

## COUNCIL ASSESSMENT REPORT

<b>Panel Reference</b>	2017SNH034
<b>DA Number</b>	N0123/17
<b>LGA</b>	Northern Beaches Council
<b>Proposed Development</b>	Demolition of an existing aged care facility and construction of a new 156 bed aged care facility
<b>Street Address</b>	184 Garden Street, Warriewood
<b>Applicant/Owner</b>	Principal Healthcare Finance Pty Limited
<b>Date of DA lodgement</b>	7 April 2017
<b>Number of Submissions</b>	4
<b>Recommendation</b>	Approval, subject to conditions
<b>Regional Development Criteria</b>	Capital Investment Value > \$20 million
<b>List of all relevant s79C(1)(a) matters</b>	<ul style="list-style-type: none"> <li>• Environmental Planning and Assessment Act 1979</li> <li>• Environmental Planning and Assessment Regulation 2000</li> <li>• Roads Act 1993</li> <li>• Rural Fires Act 1997</li> <li>• State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004</li> <li>• State Environmental Planning Policy No.55 – Remediation of Land</li> <li>• Pittwater Local Environmental Plan 2014</li> <li>• Pittwater 21 Development Control Plan</li> <li>• Warriewood Valley Strategic Review Report 2012</li> <li>• Warriewood Valley Strategic Review Addendum Report 2014</li> </ul>
<b>List all documents submitted with this report for the Panel's consideration</b>	<ul style="list-style-type: none"> <li>• Draft conditions of consent</li> <li>• Applicant's clause 4.6 request to vary a development standard</li> </ul>
<b>Report prepared by</b>	David Kerr, General Manager – Planning, Place and Community
<b>Report date</b>	25 October 2017

### Summary of s79C matters

Have all recommendations in relation to relevant s79C matters been summarised in the Executive Summary of the assessment report? **Yes**

### Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report? **Yes**  
*e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP*

### Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report? **Yes**

### Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S94EF)? **Not Applicable**  
*Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions*

### Conditions

Have draft conditions been provided to the applicant for comment? **Yes**

**N0123/17 – 184 Garden Street, Warriewood (Lot 2 DP 595174)**

**Demolition of an existing aged care facility and construction of a new residential aged care facility containing 156 high care beds**

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**SUMMARY OF RECOMMENDATION:**

**CONSENT WITH CONDITIONS**

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<b>APPLICATION SUBMITTED ON:</b>	7 April 2017
<b>APPLICATION SUBMITTED BY:</b>	Opal Aged Care
<b>OWNER:</b>	Principal Healthcare Finance Pty Limited
<b>COST OF WORKS:</b>	\$34,163,225.00
<b>NO. OF SUBMISSIONS:</b>	4
<b>DEVELOPMENT TYPE:</b>	Integrated (NSW RFS)
<b>DETERMINATION LEVEL:</b>	Sydney North Planning Panel

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**1.0 EXECUTIVE SUMMARY**

The proposal is for the demolition of an existing 105 bed residential aged care facility and construction of a new 156 bed residential aged care facility at 184 Garden Street, Warriewood. The applicant has indicated a cost of works, or Capital Investment Value (CIV), of approximately \$34 million, and as such, the application must be referred to the Sydney North Planning Panel (SNPP) for determination.

The proposed two storey aged care facility comprises 133 rooms, with resident and staff amenities, and off-street parking for 37 vehicles. Whilst the proposal has a comparably large footprint when compared to surrounding low-density residential development, the proposed two-storey building is well modulated and articulated, with generous setbacks and an appropriate landscaped treatment. When viewed from the public domain, the development is considered to be compatible with the low-density character of the existing streetscape and the wider locality.

Whilst the proposed intensification of a vulnerable land use on a bushfire prone site was initially questioned, the applicant has since provided sufficient information and justification to satisfy concerns raised, and the NSW RFS have issued General Terms of Approval in accordance with the provisions of s100B of the Rural Fires Act.

The proposal has been lodged under the provisions of SEPP HSPD, and the consent authority can be satisfied that the policy relevantly applies to the site, and that the proposal meets the aims and requirements of the policy, specifically the site related requirements of clauses 26 (Location and access to facilities), 27 (Bushfire prone land), and 28 (Water and sewer) and the development standards of clause 40 (Development standards – minimum sizes and building height).

The application is reliant upon a variation to the building height development standard of clause 4.3 of PLEP 2014, and the application is supported by a variation request pursuant to clause 4.6 of PLEP 2014. The consent authority can be satisfied that the applicant's request is well-founded, and the proposed aged care facility is in the public's interest.

The proposal will provide some relief for the high demand for aged care beds amongst the aging population on the Northern Beaches, with minimal impact upon existing occupants of the development and adjoining residential properties. Subject to conditions of consent, the proposal is consistent with the outcomes and objectives of SEPP HSPD, PLEP 2014, P21 DCP and other relevant policies, and as such, the proposal is recommended for approval.

## 2.0 SITE DETAILS

The site is known as 184 Garden Street, Warriewood, and has a legal description of Lot 2 in Deposited Plan 595174. The site is irregular in shape, with a 131.55m wide frontage to Garden Street, a maximum depth of 98.9m and a total area of 11,675m<sup>2</sup>. The site is slightly elevated above street level, but is generally flat.



Figure 1 - Aerial image with site outlined in yellow  
Source: Nearmap

The site currently comprises an existing residential care facility with 55 high care beds and 50 assisted living beds, spread across two separate buildings. A single dwelling house is also located in the north-west corner of the site. Vehicular and pedestrian access to the existing residential care facility is gained via a driveway to Garden Street, with a separate driveway access to the single residential dwelling. A number of established canopy trees are located within the front setback to Garden Street.

There are existing bus stops immediately adjacent to and opposite the site, with regular services to Mona Vale (north-bound) and Warriewood Square and the City (south-bound). A pedestrian refuge has been constructed in Garden Street adjacent to the north-eastern corner of the site. Two spans of overhead low voltage powerlines run along the frontage of the site, to a point approximately 20m from the northern boundary, where the overhead infrastructure has been relocated underground as part of the redevelopment of the site to the north.

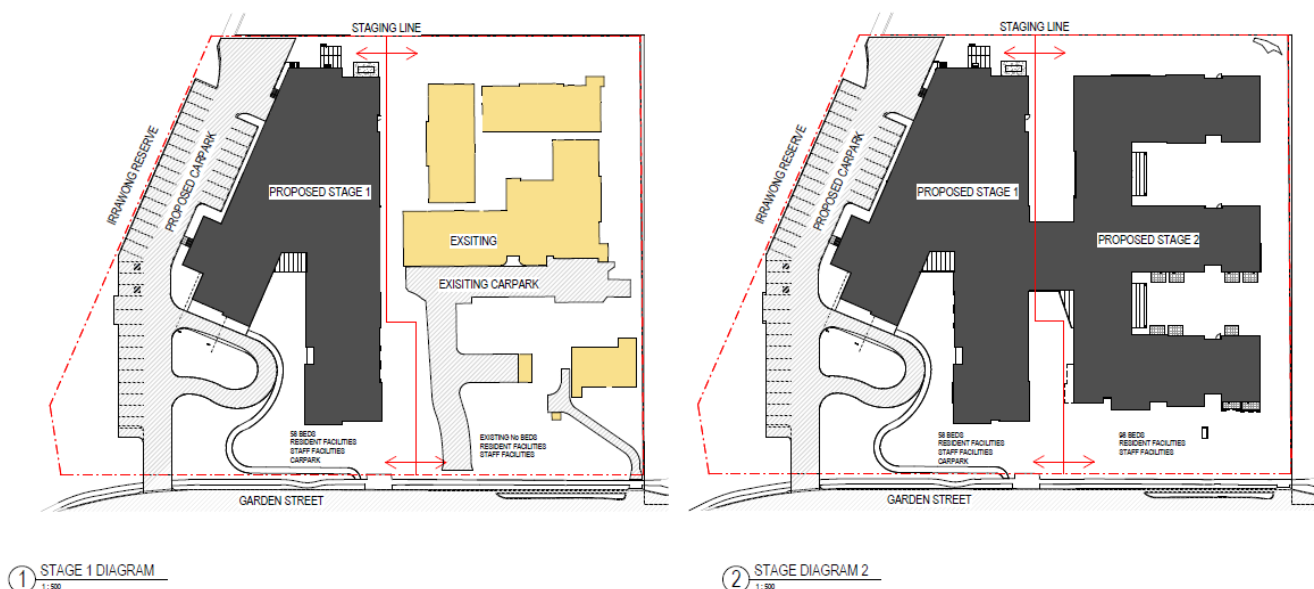
The site adjoins Irrawong Reserve and Mullet Creek to the south of the site, and residential development to the north, west and north-east. Warriewood Wetlands is located to the east of the site, on the opposite side of Garden Street. The site is identified as Sector 10C in the Warriewood Valley Release Area, as shown on the Warriewood Valley Release Area Map of PLEP 2014.

### 3.0 PROPOSED DEVELOPMENT

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

- Demolition of all existing site improvements,
- Earthworks and excavation,
- Construction of a 2 storey residential aged care facility with 156 high-care beds, including:
  - 110 single rooms,
  - 20 double rooms,
  - 3 suites,
  - Staff and resident amenities,
- 37 off-street parking spaces, including a designated ambulance space,
- Infrastructure, including water management detention basins, and
- Landscaping.

The applicant seeks to undertake the demolition and construction works in two separate stages, as nominated in **Figure 2**, below. The existing driveway, carpark and northern portion of the residential care facility will continue to operate whilst the Stage 1 works are undertaken and once the Stage 1 works are operational, Stage 2 works will commence.



**Figure 2 – Construction staging diagram**  
Source: Group GSA Pty Ltd

### 4.0 LEGISLATION, PLANS AND POLICIES

The following planning legislation, environmental planning instruments, development control plans and policies are relevant to the subject application:

- Environmental Planning and Assessment Act 1979 ('the Act')
- Environmental Planning and Assessment Regulation 2000 ('the Regulations')
- Rural Fires Act 1997
- Roads Act 1993
- Protection of the Environment Operations Act 1997
- State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004 ('SEPP HSPD')
- State Environmental Planning Policy No.55 – Remediation of Land ('SEPP 55')
- State Environmental Planning Policy (Exempt and Complying Development Code) 2004 ('SEPP Exempt and Complying')



- Pittwater Local Environmental Plan 2014 (**'PLEP 2014'**)
  - Zoning Map - R3 Medium Density Residential
  - Warriewood Valley Release Area Map – Sector 10C
  - Height of Buildings Map – 8.5m
- Pittwater 21 Development Control Plan (**'P21 DCP'**)
  - Warriewood Valley Locality
- Planning for Bushfire Protection 2006
- Warriewood Valley Strategic Review Report 2012 (**'Strategic Review'**)
- Warriewood Valley Strategic Review Addendum Report 2014 (**'Strategic Review Addendum'**)
- Warriewood Valley Roads Masterplan 2016 (**'Roads Masterplan'**)
- Warriewood Valley Landscape Masterplan and Design Guidelines (Public Domain) (**'Landscape Masterplan'**)
- Warriewood Valley Urban Land Release Water Management Specification (**'Water Management Specification'**)
- Roads and Maritime Services Guide to Traffic Generating Development (**'RMS Guidelines'**)
- Flood Risk Management Policy for Development in Pittwater (**'Flood Policy'**)
- Warriewood Valley Section 94 Contributions Plan Amendment 16 Revision 2 (**'Section 94 Plan'**)
- NSW Industrial Noise Policy

## 5.0 PERMISSIBILITY

The site is zoned R3 Medium Density Residential under the provisions of PLEP 2014, and in accordance with the land use table of this instrument, the proposed residential care facility, being a form of seniors housing, is permissible with consent. The proposal is also consistent with the provisions of clause 6.1(3) of PLEP 2014, which prescribes that development consent must not be granted for development on land in Sector 10C unless the consent authority is satisfied that not more than 17 dwellings will be erected.

## 6.0 BACKGROUND

On 1 December 2016, a prelodgement meeting was held with Council staff with regards to the redevelopment of the existing residential aged care facility at the site.

On 7 April 2017, the subject application was lodged with Council. The application was internally referred to Council's referral teams for comments and/or recommendations. The application was also referred to the NSW RFS in accordance with the provisions of s100B of the Act.

On 12 July 2017, a briefing meeting was held with the Sydney North Planning Panel.

On 13 July 2017, additional information was requested of the applicant, with respect to:

- Bushfire Risk Management, following a request from the RFS,
- Water management
- Extent of earthworks
- Pedestrian connectivity
- Presentation to the creekline
- Location of plant equipment and outdoor staff area

On 15 August 2017, additional information was submitted to Council.

On 6 September 2017, a meeting was held between the applicant and Council staff, with further concerns raised with respect to water management.

On 11 September 2017, further additional information was submitted to Council.

