

**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 89 beds, under the provisions of SEPP (Housing for Seniors and People with a Disability) 2004**

**DETERMINATION LEVEL:** Joint Regional Planning Panel

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**SUMMARY OF RECOMMENDATION:** Refusal

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

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## **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 89 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 1814.7m<sup>2</sup>. 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 607m<sup>2</sup>. 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 1214m<sup>2</sup>. 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 3659m<sup>2</sup> (as calculated) and 3635.7m<sup>2</sup> (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 (65 single and 12 double) all with ensuite bathrooms,
  - 89 beds,
  - 20 off-street parking spaces,
  - Kitchen and Laundry;
  - Multiple internal and external living and dining areas,
  - Staff facilities,
  - Residents amenities including, a café, salon and library, and
  - A consultation room.
- Landscaping
- Removal of redundant driveway crossings, and construction of new driveway crossings
- Construction of new pedestrian access pathways and stairs

### **4.0 LEGISLATION, PLANS AND POLICIES**

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.

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 (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
  - Minimum lot size: 550m<sup>2</sup>
- Pittwater 21 Development Control Plan ('P21 DCP')
  - Mona Vale Locality
  - Landscaped Area 3

### **5.0 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. The original proposal sought consent for a larger development, comprising 92 bedrooms and 102 beds.

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.

The matter went before the Sydney East JRPP on 29 September 2015 with a recommendation of refusal. The panel members resolved unanimously to defer the matter to allow the applicant to address the following issues;

- The level of capacity of the residents of the facility – If high care, can all required services be supplied on site thereby overcoming the distance requirements of Clause 26 of SEPP HSPD.
- Provision for access for service vehicles inclusive of ambulances, resident bus and delivery vehicles. Final details of staff numbers and service providers, to determine the required number of onsite parking spaces.
- Ways of improving the visual and acoustic privacy of bedrooms within the development including those adjacent/near to communal open space and the access driveway.
- Resolution of issues around building height including compliance or not and impact on view and privacy.
- Landscaping area – including quantum and functionality relative to the needs of the proposed residents.

The applicant provided additional information on 21 October 2015, which was referred to relevant Council staff for comments and/or recommendations. The application was also referred to Roads and Maritime for concurrence.

Further additional information, including height pole certification, was provided upon request from 6-11 November 2015.

## **6.0 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 and 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.

The fifth set of amended plans was notified for a further fourteen (14) days from 22 October 2015. Two (2) further submissions were received, raising concerns with regard to traffic, the location of the proposed driveway and reiterating concerns regarding view loss.



## 7.0 ASSESSMENT ISSUES

The key issues considered in the assessment of this application are summarised as follows;

- **Location and access to services (Permissibility)**
  - Clause 26 (Location and access to services) of SEPP HSPD
- **Character, height and scale**
  - Clause 33 (Neighbourhood amenity and streetscape) of SEPP HSPD
  - Clause 40 (Development standards) of SEPP HSPD
  - Clause 4.3 (Height of buildings) of PLEP 2014
  - Clause A4.9 (Mona Vale Locality) of P21 DCP
  - Clause D9.1 (Character as viewed from a public place) of P21 DCP
  - Clause D9.9 (Building envelope) of P21 DCP
  - Clause D9.10 (Landscaped Area – General) of P21 DCP
- **Impacts upon adjoining properties**
  - Clause 40 (Development standards) of SEPP HSPD
  - Clause C1.3 (View Sharing) of P21 DCP
  - Clause 4.3 (Height of buildings) of PLEP 2014

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

## 8.0 SEPP HSPD COMPLIANCE TABLE

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

Clause	Standard	Proposal	C
<b>Chapter 1 - Preliminary</b>			
2. Aims of Policy	(1) This Policy aims to encourage the provision of housing (including residential care facilities) that will: <ul style="list-style-type: none"> <li>(a) increase the supply and diversity of residences that meet the needs of seniors or people with a disability, and</li> <li>(b) make efficient use of existing infrastructure and services, and</li> <li>(c) be of good design.</li> </ul> (2) These aims will be achieved by: <ul style="list-style-type: none"> <li>(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</li> <li>(b) setting out design principles that should be followed to achieve built form that responds to the characteristics of its site and form, and</li> <li>(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.</li> </ul>		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
<b>Chapter 2 – Key Concepts</b>			
11. Residential Care Facilities	In this Policy, a residential care facility is residential accommodation for seniors or people with a disability that includes: <ul style="list-style-type: none"> <li>(a) meals and cleaning services, and</li> <li>(b) personal care or nursing care, or both, and</li> <li>(c) appropriate staffing, furniture, furnishings and equipment for</li> </ul>		Y

Clause	Standard	Proposal	C
	the provision of that accommodation and care, not being a dwelling, hostel, hospital or psychiatric facility.		
<b>Chapter 3 – Development for seniors housing</b>			
<b>Part 1 – General</b>			
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.	See discussion below.	N
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
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"> <li>(a) seniors or people who have a disability,</li> <li>(b) people who live within the same household with seniors or people who have a disability,</li> <li>(c) staff employed to assist in the administration of and provision of services to housing provided under this Policy.</li> </ul> <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"> <li>(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, &amp;</li> <li>(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).</li> </ul>	Subject to conditions.	Y
<b>Part 2 – Site-related requirements</b>			
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"> <li>(a) shops, bank service providers and other retail and commercial services that residents may reasonably require, and</li> <li>(b) community services and recreation facilities, and</li> <li>(c) the practice of a general medical practitioner.</li> </ul>	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
<b>Part 3 – Design requirements</b>			
<b>Division 1 - General</b>			
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 development	A consent authority must not consent to a development application unless satisfied that the proposed development demonstrates that adequate regard has been given to the principles set out in Division 2.		Y

Clause	Standard	Proposal	C
<b>Division 2 - Design Principles</b>			
33. Neighbourhood amenity and streetscape	<p>The proposed development should:</p> <ul style="list-style-type: none"> <li>(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</li> <li>(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</li> <li>(c) maintain reasonable neighbourhood amenity and appropriate residential character by: <ul style="list-style-type: none"> <li>(i) providing building setbacks to reduce bulk and overshadowing, and</li> <li>(ii) using building form and siting that relates to the site's land form, and</li> <li>(iii) adopting building heights at the street frontage that are compatible in scale with adjacent development, and</li> <li>(iv) considering, where buildings are located on the boundary, the impact of the boundary walls on neighbours.</li> </ul> </li> <li>(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</li> <li>(e) embody planting that is in sympathy with, but not necessarily the same as, other planting in the streetscape, and</li> <li>(f) retain, wherever reasonable, major existing trees, and</li> <li>(g) be designed so that no building is constructed in a riparian zone.</li> </ul>	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"> <li>(a) appropriate site planning, the location and design of windows and balconies, the use of screening devices and landscaping,</li> <li>(b) ensuring acceptable noise levels in bedrooms of new dwellings by locating them away from driveways, parking areas and paths.</li> </ul>	See discussion below.	Y
35. Solar access and design for climate	<p>The proposed development should:</p> <ul style="list-style-type: none"> <li>(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</li> <li>(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.</li> </ul>	See discussion below.	Y
36. Stormwater	<p>The proposed development should:</p> <ul style="list-style-type: none"> <li>(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</li> <li>(b) include, where practical, on-site stormwater detention or re-use for second quality water uses.</li> </ul>	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"> <li>(a) site planning that allows observation of the approaches to a dwelling entry from inside each dwelling and general observation of public areas, driveways and streets from a</li> </ul>	See discussion below.	Y

