floor, to give the appearance that the development as a whole has been designed to follow the slope of the site. However, the unnecessary built form further attributes to the three storey appearance of the development, enlarging the visual impact of the development in locations that cannot be screened by landscaping given the dominance of development within the non-compliant front setback.

The front setback area of Jenkins Street is dominated by hard surfaces and is bounded by fencing of an unknown design, and is in no way reflective of the character of surrounding residential dwellings.

Overall, the proposal is not seen to be visually compatible with its context or have adequate regard for the current and desired future character of the locality. The proposal is not in a position to be supported in this regard.

Amenity

- **Clause 34 (Visual and acoustic privacy) of SEPP HSPD**

Clause 34(a) of SEPP HSPD identifies that the design and location of windows should consider visual privacy for neighbours and visitors alike, and encourages the use of screening devices and landscaping to mitigate overlooking. Whilst the primary areas of open space and internal communal areas are considered to be appropriately sited, there is some concern in relation to windows of bedrooms in close proximity of areas of private open space of adjoining properties and larger communal areas of the proposal itself.

In particular, concern is raised in relation to the two southern most bedrooms along the western elevation of the first floor, which are within 9m of an elevated deck on the adjoining property at 8 Jenkins Street. Within a residential dwelling, privacy is generally gained to bedrooms by means of internal blinds or shutters. However, in a residential care facility, where people are more likely to spend more time in one's bedroom, further emphasis should be placed on ensuring privacy through good design, rather than internal measures. As a staff courtyard is located adjacent to

these rooms, any opportunity to mitigate this issue with landscaping is restricted. As such, external horizontal louvres are recommended to allow for sunlight into the rooms and visibility out the windows, whilst restricting overlooking from the adjoining property.

Concern is also raised in relation to six (6) bedrooms scattered throughout the development, whereby the one and only window is situated immediately adjacent to a communal terrace, which could potentially be used by residents and visitors alike at any time of the day. Unfortunately, no means of mitigating any potential visual privacy impact has been demonstrated by the applicant, and further consideration of the location and use of communal areas of space is required.

Clause 34(b) of SEPP HSPD prescribes that bedrooms should be located away from noise sources, such as parking areas, driveways and paths, to ensure acceptable noise levels for residents. Concern is raised in regards to the location of a number of bedrooms, considered individually as follows;

Bedrooms above driveway

There are three bedrooms situated directly above the excavated driveway entrance, with openings to the noise source. It is noted that there appears to be an error in the lower ground floor plan, as these openings are demonstrated as doorways opening above the excavated driveway below. The application was not supported by an acoustic report, to assist in determining the impacts of the basement parking and driveway upon noise levels experienced in these rooms. It is considered that this area would be more suitably utilised for communal purposes (like the level above).

Bedrooms to Pittwater Road

Fifteen (15) of the proposed bedrooms have windows to Pittwater Road, being a classified road subject to the provisions of SEPP (Infrastructure) 2007. Pursuant to clause 101 of this policy, the consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that:

the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.

At this stage, the applicant has not provided sufficient information to demonstrate that these 15 bedrooms have been designed to ameliorate potential traffic noise or vehicle emissions arising from vehicles travelling along Pittwater Road.

Bedrooms above staff courtyard

There are seven (7) bedrooms along the western elevation with windows situated above a subterranean staff courtyard. It is considered highly likely that noises from the courtyard will echo around the retaining structures and will be audible from the rooms above. At this stage, the applicant has not provided any details relating to staffing numbers or the utilisation of this space, however it has been made known that the facility is to be staffed around the clock. It is considered that the use of the external staff courtyard should be restricted during the evening to minimise potential acoustic impact upon the bedrooms immediately above.

Bedrooms around internal courtyard

The applicant has not provided any indication of how or when the internal courtyard space and associated terraces are to be used. Furthermore, there has been no assessment of the acoustic qualities of the space, with thirty-three (33) windows associated with bedrooms opening onto the space in addition to communal terraces, a café, a salon etc.

Insufficient information has been provided by the applicant in order to demonstrate that the proposal has been appropriately designed with respect to noise levels and acoustic amenity. Furthermore, there are outstanding issues relating to visual privacy that cannot simply be addressed by means of conditions of consent. As such, the proposal is not in a position to be supported in its current form.

Design for climate

- **Clause 35 (Solar access and design for climate) of SEPP HSPD**

Ensuring adequate daylight to main living areas and areas of private open space of neighbouring properties is a key area of consideration in SEPP HSPD. In this instance, the proposed development has been sited at a reasonable distance from adjoining properties to ensure that overshadowing is minimised, and that adequate levels of solar access are retained.

Solar access for residents of the proposed seniors housing development is also important, and the proposal has been designed so that the larger communal areas, both internal and external, are sited in areas that receive direct sunlight for large portions of the day. However, as a result, a number of rooms will receive little-to-no direct sunlight throughout the year, and will be heavily reliant upon artificial lighting. Whilst this is not the best outcome for future residents of the development, it is considered that all residents will have access to areas with direct sunlight throughout the year.

Cross ventilation throughout the proposed development is poor, and each bedroom and bathroom will be reliant upon mechanical exhaust and air-conditioning. This was raised as an issue by Council's Urban Designer, however no changes were presented in this regard. Should issues relating to visual and acoustic privacy be resolved, the presence of large windows in each room is seen to achieve a reasonable level of amenity for future occupants. However, if windows in certain bedrooms are to remain closed due to visual privacy issues or unreasonable noise levels, alternate design solutions should be explored.

Crime prevention

- **Clause 37 (Crime prevention) of SEPP HSPD**

Clause 37 of SEPP HSPD encourages crime prevention measures through good design, to ensure that entrances, communal spaces and driveways are able to be generally observed from throughout the development. It is considered that this is generally achieved in the proposal, with the exception of the excavated basement footpath to Pittwater Road, which is surrounded by retaining walls and vegetation, and will only be visible from one bedroom. There has been no information as to how this entrance is to be managed or how access at this point will be controlled. Given that this is the entrance relied upon to achieve compliance with the access provisions of clause 26 of SEPP HSPD, further information is required in this regard.

Building Height

- **Clause 40 (Development standards – minimum sizes and building heights) of SEPP HSPD**
- **Clause 48 (Standards that cannot be used to refuse development consent for residential care facilities) of SEPP HSPD**
- **Clause 4.6 (Exceptions to Development Standards) of PLEP 2014**

In accordance with the definition of building height as prescribed by SEPP HSPD, which is measured between the existing ground level of the site and the underside of the upper floor ceiling, the proposed development reaches a maximum height of 9.5m. This height calculation is based upon an internal ceiling height of RL 29.6 for the upper most floor level. However, the sectional detail demonstrates that the ceiling height increases within the building, following the pitch of the roof, and these levels have not been nominated by the applicant. With this in mind, the exact

height within the building, and the extent of the building height breach, is unable to be accurately calculated.

Based upon the elevations and an RL of 29.6 for the upper floor ceiling, the proposal is inconsistent with the 8m maximum height development standard prescribed by clause 40(4)(a) of SEPP HSPD. This height non-compliance occurs along the entire eastern frontage of the proposed building, extending up to 16m along the southern elevation and up to 8m along the northern elevation, and resulting in an area of approximately 577m² of the upper floor breaching the height plane. A clause 4.6 submission has been presented by the applicant in this regard.

Consideration of variation to development standard

The proposal is non-compliant with the 8m maximum height limit prescribed by clause 40(4)(a) of SEPP HSPD. The maximum building height limit is a development standard, as defined by the *Environmental Planning and Assessment Act 1979*, and as such, the provisions of clause 4.6 (Exceptions to development standards) of PLEP 2014 can be applied.