On 11 September 2017, Council received General Terms of Approval from NSW RFS. The General Terms of Approval inadvertently required changes to the design, and as such, Council requested further clarification from NSW RFS in this regard.

On 5 October 2017, Council received amended General Terms of Approval from NSW RFS.

## **7.0 ADVERTISEMENT AND NOTIFICATION**

The application was advertised and notified to adjoining property owners and the Warriewood Residents Association for a period of thirty-one (31) days from 29 April through to 30 May 2017, in accordance with the Regulations and Council's Notification Policy. During the advertisement/notification period, submissions were received from four (4) nearby or adjoining property owners, as follows;

- The property owners of 8 Mahogany Boulevard, raising concern with regard to the lack of a shared path connection along the southern boundary of the site.
- The property owners of 14 Banksia Parade, raising concern with regard to potential acoustic and light impacts associated with the proposed generator, staff courtyard and loading bay.
- The property owners of 12 Banksia Parade, raising concern with regard to:
  - potential acoustic impacts associated with the proposed generator, staff courtyard, maintenance shed and loading bay,
  - proximity to the boundary,
  - overshadowing,
  - location of garbage storage area,
  - inclusion of retaining walls,
  - drainage,
  - pedestrian and cyclist connectivity,
  - evacuation measures,
  - maintenance of Irrawong Reserve and Mullet Creek,
  - lack of an Environmental Impact Statement, and
  - the specific location of the boundary.
- The property owners of 10 Acacia Circuit, raising concerns with regard to the proximity of existing canopy trees.

## **8.0 KEY ASSESSMENT ISSUES**

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

- Bushfire Hazard
- S94 Contributions
- Water Management

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.

## 9.0 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	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>	Y
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 or residential flat buildings is permitted.	Y
5	Relationship with other environmental planning instruments	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 the provision of that accommodation and care,</li> </ul> not being a dwelling, hostel, hospital or psychiatric facility.	Y
<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.	Y
15	What Chapter does	This Chapter allows for development on land zoned primarily for urban purposes for any form of seniors housing despite the provisions of any other environmental planning instrument if the development is carried out in accordance with this Policy.	Y
18	Restrictions on occupation of seniors housing allowed under this chapter	Development allowed by this Chapter may be carried out for the accommodation of the following only: <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> A consent authority must not consent to a development application made pursuant to this Chapter unless:	Y

Clause		Standard	Proposal	C
		<p>(a) a condition is imposed by the consent authority to the effect that only the kinds of people referred to above may occupy the building to which the application relates, &amp;</p> <p>(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 above.</p>		
<b>Part 2 – Site-related requirements</b>				
26	Location and access to facilities	<p>The consent authority must be satisfied, by written evidence, that residents of the proposed development will have compliant access to:</p> <p>(a) shops, bank service providers and other retail and commercial services that residents may reasonably require, and</p> <p>(b) community services and recreation facilities, and</p> <p>(c) the practice of a general medical practitioner.</p>		Y
27	Bushfire prone land	The consent authority must not consent to a development application on land identified on a bush fire prone map unless satisfied that the development complies with the requirements of <i>Planning for Bushfire Protection 2006</i> .	See discussion.	Y
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.		Y
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
<b>Division 2 - Design Principles</b>				
33	Neighbourhood amenity and streetscape	<p>The proposed development should:</p> <p>(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</p> <p>(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</p>	See discussion.	Y



Clause		Standard	Proposal	C
		<ul style="list-style-type: none"> <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, and</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>		
34	Visual and acoustic privacy	The proposed development should consider the visual and acoustic privacy of neighbours in the vicinity and residents.	Subject to conditions. See discussion.	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.	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 conditions. See discussion with respect to P21 DCP.	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 dwelling that adjoins any such area, driveway or street, and</li> <li>(b) where shared entries are required, providing</li> </ul>		Y

Clause		Standard	Proposal	C
		shared entries that serve a small number of dwellings and that are able to be locked, and (c) providing dwellings designed to allow residents to see who approaches their dwellings without the need to open the front door.		
38	Accessibility	The proposed development should: (a) have obvious and safe pedestrian links from the site that provide access to public transport services or local facilities, and (b) provide attractive, yet safe, environments for pedestrians and motorists with convenient access and parking for residents and visitors.		Y
39	Waste management	The proposed development should be provided with waste facilities that maximise recycling by the provision of appropriate facilities.		Y
Part 4 – Development standards to be complied with				
Division 1 - General				
40	Development standards – minimum sizes and building heights	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.		
		The <b>size</b> of the site must be at least 1,000m².	11,675m²	Y
		The <b>site frontage</b> must be at least 20 metres wide measured at the building line.	131.55m	Y
		<b>Height</b> in zones where residential flat buildings are not permitted.		-
Division 2 – Residential care facilities				
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.		Y
Division 2 – Residential care facilities				
48	Standards that cannot be used to refuse development consent for residential care facilities  Note: ‘Building height’ and ‘landscaped area’ are separately defined by SEPP HSPD and differ from the standard instrument definitions.	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:		
		<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),	See discussion.	Y
		<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	0.69:1	Y
		<b>landscaped area:</b> if a minimum of 25 square metres of landscaped area per residential care facility bed is provided.	36m² per bed	Y

Clause	Standard	Proposal	C
	<b>parking for residents and visitors:</b> if at least the following is provided: <ul style="list-style-type: none"> <li>(i) 1 parking space for each 10 beds in the residential care facility; and</li> <li>(ii) 1 parking space for each 2 persons to be employed in connection with the development and on duty at any one time; and</li> <li>(iii) 1 parking space suitable for an ambulance.</li> </ul>	37 spaces See discussion.	Y
<b>Chapter 4 - Miscellaneous</b>			
55	Residential care facilities-fire sprinkler systems	Subject to condition.	Y

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

## 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>					
2.6 Subdivision – consent requirements			Y	Y	Y
Zone R3 Medium Density Residential			Y	Y	Y
4.3 Height of Buildings	8m above PMF	8.55m above PMF See discussion.	N	Y	Y
4.6 Exceptions to development standards		See discussion.	Y	Y	Y
5.10 Heritage conservation			Y	Y	Y
6.1 Warriewood Valley Release Area			Y	Y	Y
7.1 Acid sulphate soils			Y	Y	Y
7.2 Earthworks			Y	Y	Y
7.3 Flood planning		See discussion.	Y	Y	Y
7.4 Floodplain risk management		See discussion.	Y	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			Y	Y	Y
3.2 Submission of a Statement of Environmental Effects			Y	Y	Y
3.3 Submission of supporting documentation			Y	Y	Y
3.4 Notification			Y	Y	Y
3.5 Building Code of Australia			Y	Y	Y
4.5 Integrated Development: Bushfire	GTAs required from NSW RFS.	GTAs provided. See discussion.	Y	Y	N
6.6 Section 94 Contributions – Warriewood Valley		See discussion.	Y	Y	Y
A1.7 Considerations before consent is granted			Y	Y	Y
A4.16 Warriewood Valley Release Area Locality		See discussion.	Y	Y	Y
B1.4 Aboriginal Heritage Significance			Y	Y	Y
B3.6 Contaminated Land and Potentially Contaminated Land		See discussion.	Y	Y	Y
B3.18 Flood Hazard – Flood Category 1 – High Hazard -		See discussion.	Y	Y	Y

Control	Standard	Proposal	T	O	N
Other Development					
B3.23 Climate Change			Y	Y	Y
B3.25 Flood Hazard – Flood Emergency Response planning		See discussion.	Y	Y	N
B8.1 Construction and Demolition - Excavation and Landfill			Y	Y	Y
B8.2 Construction and Demolition - Erosion and Sediment Management			Y	Y	Y
B8.3 Construction and Demolition - Waste Minimisation			Y	Y	Y
B8.4 Construction and Demolition - Site Fencing and Security			Y	Y	Y
B8.5 Construction and Demolition - Works in the Public Domain			Y	Y	Y
B8.6 Construction and Demolition - Traffic Management			Y	Y	Y
C1.3 View Sharing			Y	Y	Y
C1.9 Adaptable Housing and Accessibility			Y	Y	Y
C1.12 Waste and Recycling Facilities		See discussion.	Y	Y	N
C1.13 Pollution Control			Y	Y	Y
C1.21 Seniors Housing			Y	Y	Y
C1.23 Eaves			Y	Y	Y
C6.1 Integrated Water Cycle Management		See discussion.	N	Y	N
C6.2 Natural Environment & Landscaping Principles		See discussion.	N	Y	N
C6.3 Ecologically Sustainable Development, Safety and Social Inclusion			Y	Y	Y
C6.4 The Road System and Pedestrian and Cyclist Network		See discussion.	Y	Y	N
C6.5 Utilities, Services and Infrastructure Provision		See discussion.	N	Y	Y
C6.7 Landscape Area (Sector, Buffer Area or Development Site)	35% (minimum)	39% See discussion.	Y	Y	Y
D16.1 Character as viewed from a public place		See discussion.	Y	Y	Y
D16.4 Water Management for individual allotments		See discussion.	N	Y	Y
D16.6 Front building lines	Garden St: 6.5m	Garden St: 11.3m	Y	Y	Y
D16.7 Side and rear building lines	Sides & rear: 3m	North side: 6.4m South side: 19m Rear (west): 7.4m See discussion.	Y	Y	N
D16.8 Spatial Separation	Sides & rear: 3-6m	North side: 6.4m South side: 19m Rear (west): 7.4m See discussion.	Y	Y	N
D16.9 Solar Access		See discussion.	Y	Y	N
D16.11 Form of construction including retaining walls, terracing and undercroft areas		See discussion.	Y	Y	N
D16.12 Fences			Y	Y	Y
D16.13 Building colours and materials		See discussion.	N	Y	Y
D16.14 Pets and Companion animals			Y	Y	Y

Issues marked with a (-) are not applicable to this application.  
Issues marked with a (N) are discussed in detail, below.

## 11.0 DISCUSSION OF ISSUES

### **Bushfire Hazard**

- **Clause 27 (Bushfire prone land) of SEPP HSPD**
- **Clause 4.5 (Integrated Development: Bushfire) of P21 DCP**

The site is mapped as being prone to bushfire, and as the proposed residential care facility is considered a 'special fire protection purpose', the application requires authorisation from NSW RFS pursuant to section 100B of the Rural Fires Act. The application was referred to the NSW RFS at the time of lodgement, who subsequently raised concerns in relation to the proximity of the proposed development to the bushfire hazard, and the proposed location of the egress point.

Additional information was provided by the applicant to further justify the proposed design solution and on 8 September 2017, General Terms of Approval were issued by NSW RFS. However, the General Terms of Approval issued required a change to the design of the development, as follows:

*6. First floor terraces, roof gardens and the like, on the southern elevation, shall be fully enclosed with non-openable windows.*

Concern was raised in relation to this condition, noting that compliance with the condition would alter the architectural expression of the southern elevation of the building and significantly impact upon the amenity of 6 bedrooms and two activity rooms on Level 1, to a point where rooms may no longer be able to be used as habitable space. Discussions have been held between Council, the applicant and the NSW RFS, and the applicant provided the following response in this regard:

*"Our bushfire consultant has had discussions with RFS on the proposed conditions as he does not believe condition 6 is a legislative requirement. He has now received verbal confirmation from the RFS that they will remove condition 6 and instead will request a management plan and an automatic switch to prohibit the use in the event of the fire.*

*Considering the above will not be formalised and received from RFS prior to your report bring finalised, in the condition of the DA approval can you please note that we would work with RFS to address their concerns?"*

NSW RFS subsequently provided amended General Terms of Approval on 5 October 2017, adopting an amended solution, as follows:

*A Bush Fire Emergency Management and Evacuation Plan shall be prepared for the facility that is consistent with 'Development Planning- A Guide to Developing a Bush Fire Emergency Management and Evacuation Plan December 2014' and Australian Standard AS3745 2010 'Planning for Emergencies in Facilities'. This shall include arrangements for the inspection of the terraces and roof gardens to ensure they are vacant and that all avenues of entry to them are subsequently locked.*

A submission has been received from an adjoining property owner with regard to the suitability of the evacuation pathway in the event of a bushfire. The submission questions the width of the pathway, and the practicalities of moving patients in beds along a narrow pathway in a time sensitive emergency. The pathway has been reviewed by the applicant's bushfire consultant and the NSW RFS, and no concern is raised in this regard subject to a condition requiring the production of a Bushfire Emergency Management and Evacuation Plan consistent with relevant guidelines and Australian Standards.

However, it is noted that the applicant seeks to construct the proposal in two separate stages, and the key evacuation measures proposed are within the area of the site that is to be

developed in Stage 2 of the proposed works. A condition of consent is recommended to require the provision of the 'landscape turning lane for emergency access' and an emergency evacuation path thereto, certified by a qualified bushfire consultant, associated with Stage 1 of the proposal.

