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Planning Services
Department of Planning and Environment
GPO Box 39
SYDNEY NSW 2001

By email via: Ellen.Jones@planning.nsw.gov.au

Our Ref: 2018/183525
Your Ref: IRF18/448

Dear Amanda,

Re: Request for a Rezoning Review – 2 & 4 Nooal Street and 66 Bardo Road, Newport

I refer to your letter to Council dated 8 February 2018 advising that a Rezoning Review has been lodged with the Department. Thank you for seeking Council's views on the original Planning Proposal for 2 & 4 Nooal Street and 66 Bardo Road, Newport.

Planning Circular PS 16-004 "Independent reviews of Plan Making Decisions" states *'only the same application that was initially presented to the council by the proponent will be reviewed by the Planning Panel or Commission'*. The 'same application' test is also included in *'A guide to preparing local environmental plans'* published by the Department of Planning & Environment (DP&E). Further, the Planning Panels Operation Procedures document (September 2016) states *'The planning panel is required to review the planning proposal initially considered by council, rather than an amended or updated version'*.

The 'same application' test was introduced to restore public confidence in the planning process which had been undermined by the ability of proponents to chip away at the decisions of planning authorities through the provision of additional material that the community had not been afforded the opportunity to review.

Council notes that two additional technical reports have been submitted to the DP&E which did not form part of the original application to Council. These reports are:

- Estuarine Risk Management Report by Horton Coastal Engineering – Dated 28 December 2017
- Pre Development Site Inspection Letter by Arborsaw – Dated January 2018

It is also noted that a 'cover letter' to the DP&E was also submitted that contains detailed material that was not provided to Council originally. This letter attempts to address the reasons for Council's refusal of the Planning Proposal and is tantamount to an additional planning report.

On 8 March 2018, Council received confirmation from DP&E that the two additional technical reports and 'cover letter' will not be presented to the Panel, as they represent additional



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information not supplied to Council as part of the original Planning Proposal.

Subsequent to Council submitting comments to the Rezoning Review, we were advised of an amended 'cover letter' that was not previously provided to Council. This amended version is in substantially the same format and contains similar information as the cover letter that has already been rejected by DP&E for being an additional report. As such, Council asks that the amended 'cover letter' also be rejected as it also fails the 'same application' test.

Council also notes that as of the 19 March 2018, the Sydney North Planning Panel website still does not display the Rezoning Review documents, depriving the community the opportunity to be informed of the review. Council placed the Planning Proposal on non-statutory exhibition prior to determination. Not providing public access to the revised Proposal and relevant information denies the community, and especially those who made a submission, the opportunity to stay informed regarding the Planning Proposal.

Planning Circular PS 16-004 – *Independent reviews of plan making decisions*, specifies that after Council issues written notification of a refusal, 'The proponent of the proposed instrument then has 42 days to request that the relevant Planning Panel or the Commission review the proposal'. Again this same requirement is included in 'A guide to preparing local environmental plan' published by the DP&E.

The Rezoning Review Request was lodged with the DP&E on 8 February 2018. This is 70 days after Council's written notice of refusal issued on 7 December 2017. The applicant has indicated they completed and signed the Rezoning Review Request Form on 29 January 2018. This is 60 days after the written confirmation of Council's refusal on 7 December 2017. The reference to extension of periods over Christmas contained within 'A guide to preparing local environmental plans' is noted however, the additional time is considered excessive. Council contends that this Rezoning Review Request has been lodged outside the requirements of the Circular.

It is further noted that the extension of time appears to have been requested to allow the applicant to prepare the additional technical reports (Dated 28 December 2017 and January 2018) which as explained above have been rejected by DP&E for not being submitted with the original proposal. If the applicant had intended to lodge the same application as the one considered by Council, they could have readily achieved this within the 42 day time frame.

Planning Circular PS 16-004 notes that where an exhibited district or regional plan is not proposed to be finalised, it is no longer to be considered as part of the Strategic Merit Test. The applicant has assessed their proposal against the *Draft North-East Subregional Strategy* (2007) and *Metropolitan Plan for Sydney 2036* (2010) which were not finalised and have been withdrawn or superseded. Council notes that at the time of lodgement for the Planning Proposal the relevant district plan was the *North District Plan* (November 2016). This was subsequently superseded by the *Revised North District Plan* (October 2017) and *Draft Greater Sydney Region Plan* (October 2017). The proponent has tried to justify their proposal against plans that no longer form part of the test. Council notes that at the time of this revised submission the district and metropolitan plans have been updated again to the *Greater Sydney Region Plan – A Metropolis of Three Cities* and the *North District Plan* (March 2018)



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which is not considered to be substantially different from the previous versions.