Clause	Standard	Proposal	C
	<div>dwelling that adjoins any such area, driveway or street, and</div> <div>(b) where shared entries are required, providing shared entries that serve a small number of dwellings and that are able to be locked, and</div> <div>(c) providing dwellings designed to allow residents to see who approaches their dwellings without the need to open the front door.</div>		
38. Accessibility	<div>The proposed development should:</div> <div>(a) have obvious and safe pedestrian links from the site that provide access to public transport services or local facilities, and</div> <div>(b) provide attractive, yet safe, environments for pedestrians and motorists with convenient access and parking for residents and visitors.</div>	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	(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.		
	(2) <b>Site size</b> The size of the site must be at least 1,000m².		Y
	(3) <b>Site frontage</b> The site frontage must be at least 20 metres wide measured at the building line.		Y
	(4) <b>Height</b> 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: <div>(a) the height of all buildings in the proposed development must be 8 metres or less, and</div> <div>(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</div> <div>(c) a building located in the rear 25% area of the site must not exceed 1 storey in height.</div> 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.	<div>Max. height: 9.275m</div> <div>Ranging in height from one to three storeys adjacent to boundary.</div> <div>Buildings up to two storeys in height in rear 25% of site.</div>	N
Division 2 – Residential care facilities			
	<b>Note.</b> 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> .		Y
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
<b>Division 2 – Residential care facilities</b>			
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) <b>building height:</b> if all proposed buildings are <b>8 metres</b> or less in height (and regardless of any other standard specified by another environmental planning instrument limiting development to 2 storeys),	Max. height: 9.275m	N
	(b) <b>density and scale:</b> if the density and scale of the buildings when expressed as a floor space ratio is <b>1:1</b> or less	1.05 : 1	N
	(c) <b>landscaped area:</b> if: if a minimum of 25 square metres of landscaped area per residential care facility bed is provided.	17.4m <sup>2</sup> per bed	N
	(d) <b>parking for residents and visitors:</b> 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: 9 Staff: 11 Ambulance: 0	N
<b>Chapter 4 - Miscellaneous</b>			
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.

## 9.0 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;

- Shops, bank service providers and other retail and commercial services that residents may reasonably require, and*
- Community services and recreation facilities, and*
- The practice of a general medical practitioner.*

Clause 26(2) of SEPP HSPD specifies that access is seen to comply with clause 26(1) if:

- the facilities and services referred to in subclause (1) are located at a distance of not more than 400 metres from the site of the proposed development that is a distance accessible by means of a suitable access pathway and the overall average gradient for the pathway is no more than 1:14, although the following gradients along the pathway are also acceptable:*
  - a gradient of no more than 1:12 for slopes for a maximum of 15 metres at a time,*
  - a gradient of no more than 1:10 for a maximum length of 5 metres at a time,*
  - a gradient of no more than 1:8 for distances of no more than 1.5 metres at a time, **or***
- 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:*

- i. 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*
- ii. 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*
- iii. 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).*

Throughout the assessment process it became apparent that the site was unable to comply with the access requirement of clause 26(2)(b) of SEPP HSPD, as the accessible path of travel to the southbound bus stop exceeds 400m. Whilst a southbound bus stop is located almost directly opposite the site, it cannot be relied upon as is not accessible by a suitable access pathway, and would require residents to cross 6 lanes of Pittwater Road without assistance.

Furthermore, the proposed path of travel through the basement carpark is not seen to be an equitable or dignified way for seniors or people with a disability to egress the site. The backdoor basement pathway is also inconsistent with the requirement for obvious, safe and attractive pedestrian links from the site, to public transport services, as required by clause 38 of SEPP HSPD.

In an attempt to address these issues, the applicant has since provided a statement confirming that each of the services and facilities, identified by clause 26(1), are to be provided on-site by the aged care provider, thus meeting the provisions of clause 26(2)(a). These services/facilities include, but are not limited to, the following;

- Internet Access (banking and shopping)
- Newspaper and magazine deliveries
- Café
- General Practitioner visits
- Dental care visits
- Optometry visits
- Podiatry visits
- Physiotherapy services
- Spiritual/religious visits
- Hairdressing salon with in-house hairdresser
- In-house library
- In-house entertainment
- Activities and indoor/outdoor recreation
- Pharmaceutical deliveries

The statement also confirms that the proposed residential care facility is a high care facility, under the provisions of the Commonwealth Aged Care Act and Aged Care Funding Instrument, as administered by the Commonwealth Department of Social Services (transitioning to the Department of Health). The applicant has advised that residents within a high care facility require significant assistance throughout the day, with very few residents that are able to leave the facility without assistance. The statement suggests that this also alters the retail and commercial services that residents “*may reasonably require*”, as high care residents may no longer be able to shop for themselves or be in control of their finances.

However, this interpretation and proposed approach is not considered to be consistent with the intent of SEPP HSPD, and it is not agreed that the incorporation of token amenities within the proposed residential care facility negates from the need to meet the location requirements of SEPP HSPD.

SEPP HSPD overrides local planning instruments, and in this particular instance, provides for a type of development that is otherwise prohibited on the site. However, in order to set aside the provisions of PLEP 2014, one of the 'site-related requirements' of SEPP HSPD identifies that the site must be located at a distance of not more than 400m from the services identified in clause 26(1) or a regularly operating public bus service that will take residents to such services. The term "located at a distance" implies some measure of distance between the site and the services, and notably differs from the terminology used to identify the services required on-site for residential care facilities, in accordance with clause 11 (Residential Care Facilities) of SEPP HSPD.

SEPP HSPD aims to encourage the provision of housing (including residential care facilities) that will *"make efficient use of existing infrastructure and services"*. In consideration of SEPP HSPD, this is most obviously linked with the location requirements of clause 26, which relies upon existing bus services (infrastructure) and/or existing shops, retail and commercial services, community services and recreation facilities (services), to ascertain the suitability of the site for seniors housing development.

The objective of Chapter 3 of SEPP HSPD 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"*. With this in mind, it must be said that the location of the site is an essential component of the application of SEPP HSPD, and when the location requirements of clause 26 are not met, the provisions of SEPP HSPD can no longer be relied upon.

As stated by Justice Pain in *Lotus Project Management v Pittwater Council* [2015] NSWLEC 166;

*A prohibition on a particular kind of development is not a development standard if the characteristic is an essential element of the particular development, not a standard in relation to an aspect of development.*

As the site does not meet the location requirements of SEPP HSPD, and as the requirements of clause 26 do not constitute a development standard, the proposed development is prohibited.

If the provision of on-site services was seen to meet the site-related location requirements of SEPP HSPD, the proposal is otherwise seen to fail with regard to the requirement for access to shops (plural), bank service providers (plural), and retail and commercial services (plural).

Whilst not defined by SEPP HSPD, the term 'shop' is defined in the standard instrument dictionary as being *"premises that sell merchandise such as groceries, personal care products, clothing, music, homewares, stationary, electrical goods or the like, and includes a neighbourhood shop but does not include a food or drink premises"*. The incorporation of a café, being a food or drink premises, is inconsistent with this definition of 'shop', and is not seen to provide the goods that would be reasonably required by future occupants of the proposed development. Furthermore, even if the proposed café was considered to be a shop, the development would still fail with only one shop provided on site, when access to more than one shop, in addition to other retail and commercial premises, is required under the provisions of SEPP HSPD.