### **Character**

- **Clause 33 (Neighbourhood amenity and streetscape) of SEPP HSPD**
- **Clause A4.16 (Warriewood Valley Release Area Locality) of P21 DCP**
- **Clause D16.1 (Character as viewed from a public place) of P21 DCP**

The proposed development is located within the Warriewood Valley Release Area, which is an area that is currently transitioning from rural residential landholdings to medium density development. The desired character of the Warriewood Valley Release Area locality is identified in clause A4.16 of P21 DCP, which states:

*Warriewood Valley Release Area continues to be developed as a desirable urban community in accordance with the adopted planning strategy for the area, and will include a mix of low to medium density housing, industrial/commercial development, open space and community services. The creekline corridors, roads and open space areas form the backbone of the new community, complemented with innovative water management systems, the natural environment, pedestrian/cycle path network, public transport, and recreation facilities.*

Clause 33 of SEPP HSPD prescribes that the proposed development should recognise the desirable elements of the desired future character of the locality, so that new buildings contribute to the quality and identity of the area. Whilst within a medium density zone, the immediate locality has been redeveloped and has the visual appearance of a low density residential setting. As such, the development needs to be designed to be sympathetic and compatible with the scale of the one and two storey detached residences to the north, west and east of the site.

The design of the proposed two storey residential care facility is well articulated, particularly with respect to the presentation to Garden Street, with varied setbacks, deep recesses and vegetation between the 3 elements of the building that project towards the frontage of the site. Furthermore, the façade of the widest of these three elements is broken down to mimic the scale of nearby two storey dwellings, with varied materials and finishes to further reduce the perceived scale of the development. The proposal has been reviewed by Council's Urban Designer and Landscape Architect who have both advised that the proposal is compatible with the character of the streetscape, and consistent with the desired future character of the Warriewood Valley Release Area Locality.

### **Flooding**

- **Clause 7.3 (Flood planning) of PLEP 2014**
- **Clause 7.4 (Floodplain risk management) of PLEP 2014**
- **Clause B3.18 (Flood Hazard – Flood Category 1 – High Hazard - Other Development) of P21 DCP**
- **Clause B3.25 (Flood Hazard – Flood Emergency Response planning) of P21 DCP**

#### **General**

Flood Planning Level (FPL) at = 6.16m AHD (as vulnerable development FPL = PMF)

1% AEP Flood Level = 4.68m AHD

Probable Maximum Flood (PMF) Level = 6.16m AHD

Flood Life Hazard Category = H6

Duration of flooding in PMF = Long

Hazard = High

FFL of proposed building = 6.16m AHD



The proposed use of the site, being a seniors housing development, is a 'special flood protection land use' (as defined by Council's Flood Policy) and is required to be constructed to the PMF, as opposed to the 1% AEP, under the provisions of clause 7.4 of PLEP 2014 and clause B3.18 of P21 DCP. The minimum floor level of the ground floor of the proposal is 6.16m AHD, and is therefore consistent with design requirements of PLEP 2014 and P21 DCP in this regard.

Council's flood engineer provided the following comments in regards to the proposal:

*The site is only marginally impacted by flooding with the 1% AEP (with and without climate change). The PMF affectation on the site is to depths of up to 0.5m were the proposed building is situated.*

*A 'Flood Risk Management Report Aged Care Facility Redevelopment 184-194 Garden Street, Warriewood, NSW, dated March 2017/Revision 2 by Henry and Hymas' was submitted to Council with this development. It was updated in August 2017, to provide clarification on matters raised by Council. The proposed floor level of the ground floor is at the PMF, so is compliant with the Pittwater 21 DCP and LEP 2014. The parking provided is for visitors and staff and is therefore permissible at existing natural ground level. The proposal is however to have the visitor carparking at the 1% AEP and therefore vehicle barriers are not required.*

A submission was received from an adjoining property owner raising concern regarding the suitability of the evacuation measures in the event of a flood. Consistent with the provisions of clause B3.25 of P21 DCP, the proposal provides suitable measures for occupants of the development to shelter-in-place, and as such, occupants would not be required to evacuate in a flood event.

## **Height**

- **Clause 4.3 (Height of Buildings) of PLEP 2014**
- **Clause 4.6 (Exceptions to development standards) of PLEP 2014**
- **Clause 48 (Standards that cannot be used to refuse development consent for residential care facilities) of SEPP HSPD**

The maximum height of a building at the site is limited to 8.5m above existing ground, as shown on the Height of Buildings Map of PLEP 2014. However, pursuant to clause 4.3(2A) of PLEP 2014, development on land at or below the flood planning level may exceed a height of 8.5m above existing ground, but not more than 8m above the flood planning level. The FPL for the subject site is 6.16m AHD and as such, PLEP 2014 prescribes that the development may reach a maximum height of 14.16m AHD. The proposal reaches a maximum height of 14.71m AHD, inconsistent with the maximum building height prescribed.

Clause 48 of SEPP HSPD prescribes that the consent authority must not refuse a residential care facility based on building height, if all proposed buildings are 8m or less in height. Whilst the majority of the proposal is less than 8m in height as defined by SEPP HSPD, including those elements that are non-compliant with the height prescribed by PLEP 2014, the double storey void over the main entrance way reaches a maximum height of approximately 8.6m above existing ground as defined by SEPP HSPD, and as such, the consent authority may refuse the development due to the non-compliance with the building height prescribed by PLEP 2014.

However, whilst the proposal is technically non-compliant the maximum building height prescribed, the maximum building height is a development standard as defined by the Act, and may be varied under the provisions of clause 4.6 of PLEP 2014. A submission made pursuant to clause 4.6 of PLEP 2014 has been provided by the applicant in this regard and the reasonableness of the requested variation is considered as follows:

Extent of variations:

With a maximum height of 14.71m AHD, the proposal exceed the maximum building height by 0.55m, representative of a 6.9% variation of the development standard. The extent of the height non-compliance is shown graphically in the height plane diagram prepared by the applicant in **Figure 3**, below.



**Figure 3 - Height Plane Diagram with elements above the height limit in blue**  
**Source: Group GSA Pty Ltd**

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 an environmental planning instrument. However, in accordance with the provisions of clause 4.6(4) of PLEP 2014, consent can only be granted if Council is satisfied that the applicant's written submission on the matter is well founded and if the proposal is in the public's interest by being consistent with the objectives of the specific development standard and the relevant zoning.

The applicant has provided a written submission which puts forward that strict compliance with the building height development standard is unnecessary in the circumstances of this application, as the proposal is both consistent with the objectives of the building height development standard and the objectives of the R3 Medium Density zone.

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 height limit. The objectives of the building height development standard are individually considered in respect of the proposed development, as follows;

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

Comment: The desired character of the Warriewood Valley Release Area is prescribed by clause A4.16 of P21 DCP, and aims to ensure that the locality is developed as a desirable urban community in accordance with the adopted planning strategy for the area.

Council's Land Release Team provided the following comment in this regard:

*The proposal is an aged care facility, considered to be a "residential care facility" under the definition and is not under the definition of a "dwelling". The density of 15 dwellings per developable hectare adopted for this sector (under the Strategic Review Addendum Report) does not apply to this proposal. The proposed aged care facility is 2 storeys on all elevations including Garden Street frontage and along Irrawong Reserve, hence is at a similar scale to neighbouring developments along this section of Garden Street, consistent with the adjoining sectors and reflective of its position on the edge of Irrawong Reserve and the Release Area. The proposal is in accord with the recommendations of the Strategic Review Addendum Report.*

More specifically, clause D16.1 of P21 DCP identifies the desired character of the development as viewed from a public place, which prescribes the need to minimise the bulk and scale of new buildings, and for development to present to the public domain, whilst also being appropriately screened/softened by landscaping. The proposal is considered to achieve consistency with these requirements.

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

Comment: As discussed in more detail with regard to character, the development is well modulated with the use of deep recesses, landscaping and varied materials, ensuring that the development is compatible with the height and scale of nearby two storey residential development. The minor areas of non-compliance with the height limit do not negate from consistency with this outcome. Furthermore, despite minor breaches to the height plane, the visual appearance of the development is consistent with the two storey height anticipated by both PLEP 2014 and SEPP HSPD.

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

Comment: The proposal does not unreasonably overshadow neighbouring properties.

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

Comment: The proposal does not result in an unreasonable impact upon views.

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

Comment: The proposal generally maintains existing ground levels, with minor site disturbance to balance flood storage calculations.

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

Comment: The proposed development does not result in an adverse visual impact upon the natural environment, and subject to conditions of consent, the proposed landscaping will ensure that the natural environment is enhanced, with built form softened by vegetation.

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

The proposed development is seen to be generally consistent with the objectives of the building height development standard. However, in accordance with the NSWLEC decision in *Four2Five Pty Limited v Ashfield Council*, simply meeting the objectives of the development standard is no longer enough to justify contravention of a development standard; the consent authority must be satisfied that there is a specific reason to justify the contravention.

In this instance, the minor breaches to the height limit are associated with the central roof elements that have been specifically designed to hide plant equipment on the roof. Whilst the presence of plant equipment on the roof is not preferred as a matter of Council policy, clause D16.1 of P21 DCP provides that plant equipment may be located on roof forms if they are integrated into the fabric of the building and not visible from the public domain.

As the non-compliance is a result of adherence with Council's DCP, and as the objectives of the building height development standard are achieved, the proposed minor variation is considered to be reasonable. Furthermore, in the circumstances where requiring strict compliance would not result in a better outcome (i.e. the plant equipment would not be hidden from view) the proposal is considered to be consistent with the objectives of clause 4.6 of PLEP 2014, 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.

Is the proposed development in the public interest?

A development is seen to be in the public's interest if it is consistent with the objectives of the development standard and the zone in which the particular development is carried out. The proposed development is seen to achieve consistency with the building height development standard, and the R3 Medium Density Residential Zone as follows:

- a. To provide for the housing needs of the community within a medium density residential environment.*

Comment: The proposed development will provide for the housing needs of the localities aging population.

- b. To provide a variety of housing types within a medium density residential environment.*

Comment: The proposed residential care facility will compliment surrounding housing types, which will ultimately include individual dwellings, residential flat buildings, attached housing, multiunit housing and other seniors housing developments.

- c. To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Comment: This objective is not applicable in relation to the proposed seniors housing development.

- d. *To provide for a limited range of other land uses of a low intensity and scale, compatible with surrounding land uses.*

Comment: This objective is not applicable in relation to the proposed seniors housing development.

Is the applicant's submission well-founded?

The applicant has reasonably demonstrated that strict compliance with the building height development standard is unnecessary in the circumstances of this particular application, as the proposal will otherwise achieve consistency with the outcomes of the building height development standards. The clause 4.6 submission also makes valid points with respect to the breaches associated with the design of the roof form, demonstrating that there are sufficient environmental planning grounds that warrant contravention of the building height development standard. Overall, the clause 4.6 submission is considered to be well founded.

Concurrence:

In accordance with the direction from the Department of Planning and Environment in Planning Circular PS 09-003, the Secretary's concurrence has been assumed for the purpose of this application.

Conclusion:

A written submission has been provided by the applicant, and the submission is considered to be well founded, as it reasonably demonstrates that strict compliance with the building height development standards is unnecessary in the circumstances of the application and that there are sufficient environmental planning grounds to justify contravention of the development standard. Furthermore, the application is seen to be in the public's interest, as the proposal is consistent with both the objectives of the building height development standard and the R3 Medium Density Residential zone. As such, the consent authority can be satisfied that the proposal can be approved, despite contravention of a development standard.

## **Acoustic Privacy**

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

Submissions have been received from adjoining property owners at 12 and 14 Banksia Parade, raising concern with regard to noise levels associated with the staff courtyard, garbage bin area, kitchen, laundry, workshop, electricity generator, and turning circle that are proposed in the south-western corner of the site. 12 and 14 Banksia Parade are the closest dwellings to these elements of the proposed development, with setbacks of approximately 1-2.5m from the common boundary. The noise generating elements are considered individually, as follows:

Staff Courtyard: The staff courtyard is located within the western setback area, at a minimum distance 2.4m from the common boundary. The courtyard is slightly elevated, with the internal staffroom approximately 1.2m above existing ground with openings oriented towards the common side boundary. The potential acoustic impact associated with the staff courtyard was raised with the applicant and a suggestion from Council to relocate the staff area away from neighbouring properties was not adopted in the design.

The development will be in operation 24 hours per day, and whilst noise associated with the use of the staff areas is generally acceptable during the daytime, it is appreciated that the use of these spaces during the night will have an impact upon the amenity of adjoining residences. As such, it is considered reasonable to impose conditions requiring the incorporation of an acoustic screen along the southern elevation of the courtyard, with restrictions upon the use of the outdoor courtyard between 7pm and 7am.