Pursuant to clause 4.6(2) of PLEP 2014, consent may be granted for development even though the development would contravene a development standard prescribed by any other environmental planning instrument, inclusive of SEPP HSPD. However, pursuant to clause 4.6(4), consent can only be granted if Council is satisfied that the applicant's written submission on the matter is well founded and if the proposal is in the public's interest by being consistent with the objectives of the specific development standard and the relevant zoning.

The applicant has provided a written submission which suggests that strict compliance with the 8m height limit is both unreasonable and unnecessary, as the proposal is of a good design, that does not result in any unreasonable impacts upon adjoining properties and that is of a scale that is acceptable in its context. With this in mind, the applicant puts forward that any general outcomes associated with building height standards are achieved, noting that no objectives are specified by SEPP HSPD.

However, the applicant's submission is not supported, as it is not agreed that the proposal is of a good design, or that its visual impact is acceptable in its context. Furthermore, the applicant is yet to demonstrate that the proposal does not unreasonably impact upon views currently enjoyed by adjoining properties, or that the amenity of the resultant development is acceptable for future residents.

It is also noted that the applicant does not accurately convey the extent of height non-compliance, as the ground line appears to be an assumed natural ground line taken from the boundaries of the site, as opposed to the existing ground levels of the site at any one point. The applicant also fails to consider the objectives of the zone, as required by clause 4.6(4) of PLEP 2014. Overall, the applicant's submission is not considered to be well founded, and variance from the 8m building height development standard is not seen to be warranted in this instance.

The portion of the building that exceeds the 8m height limit is also the portion of the building which has a three storey appearance to Pittwater Road, Jenkins Street and the adjoining property to the north, inconsistent with the two storey height limit prescribed by clause 40(4)(b) of SEPP HSPD. The aim of the two storey height limit is conveyed in the associated note, as follows;

Note: *the purpose of this paragraph is to avoid an abrupt change in scale of development in the streetscape.*

The new development proposed will be approximately 4.35m taller than the gutter line of the existing residential care facility at 2 Jenkins Street, and approximately 4.63m taller than the gutter line of the existing two storey dwelling on the adjoining property at 1681 Pittwater Road to the

north. The proposed development is also situated closer to the street than the existing development at the subject site, and the dwelling on the adjoining site at 1681 Pittwater Road.

The resultant 47m wide and 10.82m high (as measured between existing ground level and the top of the upper most parapet) three storey building is largely unscreened by proposed landscaping, and will be seen to result in an abrupt change in scale when seen in its context, surrounded by low scale residential dwellings. A clause 4.6 submission has been presented by the applicant in this regard.

Consideration of variation to development standard

The proposal is non-compliant with the two storey height limit prescribed by clause 40(4)(b) of SEPP HSPD. The two storey building height limit is a development standard, as defined by the *Environmental Planning and Assessment Act 1979*, and as such, the provisions of clause 4.6 (Exceptions to development standards) of PLEP 2014 can be applied.

Pursuant to clause 4.6(2) of PLEP 2014, consent may be granted for development even though the development would contravene a development standard prescribed by any other environmental planning instrument, inclusive of SEPP HSPD. However, pursuant to clause 4.6(4), consent can only be granted if Council is satisfied that the applicant's written submission on the matter is well founded and if the proposal is in the public's interest by being consistent with the objectives of the specific development standard and the relevant zoning.

The applicant has provided a written submission which suggests that strict compliance with the two storey height limit is both unreasonable and unnecessary, as the proposal provides public benefit for the surrounding aging population, and the amount of beds proposed is critical for the feasibility of the redevelopment. Furthermore, the applicant puts forward that the three storey appearance to Pittwater Road is acceptable in its main road context, and that the additional storey is a natural response in regards to the slope of the land.

The desired future character for the Mona Vale Locality identifies that buildings should be designed to step down the slope of the land, as opposed to maintaining the roof line across from the highest point of the site, as currently proposed. Furthermore, the three storey appearance is inconsistent with the surrounding built form and will result in an abrupt change in the scale of buildings along the streetscape, contrary to the objectives identified by the note under this specific control.

Whilst not technically applicable, SEPP 65 identifies that secondary upper level setbacks should be considered to reinforce the desired scale of the building to the street. This is consistent with the design approach throughout Pittwater's commercial areas, whereby increased setbacks are required for the second and third floors. It is considered that the proposal would benefit immensely by incorporating a reasonable setback along the front façade in relation to the upper floor.

It is noted that the applicant's submission is flawed in that it does not address the three storey presentation to Jenkins Street and does not correctly identify existing ground levels. Furthermore, the assertions relating to an acceptable visual impact are not supported by appropriate information, such as photomontages, and the 3D modelling information provided is inconsistent with the amended design and landscaping scheme. Overall, the applicant's submission is not considered to be well founded, and the proposed variation to the two storey building height limit is not warranted or supported.

The applicant has nominated that the proposal is also inconsistent with the requirement of clause 40(4)(c), in that the building is not limited to a single storey within the rear 25% of the site. As Pittwater Road is seen to be the primary street frontage, the western boundary is seen as the rear

boundary in this regard. Given the depth of the site, the rear 25% is seen to be the western most 15m of the site.

The proposed building ranges between one storey and two storeys above existing ground level within this 15m wide portion of the site, inconsistent with the requirement for buildings to be limited to single storey. It is also noted that large parapets, up to 2.6m above the height of the upper floor ceiling, also form part of the design within the setback area, but are not technically counted as a storey, given the definitions of SEPP HSPD. A clause 4.6 submission has been presented by the applicant in this regard.

Consideration of variation to development standard

The proposal is non-compliant with the single storey limitation for the rear 25% of the site, as prescribed by clause 40(4)(c) of SEPP HSPD. The single storey height limit is a development standard, as defined by the *Environmental Planning and Assessment Act 1979*, and as such, the provisions of clause 4.6 (Exceptions to development standards) of PLEP 2014 can be applied.

Pursuant to clause 4.6(2) of PLEP 2014, consent may be granted for development even though the development would contravene a development standard prescribed by any other environmental planning instrument, inclusive of SEPP HSPD. However, pursuant to clause 4.6(4), consent can only be granted if Council is satisfied that the applicant's written submission on the matter is well founded and if the proposal is in the public's interest by being consistent with the objectives of the specific development standard and the relevant zoning.

The applicant has provided a written submission which suggests that strict compliance with the single storey development standard is both unreasonable and unnecessary in this instance as the development adjoining the western boundary will have the appearance of being single storey from adjoining properties, and will not attribute to any unreasonable impacts upon adjoining properties.

There is considered to be merit in this argument, as the appearance of the two storey structure is limited due to the natural fall of the land. Furthermore, the setback of the development is quite generous, exceeding the minimum rear setback of 6.5m prescribed by P21 DCP. However, at this stage, the applicant has not satisfactorily demonstrated that elements within the rear 25% of the site will not result in any unreasonable impacts upon views enjoyed by adjoining properties, and consideration of objectives relevant to the rear setback requirement have not been addressed.

Whilst the setback between the proposed built form and the western property boundary is considered to be more than reasonable, and consistent with the 6.5m minimum rear setback control of P21 DCP, the extent of retaining walls and the proposed landscaping solution is not in a position to be supported, and requires further consideration. Until these issues are fully resolved, it cannot be said that the submission is well founded, or that variation to the development standard is warranted.

It is noted that, under the provisions of clause 48 of SEPP HSPD, a seniors housing application cannot be refused on the basis of building height if the building is maintained below the 8m height limit. However, as the proposal exceeds the 8m height limit, the proposal may be refused based upon non-compliance with each of the three provisions of clause 40(4) of SEPP HSPD.