The term 'bank service provider' is defined by SEPP HSPD as being *"any bank, credit union or building society or any post office that provides banking services"*. A computer with internet access is not considered to meet the definition of a bank service provider. Whilst internet banking is becoming more prevalent in society, it will not provide future residents of the development with ability to deposit or withdraw cash and cheques, and the full range of services associated with a bank, credit union or post office will not be available.

The provision of on-site services and non-compliance with the location requirements is considered to remove any opportunity for residents of the aged care facility to interact with the wider community, resulting in the isolation of residents on the site. This is considered to be at complete odds with the objectives of SEPP HSPD, which requires seniors housing developments to be

located in areas where residents can engage with the community, and be designed to cater for residents that are independent, mobile and active, as well as those that are frail.

There has been a great emphasis upon the categorisation of the level of care provided by the applicant in this subject application. Whilst it is acknowledged that the majority of high care residents may be unlikely to leave the facility unaccompanied, there is nothing to suggest that someone in high care cannot leave the site, whether on their own or accompanied by a friend or family member. Furthermore, there is nothing in the policy that differentiates high care facilities, or specifies that they are not required to meet the location requirements of clause 26.

Overall, the proposal does not meet the provisions of clause 26 of SEPP HSPD, and is inconsistent with the intent and objectives of SEPP HSPD. As such, the application is recommended for refusal in this regard.

### **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 450m<sup>2</sup> - 1100m<sup>2</sup>, 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 two and three storey development to Pittwater Road, inconsistent with the building height development standard of SEPP HPSD 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 width of the building is also of concern, noting that the proposed development is sited across the width of three residential allotments. The balustrade of the ground floor eastern terrace, which presents as the second storey to Pittwater Road, is a continual and uninterrupted plane in excess of 47m wide. Whilst the amended plans have introduced some further setbacks into the Pittwater Road façade, they occur in differing sections of the building, with no clear or generous breaks in the built form. Unfortunately, the amended design still fails to reflect the rhythm and scale of surrounding built form, the existing subdivision pattern and the character of the locality.

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 two and three storey development to Jenkins Street. Throughout the assessment process, the scale of the Jenkins Street facade has been amended, with a reduction of the built form at both the south-eastern and south-western corners of the development. However, the middle level (ground floor) still extends across the entire width of the building, resulting in a 43m wide façade fronting Jenkins Street.

The eastern most portion of the upper floor remains non-compliant with the 8m height limit prescribed by SEPP HSPD, and the three storeys overlap for a distance of approximately 17m resulting in non-compliance with regard to the two storey height limit prescribed by SEPP HSPD. The portion of the development that exceeds the height limit is also non-compliant with the 6.5m front setback required by P21 DCP. However, it is appreciated that the Jenkins Street façade has been designed to step down the slope, consistent with the desired future character for the Mona Vale locality, and will be well screened by the existing mature canopy trees within the road reserve and additional plantings proposed within the setback area.



Overall, there remains concern with regard to the overall scale of the building, particularly as viewed from Pittwater Road. The proposed development is not seen to positively contribute to the low density residential character of the locality, and is ultimately 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. The proposed development has been amended to incorporate privacy attenuation measures to reduce overlooking of bedrooms, such that the majority of proposed rooms will have reasonable levels of visual privacy.

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. The proposal, as amended, is considered to have had adequate consideration of noise levels for residents.

### **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. However, given the type of development proposed, which comprises a series of small individual rooms, it is acknowledged that this outcome is largely unavoidable.

### **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. Subject to conditions of consent requiring a camera and intercom to monitor the pedestrian egress from the basement to Pittwater Road, the proposal is seen to be acceptable in this regard.

Should the application be approved, conditions of consent are also recommended to require the preparation of a plan of management, which adequately addresses strategies for site cleanliness, rapid repair of vandalism and graffiti, the replacement of burned out pedestrian, security and basement lighting and the removal or refurbishment of decayed physical elements.

## **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 exiting ground level of the site and the underside of the upper floor ceiling at any one point, the proposed development reaches a maximum height of 9.275m. 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 back into the building with a maximum depth of 20m, and resulting in an area of approximately 379m<sup>2</sup> of the upper floor breaching the height plane. The extent of height non-compliance is demonstrated by Figure 2, below.



Figure 2 - Plan provided by applicant demonstrating area of height non-compliance.

### Consideration of variation to development standard: Introduction

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 request to vary this development standard pursuant to SEPP 1 – Development Standards. In accordance with clause 1.9(2) of PLEP 2014, the provisions of SEPP 1 do not apply to land in Pittwater. Whilst the SEPP 1 objection provided makes reference to clause 4.6 (Exceptions to Development Standards) of PLEP 2014, it refers to the 8.5m height standard of PLEP 2014, as opposed to 8m height limit of SEPP HSPD, and does not address the objectives of the R2 Low Density Residential zone.

The submission is not considered to be well founded, as it relates to a policy that is not applicable to Pittwater and it fails to address the appropriate provisions of clause 4.6 of PLEP 2014. However, for the sake of completeness, the merits of the proposed variation have been considered in accordance with clause 4.6 of PLEP 2014.

### Is compliance unreasonable or unnecessary in the circumstances of the case?

In accordance with the NSWLEC decision in *Wehbe v Pittwater Council*, one way in which strict compliance can be seen to be unreasonable or unnecessary is if it can be demonstrated that the objectives of the standard are otherwise achieved, despite non-compliance with the 8m height limit. SEPP HSPD does not contain objectives relating to the 8m height limit, and as such, the objectives of the building height development standard of clause 4.3 (Height of Buildings) of PLEP 2014 are considered, as follows;

- a. *to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,*

The desired future character of the Mona Vale Locality, as identified by clause A4.9 (Mona Vale Locality) of P21 DCP, is for existing residential areas to remain primarily low-density with dwelling houses a maximum of two storeys in any one place in a landscaped setting. Bulk and scale of future development is to be minimised, with existing and new vegetation incorporated into the development.

In the most recent set of amended plans, the proposal has been modified to reduce the visual prominence of the height non-compliance along the majority of the eastern facade, and the scale of the development as seen from the corner of Jenkins Street and Pittwater Road has been lessened. Furthermore, the Jenkins Street façade has also been amended to follow to the slope of the site, consistent with the desired future character statement of P21 DCP.

However, the visual impact of the height non-compliance at the north-eastern corner of the development has not been minimised, with a 16.5m wide non-compliant roof form presenting directly to the street. Furthermore, there is still no clear break in the Pittwater Road façade, and as seen from the eastern side of Pittwater Road, the 47m wide non-compliant roof form is highly visible. Despite specific request and an agreement from the applicant, a photomontage (or even a still shot of the 3d model) has not been provided of

the north-eastern corner of the Pittwater Road façade as seen from the east of the site.

In consideration of the architectural drawings and with regard to the height poles erected on site, previous concerns regarding the height and scale of the development as seen from Pittwater Road have not been adequately addressed.