Further, Council notes that 'A guide to planning local environmental plans' specifies that *'there will be a presumption against a Rezoning Review request that seeks to amend LEP controls that are less than 5 years old, unless the proposal can clearly justify that it meets the Strategic Merit Test'*. As the planning instrument proposed to be amended, Pittwater Local Environmental Plan 2014 is less than five years old, it should not be amended as the proposal clearly fails the Strategic Merit Test.

Please refer to **ATTACHEMENT 1** for a detailed explanation of Council's concerns with the Proposal.

Should you have any questions in relation to the above, please not hesitate to contact Anne-Maree Newbery on 9970 1164.

Yours Sincerely,

Andrew Pigott
Executive Manager Strategic and Place Planning

COUNCIL SUBMISSION REZONING REQUEST

This Proposal is fundamentally flawed as it has not demonstrated strategic merit.

1. Strategic Merit Test

Detailed consideration of the application against the Strategic Merit Test was provided in the planning report to Council. Table A below has been reproduced from that report. Notwithstanding the additional information provided by the applicant which has already been disregarded by DP&E, Council's assessment of the application remains unchanged.

Table A – Does the proposal have strategic merit? Is it:

<p>Consistent with the relevant regional plan outside of the Greater Sydney Region, the relevant district plan within the Greater Sydney Region, or corridor/precinct plans applying to the site, including any draft regional, district or corridor/precinct plans released for public comment;</p>	<p><u>A Productive City</u></p> <p>Yes. The Planning Proposal is consistent. The Proposal would contribute to some job creation in the short term during construction. However the site is not located within an existing centre.</p> <p><u>A Liveable City</u></p> <p>The Proposal is considered not to relate to Liveability Priority 5 – Providing housing supply, choice and affordability, with access to jobs and services or Priority 6 –Creating and renewing great places and local centres.</p> <p>Northern Beaches Council has sufficient land and future development to reach its dwellings target. Council is on track to achieve our housing target. Additional rezoning to facilitate increase housing supply is not required.</p> <p>The proposed form provides some additional housing; however, the site is in a low density residential setting. The Proposal results in medium density housing that would be inconsistent with the existing character of its surrounds, particularly as the site (zoned E4 Environmental Living) is not in an existing centre or within walking distance of one.</p> <p>The Proposal also does not address the need for affordable housing or social housing identified. The location and proximity to water, as well as the large dwelling size and facilities indicated, show the development is aimed at upper levels of the housing market already able to acquire appropriate accommodation. No affordable or social housing is identified by the applicant, and the low number of dwellings indicates that the proposal will not provide additional affordable housing under Northern</p>
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	<p>Beaches Council's policies.</p> <p>Local Housing Strategy – Northern Beaches Council was recently amalgamated and has not yet adopted a Local Housing Strategy. However previous investigations have identified the need for small housing types in well located areas close to centres, which is also replicated in the Draft District Plan. This Proposal runs contrary to those aims.</p> <p><u>A Sustainable City</u></p> <p>The Proposal is inconsistent with Priority 17 – Protecting and enhancing scenic and cultural landscapes. The area is well regarded by the community for its scenic value where by vegetation and bushland dominate over houses in a waterway setting. This proposal is for a large and bulky development on the water which will detract from these scenic and aesthetic values.</p> <p>The Proposal is inconsistent with Priority 19 – Increasing urban tree canopy. It will see the removal of existing large trees without replacement. Further it will see an overall reduction in the tree canopy and the ability to increase it.</p>
Consistent with a relevant local council strategy that has been endorsed by the Department;	No. The Department has not formally endorsed the <i>Pittwater Local Planning Strategy</i> (2011); however, it has been used to inform the Pittwater LEP (2014) which was gazetted on 30 May 2014 and came into effect on 27 June 2014.
Responding to a change in circumstances, such as the investment in new infrastructure or changing demographic trends that have not been recognised by existing planning controls.	The Planning Proposal does not respond to a change in circumstances.

The proponent contends that the site is unique and therefore support for the rezoning will not set a precedent. Council contends that there are no special or unique features of this site that differentiate it from adjoining and nearby sites or indeed many sites in the E4 Environmental Living zone. Accordingly, the rezoning of this site will set an unwanted precedent.