Floor Space Ratio

- **Clause 46 (Inter-relationship of Part with design principles in Part 3) of SEPP HSPD**
- **Clause 48 (Standards that cannot be used to refuse development consent for residential care facilities) of SEPP HSPD**

A seniors housing application cannot be refused on the basis of density and scale if the building, when expressed as a floor space ratio, is 1:1 or less. In relation to the subject proposal, there are a number of areas shown in the plans where the intended use of the space is not entirely clear. To alleviate concerns regarding the floor space ratio calculation, the applicant has provided detailed drawings to demonstrate which areas have been included and which areas are excluded.

Based upon the applicant's calculations, the proposed development has a floor space ratio of 1.17:1 (624m² above 1:1). As discussed at length with regard to the character of the development and building height, the scale of the building is not seen to be appropriate in its context, and the proposed development presents as an over-development of the site. Clause 46(1) of SEPP HSPD provides the following notation for assistance in this regard;

***Note.** It is considered possible to achieve good design and achieve density ratios set out in Division 2. Good design is critical to meriting these density ratios.*

At this stage, there are outstanding issues not only in relation to the scale of the development, but also in regards to the amenity of adjoining properties and that of future residents and visitors to the site. The proposal is seen to fail in terms of both the design response and the density ratio, and is in a position to be refused in this regard.

Landscaping

- **Clause 48 (Standards that cannot be used to refuse development consent for residential care facilities) of SEPP HSPD**

A landscaped area at a rate of 25m² per bed is the threshold identified by clause 48(c) of SEPP HSPD in regards to the standards to which an application cannot be refused on landscaping grounds. In light of the 91 beds proposed, a total landscaped area of 2275m² would be required to meet this landscaped area standard.

There is general disagreement as to whether or not terraces on upper levels of the development should be included within the landscaped area calculation, and as such, two separate landscaped area calculations have been undertaken. Without terraces on upper levels included, the proposal provides for 1309m² of landscaped area, which equates to approximately 14.4m² per bed proposed. With upper level terraces included, the proposal provides for 1613m² of landscaped area, equating to 17.7m² per bed.

The landscaped treatment of the site is not just important with regards to the amenity of future residents, but is also crucial to the developments ability to achieve consistency with the existing streetscape and the desired future character of the locality. Landscaping also assists to minimise impacts upon the amenity of adjoining properties and soften built form, and in this instance, the landscaped treatment is used to justify technical non-compliance with a number of amenity and built form standards and controls.

Setback to Pittwater Road

As identified by the arborist report, there are currently 12 established native canopy trees on site, ranging in height from 5m to 18m. The proposal seeks consent for the removal of 8 of these canopy trees, the majority of which are located within the existing front setback to Pittwater Road. Unfortunately, the proposed landscaped treatment of the Pittwater Road setback is comparably poor, with only three replacement trees proposed along the 56m wide frontage, with limited maturity heights of 5m.

The opportunity to enhance the landscaped quality of the Pittwater Road frontage is somewhat constrained by the proposed development, which incorporates areas of private open space, elevated balconies and terraces within the 10m minimum setback area. Furthermore, screening to the southern end of the front façade is almost impossible, with the proposed excavated driveway and footpath covering approximately one-third of the entire front setback area.

Setback to Jenkins Street

In addition to being non-compliant with the minimum setback requirement of P21 DCP, the setback to Jenkins Street predominately comprises hard surfaces and areas of lawn, with little-to-no landscaping of any significance. Whilst it is appreciated that the street trees are visually significant and assist in screening the development, they cannot be relied upon in order to provide for a landscaped quality on the site.

Setback to western boundary

Whilst the setback between the built form and the western boundary is relatively generous, a considerable volume of excavation is proposed, resulting in the need for a number of retaining structures. As advised by Council's Landscape Architect, these retaining walls are sited too close together, such that the soil depths required to accommodate the proposed plantings are not achieved. Council's Landscape Architect has recommended the following condition of consent in this regard;

1. *No structures parallel to the western boundary shall be located within 2.5m from the boundary. This condition is required to ensure sufficient soil volume is available for the screening tree planting. The retaining wall alignment and path shall be adjusted to suit this requirement and shall be measured as the internal wall face and edge of path.*

Council's Landscape Architect has also indicated that the amount and type of plantings proposed along the western boundary is not sufficient, and has provided the following condition in this regard;

2. *A total of 15 screening trees (of 100L stock) shall be planted along the western boundary, consisting of the following:*
 - 3 x *Melaleuca linariifolia*
 - 3 x *Melaleuca ericifolia*
 - 5 x *Elaeocarpus reticulatus*
 - 4 x *Callistemon salignus*

However, it is appreciated that these conditions impact upon the design of the staff courtyard and services areas, including the proposed substation kiosk (no detail provided). Furthermore, the landscaping treatment along the western boundary has potential to impact upon views currently enjoyed by adjoining properties to the west of the site, which ideally should be retained. Realistically, it is considered that these changes warrant reassessment by Council, rather than being able to be addressed prior to the issue of a Construction Certificate.

Setback to northern boundary

The setback to the northern boundary is also generous, and has potential to provide for a high quality landscaped setting. However, once again, the proposed retaining walls are sited too close together and the amount and type of plantings is insufficient. Council's Landscape Architect has provided the following conditions in this regard;

1. *No structures parallel to the northern boundary shall be located within 2.5m from the boundary. This condition is required to ensure sufficient soil volume is available for the screening tree planting. The retaining wall alignment and path shall be adjusted to suit this requirement and shall be measured as the internal wall face and edge of path.*

2. A total of 13 screening trees (of 100L stock) shall be planted along the northern boundary, consisting of the following:

- 2 x *Melaleuca linariifolia*
- 2 x *Melaleuca ericifolia*
- 4 x *Elaeocarpus reticulatus*
- 5 x *Callistemon salignus*

General

There are also a number of general inconsistencies in the landscape plans provided, such as;

- Canopy trees located over proposed stormwater pits and stormwater pipes;
- Canopy trees located partially below proposed roof structures;
- Plants nominated as replacement canopy trees (Old Man Banksias) are to be planted as hedges such that the maximum maturity heights will not be realised;
- Tree 20 is nominated for retention on the landscape plan but proposed for removal in the arborist report; and
- The planting of Bamboo is not supported by Council.

Overall, the proposal fails with respect to both the landscaped area calculation and the resultant quality of landscape treatment. The outcome will not be compatible with the landscaped treatment of the streetscape, and the desired future character of the locality will not be achieved. As the proposal fails to meet the 25m² of landscaped area per bed, the proposal can be refused on the grounds of insufficient landscaping.

Parking

- **Clause 48 (Standards that cannot be used to refuse development consent for residential care facilities) of SEPP HSPD**

Parking for residents and visitors is required at a rate of 1 parking space for each 10 beds in the residential care facility. As the proposed development incorporates 91 beds, 10 parking spaces are required and provided in this regard. Parking for staff is required at a rate of 1 parking space for every 2 employees on duty at any one time. The applicant has indicated that there will be a maximum of 20 employees on duty at any one time, and therefore, 10 parking spaces are required and provided in this regard.

It is noted that the indication of staffing numbers was specified in a separate document provided in response to concerns raised by adjoining property owners. This number is not endorsed in the SOEE or any reports provided to support the application. Whilst the submission of a Plan of Management outlining staffing numbers would be preferred, a condition of consent could be imposed to restrict staff numbers to 20, as indicated by the applicant. However, the allocation of staffing will fluctuate in response to the care required by individual residents, which may be unknown at this point in time. It is therefore considered more appropriate to increase the amount of parking spaces to provide for any future change in the staffing needs.

Furthermore, whilst the proposal is seen to be technically compliant with regard to the provision of parking for residents, staff and visitors, additional parking could be provided in consideration of the objections received from nearby residents and the inability to park at the frontage of the site for portions of the day. Additional spaces could be accommodated in the basement parking at little additional expense to the applicant.