- b. to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*

The surrounding locality is predominately comprised of low density residential development, sited on lots approximately 15-20m wide. The surrounding streetscapes are characterised by one and two storey dwellings, no greater than approximately 18m in width, with clear breaks and landscaping in between. The Pittwater Road frontage is 47m wide, with the non-compliant portion of the development visible from, if not directly fronting, the street. Whilst the amended plans demonstrate a 7.5m wide and 3m deep recess in the upper floor balustrade, the development does not incorporate any adequate or clear breaks in the built form, and the proposal is incompatible with the height and scale of surrounding and nearby development.

- c. to minimise any overshadowing of neighbouring properties,*

The proposed development, including the portions of the development above the 8m height limit, do not attribute to unreasonable overshadowing of neighbouring properties.

- d. to allow for the reasonable sharing of views,*

As discussed in further detail in this report with regard to clause 1.3 (View Sharing) of P21 DCP, the proposed development impacts upon views currently enjoyed from adjoining properties on Jenkins Street and Elimatta Road. This impact is directly attributed to the portion of the building which exceeds the 8m height limit of SEPP HSPD, and as such, a reasonable sharing of views is not seen to be achieved in these circumstances.

- e. to encourage buildings that are designed to respond sensitively to the natural topography,*

At the southern end of the building, the width of the upper floor has been reduced, providing a step in the façade, consistent with the fall of the land. However, this has not been employed at the northern end of the building, where the width of the upper floor is consistent with the level below. The northern end of the building is not seen to appropriately respond to the natural fall of the land.

- f. to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.*

As identified by the desired future character statement for the Mona Vale Locality, the visual impact of the development upon the natural environment can be limited by the incorporation of landscaping and the use of dark and earthy tones. As currently proposed, the landscaped outcome is not supported, however Council's Landscape Architect has recommended conditions of consent to achieve a more appropriate outcome in this regard. Little information has been provided regarding the colours and finishes of the external surfaces of the building, and further information would be required to demonstrate consistency in this regard.

The proposed development is inconsistent with objectives of the building height development of PLEP 2014, and there are no circumstances relating to the subject site which would otherwise mean that compliance with the 8m height limit is unreasonable or unnecessary in this instance.

It is understood that the applicant has a minimum number of beds that needs to be achieved to result in an economically viable development. However, it cannot be said that the imposition of an 8m height limit is unreasonable or unnecessary in this particular instance, simply because the applicant's chosen design response does not fit below the 8m height plane on this particular site.

Are there sufficient environmental planning grounds to justify the proposed contravention of the development standard?

The objectives of clause 4.6 of PLEP 2014 are to provide an appropriate degree of flexibility in applying certain development standards to particular development and to achieve better planning outcomes for and from development by allowing flexibility in particular circumstances.

The applicant has commented that a better outcome would be achieved by allowing the proposed building height variation, because;

*"The portions of the development which are non-compliant with the height standards provide much needed single bed bedrooms as well as indoor and outdoor living dining and sitting area which are critical to the wellness and appeal of an RACF..."*

*The proposed facility has been designed in such a way that it best utilises an existing asset to allow a critical bed number to be achieved to allow redevelopment of the site to be feasible. A design with full compliance could not proceed for feasibility reasons, and hence the benefits associated with the new facility of 89 beds would not be realised.*

However, in this particular instance, it is considered that a better planning outcome would be achieved if the proposed development was amended to comply with the height requirements. The height non-compliance directly attributes to excessive bulk and scale within the low-density residential setting, inconsistency with the desired future character of the locality and unreasonable impacts upon adjoining properties. If the area of the upper floor was reduced to more appropriately follow the fall of the land, the overall scale of the building would be minimised and impacts upon views would be reduced to acceptable limits.

There are no sufficient environmental planning grounds to justify the proposed contravention of the building height development standard in this particular instance.

Is the proposed development in the public interest?

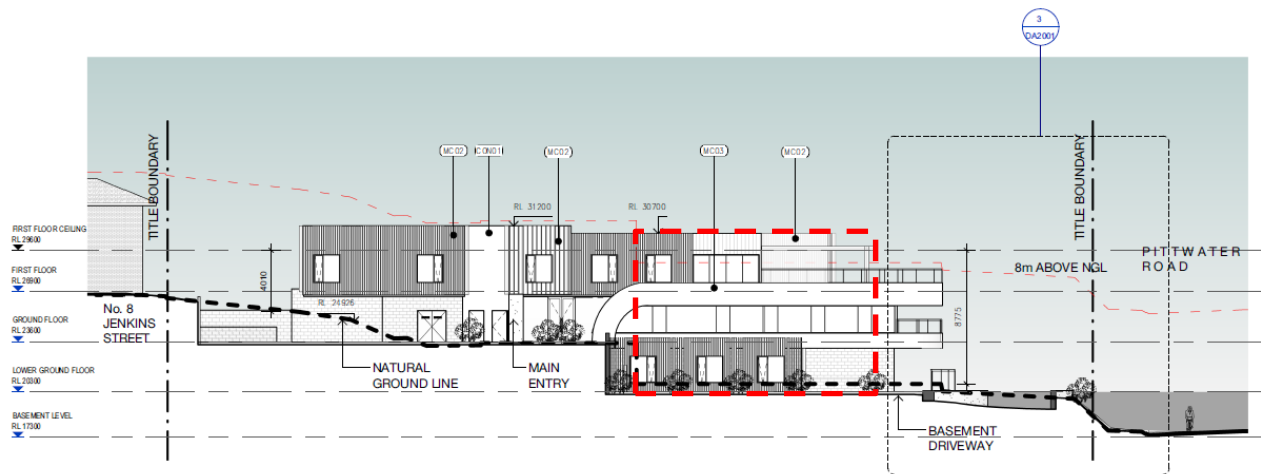
There is no denying that Pittwater has an aging population that would benefit from new and upgraded aged care facilities within the locality. However, in accordance with subclause 4(a) of clause 4.6 (Exceptions to development standards) of PLEP 2014, the consent authority must be satisfied that the development is in the public's interest because it is *"consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out"*.

As identified above, the proposal is not considered to meet the general objectives of a building height development standard and the outcomes of the R2 Low Density Residential zone are not achieved.

Clause 40(4)(b) of SEPP HSPD identifies that buildings must not be more than two storeys in height where they are situated adjacent to a boundary. The terms 'storey' and 'building' are not defined by SEPP HSPD, and in relation to the design of the subject development, there is no clear direction as to whether a balustrade of a third level would be considered to contribute to a building that is more than two storeys in height. In consideration of the intent of the two storey height limit, which is considered to be generally associated with the apparent size of the development, the areas considered to be more than two storeys in height are the areas that are covered by a roof /awning.