It remains fundamentally inappropriate to change the zoning of a site to introduce a vulnerable group (seniors and people with a disability) onto a site that is known to be subject to estuarine hazard.

The proponent claims the Planning Proposal (Proposal) is '*not antipathetic*' to the *Draft North-East Subregional Strategy* (2007). Even then, the Proposal has not provided detailed assessment against the key aims, objectives and actions of that strategy. Instead the only comment on that plan is '*there is a clear demand for seniors housing on the Northern Beaches*'. While this comment is not in dispute, by itself it does not provide appropriate justification for the Proposal to proceed. In

fact the Planning Proposal itself has not even considered the right strategic plans, and only does this through an additional report submitted with the Rezoning Review. As explained previously, this report marked as a 'cover letter' should not be considered as it was not included with The Proposal submitted to Council originally.

When the Proposal was lodged in September 2017 the relevant strategy was the *North District Plan* (November 2016) which the applicant failed to consider. In October 2017 the *Revised North District Plan* was released and became the relevant plan. The Proposal was assessed against this correct version by Council. Subsequent to Council preparing its revised submission to the Panel based on the late receipt of additional information, the *North District Plan* (March 2018) was adopted.

The Proposal also failed to address Priority 17 – Protecting and enhancing scenic and cultural landscapes and Priority 19 – Increasing urban tree canopy. The interfacing areas between the Pittwater waterway and more developed centres have long been regarded by the Northern Beaches community for their scenic and cultural values and low density development hidden amongst screening vegetation. As the applicant's photos of the site can attest to, the predominant visual character of the area is dwelling houses set into a landscape dominated by trees and vegetation. Dwellings are either single or double storey with trees rising above and in between. This Proposal seeks to fundamentally change that visual character by locating a large, bulky built form which presents as a multi-unit development rather than individual dwellings. This is especially evident from the elevation which is visible from Crystal Bay. The increased bulk and scale of this development, with an increase in hard space also detracts from Priority 19 by lowering future opportunities to increase the urban tree canopy in this area due to limited opportunities for deep soil planting.

While the Arborist letter has already been ruled invalid by DP&E as it was not submitted to Council with the original application, it still does not address the potential loss of a number of street trees upon which the proposal is dependent on to screen the built form. As the Arborist letter itself clearly states on page 1, they have not reviewed any draft or concept plans as part of their review. Therefore they cannot readily consider any potential tree loss and reduction in urban tree canopy. For instance the arborist has failed to consider the required upgrades to the western end of Bardo Road including widening and realignment, the basement car park entry on Bardo Road, or the proposed driveway on Nooal Street.

It is noted that Seniors Housing has never been permitted on this site as a consequence of a Council policy by either Pittwater LEP 1993 or Pittwater LEP 2014. It was only ever permitted by virtue of the SEPP (HSPD) that overrides local Council policy. The introduction of Pittwater LEP 2014 removed the ability for the SEPP (HSPD) to override local Council policy. The process to introduce Pittwater LEP 2014 involved two public exhibition periods and extensive community consultation including:

- Written correspondence to all landowners in the local government area explaining their current and future zones
- Notices in the Manly Daily
- Information on Council's website
- Community drop in sessions
- Pop up stalls

The introduction of the new Pittwater LEP was intended as a like for like translation of the Pittwater LEP 1993, where possible and appropriate. Having regard for the location of this site near the foreshore of Pittwater and being subject to coastal hazard, the appropriate zone is E4 Environmental Living. Further, at the time of the introduction of the new Pittwater LEP, it was made clear that the new LEP did not intend to translate the application of State Environmental Planning Policies, over which Council has no control. The Pittwater LEP 2014 was validly made and the

proposition that the site should now be rezoned to allow Seniors Housing because the owner was not aware of the permissibility change is not accepted as a legitimate planning or legal argument.

Indeed a nearby objector to this Proposal confirmed that they were aware of the changes proposed as a consequence of the proposed introduction of the new Pittwater LEP as they took "appropriate steps to acquaint ourselves as part of our purchase process with the zonings around us and the implications for further development".

2. Site Specific Merit Test

Consideration of the application against the Site Specific Merit Test was provided in the planning report to Council. Table B below has been reproduced from that report. Notwithstanding the additional information provided by the applicant Council's assessment of the application remains unchanged.