A separate and designated parking space is also required for an ambulance, however this has not been provided in the subject application. It has not been demonstrated that an ambulance can manoeuvre in the basement carpark and as such, conditioning for an additional space is not able to be relied upon. Furthermore, utilisation of the services area is not seen to be acceptable, as it is to be used by other service vehicles, and does not include any provision for vehicles to turn to egress in a forward direction. The applicant is required to demonstrate the incorporation of a designated ambulance parking space, or alternatively, the proposal can be refused in this regard.

11.0 PLEP 2014 and P21 DCP COMPLIANCE TABLE

T - Can the proposal satisfy the technical requirements of the control?

O - Can the proposal achieve the control outcomes?

N - Is the control free from objection?

Control	Standard	Proposal	T	O	N
Pittwater Local Environmental Plan 2014					
1.9A Suspension of covenant, agreements and instruments			Y	Y	Y
2.7 Demolition requires development consent			Y	Y	Y
Zone R2 Low Density Residential		See discussion.	N	N	N
4.3 Height of buildings	8.5 metres	10.82 metres	N	N	N
5.9 Preservation of trees and vegetation			Y	Y	Y
5.10 Heritage conservation			-	-	-
7.1 Acid sulphate soils			Y	Y	Y
7.2 Earthworks		See discussion.	N	N	Y
7.10 Essential services			Y	Y	Y
Pittwater 21 Development Control Plan					
3.1 Submission of a Development Application and payment of appropriate fee			Y	Y	Y
3.2 Submission of a Statement of Environmental Effects		See discussion.	N	N	N
3.3 Submission of supporting documentation - Site Plan / Survey Plan / Development Drawings		See discussion.	N	N	N
3.4 Notification			Y	Y	Y
3.5 Building Code of Australia			Y	Y	Y
4.7 Integrated Development - Roads		See discussion.	N	N	Y
A1.7 Considerations before consent is granted			Y	Y	Y
A4.9 Mona Vale Locality		See discussion.	N	N	N
B1.3 Heritage Conservation - General			Y	Y	Y
B1.4 Aboriginal Heritage Significance			Y	Y	Y
B3.6 Contaminated Land and Potentially Contaminated Land			Y	Y	Y
B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land			Y	Y	Y
B5.1 Water Management Plan			Y	Y	Y
B5.2 Wastewater Disposal			Y	Y	Y
B5.4 Stormwater harvesting			Y	Y	Y
B5.5 Rainwater tanks – Business, light industrial and other development			Y	Y	Y
B5.9 Stormwater Management – Water quality – Other than low density residential		See discussion.	N	Y	Y
B5.10 Stormwater discharge into the public drainage system			Y	Y	Y
B6.2 Access Driveways and Works on the Public Road Reserve			Y	Y	Y
B6.4 Internal Driveways			Y	Y	Y
B6.6 Off-Street Vehicle Parking Requirements		See discussion.	N	N	N
B6.9 On-Street Parking Facilities		See discussion.	-	-	N
B6.10 Transport and Traffic Management		See discussion.	Y	Y	N
B8.1 Construction and Demolition - Excavation and Landfill		See discussion.	N	N	Y
B8.2 Construction and Demolition - Erosion and Sediment Management			Y	Y	Y
B8.3 Construction and Demolition - Waste Minimisation			Y	Y	Y
B8.4 Construction and Demolition - Site Fencing and Security			Y	Y	Y

Control	Standard	Proposal	T	O	N
B8.5 Construction and Demolition - Works in the Public Domain			Y	Y	Y
B8.6 Construction and Demolition - Traffic Management Plan			Y	Y	Y
C1.1 Landscaping		See discussion.	N	N	Y
C1.2 Safety and Security		See discussion.	N	N	Y
C1.3 View Sharing		See discussion.	N	N	N
C1.4 Solar Access		See discussion.	Y	Y	N
C1.5 Visual Privacy		See discussion.	Y	Y	N
C1.6 Acoustic Privacy		See discussion.	Y	Y	N
C1.7 Private Open Space			Y	Y	Y
C1.9 Adaptable Housing and Accessibility		See discussion.	N	N	Y
C1.10 Building Facades			Y	Y	Y
C1.12 Waste and Recycling Facilities			Y	Y	Y
C1.13 Pollution Control			Y	Y	Y
C1.20 Undergrounding of Utility Services		See discussion.	N	Y	Y
C1.21 SEPP (Housing for Seniors or People with a Disability) 2004		See discussion.	N	N	N
C1.24 Public Road Reserve - Landscaping and Infrastructure		See discussion.	N	Y	Y
C1.25 Plant, Equipment Boxes and Lift Over-Run		See discussion.	N	N	Y
D9.1 Character as viewed from a public place		See discussion.	N	N	N
D9.2 Scenic Protection - General		See discussion.	N	N	N
D9.3 Building colours and materials		See discussion.	N	N	Y
D9.5 Front building line	Barrenjoey Road (east): 10m Jenkins Street (south): 6.5m	East setbacks: 8.13m – 12m South setbacks: Nil – 6.23m	N	N	Y
D9.7 Side and rear building line	Min. north setbacks: 4.12m – 4.93m Min. west setbacks: 3.85m – 4.12m	North setbacks: 7.52m – 10.5m West setbacks: 6.69m – 12.1m	Y	Y	N
D9.9 Building Envelope		See discussion.	N	N	N
D9.10 Landscaped Area – General	1829.5m ² or 50%	1065.1m ² or 29.1%	N	N	N
D9.12 Fences – General		See discussion.	N	N	Y
D9.14 Construction, retaining walls, terracing and undercroft areas		See discussion.	N	N	Y

Issues marked with a (-) are not applicable to this Application.

12.0 DISCUSSION OF ISSUES - PLEP 2014 and P21 DCP

Zone objectives

- Zone R2 Low Density Residential from the land use table of PLEP 2014**

Despite being prohibited under the provisions of PLEP 2014, the proposed seniors housing development is permissible with consent under the provisions of SEPP HSPD. Whilst the provisions of SEPP HSPD overrule PLEP 2014 in regards to the permissibility of seniors housing development, the provisions of PLEP 2014 cannot be completely ignored.

In this instance, the applicant seeks consent for a number of variations to development standards. In accordance with the provisions of clause 4.6 (Exceptions to development standards) of PLEP 2014, consent cannot be granted unless the consent authority is satisfied that the proposal is consistent with the objectives of the zone where the development is to occur.

The objectives of the R2 zone are as follows;

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide for a limited range of other land uses of a low intensity and scale, compatible with surrounding land uses.*

Whilst it could be put forward that the proposed seniors housing development is providing for the housing needs of the Pittwater community, it is the scale of the development that results in inconsistency with the objectives of the R2 Low Density Zone. The building presents as a structure that would be more in line with the three storey development that occurs within the R3 Medium Density zoning, or like the mixed use buildings within the Mona Vale Commercial Centre. Unfortunately, the objectives of the R2 Low Density zone have not been considered by the applicant and are not achieved in the current proposal.

Building Height

- **Clause 4.3 (Height of buildings) of PLEP 2014**
- **Clause D9.9 (Building envelope) of P21 DCP**

Under the provisions of PLEP 2014, buildings shall not exceed a maximum height of 8.5m, as measured between existing ground and the highest part of the building at any one point. In accordance with the definition of building height as defined by PLEP 2014, the proposed building reaches a maximum height of 10.82m, exceeding the 8.5m height limit across a large portion of the upper level. Non-compliance with the 8.5m height limit also results in non-compliance with the prescribed building envelope, which is limited by the prescribed building height.