Generator: The electrical generator is an emergency back-up generator, which will only be used in the event of a power outage. The acoustic report states that the *“emergency generator will be installed within its own acoustic housing, with a discontinuous wall between the plant room and the adjacent tenancy”*, and in these circumstances the emergency generator will not require additional treatments. However, the generator is not proposed to be located in a plant room, nor is there a wall between the proposed generator and the adjoining dwellings. Council requested that the generator be relocated, and for an amended acoustic report to be prepared. The applicant did not relocate the generator, or provide any further technical information in this regard. Noting that the generator is only to be used sporadically, conditions of consent are recommended to require an amended acoustic report prior to the issuance of a construction certificate, with certification that acoustic thresholds are met prior to the issuance of any occupation certificate.

Driveway: An acoustic report was provided to support the application, which confirms that the noise levels associated with the use of the driveway (including the loading area) and carpark will not exceed acceptable acoustic thresholds at the nearest residential receiver (being 14 Banksia Parade). However, this appears to be based on the assumption that loading is limited to the “day time” period. As such, a condition is recommended to restrict deliveries and loading from occurring between the hours of 7pm and 7am.

Kitchen: The kitchen is internally located, with no openings to external facades and as such, the noise associated with the use of the kitchen should be minimised. As nominated in the acoustic report, the mechanical exhaust system associated with the kitchen may require acoustic treatments such as silencers and internal lined ductwork; however the exact treatment is unable to be determined without knowledge of the specific system to be used, which is generally determined at construction certificate stage. Subject to conditions restricting noise levels to the relevant EPA criteria, this level of detail is considered to be resolved with an amended acoustic report prior to the issuance of a construction certificate, with certification that acoustic thresholds are met prior to the issuance of any occupation certificate.

Laundry: The laundry is located on the south side of the ground floor, away from dwellings to the west of the site. Standard conditions recommended to ensure that the general operation of the site achieves compliance with relevant noise criteria should provide appropriate assurances for adjoining property owners.

Workshop: The concerns raised in relation to the maintenance workshop are associated with the potential use of power tools in this location. The noise associated with the use of power tools on any site is regulated by the *Protection of the Environment Operations Act 1997*.

Subject to conditions of consent, and the adoption of such conditions in any plan of management prepared for the operation of the site, the proposal is not considered to result in any unreasonable impacts upon adjoining properties.



It is noted that the submissions also raise concern with regard to the impact associated with lighting of the outdoor staff area adjacent to the boundary. As the outdoor area is not to be used between 7pm and 7am, there should be no lighting to this area during the night. However, a condition of consent is recommended to ensure that security lighting is installed in accordance with the relevant provisions of AS4282 - *The control of the obtrusive effects of outdoor lighting*.

### **Solar Access**

- **Clause 35 (Solar access and design for climate) of SEPP HSPD**
- **Clause D16.9 (Solar Access) of P21 DCP**

#### **Adjoining properties**

A submission has been received from an adjoining property at 12 Banksia Parade, in objection to the proposal on the basis of overshadowing. The submission states that the new two storey proposal will block all solar access to the dwelling for the entirety of the day, such that the *“house and garden will become dark and dingy with no light or sunlight”*. The applicant has prepared solar access diagrams which demonstrate both the existing scenario and the proposed scenario in mid-winter. Whilst the proposal will result in additional overshadowing of properties to the west at 9am, this impact will be removed by 10am, when all overshadowing will be wholly maintained within the subject site. Despite additional impact at 9am, all adjoining properties will maintain reasonable levels of solar access to living rooms and areas of private open space, in excess of the minimum requirements of clause D16.0 of P21 DCP.

#### **Subject Site**

The proposal has been designed to maximise direct and indirect light and natural ventilation to living areas and individual rooms, whilst also minimising overlooking of adjoining properties.

### **Stormwater Management**

- **Clause 36 (Stormwater) of SEPP HSPD**
- **Clause C6.1 (Integrated Water Cycle Management) of P21 DCP**
- **Clause D16.4 (Water Management for individual allotments) of P21 DCP**

The proposed stormwater management system does not strictly comply with the provisions of clause C6.1 of P21 DCP and the Water Management Specification. However, Council's Water Management Engineer and Development Engineer are satisfied that additional information can be provided prior to the issuance of a Construction Certificate to ensure consistency with the outcomes and intent of the Water Management Specification. In particular, conditions are recommended to ensure an appropriately sized water tank is accommodated on site as prescribed by clause D16.4 of P21 DCP, and to require amendments to the design of the strip infiltration trench in the north-east corner of the site to prevent water sheeting off onto the road reserve.

A submission has been received raising concern with drainage on the site, and highlighting the absence of drainage plan. The information relating to water management at the site was deficient at lodgement; however additional information has been provided during the course of the assessment, and subject to conditions of consent, the proposed water management solution is considered to be appropriate for the subject site.

It is noted that the proposed stormwater solution is not the a-typical water management solution that is seen throughout the Land Release Area, which generally comprise large bio-retention ponds as highlighted in the submission received. However, the proposed solution, which comprises a smaller bioretention basin, an infiltration trench and OSD tanks with StormFilter cartridges, is acceptable in this instance as the site is being developed in isolation, and will be owned and maintained by an entity that can manage the differing and more onerous maintenance responsibilities associated with the infrastructure proposed.

The same submission raises concern regarding the presence of a drainage easement which is not shown survey, suggesting that there is drainage easement that runs along the rear fence at 12 Banksia Parade and continues onto the subject site. It has been confirmed that whilst there is an inter-allotment drainage easement along the rear of 12 Banksia Parade, it does not continue on to the subject site.

### **Off-street parking**

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

Clause 48 of SEPP HSPD specifies that a consent authority must not refuse the application on the basis of parking for residents and visitors if at least the following is provided:

- a. 1 parking space for each 10 beds (or 1 parking space for each 15 beds if the facility provides care only for persons with dementia), and
- b. 1 parking space for each 2 persons to be employed in connection with the development and on duty at any one time, and
- c. 1 parking space suitable for an ambulance.

Based on this the statement of environmental effects, the proposal has 39 staff on duty at any one time, resulting in the need for a minimum of 36.1 parking spaces and as such, the proposal meets the minimum requirements with 37 parking spaces.

However, the RMS Guidelines also notes that *“the reference to employees indicates the number of staff on site at any one time during the peak operating period. It is advisable that suitable parking provision be made when shifts overlap. Visitor parking spaces must be clearly designated and readily accessible”*.

As proposed, the development provides the bare minimum amount of off-street parking and does not allow for any potential overlap in staffing, when potentially more than 48 staff members could be present on site. Whilst the consent authority cannot refuse the development for this reason, it can control the circumstances in which an approval is issued, and with this in mind, it is considered that a condition of consent to limit the amount of staff on duty to 48 should be imposed.

### **Pedestrian Connectivity**

- **Clause C6.4 (The Road System and Pedestrian and Cyclist Network) of P21 DCP**

Clause C6.4 of P21 DCP encourages connectivity between adjoining sites and sectors within the Warriewood Valley Release Area, with particular requirements for a shared cyclist and pedestrian pathway as shown in the Landscape Masterplan. The Landscape Masterplan demonstrates the need for a shared path along the southern boundary of the site, to connect to an existing shared path on the adjoining site to the west to Garden Street. This connection was not shown on the plans provided at lodgement and the absence of a connection was raised in two objections received from adjoining and nearby residents. Amended plans were subsequently produced upon request, which now demonstrate a connection in accordance with the Landscape Masterplan, consistent with the objectives of clause C6.4 of P21 DCP.

A 2.1m wide shared path is also required within the Garden Street road reserve for the full frontage of the site, to connect with the existing shared path to the north. Conditions of consent are recommended in this regard.

## **Works within the road reserve**

- **Clause C6.5 (Utilities, Services and Infrastructure Provision) of P21 DCP**
- **Clause C6.2 (Natural Environment and Landscaping Principles) of P21 DCP**

Two spans of overhead infrastructure traverse the frontage of the site, to a point approximately 20m from the northern boundary, where the overhead infrastructure has been relocated underground as part of the redevelopment of the site to the north. The lack of overhead infrastructure is now characteristic of the Warriewood Valley Release Area, which in turn has provided the opportunity for the planting of significant canopy trees along the streetscape; another defining feature of the locality.

The undergrounding of existing and proposed overhead infrastructure within the road reserve is prescribed by clause C6.5 of P21 DCP, with the incorporation of street trees required by clauses C6.2 and C6.4 of P21 DCP, and both the Landscape Masterplan and the Roads Masterplan for Warriewood Valley. Whilst the statement of environmental effects cites compliance with each of these provisions of P21 DCP, the development does not propose these works.

There does not appear to be any reason as to why the works cannot be completed, and relevant detail design can be provided prior to the issuance of a Construction Certificate, with any s139 approval sought. As such, conditions of consent are recommended to ensure compliance in this regard.

## **Impacts upon the natural environment**

- **Clause C6.2 (Natural Environment & Landscaping Principles) of P21 DCP**

The proposed development involves excavation within the front setback to balance flood storage in other areas of the site. Concern was raised by Council's Landscape Architect in this regard, as the impact upon canopy trees associated with the proposed excavation had not been addressed in the arborist report. An amended arborist report and bulk earthworks plan has subsequently been prepared, demonstrating that a number of existing canopy trees can be safely retained.

Council's Landscape Architect maintains concern with regard to the earthworks, as the plans provided to support the application are inconsistent with regard to the need for retaining walls. In the absence of clarification, a condition of consent is recommended to ensure against the presence of retaining walls within the front setback. Further conditions are also recommended to ensure compliance with the recommendations of the arborist report, and for replacement canopy trees to compensate for those removed within the setback area.

A submission has been received from an adjoining property owner at 10 Acacia Circuit in objection to the presence of existing canopy trees near the common boundary, with a request for the trees to be removed. The submission states that the trees are a nuisance, as they attract possums and constantly drop leaves and branches over the common boundary. The arborist report identifies 5 existing canopy trees that overhang the common boundary between the site and 10 Acacia Circuit, 4 of which are recommended for removal due to their proximity to the proposed works and construction access point. However, it is noted that the landscape plan demonstrates the proposed incorporation of new canopy trees in the vicinity of 10 Acacia Circuit. The proposed retention and enhancement of vegetation along the common boundary is consistent with the objectives of PLEP 2014 and P21 DCP, and a substantial tree canopy is characteristic of the locality.

A further submission was received from an adjoining property owner at 12 Banksia Parade, requesting that the applicant be responsible for maintaining the adjacent reserve (Irrawong Reserve). The maintenance of the outer creekline corridor is required on other sites within the Release Area, however this is not applicable in this instance, as the site is more than 50m from the centreline of the creek. Irrawong Reserve is owned by Council and is maintained by

Council staff and volunteers. In the absence of any nexus between the proposal and the maintenance of the reserve, there is no reason as to why the applicant should be responsible for the ongoing maintenance of a public asset.

The same submission also questioned the lack of an Environmental Impact Statement (EIS), noting the proximity of the proposal to the reserve. The proposal is generally maintained within the footprint of the existing development, does not propose any works to Irrawong Reserve, and does not involve a significant environmental impact or a high level of uncertainty about potential impacts. As such, an EIS is not considered to be required.

### **Contaminated Land**

- **Clause B3.6 (Contaminated Land and Potentially Contaminated Land) of P21 DCP**

A preliminary site investigation was undertaken prior to the lodgement of the subject application, and a report has been provided with recommendations for further assessment prior to demolition of the existing building and prior to construction of the proposed development (following demolition). Conditions of consent are recommended to ensure consistency with the recommendations of this report, to achieve the objectives and requirements of SEPP 55.