Table B – Does the proposal have site-specific merit, having regards to the following:

<p>The natural environment (including known significant environmental values, resources or hazards).</p>	<p>The site is affected by a coastal inundation risk. As such it is generally not suited for a change to permit seniors housing or housing for people with a disability.</p>
<p>The existing uses, approved uses, and likely future uses of land in the vicinity of the proposal.</p>	<p>The subject site is surrounded by detached dwelling houses to the east, south and north. To the west sits Crystal Bay and Pittwater. Council's plans and policies do not propose any changes to the current uses in the locality. The introduction of medium density housing on this site would be inconsistent with the established character of the area.</p>
<p>The services and infrastructure that are or will be available to meet the demands arising from the Proposal and any proposed financial arrangements for infrastructure provision.</p>	<p>The Proposal seeks to allow medium density style residential development to be occupied by seniors or people with a disability. However the site is located 800m from the Newport Village Centre outside a walkable radius.</p> <p>While it is acknowledged the site is just within 400m walking distance of a bus stop located on Gladstone Street, it is not located within a centre or along a transport corridor with access to high frequency public transport which is considered essential for any increases in dwelling densities. The Proposal is significantly at odds with Council's strategic planning framework.</p> <p>From a traffic generation and demand perspective, it is reasonable to assume the Planning Proposal will have a minimum impact on existing traffic flows which is unlikely to significantly increase the anticipated peak hour traffic in the road network.</p> <p>However there will to be upgrades to the shared driveway through Bardo Road and extensive upgrades to pedestrian facilities to ensure compliance with accessibility standards. Council's engineers have recommended the following.</p> <p>Currently the western end of Bardo Road has a small and narrow shared driveway servicing a small number of dwellings. The attached</p>

	<p>concept plans indicate that the basement level of the carpark will be accessed from a new ramp from Bardo Road. The applicant will be required to remove all existing driveways and garages from their site and upgrade this vehicular access point. This would require realignment and widening to provide two way access as well as upgrades to the Bardo and Nooal intersection to improve its safety. Detailed plans showing this work would be required.</p> <p>Upgrades required to the pedestrian access are as follows:</p> <ul style="list-style-type: none"> • Kerb ramp south side of pedestrian crossing to be modified to meet accessibility standards • Extension of footpath on south side of Gladstone St to provide all weather access to boarding point • Provision of appropriately sized and positioned shelter at 62 Gladstone St bus stop • Provision of 1.5m wide footpath on Bardo Road from the property to existing ramps at King Street • Pedestrian refuge compliance works at the roundabout on King and Bardo including ramps to comply (accessibility audit to confirm) • Extend footpath to Gladstone St boarding point • (Westbound stop) including kerb adjustment to suit low floored buses • Kerb adjustment to suit low floored buses Eastbound stop • All ramps to be compliant between subject site and transport stops • Accessibility requirements at all crossing and transport collection points – i.e. tactile at ramps and bus stops. <p>These works will be required to be provided by the applicant.</p>
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a. Incompatibility with zone objectives and outcomes

The properties adjoining the subject site are all zoned E4 Environmental Living in accordance with Pittwater Local Environmental Plan 2014. The objectives of the zone are as follows:

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*
- *To ensure that residential development does not have an adverse effect on those values.*

- *To provide for residential development of a low density and scale integrated with the landform and landscape.*
- *To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.*

The Proposal states that allowing the additional permitted use on this site *'will not defeat the objectives of the E4 Environmental Living Zone with a complimentary and compatible building form able to achieved without unacceptable environmental, streetscape, foreshore scenic protection or residential amenity consequences.'*

The Proposal is a medium density development that contradicts the zone's objectives. The land has been zoned E4, as it has special aesthetic values, which only permits low density residential development. This protects the scenic character of not only the individual site but the surrounding bay and Pittwater waterway. This particular site has never been zoned for intensive development under the current or previous local environmental plans, and the intended development outcome attempts to permit such a change which is considered incompatible and out of character to the surrounding locality. The statement that such a proposal is complimentary and compatible to the site and surrounding uses is clearly false when the zone only permits low scale and low density development and the locality is dominated by individual dwellings. On this basis Council considers the Proposal does not have site specific merit, in fact the Proposal would detract from the site's scenic qualities.