Whilst it is acknowledged that the building height development standard of SEPP HSPD is seen to prevail where any inconsistencies occur between the two instruments, the building height limit prescribed by PLEP 2014 for the subject site and surrounding sites is important in understanding the likely future development occurring within the vicinity of the proposal. Furthermore, the objectives of the building height development standard are an important consideration in determining the reasonableness of any proposed variation to the height standards prescribed by SEPP HSPD.

The objectives of clause 4.3 of PLEP 2014, in addition to the building envelope prescribed by clause D9.9 of P21 DCP, are not seen to be achieved, as the scale of the development is not compatible with the height and scale of nearby development and as the resultant development is not reflective of the desired future character of the locality.

A number of submissions were received in relation to the height of the development and its inconsistency with surrounding built form. The impact of the building height upon adjoining properties is discussed in further detail with regard to solar access and view sharing.

Earthworks and excavation

- **Clause 7.2 (Earthworks) of PLEP 2014**
- **Clause B8.1 (Construction and Demolition - Excavation and Landfill) of P21 DCP**
- **Clause D9.14 (Construction, retaining walls, terracing and undercroft areas) of P21 DCP**

The proposed development involves considerable earthworks across almost the entirety of the site, with the sectional drawings demonstrating a maximum excavation depth of approximately 8m. The two primary areas of concern in relation to these controls are considered individually as follows;

Western boundary

The application proposes excavation at a nil setback to accommodate the front service area and the staff courtyard. Whilst the extent of excavation differs between elevation and plan, it is apparent that retaining walls of varying height will be located with a nil setback to the common side boundary. In accordance with the recommendations of the geotechnical report, drainage works are required behind each proposed retaining wall and rock anchors are required where 1:1 battering is unable to be undertaken. In accordance with the recommendations of the geotechnical risk assessment report, works would be required to occur on the adjoining property, and relevant owners consent would be required.

Conditions of consent are recommended by Council's Landscape Architect to require a minimum setback of 2.5m between any retaining structures and the common side boundary. This 2.5m setback will provide for the battering of the excavation and drainage infrastructure required by the geotechnical risk assessment report to occur within the subject site, without requiring works on any adjoining property. However, this requirement will have impacts upon the spaces proposed along the western boundary, which require review by Council prior to the determination of this matter.

Excavated footway

Excavation is proposed between the basement carpark and the existing footpath along the Pittwater Road frontage, to provide a pedestrian link to the street. The excavation is to occur on both private land and the Pittwater Road public road reserve, through a portion of land subject to geotechnical hazards. The current geotechnical risk assessment report does not address these works or the hazard affecting the road reserve, and the current recommendations are reliant upon the retention of the existing retaining wall. Whilst further geotechnical assessment could be required as a condition of consent, this decision is one to be made by Roads and Maritime Services (RMS), the consent authority for works within the classified road reserve.

Integrated development

- **Clause 4.7 (Integrated Development – Roads) of P21 DCP**

By amending the development to provide for the excavated footpath to Pittwater Road, the application is seen to constitute Integrated Development, with concurrence required from RMS in relation to works within the classified road reserve. In accordance with Section 91A(2) of the Act, consent must not be granted to a development involving works within the road reserve of a classified road, without first obtaining general terms of approval from RMS. However, nothing in section 91A(2) of the Act requires the consent authority to obtain the general terms of any such approval if the consent authority determines to refuse to grant development consent.

The proposal is heavily reliant upon the works proposed in the road reserve in order to achieve consistency with the provisions of clause 26 (Location and access to services) of SEPP HSPD. However, the applicant has not nominated that the proposal involves works in the road reserve, or that approval from RMS is required. In fact, the applicant has openly expressed that there are no works proposed within the public road reserve. Whilst there are no apparent reasons as to why the works would not be supported, the proposed development cannot be approved without general terms of approval from RMS.

Consideration of relevant controls

- **Clause 3.2 (Submission of a Statement of Environmental Effects) of P21 DCP**

Clause 3.2 of P21 DCP requires the preparation of a Statement of Environmental Effects (SOEE), to demonstrate how the development satisfies the relevant provisions of the DCP and justify any areas of non-compliance. The SOEE provided to support the application does not provide consideration of any DCP controls, but rather includes a statement to suggest that the controls of

P21 DCP do not apply specifically to residential care facilities and that the provisions of SEPP HSPD have been utilised instead.

Consistent with the definitions of both SEPP HSPD and PLEP 2014, a residential care facility is a type of seniors housing, which is identified by the “uses to which this control applies” section of many clauses of P21 DCP. Whilst the SOEE does not help or assist the applicant in seeking approval for a non-compliant development, the deficiency of the SOEE and inconsistency with this particular clause is not seen to warrant the refusal of the application in this regard.

Character

- **Clause A4.9 (Mona Vale Locality) of P21 DCP**
- **Clause C1.21 SEPP (Housing for Seniors or People with a Disability 2004) of P21 DCP**
- **Clause D9.1 (Character as viewed from a public place) of P21 DCP**
- **Clause D9.2 (Scenic Protection – General) of P21 DCP**
- **Clause D9.3 (Building colours and materials) of P21 DCP**

The provisions of P21 DCP essentially promote the need for the bulk and scale of a development to be minimised, and for the built form to be secondary to landscaping and integrated with the landscape. Within a low-density residential setting, such as the subject site, there is further emphasis on the use of dark and earthy colours and materials, and for buildings to have the appearance of being a maximum of two storeys in height.

The proposed four storey development, with a three storey and generally unarticulated presentation to Pittwater Road and Jenkins Street, is not compatible with the scale and character of surrounding low density development, and is not consistent with the desired future character of the locality. The landscaping treatment along the street frontages is below average, and will not ensure that the visual impact of the development is secondary to landscaping, or that the built form is softened as seen from a public place.

The amended application was not accompanied by a colour schedule, however it appears that heavy elements along the front facades are further emphasised by the use of light colours, inconsistent with the requirement for dark and earthy tones. At this stage, the visual impact of the excavated walkway between the basement carpark and Pittwater Road is unknown, as this element of the development is not demonstrated on any elevational drawings or the 3D imagery provided to support the application. Furthermore, the application also lacks the benefit of photomontages, which would assist in the consideration of the proposed built form in its context.

Multiple submissions were received from adjoining property owners raising objection to the development based upon inconsistency with the character of the area, and the overall bulk and scale of the development.

Traffic and parking

- **Clause B6.6 (Off-street Vehicle parking) of P21 DCP**
- **Clause B6.9 (On-Street Parking Facilities) of P21 DCP**
- **Clause B6.10 (Transport and Traffic Management) of P21 DCP**

A number of submissions were received with regard to off-street parking and the impacts upon on-street parking associated with the intensification of the site. On-street parking is already limited in the vicinity of the site, with an afternoon bus lane on the western side of Pittwater Road, a morning bus lane on the eastern side of Pittwater Road, time-limited parking on the northern side of Jenkins Street and no stopping on the southern side of Jenkins Street. In response to community concerns, Council’s Development Engineer has noted that the proposal will result in a reduction to the amount of driveways onto both Jenkins Street and Pittwater Road, increasing the provision of on-street parking as compared to what is currently available.

With the exception of a designated ambulance space (as required by SEPP HSPD), the proposal is compliant with the minimum requirements for residents, staff and visitors outlined in the *RTA Guide to Traffic Generating Development*, and Council's Development Engineer has raised no concern in this regard. However, the proposal is only compliant with the minimum requirements if staffing is limited to a maximum of 20 employees on duty at any one time, and at this stage there has been no real indication from the applicant as to whether this is a realistic expectation for the size of the development proposed. Furthermore, it does not appear that the applicant has had any consideration of the need for additional parking during an overlap of shifts, as required by the *RTA Guide to Traffic Generating Development*. At this point in time, the proposal has not satisfactorily addressed issues relating to parking.