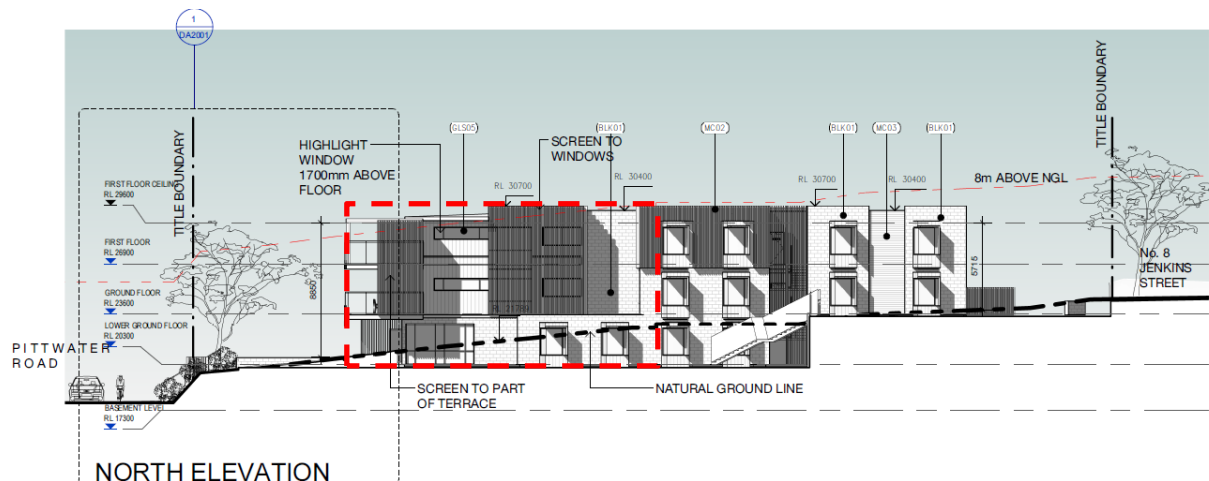


There are three main points at which the building presents with more than two storeys to a boundary; the 17m overlap of the first floor, ground floor and lower ground floor on the Jenkins Street front facade, the 16m overlap of the first floor, ground floor and lower ground floor on the Pittwater Road front facade, and the 20.5m overlap of the first floor, ground floor and lower ground floor along the northern side facade. These areas are highlighted in red on the elevations, below.



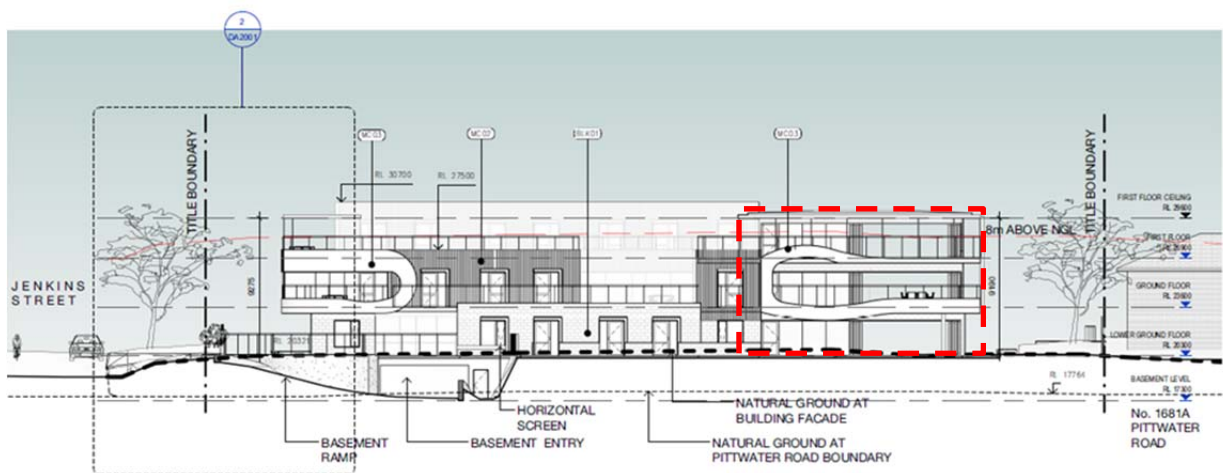
SOUTH ELEVATION - JENKINS STREET

Figure 3 - Southern Elevation with two storey height non-compliance outlined in red



NORTH ELEVATION

Figure 4 - Northern Elevation with two storey height limit non-compliance outlined in red



EAST ELEVATION - PITWATER ROAD

Figure 5 - Eastern Elevation with two storey height non-compliance outlined in red

### Consideration of variation to development standard: Introduction

The proposal is non-compliant with the two storey height limit prescribed by clause 40(4)(b) of SEPP HSPD. The two 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 request to vary this development standard pursuant to SEPP 1 – Development Standards. In accordance with clause 1.9(2) of PLEP 2014, the provisions of SEPP 1 do not apply to land in Pittwater. Whilst the SEPP 1 objection provided makes reference to clause 4.6 (Exceptions to Development Standards) of PLEP 2014, it refers to the 8.5m height standard of PLEP 2014, as opposed to height standards of SEPP HSPD, and does not address the objectives of the R2 Low Density Residential zone or the two storey height limit identified by SEPP HSPD.

The submission is not considered to be well founded, as it relates to a policy that is not applicable to Pittwater and it fails to address the appropriate provisions of clause 4.6 of PLEP 2014. However, for the sake of completeness, the merits of the proposed variation have been considered in accordance with clause 4.6 of PLEP 2014.

### Is compliance unreasonable or unnecessary in the circumstances of the case?

In accordance with the NSWLEC decision in *Wehbe v Pittwater Council*, one way in which strict compliance can be seen to be unreasonable or unnecessary is if it can be demonstrated that the objectives of the standard are otherwise achieved, despite non-compliance with the 8m height limit. 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.*

Due to the corner location of the site, there are two points on the site where the scale of the development is most readily compared to adjoining residential development, being the north-eastern corner of the site adjacent to 8 Jenkins Street and the south-western corner of the site adjacent to 1681 Pittwater Road. The south-western corner of the site is largely excavated into the slope of the site, with a maximum RL approximately 1.3m lower than the adjoining property upslope, compliant with both the 8m and two storey height limit.

The primary area of concern remains with regard to the north-eastern corner of the site, which is non-compliant with both the 8m and two storey height limit. This portion of the development is approximately 3.9m taller than the gutter line of the adjoining two-storey dwelling to the north at 1681 Pittwater Road and is situated slightly closer to Pittwater Road.

A photomontage of the Pittwater Road streetscape has not been provided by the applicant, however the height poles erected on site give a general indication of the scale of the development as seen from the public domain. Overall, the three storey nature of the proposal is seen to result in an abrupt change in the scale of development along the Pittwater Road streetscape, and as such, the objective of this development standard is not seen to be achieved.

The applicant has suggested that the height of the north-eastern corner of the development is comparable to the adjoining dwelling at 1681 Pittwater Road, which has a maximum RL of 28.22

at the ridge line of the upper most roof form. However, there is a distinct difference between the maximum RL of a building and scale of a building, which is emphasised in this policy by differentiating between a 8m height limit and a two storey height limit for the same development.

The adjoining dwelling at 1681 Pittwater Road is a two storey development with a pitched roof form, generally consistent with the scale of surrounding low density residential development. At the front façade of the dwelling, the maximum height is represented by the gutter line, with the maximum RL of the ridge line setback from the street frontage, generally centralised over the footprint of the development. This differs significantly from the scale of the proposed development, whereby the maximum height and gutter line of the third storey form part of the front façade, with greater roof heights further back in the building, away from the street frontage.

The two storey height limit is considered to relate to the apparent size of a development and the perceived sense of scale, as seen from the public domain and adjoining low-density residences. In this instance, the three storey appearance of the development has been emphasised with three clear and distinct levels presenting to boundaries, particularly Pittwater Road. The scale is also emphasised by the width of the development, which is also inconsistent with the form of surrounding built form. Overall, the apparent size of the development has not been minimised.