### **Section 94 contributions**

- **Clause 6.6 (Section 94 Contributions – Warriewood Valley) of P21 DCP**

Council's s94 Coordinator provided the following comments:

*The submitted statement of environmental effects identifies that the application seeks approval for the demolition of existing structures and the construction of a new 133-room residential aged care facility and associated infrastructure. The statement of environmental effects also requests a partial exemption to Section 94 contributions pursuant to Clause 2.11 of the Warriewood Valley Section 94 Contributions Plan Amendment 16 Revision 2 (Section 94 Plan). Section 94B(1) of the Environmental Planning and Assessment Act 1997 (the Act) provides for a consent authority to impose conditions requiring monetary contributions towards the provision, extension or augmentation of public amenities and services only if it is of a kind allowed by, and determined in accordance with a contributions plan.*

*Development under SEPP Seniors Living is considered contributing development under the Section 94 Plan. Table 1 in the Plan identifies that such development is required to contribute to all works elements except ponderosa Parade drainage. Recognising that occupants of an aged care facility may not have the same demand for traffic & transport facilities as those of other residents, Table 2 in the Plan provides an apportioned rate for this works element. The remaining applicable works elements are applied to this type of development as detailed in Table 1, providing a specific contribution rate for aged care facilities.*

*... Previous decisions the Land & Environment Court held that councils have no discretion to alter contributions which must be determined in accordance with the contributions plan. This legal precedent highlights that councils are bound by the Act to only impose conditions in accordance with a contributions plan. Where a plan specifies a rate of contributions payable, that rate must be applied and Council has no discretion to apply a contribution requiring any other amount. In this instance Table 1 makes clear that development under SEPP Seniors Living is required to contribute to all elements of the Plan except ponderosa Parade drainage. Providing a partial exemption to this development under Clause 2.11 would conflict the clear intent of Table 1 and result in an unlawful contribution. Consequently the contribution has been calculated in strict accordance with the Plan.*

*Notwithstanding, Council is commencing a review of the Section 94 Plan to investigate the methodology used to calculate contributions for aged care facilities.*

*The Section 94 contribution for this development has been calculated and provided in the attached condition. It is noted that an offset in the cash contribution has been provided for the construction of a share path on the property's southern boundary. This share path is identified as Item 6.2 in the Section 94 Plan works schedule. The submitted plan titled 'Landscape Plan – Ground Floor', drawing number LA02, prepared by Taylor Brammer Landscape Architects, dated 26 July 2017 identifies the location of the proposed share way. An offset in the cash contribution of \$78,028.17 for the construction of this section of path has been provided as detailed in the Section 94 cost sheet and has been adjusted for CPI. It is understood a condition requiring public access to this share path is being imposed by the Assessment Officer.*

### **Landscaped Area**

- **Clause C6.7 (Landscape Area (Sector, Buffer Area or Development Site)) of P21 DCP**

Clause C6.7 of P21 DCP prescribes that sites that have a frontage to a creek, such as the subject site, are to have a minimum landscaped area of 35%. The proposal achieves compliance in this regard, with a resultant landscaped area of approximately 4545m<sup>2</sup>, or 39% of the total site area.

However, the provisions of clause C6.7 of P21 DCP also highlight the important link between the landscaped area of the site and consistency with the recommendations of any water management solution developed for the site in accordance with the provisions of the Water Management Specification. In this regard, the stormwater management plan provided to support the application relies upon an impervious area of 55% of the total site, and assumes that all portions of the site excluding the area of the building and driveway are pervious. Unfortunately, this is inconsistent with detail provided in the landscape plans which clearly demonstrate the use of impervious ground treatments, and as such, conditions of consent are recommended to ensure that all landscaped surfaces (approximately 810m<sup>2</sup> of paths and terraces) are constructed of pervious materials.

### **Proximity to neighbours**

- **Clause D16.7 (Side and rear building lines) of P21 DCP**
- **Clause D16.8 (Spatial Separation) of P21 DCP**

A submission has been received from the property owners of 12 Banksia Parade in objection to the proximity of the proposal to the western boundary, stating that the development should maintain the setbacks of the existing building. The western elevation of the proposed development is generally consistent with the siting of the existing development, and is in excess of the minimum setback requirements of clauses D16.7 and D16.8 of P21 DCP. The siting of the development provides for a landscaped buffer between the proposed residential care facility and adjoining properties, and ensures that the two storey development does not attribute to unreasonable overshadowing or overlooking of adjoining dwellings.

The submission suggests that the development should be relocated to the east, to maximise the setback between the resultant development and dwellings to the west. Whilst the proposal is also compliant and in excess of the minimum required setback to the east (Garden Street), the development has been sited to maximise the retention of existing canopy trees within the front setback. The retention and enhancement of vegetation, particularly within the setback that present to the public domain, is encouraged as a matter of Council policy and is the preferred outcome in the circumstances where the setback to the western boundary is consistent with the technical requirements and objectives of clauses D16.7 and D16.8 of P21 DCP.

The same submission questions the location of the property boundary, and asks Council for clarification in this regard. After review of the survey information provided to support the subject application, and that provided to support the approval of the dwelling at 12 Banksia Parade, the existing lapped and capped timber fence is generally representative of the property boundary.

### **Retaining walls**

- **Clause D16.11 (Form of construction including retaining walls, terracing and undercroft areas) of P21 DCP**

A submission has been received in objection to the incorporation of a retaining wall that runs parallel to the western boundary, partially adjacent to 12 Banksia Parade. The retaining wall will act to separate a garden bed at existing ground level from an accessible pathway that is proposed to be slightly excavated to achieve appropriate accessible gradients. The retaining wall is located 1m from the common side boundary with a maximum height of 800mm, and could otherwise be undertaken without consent under the provisions of SEPP Exempt and Complying. Nonetheless, Council's Development Engineer has reviewed the proposed retaining wall and raises no concern with regard to drainage or potential impacts upon the adjoining property.

### **Building Colours and Materials**

- **Clause D16.13 (Building colours and materials) of P21 DCP**

The schedule of colours and materials proposes the use of off-white cladding and brickwork, inconsistent with the requirement of clause D16.13 of P21 DCP for dark and earthy tones. The development control does not provide any variations to this requirement, and the statement of environmental effects does not provide any justification for the proposed non-compliance.

Whilst the elevations and the schedule of materials demonstrate the use of a variety of materials and finishes, which is intrinsic to minimising the visual impact of the proposed residential care facility, it is considered that the proposed off-white materials should be replaced with materials in a darker tone. A condition of consent is recommended in this regard.

### **Waste Management**

- **Clause C1.12 (Waste and Recycling Facilities) of P21 DCP**

A submission has been received from an adjoining property owner with regard to the location of the proposed garbage storage area, expressing concern regarding its proximity to the creekline and its potential to attract animals from the reserve. The proposed garbage room is an internal, enclosed space that forms part of the main building, with doors to restrict animals from entering the space. Conditions of consent are also recommended to ensure appropriate construction methods to allow for the space to be easily and regularly cleaned.



## **12.0 CONCLUSION**

The proposed residential care facility provides a much needed upgrade to the existing residential aged care facility on the site, and the proposed staging of the development minimises the impact upon occupants of the existing facility. The design of the development, which is well modulated with spacious setbacks to common boundaries, also ensures that the amenity of adjoining properties is not adversely affected, despite the redevelopment and intensification of the site.

Whilst initial concerns were raised in regards to the suitability of the bushfire prone site for the intensification of a vulnerable development, the applicant has provided sufficient information and justification for the proposed design, and NSW RFS have issued General Terms of Approval for the development.

The proposal involves a variation to the building height development standard of PLEP 2014, however the minor non-compliance does not deter from the objectives of the building height development standard and the clause 4.6 submission is considered well-founded.

Overall, the proposed residential care facility is considered to successfully achieve consistency with the relevant outcomes of objectives of SEPP HSPD, PLEP 2014, P21 DCP and other plans and policies, and is recommended for approval.

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## **RECOMMENDATION**

That the Sydney North Planning Panel endorse the applicant's submission vary a development standard and Council's recommendation for the approval of Development Application N0123/17 for the construction of a residential aged care facility at 184 Garden Street, Warriewood, subject to the draft determination attached.

## DRAFT DETERMINATION

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**CONSENT NO: N0123/17**

**ENVIRONMENTAL PLANNING & ASSESSMENT ACT, 1979 (AS AMENDED)**

**NOTICE TO APPLICANT OF DETERMINATION OF A DEVELOPMENT APPLICATION**

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Applicants Name and Address:

**Tyron Nicholson**

**Opal Aged Care**

**Level 27, 135 King Street**

**Sydney NSW 2000**

Being the Applicant in respect of Development Application **N0123/17**

Pursuant to section 80(1) of the Act, notice is hereby given of the determination by Northern Beaches Council, as the consent authority, of Development Application **N0123/17** for:

**Demolition of an existing aged care facility and construction of a new residential aged care facility**

**At: 184 Garden Street, Warriewood**

Decision:

The Development Application has been determined by the granting of consent based on information provided by the Applicant in support of the application, and in accordance with:

- **Architectural Plans, prepared by Group GSA Pty Ltd:**
  - DA-1100, revision A, dated 23 March 2017,
  - DA-2000, revision B, dated 7 August 2017,
  - DA-2001, revision B, dated 7 August 2017,
  - DA-2002, revision B, dated 7 August 2017,
  - DA-3000, revision B, dated 7 August 2017, and
  - DA-3100, revision A, dated 23 March 2017.
- **Schedule of Materials and Finishes, prepared by Group GSA Pty Ltd:**
  - DA-8300, revision B, dated 7 August 2017, and
  - DA-3003, revision (-), dated 31 July 2017.
- **Staging Diagram, DA-4001, revision A, prepared by Group GSA Pty Ltd, dated 23 March 2017;**
- **Landscape Plans, LA00, LA02, LA03, LA04, LA05, LA06, LD01, LD02 and LD03, prepared by Taylor Brammer Landscape Architects Pty Ltd, dated 26 July 2017;**
- **Civil Engineering Plans, pared by Henry & Hymas:**
  - DA\_C000, issue 02, dated 9 June 2017,
  - DA\_C100, issue 05, dated 11 September 2017,
  - DA\_C110, issue 01, dated 24 February 2017,
  - DA\_C200, issue 04, dated 8 September 2017,
  - DA\_C201, issue 04, dated 11 September 2017,
  - DA\_C202, issue 02, dated 11 September 2017,
  - DA\_C203, issue 02, dated 8 September 2017,
  - DA\_C250, issue 04, dated 11 September 2017,
  - DA\_C500, issue 02, dated 9 August 2017,
  - DA\_C900, issue 02, dated 9 August 2017,
  - DA\_SE01, issue 01, dated 21 February 2017,
  - DA\_SE02, issue 01, dated 21 February 2017, and
  - DA\_BE01, issue 01, dated 21 February 2017.

- Revised Bushfire Hazard Assessment Report, prepared by Building Code & Bushfire Hazard Solutions Pty Limited, dated 9 August 2017,
- Arboricultural Impact Assessment Report, reference AIA-01, revision C, prepared by Arterra Design Pty Ltd, dated 8 August 2017,
- Acoustic Impact Assessment Report, revision 01, prepared by Acoustic Logic, dated 23 March 2017,
- Preliminary Site Investigation Report, prepared by Douglas Partners, dated March 2017,
- Geotechnical Risk Management Report, prepared by Douglas Partners, dated March 2017,
- Traffic Assessment Report, prepared by Taylor Thomson Whitting, dated 22 March 2017,
- Accessibility Report, version 2, prepared by Morris Goding Accessibility Consulting, dated 1 March 2017,
- BCA Capability Statement, prepared by Blackett Maquire and Goldsmith, dated 27 March 2017,
- Flood Risk Management Report, revision 2, prepared by Henry & Hymas, dated August 2017,
- Engineering Report, revision 2, prepared by Henry & Hymas, dated August 2017,
- Water Management Report, revision 1, prepared by Henry & Hymas, dated September 2017,
- General Terms of Approval, issued by NSW RFS, dated 5 October 2017;

as amended in red (shown clouded) or as modified by any conditions of this consent.

The reason for the imposition of the attached conditions is to ensure that the development consented to is carried out in such a manner as to achieve the objectives of the Environmental Planning and Assessment Act 1979 (as amended), pursuant to section 5(a) of the Act, having regard to the relevant matters for consideration contained in section 79C of the Act and the Environmental Planning Instruments applying to the land, as well as section 80A of the Act which authorises the imposing of the consent conditions.

Endorsement of date of consent: **TBA**

Mark Ferguson  
CHIEF EXECUTIVE OFFICER

## CONDITIONS OF APPROVAL

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This consent is not an approval to commence building work. The works associated with this consent can only commence following the issue of the Construction Certificate.

Note: Persons having the benefit of development consent may appoint either a council or an accredited certifier as the principal certifying authority for the development or for the purpose of issuing certificates under Part 4A of the Environmental Planning and Assessment Act. When considering engaging an accredited certifier a person should contact the relevant accreditation body to ensure that the person is appropriately certified and authorised to act in respect of the development.

### A. Prescribed Conditions:

1. All works are to be carried out in accordance with the requirements of the Building Code of Australia and the National Construction Code.
2. In the case of residential building work for which the *Home Building Act 1989* requires there to be a contract of insurance in force in accordance with Part 6 of that Act, there is to be such a contract in force.
3. Critical stage inspections are to be carried out in accordance with clause 162A of the *Environmental Planning & Assessment Regulation 2000*. To allow a Principal Certifying Authority or another certifying authority time to carry out critical stage inspections required by the Principal Certifying Authority, the principal contractor for the building site or the owner-builder must notify the Principal Certifying Authority at least 48 hours before building work is commenced and prior to further work being undertaken.
4. A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
  - a. showing the name, address and telephone number of the Principal Certifying Authority for the work, and
  - b. showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
  - c. stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

5. If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause (2) becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
6. The hours of construction are restricted to between the hours of 7.00am and 5.00pm Monday - Friday and 7.00am to 1.00pm on Saturdays. No works are to be carried out on Sundays or Public Holidays. Internal building work may be carried out at any time outside these hours, subject to noise emissions from the building or works not being audible at any adjoining boundary.