Submissions received from adjoining property owners also raised concern with regard to traffic moving along Jenkins Street and Elimatta Road. These concerns were not shared by Council's development engineer who provided the following comments;

The increase in aged care units on the site from 47 to 91 represents a potential increase of approximately 88 vehicle trips per day to and from the site – based on RMS guidelines of 2 vehicle trips per day per bed. Such an increase of vehicle movements to the site from Jenkins Street is considered to be insignificant in terms of the capacity of Jenkins Street to cope with vehicle movements.

One submission was received in regards to the inability to reverse a large vehicle from the service area, if a truck is parked on the southern side of Jenkins Street. However, the southern side of Jenkins Street is a no stopping area, where stopping or parking for any period of time is not permitted.

Stormwater

- **Clause B5.9 (Stormwater Management – Water quality – Other than low density residential) of P21 DCP**

The stormwater management plan provided to support the subject application incorrectly identifies the subject site, with all detailed analysis limited only to 2 Jenkins Street (with no consideration of 4 Jenkins Street or 1679 Pittwater Road). However, the proposed stormwater solution for the amended proposal is designed in consideration of the site as a whole, and all recommendations and calculations appear to be based upon the correct site information.

Landscaped area and landscaping

- **Clause C1.1 (Landscaping) of P21 DCP**
- **Clause D9.10 (Landscaped Area – General) of P21 DCP**

P21 DCP identifies that a minimum of 50% or 1829.5m² of the total site should comprise landscaping. In accordance with the definition of landscaped area as defined by PLEP 2014, the proposal is vastly non-compliant with this minimum requirement, providing only 1065.1m² of landscaped area, equating to 29% of the total site. In accordance with the provisions of clause 48 of SEPP HPSD, the proposal must not be refused on the basis of the landscaped area calculation if the proposal provides 25m² of landscaped area per bed proposed. However, the proposal also falls well short of this requirement, with only 14.4m² of landscaping provided for each of the 91 beds proposed.

The proposed development is not seen to be consistent with the outcomes of the landscaped area control, and the proposed landscape treatment is not of a sufficient quality that would be seen to compensate for the shortfall in landscaped area proposed.

Whilst the proposal is unable to be supported in its current form, the lesser 50% requirement of P21 DCP could potentially be utilised by the applicant, if the outcomes of control were able to be achieved. The 50% minimum requirement for the site is also the minimum landscaped requirement

of adjoining low density sites, and could be used as a guide for achieving greater consistency with the character of the surrounding locality.

Crime prevention

- **Clause C1.2 (Safety and Security) of P21 DCP**

P21 DCP enforces the four Crime Prevention Through Environmental Design (CPTED) principles for new development in Pittwater, which are considered in relation to the proposal, as follows;

Surveillance

Buildings should be designed to maximise surveillance of public spaces and to ensure that adequate lighting is provided to minimise the possibility of vandalism or damage. Concern is raised in this regard, particularly in relation to the Pittwater Road frontage, and the excavated access way to the basement carpark. This area is not readily visible from communal areas of the building, and the proposed fencing and landscaping will restrict visibility of the footpath along Pittwater Road, which is already compromised by the existing embankment.

Access Control

Building entrances should be clearly visible from the street, easily identifiable and appropriately lit. The proposed development comprises two pedestrian entrances to Pittwater Road, however, how they will be seen from the street is largely unknown at this stage, as these works are not shown on the elevations provided and no detail has been provided in relation to the landscaped treatment of the road reserve.

Access through a building and along the public domain is to be clearly defined, signposted, visible and direct. This has not been appropriately considered by the applicant with regard to the excavated footpath and pedestrian access through the basement carpark.

Territorial reinforcement

The proposal is seen to respond appropriately in this regard.

Space Management

A Plan of Management will be required as a condition of consent in regard to space management strategies to address activity coordination, site cleanliness, rapid repair of vandalism and graffiti, the replacement of burned out pedestrian and car park lighting and the removal or refurbishment of decayed physical elements.

Further consideration of the CPTED principles is required, largely in relation to the Pittwater Road frontage and the access way between Pittwater Road and the internal lift.

Impacts upon views

- **Clause C1.3 (View Sharing) of P21 DCP**

Over the course of the assessment, submissions have been received in regards to potential view loss from 57a Elimatta Road, 55 Elimatta Road, and 8 Jenkins Street. A site inspection also revealed that the proposal will also impact upon views currently experienced from the street, and result in potential impacts upon views currently available from the existing dwelling at 53 Elimatta Road (referred to as 10 Jenkins Street by the applicant). During the course of the assessment, height poles were requested and subsequently erected on the site. These height poles demonstrate the upper most parapet in the south-western corner, the upper most parapet on the north-western corner and the north-south ridgeline of the western portion of the upper most roof form.

57a Elimatta Road

The existing dwelling at 57a Elimatta Road has views of Pittwater to the north and ocean views to the east. The views are obtained from the upper floor rear deck associated with the master bedroom, with the views of Pittwater views gained across the rear boundary and oceans view obtained across the side of the balcony and the site boundary.

Whilst the height poles were not visible from this position at 57a Elimatta Road, it is considered highly unlikely that the ocean views will be impacted by the proposed development. Furthermore, if the views were to be impacted, it would be difficult to suggest that the impact is unreasonable, given the position in which the views are obtained, the vulnerability of the view corridor and the retention of views of Pittwater to the north.

55 Elimatta Road

The existing dwelling at 55 Elimatta Road enjoys views of the ocean and South Mona Vale headland from two rear upper floor balconies, one that is adjacent to the living room and one that is adjacent to a bedroom. These views are obtained from a sitting and standing position across both the southern side and eastern rear boundaries, over the roof of the existing dwelling at 4 Jenkins Street, the roof of the existing seniors housing development at 2 Jenkins Street, and the existing dwelling at 1679 Pittwater Road. A band of vegetation acts as a buffer between the existing roof forms and the ocean views.

The height poles erected on the site demonstrate that the western elevation of the proposed building will not impact upon the views currently enjoyed from the rear of 55 Elimatta Road. However, the impact associated with the eastern façade of the building is unable to be determined, and may potentially impact upon water views currently enjoyed.

The solid red line in Figure 2 demonstrates the continuation of the ridgeline of the existing dwelling at 1679 Pittwater Road which has an RL at 30.7, the same as the RL the parapet of the eastern façade of the proposed development. Based upon the continuation of this ridge line, the water views are able to maintained, however the foreground vegetation will be lost. The dashed red line in Figure 2 demonstrates the parapet along the southern elevation of the proposal at RL 32.2. Based upon this height pole, the ocean views are also likely to be retained.



Figure 2 - View from balcony at 55 Elimatta Road with solid red line at RL 30.7 and dashed red line at RL 32.2

Unfortunately though, this cannot be relied upon for the basis of determining the potential impact of the development, as the proposed ridgeline is located substantially further forward (to the east) on the site, and the lift overrun and plant equipment protrudes above RL 30.7. Additional height poles and photomontages are required to quantify the impact to the views currently enjoyed from 55 Elimatta Road.

8 Jenkins Street

The existing dwelling at 8 Jenkins Street enjoys views of the ocean from the upper open plan living room and kitchen, the upper floor rear deck adjacent to the living room, and two upper floor bedrooms. These views are obtained from a sitting and standing position across the eastern side boundary, over the roof of the existing dwelling at 4 Jenkins Street and the roof of the existing seniors housing development at 2 Jenkins Street. A band of vegetation acts as a buffer between the existing roof forms and the ocean views.