The following image demonstrates the height poles erected on site. Whilst the height poles are representative of the external wall of the upper floor, and do not represent the roof adjacent to the upper floor living area, they give a general indication of the scale of the development in the existing streetscape.



Figure 6 - Photo of north-eastern corner of proposed site and 1681 Pittwater Road with approximate outline of resultant buildings in red

There is no reason as to why compliance with the development standard requiring buildings to be no more than two storeys in height when adjacent to boundaries is unreasonable or unnecessary in the circumstances of the proposed development on this particular site. In fact, it is considered to be a critical requirement in the circumstances of the proposed development and its low density context.

Are there sufficient environmental planning grounds to justify the proposed contravention of the development standard?

The applicant has not demonstrated that there are any environmental planning grounds which would justify non-compliance with this development standard.

Is the proposed development in the public interest?

The proposed variation to the development standard directly attributes to inconsistency with the intent of the development standard and the objectives of the R2 Low Density Residential zone, and as such, the proposed variation is not seen to be in the public's interest in this instance.

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.

Consideration of variation to development standard: Introduction

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.

The applicant has provided a request to vary this development standard pursuant to SEPP 1 – Development Standards. In accordance with clause 1.9(2) of PLEP 2014, the provisions of SEPP 1 do not apply to land in Pittwater. Whilst the SEPP 1 objection provided makes reference to clause 4.6 (Exceptions to Development Standards) of PLEP 2014, it refers to the 8.5m height standard of PLEP 2014, as opposed to height standards of SEPP HSPD, and does not address the objectives of the R2 Low Density Residential zone.

The submission is not considered to be well founded, as it relates to a policy that is not applicable to Pittwater and it fails to address the appropriate provisions of clause 4.6 of PLEP 2014. However, for the sake of completeness, the merits of the proposed variation have been considered in accordance with clause 4.6 of PLEP 2014.

Is compliance unreasonable or unnecessary in the circumstances of the case?

In accordance with the NSWLEC decision in *Wehbe v Pittwater Council*, one way in which strict compliance can be seen to be unreasonable or unnecessary is if it can be demonstrated that the objectives of the standard are otherwise achieved, despite non-compliance with the development standard.

However, in this instance there are no particular objectives stated for the single storey height restriction required at the rear of sites. It must be assumed that the single storey height limit is intended to minimise impacts upon the amenity of adjoining properties, particularly with regard to overshadowing and visual privacy.

The applicant's submission 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 apparent size of the proposed development as seen from properties at the rear 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.

Strict compliance is considered to be unnecessary in regards to this particular development on the subject site, as the design response for this portion of the site is considered to respond appropriately to the fall of the land and context of the area.

Are there sufficient environmental planning grounds to justify the proposed contravention of the development standard?

The objectives of clause 4.6 of PLEP 2014 are to provide an appropriate degree of flexibility in applying certain development standards to particular development and to achieve better planning outcomes for and from development by allowing flexibility in particular circumstances. If the request for the proposed variation was appropriately made, it is considered that flexibility could be justified in this instance and that there would be sufficient environmental planning grounds to employ the provisions of clause 4.6 of PLEP 2014 and to justify contravention of this development standard in relation to the proposed development.

Is the proposed development in the public interest?

The proposed variation to the development standard is seen to achieve the assumed intent of the single storey height limit, and as seen in isolation, this portion of the development could be seen to be consistent with the R2 Low Density Residential zone. However, once again, the request to vary the development standard would need to be well founded, and made against the appropriate policy.

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. Based upon the applicant's calculations, the proposed development has a floor space ratio of 1.05:1 (165m<sup>2</sup> 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 25m<sup>2</sup> 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 89 beds proposed, a total landscaped area of 2225m<sup>2</sup> would be required to meet this landscaped area standard. Based on the amended plans presented to address the concerns identified by the JRPP in the deferral of the matter, the landscaped area calculation was increased, however the proposal still falls well short of the target at approximately 1547m<sup>2</sup>, or 17.4m<sup>2</sup> per bed.

In addition to a general increase to the landscaped area calculation, the applicant was also required to address the screening/softening quality of the proposed plantings and the functionality of the proposed landscaped areas relative to the needs of future residents. Concern is maintained in both of these areas, with respect to the following areas of the site;

### **Setback to Pittwater Road**

Council's Landscape Architect provided the following comments regarding the Pittwater Road front setback area:

- *The updated landscape proposal dated 20 October 2015 illustrating additional tree planting along the Pittwater Road frontage is not supported as documented. 5 River Red Gums (Eucalyptus camaldulensis) as proposed shall be amended to provide a more suitable tree species. River Red Gums are prone to limb drop and are not considered as suitable for new tree planting. 5 x Eucalyptus sideroxylon shall be installed instead.*
- *To ensure appropriate landscape amenity along the Pittwater Road frontage, the following planting centres shall be applied to the planting scheme and schedule:*
  - o *Murraya at 2 per linear metre; Banksia spinulosa at 2 per m<sup>2</sup>, Leucospermum at 4 per m<sup>2</sup>, Phylica at 4 per m<sup>2</sup>, and Lavandula at 4 per m<sup>2</sup>.*

### **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;

- *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;

- *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*

These concerns have been expressed throughout the entire assessment process, and despite an agreement to do so, the plans have not been amended in this regard. The imposition of these conditions is likely to impact upon the design of the staff courtyard, the services area and the design and layout of the resident's landscaped Areas 7 and 8, as identified on the landscape design plans.

In relation to Areas 7 and 8, there is also concern regarding the functionality of the space, noting that the accessible pathway leads residents to an 8m long run of stairs. There is no destination at the end of this path, but rather residents are faced with an obstacle or a restriction, which essentially limits/prevents future residents from continuing around the landscaped perimeter of the site. Given the applicant's emphasis upon the frailty of future occupants of the development, the incorporation of series of steps along of the exterior pathway seems unfortunate.

#### 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;

- *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.*
- *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*

As identified above, these concerns have been expressed throughout the entire assessment process, and despite an agreement to do so, the plans have not been amended in this regard. The imposition of these conditions is likely to impact upon the design and layout of the resident's landscaped Area 6, as identified on the landscape design plans.

Concerns regarding the functionality of this space also remain, noting that the 'Contemplation Zone' is set on a series of elevated terraces and again, the accessible pathway leads residents to an 8m long run of stairs.

Overall, the proposal fails with respect to both the landscaped area calculation and the resultant quality and functionality of the landscape treatment. The outcome will not be compatible with the landscaped character of the locality, and the desired future character of the locality will not be achieved. As the proposal fails to meet the 25m<sup>2</sup> 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 89 beds, 9 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. As there are 20 parking spaces within the proposed basement, the proposal provides for 1 additional parking space beyond the requirements of this clause.

However, it is noted that the current proposal requires a wide range of professionals to visit the site for various services. After review of the likely daily schedule, it appears unlikely that more than two visiting professionals will be on site at any one time, and as such the additional parking space within the basement carpark is considered to adequately accommodate this additional demand.

A separate and designated parking space is also required for an ambulance, however this has not been provided in the subject application. The applicant proposes that ambulances will share the use of the loading dock fronting Jenkins Street with service vehicles, and has provided a plan of management to control the use of this area. Whilst not ideal, the proposal is not considered to warrant refusal in this regard.