**B. Matters to be incorporated into the development and maintained over the life of the development:**

1. This approval/consent relates only to the new work nominated on the approved consent plans and does not approve or regularise any existing buildings or structures within the property boundaries or within Council's road reserve.
2. If any Aboriginal Engravings or Relics are unearthed all work is to cease immediately and the Metropolitan Local Aboriginal Land Council (MLALC) and the Office of Environment and Heritage are to be notified.
3. In accordance with Council's Tree Preservation Order, all existing trees as indicated in the Survey Plan and/or approved Landscape Plan shall be retained. For all other tree issues not related to a development application, applications must be made to Council's Tree Management Officers.
4. No environmental weeds are to be planted on the site. Refer to Council's website for environmental weed lists.
5. Prior to the completion of works, all declared noxious weeds are to be removed/controlled in accordance with the *Noxious Weeds Act 1993*. Environmental weeds are to be removed and controlled. Refer to Council's website for noxious/environmental weed lists.
6. Any vegetation planted onsite outside the approved landscaping is to be consistent with:
  - Locally native species growing onsite and/or selected from the list pertaining to the vegetation community growing in the locality as per the vegetation mapping and Native Plants for Your Garden guide available on Council's website.
  - Species listed in the flora and fauna assessment report referenced in this consent.

Any other plant species can only be used with written approval of Council.

7. The recommendations of the approved Geotechnical Risk Management Report referenced in this consent are to be incorporated into the construction plans and implemented during construction.
8. The recommendations of the approved Arboricultural Impact Assessment Report referenced in this consent are to be incorporated into the construction plans and implemented during construction.
9. Domestic pet animals are to be kept from entering wildlife habitat areas at all times. Dogs and cats are to be kept in an enclosed area or on a leash such that they cannot enter areas of bushland or foreshore, unrestrained, on the site or on surrounding properties or reserves. Ferrets and rabbits are to be kept in a locked hutch/run at all times.
10. The adjustment and construction of all utilities, services and drainage systems, and the creation of appropriate easements are to be at the full cost of the developer, including:
  - Electrical and telecommunications for the site, which are to be provided underground. The location of any trenching and if required, pad mounted substation(s), is to take into account future/proposed landscaping in the public domain.
  - Street lighting facilities are to be provided to existing street frontages in accordance with the requirements of Ausgrid.
  - The two spans of existing overhead infrastructure within the Garden Street public road reserve is to be undergrounded in their entirety. Should a span continue past the frontage of the site, the undergrounding is to be continued to the next existing power pole.

11. The proposal is to be consistent with the General Terms of Approval, issued by the NSW RFS, as follows:

- a. At the commencement of building works and in perpetuity the entire property shall be managed as an inner protection area (IPA) as outlines within Appendices 2 & 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.
- b. Water, electricity and gas supplies shall comply with section 4.1.3 and 4.2.7 of 'Planning for Bush Fire Protection 2006'.
- c. The internal access road shall be as detailed in the Bushfire Hazard Assessment Report, prepared by Building Code & Bushfire Hazard Solutions, dated 22/02/2017 as revised 09/08/2017, ref. 161187.
- d. A Bush Fire Emergency Management and Evacuation Plan shall be prepared for the facility that is consistent with 'Development Planning – A Guide to Developing a Bush Fire Emergency Management and Evacuation Plan December 2014' and Australian Standard AS3745 2010 'Planning for Emergencies in Facilities'. This shall include arrangements for the inspection of the terraces and roof gardens to ensure they are vacant and that all avenues of entry to them are subsequently locked.
- e. The Bushfire Attack Level ratings shall be applied as detailed in Bushfire Hazard Assessment Report prepared by Building Code & Bushfire Hazard Solutions, dated 22/02/2017 as revised 09/08/2017, ref.161187, as follows:
  - i. New construction on Stage 1 shall comply with Section 3 and Section 7 (BAL 29) Australian Standard AS3959-2009 'Construction of buildings in bush fire-prone area' or NASH Standard (1.7.14 updated) 'National Standard Steel Framed Construction in Bushfire Areas - 2014' as appropriate and section A3.7 Addendum Appendix 3 of 'Planning for Bush Fire Protection' 2006'. Except that all new works on the northern elevation of Stage 1 building that are shielded from the hazard interface to the south and greater than 35 metres from the hazard to the east can be downgraded and shall comply with BAL 19.
  - ii. New construction on Stage 2 shall comply with Section 3 and Section 6 (BAL 19) Australian Standard AS3959-2009 'Construction of buildings in bushfire-prone area' or NASH Standard (1.7.14 updated) 'National Standard Steel Framed Construction in Bushfire Areas - 2014' as appropriate and section A3.7 Addendum Appendix 3 of 'Planning for Bush Fire Protection' 2006', for the east wing only. The remainder of Stage 2 that is greater than 48 metres from the hazard to the east shall comply with Sections 3 and 5 (BAL 12.5) Australian Standard AS3959-2009 'Construction of buildings in bush fire-prone areas' or NASH Standard (1.7.14 updated) 'National Standard Steel Framed Construction in Bushfire Areas - 2014' as appropriate and section A3.7 Addendum Appendix 3 of 'Planning for Bush Fire Protection 2006'.
  - iii. The additional construction detail within Addendum Appendix 3 of PBP 2006 applies to the whole building Stages 1 & 2.
- f. Landscaping of the site shall comply with the principles of Appendix 5 of 'Planning for Bush Fire Protection 2006'.

12. The staging of the development of the site is to be consistent with the approved Staging Plan referenced in this consent, in addition to the following:

- a. The proposed 'landscape turning lane for emergency access' is to be provided as part of the Stage 1 works, prior to the occupation of the Stage 1 Building,



- b. An emergency egress pathway is to be provided between the 'landscape turning lane for emergency access' and the proposed Stage 1 Building as part of the Stage 1 works, prior to the occupation of the Stage 1 Building, and
  - c. With the exception of the removal of the existing access driveway, all works required by virtue of condition of consent within the road reserve are to be completed as part of Stage 1.
- 13. Landscaping is to be implemented in accordance with the approved Landscape Plans referenced in this consent, as modified by any conditions of consent. This landscaping is to then be maintained for the life of the development.
- 14. The development is to be undertaken in accordance with the recommendations of the Arboricultural Impact Assessment Report, as referenced in this consent.
- 15. The Probable Maximum Flood (PMF) level is 6.16m AHD for the aged care facility development.
- 16. The minimum floor level of the development is to be at or above the PMF.
- 17. Storage of hazardous materials, electrical items, items of plant, equipment or stock and any other items which may be susceptible to water damage are to be located above the PMF.
- 18. All structural elements, external finishes and internal finishes located below the PMF must be constructed using flood-compatible techniques and materials. Refer to Council's Flood Compatible Building Guideline, available on Council's website.
- 19. All new electrical services, fixtures and fittings must be located above the PMF. No electrical equipment or electrical motors are to be located below PMF. The electric generator on the western boundary is to be supported on piles in order for flood water to pass underneath.
- 20. The approved Flood Risk Management Report, as referenced in this consent and as amended by any conditions of consent, shall apply for the life of the development.
- 21. The garbage enclosures/refuse shall be provided and maintained in accordance with the following:
  - a. A separate room or an appropriately constructed area is to be provided for the storage of garbage and recyclables.
  - b. The walls of the enclosure shall be cement rendered and steel trowelled to a smooth, even surface.
  - c. The floor shall be of impervious material coved at the intersection with the walls, graded and drained to an approved floor waste within the room/enclosure.
  - d. Stormwater shall not enter the floor of the garbage enclosure such that the sewer system may be contaminated by rainwaters.
  - e. Garbage and recycling rooms shall be vented to the external air by natural or artificial means. The installation and operation of the mechanical ventilation system shall comply with AS 1668, Parts 1 & 2.
  - f. The room used for the storage and washing down of garbage and recycling receptacles shall be constructed of solid material (brick, concrete blocks, structural fibrous cement or similar homogeneous material) so as to prevent the formation of cavities which become possible harborages for insects and vermin. Framing in timber is not permitted.
  - g. The garbage and recycling room shall be made vermin proof.
  - h. Hot and cold water hose cocks shall be located within a garbage enclosure or in close proximity to Council's satisfaction.
- 22. Security lighting is to be provided in accordance with the relevant provisions of AS4282 - *The control of the obtrusive effects of outdoor lighting*.

23. With the exception of plant equipment within the nominated plant areas on the approved plans, air-conditioning units, hot water systems, and other mechanical equipment shall not be located on any roof or in locations that are visible from a public place.
24. All parking spaces are to be maintained free of obstruction and used solely for the parking of vehicles.
25. The driveway and parking area is to be constructed to an all-weather standard, non-slip finish and is to be appropriately line-marked and signposted. Dark grey/black oxide or pigment is to be added to the proposed concrete finish to achieve a mid-dark coloured driveway and parking area.
26. The water management system including the water balance outcomes are to be in accordance with the approved Water Management Report, as referenced in this consent, and maintained for the life of the development.
27. All private stormwater management devices are to be maintained in accordance with the accepted design, maintenance plan and manufacturer's specifications and associated operational guidelines.
28. All water management facilities shall be made safely accessible for regular maintenance.
29. An annual report is to be submitted to and accepted by Northern Beaches Council demonstrating application of the accepted maintenance plan for all private stormwater management devices, including the Stormfilter cartridges located in the OSD tanks, the pit baskets located in each stormwater pit, the bio-basin, and the sand infiltration trench.
30. All water management facilities relevant to each stage of development, including associated stormwater infrastructure up to the connection of the public drainage system are to remain in private ownership and located within private property.
31. Any modification to the impervious area on the subject site shall trigger an increase in the requirements for on-site detention.
32. A water quality assessment for stormwater quality improvement devices (based on the water quality monitoring plan in the approved Water Management Report, as referenced in this consent) shall be provided to Northern Beaches Council within 14 days of each sampling event.
33. The proposed residential aged care facility may only be occupied by:
  - seniors or people who have a disability,
  - people who live within the same household with seniors or people who have a disability,
  - staff employed to assist in the administration of and provision of services to housing provided under this Policy.
34. The proposed residential aged care facility is to maintain 156 high care beds.
35. No more than 39 staff shall be on duty at any one time.
36. A minimum of 16 spaces are to be clearly marked and dedicated to visitors of the facility. The visitor spaces shall be those in closest proximity to the entrance of the facility.
37. Certification is to be provided to the Certifying Authority that the Construction Certificate drawings are consistent with the recommendations of the Access Review Report referenced in this consent.

38. The residential aged care facility must include a fire sprinkler system.
39. No retaining walls are authorised within the front setback to Garden Street or the adjacent road reserve.
40. The ongoing operation of the facility is to be in accordance with the provisions of the Protection of the Environment Operations Act 1997 and the NSW EPA Industrial Noise Policy.
41. Deliveries and garbage collection must not occur between the hours of 7pm and 7am.
42. The outdoor staff courtyard must not be used between the hours of 7pm and 7am.

**C. Matters to be satisfied prior to the issue of the Construction Certificate:**

Note: All outstanding matters referred to in this section are to be submitted to the accredited certifier together. Incomplete Construction Certificate applications / details cannot be accepted.

Note: this consent allows for the staged issue of Construction Certificates that are in accordance with the approved Staging Plan referenced in this consent, and any conditions of consent. Unless otherwise stated, these conditions relate to each Construction Certificate issued.

1. Submission of construction plans and specifications and documentation which are consistent with the approved Development Consent plans, the requirements of Building Code of Australia and satisfy all conditions shown in Part B above, are to be submitted to the Principal Certifying Authority.
2. No works are to be carried out in Council's Road Reserve without the written approval of the Council.

Note: Separate approval is required for access driveways, paths, connections to underground services (stormwater, gas, sewer, electricity, etc:), and landscaping works within Council's Road Reserve.

4. Applicants will be required to obtain a Section 139 Consent for Works on a Public Road Reserve issued by Council under the provisions of Section 138 of the *Roads Act 1993* for the design and construction of any works located on the road reserve including Access Driveways.
5. Construction works approved by this consent must not commence until:
  - a. Construction Certificate has been issued by a Principal Certifying Authority;
  - b. A Principal Certifying Authority has been appointed and Council has been notified in writing of the appointment, and
  - c. At least 2 days' notice, in writing has been given to Council of the intention to commence work.
6. In accordance with section 34 of the Building and Construction Industry Long Service Payments Act 1986, the applicant must pay a long service levy at the prescribed rate of 0.0035 of the total cost of the work to either the Long Service Payment Corporation or Council for any work costing \$25,000 or more.
7. A monetary contribution of \$5,888,641.77 (subject to (a) below) is payable to Northern Beaches Council for the provision of public infrastructure and services pursuant to Section 94 of the Environmental Planning and Assessment Act 1979.