The potential impacts associated with the height poles are considered individually, as follows;

Height pole at RL 32.2

The parapet that runs along the southern façade and wraps around the western elevation for a distance of 2.5m, at RL 32.2, will impact upon views from the upper floor living area. The parapet will restrict the majority of the views of the ocean from the southern-most window on the eastern elevation, which are enjoyed from both the living room and the workspace in the kitchen. The parapet will also impact upon a portion of the views enjoyed while seated at the dining room table from the northern-most window on the eastern façade. The impact associated with the parapet from within the open plan living room is moderate.

The parapet is a completely unnecessary element of the proposed building, that extends up to 1.5m above the roof form, and is situated forward of the minimum front building line. The impact associated with this element of the proposal has not been addressed by the applicant, and could be easily avoided through a more skilful design response. Whilst views may be maintained from other windows in the room, the impact associated with the parapet is not seen to be reasonable in these circumstances.

Height pole at RL 30.37

The height pole at RL 30.37 represents the north-south ridgeline of the western portion of the upper floor roof. Based on this pole, this portion of the proposed roof form will have no impact upon the views currently enjoyed from any point throughout the upper floor of 57 Elimatta Road.

However, once again, due to the slightly downwards angle of the view, it is the eastern (non-compliant) elevation of the building which has potential to impact upon the oceans views currently enjoyed from 8 Jenkins Street. The effect of the downward angle is shown in Figure 3, whereby the solid red line demonstrates RL 30.37 at a distance of approximately 17m from the common side boundary and the dashed red line represents an RL of 29.13 at a distance of approximately 50m from the common boundary.

It is noted that the height of the proposed building, in the location of the red dashed line, is to increase by approximately 1.57m, which could potentially impact upon the ocean views currently enjoyed. This is then further compromised by the lift overrun and plant equipment of an unknown height and design, which is situated directly in line with the balcony at 8 Jenkins Street. At this time, the impact upon the views from the rear upper floor balcony, both upper floor bedrooms and the living area, is unable to be quantified without the erection of further height poles and the production of photomontages.



Figure 3 - View from rear balcony at 8 Jenkins Street with solid red line at RL30.37 and dashed red line at RL 29.13

53 Elimatta Road

The existing dwelling at 53 Elimatta Road appears to enjoy views of the ocean from the southern-most window on the eastern elevation. Access was not provided to this dwelling, and as such, the use of the room and the exact impact associated with the development is unknown. However, from standing adjacent to the window, it is apparent that views are received from a standing position across the eastern boundary, over the top of the roof of the existing seniors housing development at 2 Jenkins Street. Following an inspection of the perimeter of the site, it appears that this is the only view corridor available to the property, however it is acknowledged that no objection was received from the relevant property owners.

The height poles erected on site demonstrate that a large portion of this view will be lost as a direct result of the parapet proposed around the south-western corner of the building. The parapet is situated forward of the minimum front building line, and is seen as an unnecessary addition to the design of the development. It is considered that this impact could be readily avoided through a more skilful design response.

Jenkins Street

Ocean views are available from the northern side of the Jenkins Street road reserve, adjacent to 8 Jenkins Street and 53 Elimatta Road. Ocean views are also available from the southern side of Jenkins Street road reserve, adjacent to 49 Elimatta Road. These views from the northern side of the street are gained across the roof of the existing seniors housing development at 2 Jenkins Street. The views from the southern side of the street are gained across the width of the road reserve.

The height poles erected on site demonstrate that the proposal will impact upon existing views from the northern side of the street, largely attributed to the parapet proposed at the south-western corner of the site. Whilst the view is not iconic, or particularly significant, it is considered that this impact could be lessened through a more skilful design response.

Without an accurate understanding of the potential impacts upon views, particularly in relation to portions of the building that are non-compliant with prescribed standards and controls, the proposal is not in a position supported at this time.

Solar access

- **Clause C1.4 (Solar Access) of P21 DCP**

Submissions have been received from adjoining properties in regards to potential loss of solar access resulting from the proposed development. Throughout the course of the assessment, the applicant has amended the proposal, reducing the massing of the development adjacent to adjoining properties. The solar access diagrams provided to support the amended application demonstrate that the proposal will not result in any unreasonable impacts upon adjoining properties with regard to solar access.

Amenity of adjoining properties

- **Clause C1.5 (Visual Privacy) of P21 DCP**
- **Clause C1.6 (Acoustic Privacy) of P21 DCP**

Clause C1.5 of P21 DCP identifies that areas of private open space and windows associated with living rooms should be protected from overlooking in accordance with the 9m radius developed in AMCORD. Whilst submissions have been received in regards to potential visual privacy impacts, the proposal has quite generous setbacks to the western and northern boundaries, and is seen to be compliant in this regard. Submissions have also been received in regards to potential acoustic impacts associated with the density and use of the site. Whilst further information is required in relation to the use of outside communal spaces associated with the development, it is unlikely that these concerns cannot be reasonably addressed by means of conditions of consent. Further conditions could also be applied in relation to external air-conditioning units and noise levels experienced from adjoining properties.

Accessibility

- **Clause C1.9 (Adaptable Housing and Accessibility) of P21 DCP**

P21 DCP requires seniors housing developments to be consistent with the provisions of *AS4299-1995 Adaptable Housing*, and for the applicant to be responsible for ensuring that the design and construction of works in the public domain allow for accessibility for the full frontage of the site to any road. The path of travel through the basement to the Pittwater Road frontage is not consistent with the provisions of AS4299 and insufficient information has been provided in relation to the works occurring in the road reserve, where the excavated footway crosses onto public land. The proposed development is not able to be supported in its current form.

Works within the road reserve

- **Clause C1.20 (Undergrounding of Utility Services) of P21 DCP**
- **Clause C1.24 (Public Road Reserve - Landscaping and Infrastructure) of P21 DCP**

Clause C1.20 of P21 DCP requires all existing overhead utilities to be relocated underground, which would include the existing overhead electricity wires along the Pittwater Road frontage. There are two spans of overhead electricity wires adjacent to the site, with a portion of the southern span crossing the width of the Jenkins Street Road Reserve. The developer is to be responsible for undergrounding both full spans of the overhead wires.

The replacement of existing footpaths is also required under the provisions of clause C1.24 of P21 DCP. A 2.1m wide footpath is generally required for Pittwater Road, however the width of the road reserve is limited by the existing retaining wall. As such, a condition is recommended to require a new footpath the entire width of the road reserve, between the retaining wall and the kerb. A new 1.5m wide footpath is required along the entirety of the Jenkins Street frontage, subject to an arborist assessment of any potential impacts upon the existing street trees.

Landscaping of the road reserve, at the full cost of the developer, is also required under the provisions of clause C1.24 of P21 DCP. The current application is silent in relation to the treatment of the frontage to Pittwater Road, particularly in relation to any works proposed to the existing retaining wall. However, the 3D modelling still shots provided by the applicant demonstrate a different landscaped treatment compared to what currently exists. Any works within the road reserve, including landscaping, requires the concurrence of RMS which has not been obtained at this time. Further information is required in relation to the works proposed within the road reserve.

Plant equipment

- **Clause C1.25 (Plant, Equipment Boxes and Lift Over-Run) of P21 DCP**

The proposed development is inconsistent with the requirements of clause C1.25 of P21 DCP, as air-conditioning units, hot water systems and the lift overrun are located on the proposed roof and are not integrated with the fabric of the built form. Furthermore, there is little design detail for these elements of the proposal that are to be “screened”, to the extent that building height cannot be calculated and potential impacts upon views cannot be quantified.

Front setback

- **Clause D9.5 (Front building line) of P21 DCP**

The minimum setback for the Pittwater Road frontage is 10m or the established building line, whichever is the greater. As the majority of existing dwellings along Pittwater Road appear to be situated approximately 10-10.5m from Pittwater Road, the 10m minimum requirement is seen to be appropriately applied in this instance. Whilst the external walls are generally sited at a distance of 10m from the Pittwater Road frontage, covered balconies on the ground and first floor protrude forward of the building line, with a minimum setback of 8.1m from the front boundary.