## 10.0 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
<b>Pittwater Local Environmental Plan 2014</b>					
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	10.38 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	Y	Y
7.10 Essential services			Y	Y	Y
<b>Pittwater 21 Development Control Plan</b>					
3.1 Submission of a Development Application and payment of appropriate fee		See discussion.	Y	Y	Y
3.2 Submission of a Statement of Environmental Effects		See discussion.	N	Y	N
3.3 Submission of supporting documentation - Site Plan / Survey Plan / Development Drawings			Y	Y	Y
3.4 Notification			Y	Y	Y
3.5 Building Code of Australia			Y	Y	Y
A1.7 Considerations before consent is granted			Y	Y	Y
A4.9 Mona Vale Locality		See discussion.	Y	Y	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 Cat. 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

Control	Standard	Proposal	T	O	N
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	Y	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	Y	Y
B8.2 Construction and Demolition - Erosion and Sediment			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
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	Y	Y
C1.2 Safety and Security			Y	Y	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	Pittwater Rd: 10m Jenkins St: 6.5m	East setbacks: 10m South setbacks: 5.1m	N	Y	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	1829.5m² or 50%	1149m² or 31.4%	N	N	N
D9.12 Fences – General		See discussion.	N	Y	Y
D9.14 Construction, retaining walls, terracing and undercroft areas		See discussion.	N	Y	Y

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

## 11.0 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 10.38m, 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 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 relation to the retaining walls situated with a nil setback, 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. If approved, further geotechnical assessment can be required as a condition of consent.

### **Concurrence**

- **Clause 3.1 (Submission of a Development Application and payment of appropriate fee) of P21 DCP**
- **Section 138 of the Roads Act 1993**

In accordance with Section 138 of the Roads Act, concurrence is required from Roads and Maritime Services in relation to works proposed within the Pittwater Road classified road reserve. RMS provided concurrence for the works within the road reserve, in their letter dated 19 November 2015, subject to the imposition of conditions of consent.



## **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 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 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. 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.

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 1829.5m<sup>2</sup> 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 1149m<sup>2</sup> of landscaped area, equating to 31.4% 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 25m<sup>2</sup> of landscaped area per bed proposed. However, the proposal also falls well short of this requirement, with only 17.4m<sup>2</sup> of landscaping provided for each of the 89 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.

## 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).

A view, as defined by P21 DCP, means “a mid to distant view containing an attractive feature/s including bushland (particularly escarpments and skylines), water bodies and geographical features including beaches, islands, headlands etc: It may include built form but is predominantly natural in character”.

Following the previous deferral of the matter, the applicant has since erected 6 height poles on the site, to demonstrate the potential impact of the proposed development upon views currently obtained across the site. The location and height of the poles erected on site are shown in Figure 7, below. It is noted that there is no pole to demonstrate the impact of the portion of the development that has the greatest variation to the building height control, as identified by the dashed green circle.

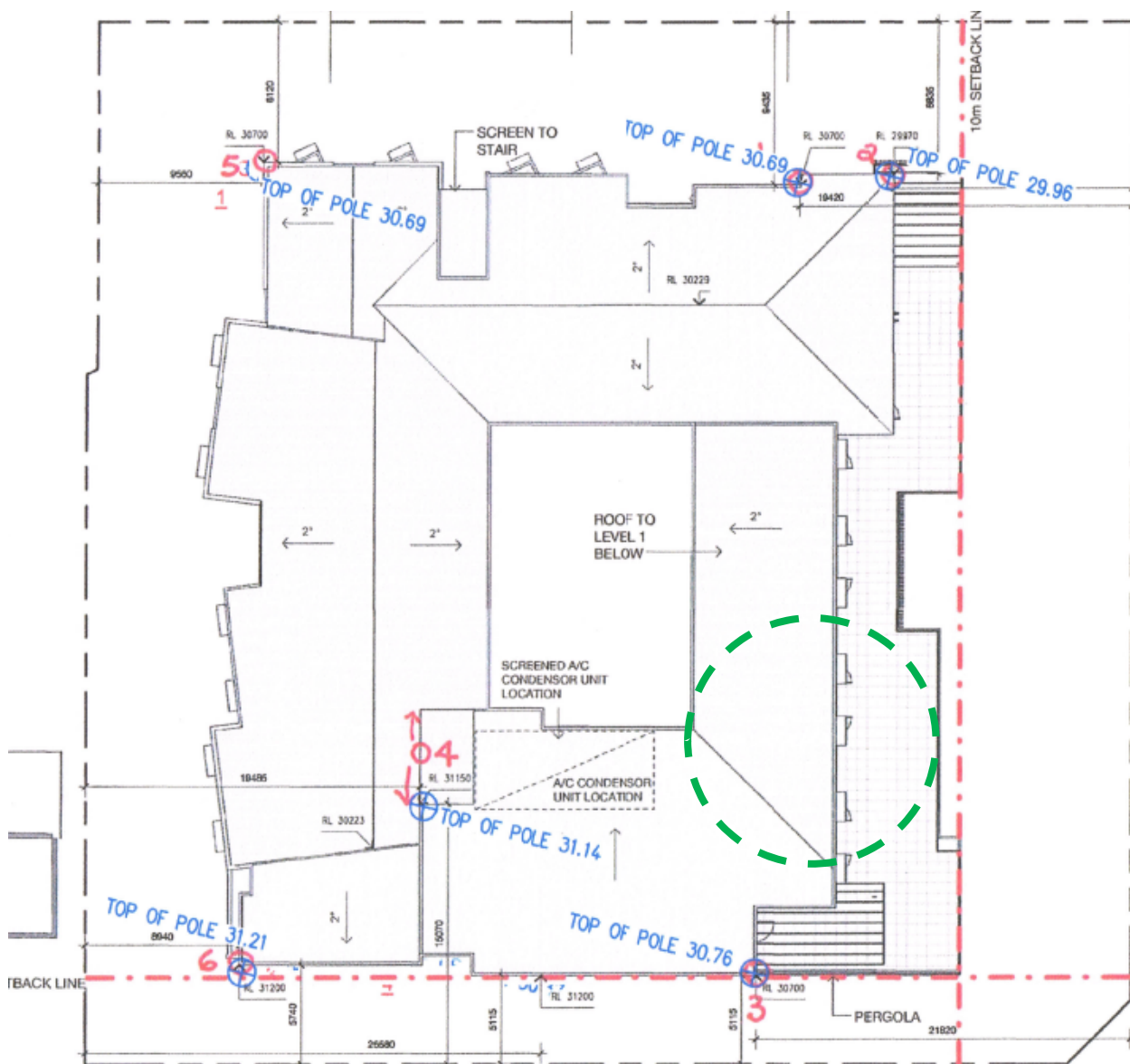


Figure 7 - Height pole location and height certification, provided by applicant.

### 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 bushland, water 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. The band of vegetation/bushland forms a critical component of the view, acting as a buffer between the existing roof forms and the ocean.

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 the dwelling. However, the erection of the new height poles representing the eastern edge of the development confirm that the proposal will impact upon views currently enjoyed from the rear of 55 Elimatta Road.