- a. The monetary contribution will be adjusted at the time of payment in accordance with the latest Consumer Price Index as published quarterly by the Australian Bureau of Statistics as outlined in Council's Warriewood Valley Section 94 Contributions Plan (Amendment 16 Revision 2). The monetary contribution is to be paid prior to the issue of the first Construction Certificate.
- b. The applicant may negotiate with Council for the direct provision of facilities and services in lieu of the monetary contribution above (or any portion of that contribution) through a Material Public Benefit offer to Council. Any Material Public Benefit agreement between the applicant and Council must be finalised, formally signed and in place prior to payment being made.

The Warriewood Valley Section 94 Contributions Plan (Amendment 16 Revision 2) may be inspected at Northern Beaches Council's Mona Vale office, 1 Park Street Mona Vale or Council's website.

8. An approved Staging Plan referenced in this consent is to be amended prior to the issuance of the first Construction Certificate to specifically demonstrate the following:
  - a. The proposed 'landscape turning lane for emergency access' is to be provided as part of the Stage 1 works, prior to the occupation of the Stage 1 Building,
  - b. An emergency egress pathway is to be provided between the 'landscape turning land for emergency access' and the proposed Stage 1 Building as part of the Stage 1 works, prior to the occupation of the Stage 1 Building, and
  - c. With the exception of the removal of the existing access driveway, all works required by virtue of condition of consent within the road reserve are to be completed as part of Stage 1.
9. The approved Acoustic Report referenced in this consent is to be amended to specifically detail the measures proposed to all plant and operating equipment to ensure that the noise levels associated with the operation of the proposed development is consistent with the Protection of the Environment Operations Act 1997 and the NSW EPA Industrial Noise Policy. The amended report shall also provide recommendations for the design of an acoustic screen adjacent to the staff courtyard, to minimise impacts upon adjoining properties to the west associated with the use of the courtyard, and the 24 hour use of the staff room (assuming both the window and door are open and the staff room is at maximum occupancy during the night). The recommendations of the amended Acoustic Report are to be included in the plans presented to obtain any Construction Certificate.
10. The approved Water Management Report and Civil Engineering Plans, as referenced in this consent, are to be revised to achieve full compliance with the Warriewood Valley Water Management Specification (February 2001), and the following:
  - a. The revised Water Management Report shall include details demonstrating that rainwater tanks will be installed in accordance with the requirements of clause D16.4 of Pittwater 21 DCP (Sector 10).
  - b. The strip infiltration trench detailed on Plan 16940\_DA\_C203 shall include an infiltration swale at the top of the graded section of the trench to assist in capture of runoff into the trench and to prevent water sheeting off on to the existing footpath.

The Warriewood Valley Water Management Specification (February 2001) Document Checklist – Construction Certificate is to be completed, certified and submitted to Council for their records prior to the issue of any Construction Certificate.

11. An amended schedule of colours and finishes is to be provided to demonstrate the replacement of the use of off-white cladding with mid-dark cladding and off-white face brick work with mid-dark face brickwork, equivalent to or darker than Colorbond "Windspray" or "Gully".

12. An Erosion and Sediment Management Plan is to be submitted prior to the issue of a Construction Certificate. Control over discharge of stormwater and containment of run-off and pollutants leaving the site/premises shall be undertaken through the installation of erosion control devices such as catch drains, diversion drains, energy dissipaters, level spreaders and sediment control devices such as hay bale barriers, filter fences, filter dams and sedimentation basins. Such plan is to be accompanied by a certification from an appropriately qualified person, that the plans/ details have been designed in accordance with the requirements of *Managing Urban Stormwater: Soils and Construction* (Landcom 2004). The plan is also to include specific details required to remove fine sediment and clay from vehicles leaving the site so as to maintain public roads in a clean condition.
13. A satisfactory Construction Traffic Management Plan (CTMP) prepared by a suitably qualified traffic consultant is to be submitted prior to the issue of a Construction Certificate. The CTMP is to detail:
  - a. Quantity of material to be transported;
  - b. Proposed truck movements per day;
  - c. Proposed hours of operation; and
  - d. Proposed traffic routes, noting that 3 tonne load limits apply to some roads within the local government area.
  - e. Location of on/off site parking for workers associated with construction for the whole period of construction.
14. A section 73 Compliance Certificate under the provisions of the Sydney Water Act, 1994 must be obtained from Sydney Water. A copy of any Notice of Requirements letter which may be issued by Sydney Water, is to be provided to the Private Certifying Authority with the Construction Certificate application.

Application must be made through an authorised Water Servicing Coordinator. Please refer to the Building Developing and Plumbing section of the web site [www.sydneywater.com.au](http://www.sydneywater.com.au) then refer to "Water Servicing Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.

Following application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and charges to be paid. Please make early contact with the Coordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design.

15. A suitably qualified bushfire consultant is to provide certification that the Construction Certificate detail is consistent with the relevant provisions of the General Terms of Approval, issued by the NSW RFS, as referenced in this consent. Furthermore, the bushfire consultant is to confirm that the design and location of the temporary emergency egress pathway between the proposed Stage 1 Building and the 'landscape turning land for emergency access' required as part of the Stage 1 works.
16. Structural Engineering details relating to the approved development are to be submitted to the Accredited Certifier or Council prior to release of the Construction Certificate. Each plan/sheet is to be signed by a qualified practicing Structural Engineer who is registered on the National Engineers Register (NER) maintained by Engineers Australia and has appropriate experience and competence in the related field.
17. Civil engineering detailed design for the proposed works are to be submitted to the Accredited Certifier or Council with the Construction Certificate application. Each plan/sheet is to be signed by a qualified practising Civil Engineer who is registered on the National Engineers Register (NER) maintained by Engineers Australia and has appropriate experience and competence in the related field. The design shall take regard of all of the requirements of the Water Management Specification (2001) and the approved Water Management Report, as referenced in this consent.

18. Prior to issue of the Construction Certificate, Form 2 of the *Geotechnical Risk Management Policy for Pittwater* (Appendix 5 of P21 DCP) is to be completed and submitted to the Principal Certifying Authority.
19. Engineering plans and specifications for any/all drainage and other civil engineering works required by this consent within the existing Garden Street public road reserve must be submitted and approved in writing by the Council prior to the issue of the relevant Construction Certificate. Payment of the Engineering Plan Assessment fee (in accordance with Council's adopted Fees and Charges) is required prior to Council releasing the approved engineering plans.
  - a. Access driveway detail.
  - b. The existing footpath is to be replaced with a 2.1m wide shared pathway for the full length of the frontage in Garden Street and connecting to the existing shared path to the north.
  - c. Pavement design and treatments.
  - d. Landscaping of the road reserve consistent with the 'Warriewood Valley Release Area Landscape Masterplan and Design Guidelines (Public Domain) 2016'.
  - e. Street lighting using Ausgrid standard lights/poles.
  - f. Undergrounding of the two spans of existing overhead infrastructure with the Garden Street road reserve adjacent to the site.
  - g. Half width road pavement re-construction of Garden Street, including pavement design and treatments up to the road centre line is required, unless it can be demonstrated that the existing pavement meets the  $4 \times 10^6$  ESA pavement design criteria for sub-arterial roads in Warriewood Valley Roads Masterplan.
  - h. The design and replacement of existing drainage infrastructure with Garden Street is required, unless it can be demonstrated that the existing drainage infrastructure meets acceptable standards for condition (through the CCTV condition assessment report) and adequacy (to accommodate design flow capacities 20 year ARI plus climate change). The condition of the pipeline will need to be in an excellent state i.e. including but not limited to: not being disjointed or showing any signs of wear, be structurally sound and good for the lifetime of the development (being 100 years). If required to be replaced, the minimum sized public road drainage system pipeline to be 375mm in diameter and pipeline to be a RRJ RCP.
20. A water quality monitoring plan is to be prepared for stormwater quality improvement devices including the stormwater filtration cartridges (ie. testing at the outlets from the OSDs) and the bio-basin. Monitoring is to be conducted on three separate events where the rainfall is predicted to be greater than 20mm over the catchment in a 24-hour period. The monitoring program shall be spread evenly over one year following connection of each device to the public stormwater drainage system.
21. A Landscape Maintenance Plan is to be prepared and submitted to Council that outlines the technique and frequency of maintenance tasks during the establishment of the landscaping on the subject site. The Landscape Maintenance Plan is to be implemented for a period 24 months immediately following the completion of landscape and hardscape works on site. The Landscape Maintenance Plan is to incorporate maintenance and care of hardscape elements (e.g. paving, retaining walls, secured pedestrian access paths), weeding, watering, mowing, consideration of other endemic species where plantings do not respond to the conditions as expected and a procedure for the replacement of failed plantings.
22. A detailed site investigation (including sampling, testing and remediation if necessary) is to be prepared by a suitably qualified independent consultant in accordance with the recommendations in the Preliminary Site Investigation Report, as referenced in this consent, and is to be carried out as per EPA guidelines and the requirements of SEPP 55 - Remediation of Land. This report is to be provided to the Certifying Authority prior to the release of the relevant Construction Certificate. The findings of the detailed site investigation should be reported in accordance with EPA (2001) to provide the data to

confirm that the site is suitable for the proposed land uses, or (should contamination be identified) to inform a remedial action plan to make the site suitable for the proposed development.

23. A Hazardous Materials Survey of current structures present at the site is to be undertaken prior to the issuance of a Construction Certificate.
24. The approved Landscape Plans as referenced in this consent are to be amended to demonstrate the use of pervious finishes to all pathways within the site (excluding the shared pathway along the southern boundary). The amended landscape plans shall then be reviewed by a suitably qualified Stormwater Engineer, who is to provide certification that no more than 55% of the total site area is occupied by impervious surfaces.
25. The approved Landscape Plans as referenced in this consent are to be amended to demonstrate an additional 4 locally native canopy trees within the front setback to Garden Street.

**D. Matters to be satisfied prior to the commencement of works and maintained during the works:**

Note: It is an offence to commence works prior to issue of a Construction Certificate.

1. A clearly legible *Site Management Sign* is to be erected and maintained throughout the course of the works. The sign is to be centrally located on the main street frontage of the site and is to clearly state in legible lettering the following:
  - a. The builder's name, builder's telephone contact number both during work hours and after hours.
  - b. That no works are to be carried out in Council's Road Reserve without the written approval of the Council.
  - c. That a Road Opening Permit issued by Council must be obtained for any road openings or excavation within Council's Road Reserve associated with development of the site, including stormwater drainage, water, sewer, electricity, gas and communication connections. During the course of the road opening works the Road Opening Permit must be visibly displayed at the site.
  - d. That no skip bins or materials are to be stored on Council's Road Reserve.
  - e. That the contact number for Northern Beaches Council for permits is 9970 1111.
2. All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with appropriate professional standards.
3. The site must be fenced throughout demolition and/or excavation and must comply with WorkCover New South Wales requirements and be a minimum of 1.8m in height.
4. Where excavations extend below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation must preserve and protect the building from damage and, if necessary, underpin and support the adjoining building in an approved manner.
5. Where site fill material is necessary, fill materials must:
  - a. be Excavated Natural Material (ENM) only, as approved under the NSW Environment Protection Authority Resource Recovery Exemption (2014);
  - b. be free of slag, hazardous, contaminated, putrescibles, toxic or radioactive excavated material and soil, rock or similar material. Putrescibles and non-putrescibles solid waste (including demolition material) is not permitted.
  - c. Be the subject of testing and monitoring throughout the course of the works, and is to consist of clean fill inert material only, that is, non-contaminated excavated material and soil, and suitable material. Putrescible and non-putrescible solid waste (including

demolition material) is not permitted. All imported fill must be sourced locally where practicable to reduce traffic movements.