Non-compliance with the minimum setback to Pittwater Road has been acknowledged by the applicant, who is seeking a variation to the control on the basis that the outcomes of the front building line control are otherwise achieved. The applicant has put forward that the balconies that protrude forward of the 10m setback provide modulation and act to offer amenity for the future residents. The applicant suggests that whilst Council could condition the removal of these balconies, this would be a “*poorer outcome*” that would “*reduce the amenity of residents and flatten the building façade*” simply to comply with a DCP control. Whilst it is agreed that the balconies act to provide some modulation to the otherwise unarticulated three storey façade, it is considered that a more skilful design solution could have provided this much needed modulation wholly behind the prescribed minimum front building line, in a manner that was more consistent with the scale of surrounding development.

The heavy masonry treatment of the non-compliant balcony elements does not assist in minimising the bulk and scale of the building, and if anything, the massing of the balconies actively emphasises the proposed breach of the established building line along Pittwater Road. This is further compounded by the location of these non-compliant structures, being both ends of the building, where the reduced setback is most apparent in the streetscape.

The minimum front setback to Jenkins Street is 6.5m. The bulk of the development is situated at a minimum setback of 5.1m from the front boundary, with an entrance structure between the Jenkins Street front façade and the boundary, encroaching within the road reserve. The applicant seeks to rely upon a variation, which provides for a lesser setback to secondary streets, noting that the Pittwater Road façade is considered the primary street frontage.

The applicant has provided justification that the development is consistent with, if not greater than, the setbacks of the adjoining properties to the west along Jenkins Street and that the outcomes of the front building line control are achieved. However, it is noted that the minimum setback of the adjoining property at 8 Jenkins Street is 6.5m, and irrespective of existing lesser setbacks in the

vicinity of the site, the control requires consistency with the 6.5m setback or the established building line, whichever is the greater.

The applicant seeks consent for the application of a variation relating to the secondary street frontage, which would allow for a minimum setback of half the front building line. However, this is not seen to be warranted in this instance as;

- the landscaping within the setback area is not adequately enhanced;
- vehicle movement in a forward direction is not facilitated in relation to the services area;
- unnecessary design elements forward of the minimum front building line unreasonably restrict views from adjoining dwellings and the private domain; and
- the desired future character is not achieved.

Overall, the primary area of concern is in relation to the south-eastern corner of the site. Whilst the landscaping treatment of both setbacks is generally inadequate and lacking of any substantial plantings, the corner of the site is highly exposed and any opportunity for plantings is restricted by the location of the excavated driveway to Jenkins Street and the excavated footway to Pittwater Road. This corner element of the proposed development is not only non-compliant with both front setback controls, but also the building height development standard in regards to both the 8m and two storey development standards. The scale of the building is also emphasised at this point by the existing retaining structure wall along the Pittwater Road boundary, which acts as a platform for the proposed development, exaggerating the height of the development as seen from the street.

As seen from both Jenkins Street and Pittwater Road, the proposal will not be screened by landscaping, and will not appear as a development that responds to, reinforces and sensitively relates to the spatial characteristics of the existing urban environment. As such, the proposal is not seen to achieve consistency with the outcomes of the front building line control, and variations to the front building line are not able to be supported.

Side and rear setbacks

- **Clause D9.7 (side and rear building line) of P21 DCP**

With dual street frontages, the site does not conform to the standard front, rear and two side approach generally adopted by the controls of P21 DCP. As such, the reasonableness of the setbacks proposed in relation to the northern and western boundaries are considered on merit, in consideration of both the minimum side and rear setback controls. Based on the height of the proposed development, as defined by PLEP 2014, the minimum side setbacks required by clause D9.7 of P21 DCP are between 4.12m – 4.93m along the northern boundary and 3.85m – 4.12m along the western boundary. If considered as a rear setback, clause D9.7 of P21 DCP requires a minimum setback of 6.5m from the northern and western boundaries.

The proposed setbacks vary between 7.52m to 10.5m along the northern boundary, and 6.69m to 12.1m along the western boundary, far exceeding the minimum requirements for either a side or rear boundary under the provisions of P21 DCP. Whilst submissions have been received in regards to the proximity of the development to the side/rear boundaries and associated impacts upon the amenity of adjoining properties, the proposed setbacks are considered to be more than adequate, if not overly generous, in relation to the northern and western boundaries. Subject to the production of a revised landscape plan and further consideration of the location and design of retaining walls (that are permitted within the minimum setback areas), the proposal is seen to meet the objectives of the side and rear building line development control.

Fencing

- **Clause D9.12 (Fences – General) of P21 DCP**

The application proposes new fencing along both the Pittwater Road and Jenkins Street frontages. The setback of the fencing varies between nil and 2.5m, with encroachments of the road reserve in

some locations. The design and detail of the fencing is limited to a note in the landscape plan, being “1500mm high aluminium fence”, and consistency with the design criteria of this clause cannot be ascertained. It is considered that conditions of consent could be imposed to remove any fencing proposed within the road reserve and to ensure that remaining fencing achieves compliance in regards to this control.

13.0 CONCLUSION

The provisions of SEPP HSPD provide for the incorporation of a seniors housing development within low density residential areas where they may not otherwise be permitted. However, an application made pursuant to SEPP HSPD should not ignore local planning instruments, but rather be guided by these documents in order to achieve a good design outcome that is responsive to the characteristics of the site and surrounding development.

SEPP HSPD emphasises that the design of a seniors housing development does not necessarily need to be the same as surrounding low-density residential development, but that it should be in harmony with the bulk and scale of surrounding built form, such that the development does not result in an abrupt change in scale along the streetscape. NSW LEC case law also emphasises that the built form of seniors housing developments within a low density area should be broken down in an attempt to mimic the subdivision pattern of the area, with landscaping playing a key role in reducing the visual impact of the generally larger scale development type. In this instance, the applicant has not demonstrated that the scale of the development is appropriate in its context and overall, the non-compliant development presents as an overdevelopment of the low density residential site.

The overdevelopment of the site may attribute to unreasonable impacts upon the amenity adjoining properties, with views enjoyed by adjoining properties potentially obstructed or reduced in direct association with built form non-compliance. Furthermore, the design of the development also compromises the amenity of future residents of the aged care facility, with a substandard design response in relation to visual and acoustic privacy, cross ventilation and solar access.

The application of SEPP HSPD is limited by location and the provision of access to local services and facilities. The policy can only be utilised to bypass the land use table of PLEP 2014 if the applicant satisfactorily demonstrates that the requirements of clause 26 of SEPP HSPD are achieved. Inadequate access arrangements through a basement carpark and reliance upon an unsuitable southbound bus stop are seen to result in the failure of the proposal in this regard. This is in addition to further issues arising as a result of the amendments to the access arrangements, and the inability to approve the integrated development proposal without the involvement of the RMS.

Whilst it is agreed that Pittwater has an aging population, and that the demand for aged care facilities is increasing, this should not be seen as an excuse for a poor design outcome that is inconsistent not only with the zoning of PLEP 2014 but also the provisions of SEPP HSPD and P21 DCP. Accordingly, the application is recommended for refusal.

RECOMMENDATION

That the Sydney East Joint Regional Planning Panel endorse the proposed recommendation for the refusal of Development Application N0322/14 for the demolition of all existing site improvements and construction of a new residential care facility, comprising 77 bedrooms and 91 beds, under the provisions of SEPP (Housing for Seniors and People with a Disability) 2004 at 2 and 4 Jenkins Street and 1679 Pittwater Road, Mona Vale, for the reasons in the draft determination attached.