It is recognised that as this is a Planning Proposal the plans included are not approved as part of the application however, it is revealing that the anticipated dwelling yield from the Proposal also grossly exceed the low density provisions and objectives of the zone. In the E4 zone density is regulated by the minimum lot size map which applies to the site and specifies a minimum lot size of 700sqm. The plans included with the Proposal show 8 residential apartments proposed (on a combined site area of 2926m²) which gives a yield of 1 apartment per 366m² of land. This is almost half the 700m² lot size requirement that currently applies. It is also double the 4 lots that could be readily achieved under the current provisions if the site was amalgamated and subdivided into individual allotments. Therefore the suggestion that the anticipated Additional Permitted Use is line with the objectives of the zone is once again false and misleading as the Proposal doubles the intended dwelling density of the site. It is not low density development but rather a medium density development and in clear breach of the objectives and aims of the zone.

Calculations undertaken of the plans submitted with the application indicate a landscape area of only 38%. This represents a significant non-compliance with Council's requirement for this site in accordance with Pittwater 21 DCP of 60% landscape area. This again reflects the development of this site for medium density unit development will not be in keeping with the desired character for this area in accordance with Council's planning controls.

b. Incompatibility with visual character and aesthetic values

The applicant has repeatedly stated through its cover letter that *'the context of the site is far from low density in character within the sites visual catchment characterised by multi-storey detached dwelling houses, multi-storey residential flat development, marinas and associated club facilities and car park areas.* This statement is demonstrable false. Within a 200m radius of the site there is only three residential apartment buildings with the remaining properties consisting of low density housing. Furthermore, it is inappropriate to use marinas and their associated facilities as a guide or an indication of residential density or residential character of a locality as they are not considered residential developments and their characteristics are substantially different. Based on the available evidence, the visual character of the area is dominated by low density development and accordingly there is no justification to support the three storey medium density development in the locality.

It cannot be demonstrated that the visual character of the area is anything other than low density and thus the site does not have merit to allow a three storey medium density development.



Figure 1 – Aerial Imagery. Site is marked as yellow star. Medium density development within a 200m radius of the site is marked by the red cross-hatching.

c. Breach of height limits

As the application is a Planning Proposal, it is recognised that built form plans submitted provide a guide as to what a future development may be like. Nevertheless it is revealing that even these drawings do not illustrate a compliant scheme.

The drawings attached with the Proposal appear to demonstrate that the development cannot comply with the maximum height limit of 8.5m. Based on where the ground floor level intersects the existing ground level at 2750 on the southern and western elevations, the building rises to the first floor at 9650, a distance of 6.9m. It is noted that no levels have been provided for the ceiling of the top storey or the roof. Noting a minimum floor to ceiling height of 2.7m is required for habitable spaces the ceiling of the first floor must be at 12350 or alternatively, 9.6m above the ground. This is also a conservative estimate as it does not consider the roof pitch. Thus the Proposal cannot meet the relevant height limits and fails to have site specific merit.

d. Appropriate areas for medium density development

The applicant's cover letter on page 4 states '*page 36 of the draft [North District] (October 2017) plan identified medium density local infill development as means of providing greater housing variety whilst maintain the local appeal and amenity of the area*'. However the

applicant has selectively quoted the page and ignored the very next sentence which provides context and goes on to clearly state that '*Councils are in the best position to investigate and confirm what locations within their local government are best suited to additional medium density opportunities*'. The former Pittwater Council identified this site as not being appropriate for medium density development in the *Pittwater Local Planning Strategy* (2011) and confirmed this approach in the Pittwater Local Environmental Plan 2014. The *Revised Draft North District* itself has acknowledged (on page 35) that the *Pittwater Local Planning Strategy* identified opportunities to increase capacity for housing which clearly does not include this site.

The applicant goes on further to state the site satisfies the criteria for infill medium density as it is residential land located near a local centre where links for walking and cycling help promote healthy lifestyle. The land is in fact zoned environmental, not residential, and is located 800m from the Newport centre and thus outside the 10 minute walking radius. It will not promote walking or cycling as it is located too far from the centre particularly for aged and disabled residents. In isolation, the replacement of older housing stock in Newport is not considered a valid justification for rezoning in the context of the site.

It is noted that between the date of the applicant's cover letter being submitted and Council's revised response that the *North District Plan* (March 2018) became available. However page 36 of the previous district plan has been substantially reproduced on page 40 of the adopted plan. It still clearly indicates Councils are in the best place to identify areas of medium density and on page 39 that the *Pittwater Local Planning Strategy* (2011) identified opportunities to increase capacity for housing which did not conclude this site as appropriate.

e. State Environmental Planning Policy No 71 – Coastal Protection

The Proposal is inconsistent with the aims and objectives of the SEPP. In addition the Proposal does not provide justification as to why the site has specific merit to proceed given the development is incompatible with the intended direction for the area.