Figure 8 - View from rear deck adjacent to living room – standing

As shown in Figure 8, the proposed development will impact upon the view obtained in a standing position on the rear deck adjacent to the living room, removing the view of the headland, the strip of distant vegetation and a portion of the water. Figure 9 demonstrates the impact of the development upon the views obtained from a standing position on the rear deck associated with the master bedroom, whereby the proposed development will once again result



in the loss of the view of the headland, the row of distant vegetation and a portion of the ocean. The impact of the development upon this view is increased in a sitting position, resulting in the loss the view of the headland, the entire strip of distant vegetation and more than half of the area of the water, as shown in Figure 10. The lift overrun and the unknown detail of the air-conditioning units also impacts upon this view.



Figure 9 - View from rear balcony associated with Master Bedroom - standing



Figure 10 - View from rear balcony associated with Master Bedroom - sitting

The impact upon views currently enjoyed by the occupants of 55 Elimatta Road is considered to be moderate to moderately severe, and in consideration of the height non-compliance associated with the impacting elements of the design, this impact is considered unreasonable and is not supported in this instance.

## 8 Jenkins Street

The existing dwelling at 8 Jenkins Street enjoys views of bushland and water 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. The band of vegetation/bushland forms a critical component of the view, acting as a buffer between the existing roof forms and the ocean.



Figure 11 - View from rear deck adjacent to living area – standing



Figure 12 - View from rear deck adjacent to living area - sitting



From a standing position, the height poles demonstrate that the eastern edge of the proposed building will block the entire band of distant vegetation, with minor intrusion into the area of water. From a seated position, the building will extend up above the line of the handrail, to block the entire band of vegetation and portions of the water. In the seated position, the lift overrun also impacts upon a portion of the view.

It is not only the non-compliant height of the eastern face of the development which results in the impacts upon views currently enjoyed from 8 Jenkins Street, but also the unarticulated expanse of the eastern elevation. If the proposal was articulated to mimic the form of surrounding low-density development, with deep and/or clear breaks introduced into this street frontage, this impact would be somewhat alleviated.

The impact upon the views currently enjoyed from 8 Jenkins Street is considered to be moderate, yet unreasonable in the circumstances of this application, where the impact is directly associated with unjustified built form non-compliance.

### 53 Elimatta Road

The existing dwelling at 53 Elimatta Road appears to enjoy a view of bushland and water 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.

Whilst the height poles demonstrate that the view will be impacted by the proposed development, it is acknowledged that this impact would occur, even if the built form was completely consistent with the relevant built form controls. The proposed height and setback non-compliance is not seen to be attributed to the likely impact upon this view corridor.

### 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, however, the primary impact is associated with the compliant portion of the built form. The impacted views are regained as one moves up the slope of Jenkins Street, and such, the impact is considered to be reasonable.

Overall, the non-compliant eastern edge of the building unreasonably impacts upon the views of the headland, bushland and water as seen from both 55 Elimatta Road and 8 Jenkins Street, resulting in non-compliance with the provisions of C1.3 (View Sharing) of P21 DCP.

## **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 prescribed 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. With the exception of screens and the introduction of varied materials slightly forward from the external facade, the proposal is generally compliant with the 10 minimum setback requirement.

The prescribed 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 minor elements setback up to 8.5m from the front boundary. 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.

In the most recent amendments to the development, the applicant has enhanced the landscaping treatment of the Jenkins Street front setback, slightly reducing the extent of hard surfaces and incorporating more substantial plantings, including canopy trees. The remaining area of concern is the extent of the façade which breaches both the 8m and two storey height limit, and the 6.5m front setback requirement. Realistically, the upper floor should be setback to at least achieve compliance with the 6.5m minimum setback requirement.

Even if this change was realised, the proposal would remain inconsistent with one of the objectives of clause D9.5 of P21 DCP, which requires vehicle movement in a forward direction to be facilitated. However, given the design of the proposal, this would not be achieved, even with a compliant 6.5m front setback.

## **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. Should the application be approved, conditions of consent are recommended to ensure that the fence is located entirely within the subject site.

## **12.0 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, to utilise the provisions of SEPP HSPD, the site must be located within 400m of services and facilities, or a regularly operating public bus service that will take residents to such facilities. In this instance, the site does not comply with the 400m requirement with regard to the southbound bus service, and as such, a seniors housing development remains prohibited on the low density site.

Despite the prohibition of the development, a full merit assessment of the proposal was undertaken in consideration of the provisions of SEPP HSPD, PLEP 2014 and P21 DCP. In this regard, the proposal was also found to fail against a number of development standards and controls, particularly in respect of building height, scale and landscaped area.

The applicant justifies inconsistency with these development standards and controls by emphasising the public benefit associated with the incorporation of seniors housing developments, and in particular residential care facilities, within the Pittwater LGA. However, the benefit of this type of development is already provided by SEPP HSPD itself, which allows for the incorporation of seniors housing on sites where they are otherwise prohibited, or at a larger scale in areas where they may be permissible with consent.

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 is also seen to result in unreasonable impacts upon views currently enjoyed by adjoining properties. The non-compliant eastern edge of the development directly attributes to the loss of views from 55 Elimatta Road and 8 Jenkins Street, which would otherwise be retained if this portion of the development was amended to comply with building height development standards.

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.

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## **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 89 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.

**REFUSAL**  
**ENVIRONMENTAL PLANNING & ASSESSMENT ACT, 1979 (AS AMENDED)**  
**NOTICE TO APPLICANT OF DETERMINATION OF A DEVELOPMENT APPLICATION**

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**Applicant's Name and Address:**

Aquarius Health Pty Ltd  
C/ Urbis Pty Ltd  
GPO Box 5278  
Sydney NSW 2001

Being the applicant in respect of Development Application **N0322/14**

Pursuant to section 80(1) of the Act, notice is hereby given of the determination of Development Application **N0322/14** for:

***Demolition of all existing site improvements and construction of a new residential care facility, comprising 77 bedrooms and 89 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 (Lots 1, 2, 3, and 4 DP 23373 and Lot 15 Section A DP 5464)**

**Decision:**

The Development Application has been refused for the following reasons:

1. The proposed residential care facility is prohibited development, as the site does not meet the location and access to facilities requirements of clause 26 (Location and access to facilities) of HSPD.
2. The built form of the proposed residential care facility is excessive and uncharacteristic of the streetscape within a low-density residential area. The proposal presents as an overdevelopment of the site, non-compliant with the building height development standards of clause 40 (Development standards – minimum sizes and building heights) of SEPP HSPD and the landscaping requirements of clause D9.10 (Landscaped area – General) of P21 DCP. Furthermore, the statement requesting a variation to all the three building height development standards of SEPP HSPD is not well founded, as it is not made against the provisions of clause 4.6 of PLEP 2014.
3. The overdevelopment of the site results in unacceptable impacts upon the amenity of adjoining properties, whereby the non-compliant height and scale of the proposed development directly attributes to unreasonable impacts upon views currently enjoyed from 8 Jenkins Street and 55 Elimatta Road, Mona Vale. The proposal does not comply with the outcomes or technical requirements of clause C1.3 (View Sharing) of P21 DCP.

**Notes:**

1. Section 97 of the Act confers on the applicant who is dissatisfied with the determination of a consent authority a right of appeal to the Land & Environment Court exercisable within 6 months after receipt of this notice.
2. Any person who contravenes this notice of determination of the abovementioned development application shall be guilty of a breach of the Environmental Planning & Assessment Act, 1979, and shall be liable to a monetary penalty and for a restraining order which may be imposed by the Land and Environment Court.

Mark Ferguson  
**GENERAL MANAGER**

Per:  
Date: **TBA**