- d. Be deposited and works carried out in strict compliance with *Managing Urban Stormwater: Soils and Construction* (Landcom 2004).
6. Prior to commencement of any works, temporary sedimentation and erosion controls in accordance with the Erosion and Sediment Management Plan required by this consent are to be installed to eliminate the discharge of sediment from the site and shall not be removed until the site has been stabilised or landscaped to the Principal Certifying Authority's satisfaction including:
  - a. A site fence and silt and sediment control fence is to be erected and maintained during the course of works along any street boundary and park/reserve boundary to the site.
  - b. Sediment is not to leave the site or enter areas of riparian vegetation, and the appropriate sediment fencing is to be installed.
  - c. The capacity and effectiveness of runoff and erosion control measures shall be maintained at all times to conform to the specifications and standards quoted and to any conditions of approval of those measures.
  - d. Measures shall be applied, to the satisfaction of council, to prevent site vehicles tracking sediment and other pollutants onto any sealed roads serving the development.
  - e. Measures required in permits issued under the Water Management Act shall be implemented. This Act requires that people obtain approval for any proposed works within 40 metres of a watercourse. Permits should be sought from the NSW Office of Water.
  - f. Approved runoff and erosion controls shall be installed before site vegetation is cleared (other than that associated with the construction of the controls). These shall be as shown on an ESCP approved by council.
  - g. Topsoil shall be stripped only from approved areas and stockpiled for re-use during site rehabilitation and landscaping.
  - h. Stockpiles of topsoil, sand, aggregate, spoil or other material shall be stored clear of any drainage line or easement, waters, footpath, kerb or road surface and shall have measures in place to prevent the movement of such materials onto the areas mentioned. All stockpiled materials are to be retained within the property boundaries.
  - i. Uncontaminated runoff shall be intercepted up-site and diverted around all disturbed areas and other areas likely to be disturbed. Diversion works shall be adequately stabilised.
  - j. Runoff detention and sediment interception measures shall be applied to the land. These measures will reduce flow velocities and prevent topsoil, sand, aggregate, or other sediment escaping from the site or entering any downstream drainage easements or waters.
7. Personnel with appropriate training, or demonstrated knowledge and experience in erosion and sediment control shall be responsible for supervising the installation and maintenance of approved erosion and sediment control measures – during and after construction and until the site has been restored to the satisfaction of council.
8. Waste materials generated through demolition, excavation and construction works are to be minimised by re-use on site, recycling or where re-use or recycling is not practical, disposal at an appropriate authorised waste facility.
9. All waste dockets and receipts regarding demolition, excavation and construction waste are to be retained on site to confirm which facility received the material for recycling or disposal.
10. No works are to be carried out in Council's Road Reserve without the written approval of the Council.



11. All construction in the public road reserve must be undertaken by a Council authorised contractor. Alternatively, prior to the commencement of works, Council must be notified of each contractor undertaking works within the public road reserve. Each contractor must be able to provide/demonstrate each of the following;
- Incorporated company/ business name and ABN;
  - Public Liability Insurance;
  - Professional Indemnity Insurance;
  - Workers Compensation Insurance;
  - Accident/ Injury Insurance Cover;
  - Other Insurances;
  - Company Licences, Registrations, Permits, Certificates etc.;
  - WorkCover Construction Industry General Induction Card;
  - WHS Documents;
  - Employee qualifications – Certificates, Licences etc.;
  - Contractor Services;
  - Client Services; and
  - WHSMS Self Evaluation.
12. A Road Opening Permit, issued by Council, must be obtained for any road openings, or excavation within Council's Road Reserve associated with the development on the site, including stormwater drainage, water, sewer, electricity, gas and communication connections. During the course of the road opening works the Road Opening Permit must be visibly displayed at the site.
13. No skip bins or materials are to be stored on Council's Road Reserve.
14. The Construction Traffic Management Plan (CTMP) is to be implemented, throughout the construction phase of the development on site, including site preparation or demolition.
15. No native canopy trees are to be removed from Council's Road Reserve without prior approval from Council.
16. A stamped copy of the approved plans is to be kept on the site at all times, during construction.
17. The public footways and roadways adjacent to the site are to be maintained in a safe condition at all times during the construction phase. Pedestrian access is to be maintained at all times during the construction phase.
18. Toilet facilities are to be provided in a location which will not detrimentally affect the amenity of any adjoining residents at or in the vicinity of the work site during the duration of the development.
19. Prior to commencement of works, at least three photographs of the road reserve and footpath area adjoining the site, one front-on and one from each side of the property, are to be submitted to Northern Beaches Council with the notification of commencement of works, showing the condition of the street trees and road reserve. The photographs must be dated, and accompanied by a statement that they are a true and accurate representation of the scene depicted.
20. As there are existing trees to be retained within 5 metres of proposed development works, all recommendations as outlined in the Arboricultural Impact Assessment Report referenced in this consent are to be complied with, particularly with regard to the following:
- a. Works, erection/demolition of structures, excavation or changes to soil levels within 5 metres of existing trees are not permitted unless part of the development as

approved, and the storage of spoil, building materials, soil or the driving and parking of any vehicle or machinery within 5 metres of the trunk of a tree to be retained is not permitted;

- b. Where specified, tree guards are to be provided to all trees as indicated in the report, and are to be installed prior to the commencement of any work on the site. Tree guard materials and dimensions are specified in the arborist report;
- c. All works within 5 metres of existing trees including demolition, excavation, civil works, fencing and the like must be carried out by hand and under the supervision of an experienced and suitably qualified arborist. Should roots larger than 50mm be encountered all excavation works are to cease immediately and a qualified Arborist is to advise on the impacts of the roots removal on the tree's survival and report to the Principal Certifying Authority prior to works recommencing. If tree roots are present a pier and beam method of footing construction is to be adopted so as to bridge/span any identified lateral roots.
- d. Signage is to be erected advising all contractors and visitors to the site that no works or storage are to take place within the dripline of existing trees.
- e. Any changes or alterations made to the tree management recommendations as outlined by the arborist report due to the discovery of new structural roots or underground services during development works must be reported to the Principal Certifying Authority prior to works recommencing.

#### **E. Matters to be satisfied prior to the issue of Occupation Certificate:**

Note: It is an offence to occupy the building or part thereof to which this consent relates prior to the issue of an Occupation Certificate.

Note: Prior to the issue of an Occupation Certificate the accredited certifier is to ensure that Council's assets, including road, kerb and gutter and drainage facilities adjacent or near to the site have not been damaged as a result of the works. Where such damage has occurred, it is to be repaired to Council's written satisfaction prior to the issue of an Occupation Certificate or suitable arrangements put in place to affect those repairs at a future date to Council's written satisfaction. Should this process not be followed, Council will pursue action against the principal accredited certifier in relation to the recovery of costs to affect such works.

Note: this consent allows for the staged issue of Occupation Certificates that are in accordance with the approved Staging Plan referenced in this consent, and any conditions of consent. Unless otherwise stated, these conditions relate to each Occupation Certificate issued.

1. An Occupation Certificate application stating that the development complies with the Development Consent, the requirements of the Building Code of Australia and that a Construction Certificate has been issued must be obtained before the building is occupied or on completion of the construction work approved by this Development Consent.
2. A copy of any Section 73 Compliance Certificate issued under the provisions of the *Sydney Water Act, 1994*, is to be forwarded to Council or the Private Certifying Authority with the Occupation Certificate.
3. Prior to issue of the Occupation Certificate, Form 3 of the *Geotechnical Risk Management Policy* (Appendix 5 of P21 DCP) is to be completed and submitted to the Principal Certifying Authority.
4. A qualified landscape architect/designer is to certify that all landscaping works have been undertaken prior to the issuing of any Occupation Certificate relating to the relevant stage of construction. The landscape architect/designer is to confirm that all plants are arranged and spaced in a manner that is consistent with the approved Landscape Plan, as amended by any conditions of consent.

5. The stormwater drainage system must be constructed and completed in accordance with the approved design and relevant Australian Standards, and certification from an experienced Water/Environmental/Civil Engineer who is NPER accredited by the Institution of Engineers, Australia is to be provided in this regard.
6. Prior to the issue of an Occupation Certificate, a certificate prepared by a Registered Surveyor shall be provided to the Private Certifying Authority stating that the finished floor and surface levels have been constructed to be at or above the Flood Planning Level:
7. The structural stability of the structure must be verified by a suitably qualified structural engineer up to the Probable Maximum Flood level of 6.16m AHD. This structural assessment must consider impacts of flood depths and flow velocities from lateral flood flow, buoyancy, suction effects, and debris load impact for all floods up the level of the Probable Maximum Flood.
8. The structural assessment must also confirm that the shelter-in-place refuge complies with the Building Code of Australia.
9. A suitably qualified professional is to provide certification that the drainage/water management system has been constructed/installed in accordance with the relevant plans, documentation and the National Construction Code, and that:
  - a. The construction of the water management system has been supervised and certified by person(s) with appropriate experience and expertise in Civil/Environmental Engineering/Environmental Science, Hydrology and Hydraulics, and must be NER registered members of the Institution of Engineers (Australia), and
  - b. Works associated with the water management system have been completed in accordance with the approved Water Management Report and all associated plans and detailed design and have been installed to the manufacturers' specification (where applicable). Certification is to be provided in accordance with the *Warriewood Valley Water Management Specification (February 2001)*.
10. A certificate submitted by a Chartered Professional Engineer confirming to the satisfaction of the accredited certifier that the works in the public road reserve comply with Council requirements is to be provided to Council. The applicant is required to obtain written confirmation that all works in the road reserve have been completed in accordance with the conditions of the Roadworks Permit from Council, and a copy of such confirmation is to accompany the Occupation Certificate Application.
11. Prior to issue of an Occupation Certificate photographic evidence of the condition of the street trees and road reserve and area adjoining the site after the completion of all construction, must be submitted to the accredited certifier showing that no damage has been done and if damage has been done that it has been fully remediated. The photographs shall be accompanied by a statement that no damage has been done (or where damage has been remediated that Council has approved that work). In this regard, Council's written agreement that all restorations have been completed satisfactorily must be obtained prior to the issue of any Occupation Certificate.
12. Evidence is to be provided to confirm the engagement of a suitably qualified landscape architect who will be responsible for the implementation of the Landscape Maintenance Plan for a minimum period of 24 months. The landscape architect is to confirm that they will undertake to:
  - a. visit the site immediately following completion of the landscaping and hardscape works on site (those other than in the creekline corridor); and
  - b. visit the site on a three (3) monthly basis for a period of 24 months to ensure implementation of the Landscape Maintenance Plan.

13. Evidence of a restriction pursuant to Section 88E of the Conveyancing Act 1919, limiting the occupants of the residential care facility to seniors or people who have a disability, as defined by SEPP HSPD.
14. Creation of a s88B instrument on title, specifying the maintenance requirements and responsibilities of the owners of the development for any water management facilities related to the development site including the rainwater tanks, stormwater quality improvement devices (bioretention basins), stormwater filters/pit baskets, the onsite detention basins, and private stormwater drainage, in accordance with manufacturer's specifications and the amended Water Management Report required as a condition of this consent,
15. A plan is to be submitted to Council that describes how the OSDs, filtration cartridges, bio-basin, infiltration trench and pit baskets are to be operated and maintained, including details of the frequency and type of maintenance, and the means and location of disposal or recycling of materials captured. Responsibilities are to be clearly set out in the plan.
16. Creation of a right of carriageway over the shared path to allow for public access across the path in perpetuity.
17. A suitably qualified professional is to provide certification that the as-built development is consistent with the relevant provisions of the General Terms of Approval, issued by the NSW RFS, as referenced in this consent.
18. An Occupation Certificate must not be issued in relation to Stage 1 works unless all works within Stage 1, as shown on the approved Staging Plan and as amended by condition, are completed.
19. The undergrounding of existing overhead infrastructure within the adjacent road reserve is to be undertaken prior to the issuance of any Occupation Certificate.
20. Certification is to be provided from a suitably qualified acoustic engineer to confirm that all aspects of the as-built development comply with the recommendations of the approved Acoustic Report referenced in this consent, as amended by conditions of consent.

**F. Advice:**

1. Failure to comply with the relevant provisions of the *Environmental Planning and Assessment Act, 1979* (as amended) and/or the conditions of this Development Consent may result in the serving of penalty notices (on-the-spot fines) under the summary offences provisions of the above legislation or legal action through the Land and Environment Court, again pursuant to the above legislation.
2. The applicant is also advised to contact the various supply and utility authorities, i.e. Sydney Water, Sydney Electricity, Telstra etc. to enquire whether there are any underground utility services within the proposed excavation area.
3. It is the Project Managers responsibility to ensure that all of the Component Certificates/certification issued during the course of the project are lodged with the Principal Certifying Authority. Failure to comply with the conditions of approval or lodge the Component Certificates/certification will prevent the Principal Certifying Authority issuing an Occupation Certificate.
4. In accordance with Section 95(1) of the Act, this consent will lapse if the development, the subject of this consent, is not physically commenced within 5 years after the date from which this consent operates.

5. To ascertain the date upon which the determination becomes effective and operates, refer to Section 83 of the *Environmental Planning and Assessment Act, 1979* (as amended).
6. The approved plans must be submitted to a Sydney Water Quick Check agent or Customer Centre to determine whether the development will affect Sydney Waters sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met. The approved plans will be appropriately stamped. For Quick Check agent details please refer to the web site at [www.sydneywater.com.au](http://www.sydneywater.com.au) then see Building Developing and Plumbing then Quick Check, or telephone 13 20 92.
7. Portions of the site may be liable to flooding from the 1% AEP and the PMF (Probable Maximum Flood) and effective precautions should be taken by the owner(s) and/or occupier(s) of the building to reduce any potential risk to personal safety and to minimise any property damage to the structure, its fixtures and contents.