The relevant aims of the SEPP include;

(a) to protect and manage the natural, cultural, recreational and economic attributes of the New South Wales coast, and

(e) to ensure the visual amenity of the coast is protected, and

(k) to ensure that the type, bulk, scale and size of development is appropriate for the location and protects and improves the natural scenic quality of the surrounding area, and

(i) to encourage a strategic approach to coastal management

The Proposal is clearly inconsistent with the aims of the policy as outlined above. The insistence that the location of the site within Crystal Bay diminishes any potential visual impact on Pittwater waterway or the immediate area is erroneous. If approved, the development would appear as a bulky and large scale development in an area predominantly consisting of single dwellings set amongst screening vegetation. The type, bulk and scale of the development is not appropriate for the area, and it does nothing to improve the scenic qualities that make the area special. The Estuarine Risk Management Report provided (which DP&E has already agreed should not be considered by the panel) has also not addressed these issues and states;

'It is beyond the scope of the investigation herein to consider aims 2(d) and 2(e) which are not coastal engineering matters'

'For aim 2(k), issues related to bulk etc. are not coastal engineering matters and hence not considered herein'

For (l) the report states *'the proposed development is consistent with the controls in the Pittwater 21 DCP relating to estuarine (coastal) management'*. However the report fails to consider the broader strategic framework as outlined in the Pittwater Local Environmental Plan 2014 which does not permit intensification of development in areas subject to natural hazards or regarded for their scenic value.

The report further states at Section 9.4 Overall Conclusion that *'The proposed development satisfies the coastal engineering matters for consideration in Clause 8 of SEPP 71 as identified as above'*. The report only attempts to address engineering matters and remained silent and provided no assessment of the strategic planning objectives of the SEPP for which the Proposal is clearly inconsistent.

f. Draft State Environmental Planning Policy – Coastal Management

This draft SEPP was publically exhibited between November 2016 and January 2017 and as such must be considered by the relevant consent authority in its determinations of Planning Proposals. It is noted the Proposal has not addressed this draft SEPP previously and has attempted to rely on the Estuarine Risk Management Report submitted as part of this Rezoning Review to demonstrate consistency. DP& E has already agreed this report cannot be relied upon as it was not initially presented to Council. Nevertheless the Proposal is inconsistent.

The aim of the draft SEPP is as follows:

- (a) managing development in the coastal zone and protecting the environmental assets of the coast, and*
- (b) establishing a framework for land use planning to guide decisions making in the coastal zone.*

Under the draft mapping attributed to the SEPP, the site is marked as being within the 'Coastal Use' zone. Under Division 5 and (16)(i) of the draft SEPP, *'development consent must not be granted to development on land within the coastal zone... unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards'*. The Proposal, as a consequence of increasing the density of the site will intensify the coastal hazard risks. The risks will be further exacerbated by locating a vulnerable group of people in an area of known hazard. Northern Beaches Council considers the Proposal incompatible with the draft SEPP as the subject site is affected by coastal hazards and the proposed seniors living development would be contradictory to the intention and aims of the draft SEPP.

There are also further considerations outlined in the draft SEPP that the Estuarine Risk Management Report has failed to address. Division 4 Coastal use area states the consent authority may not grant consent to development on land partly or wholly within the coastal area unless the consent authority:

- (a) is satisfied that the proposed development;*
 - (iii) will not adversely impact upon the visual amenity and scenic qualities of the coast, including coastal headlands, and*

(b) has taken into account the type and location of the proposed development, and the bulk, scale and size of the proposed development.

Taking into consideration the intended development outcome of the Proposal and the provisions of the draft SEPP, Council is not satisfied the Proposal is appropriate or has merit. The subject site is well regarded for its scenic and visual character and any development must be respectful to the setting and in harmony with surrounding land uses. The size and bulk of the Proposal is considered out of character with surrounding low density development and is inconsistent with the intended outcomes of surrounding land zoned E4 or R2. The Proposal has not attempted to address the inconsistency or justify the subject site is worthy of a rezoning to permit an outcome that does not respect the aims and provisions of the draft SEPP.

g. Draft Local Planning Direction – Coastal Management

The Proposal is inconsistent with the draft Local Planning Direction for Coastal Management. Once again the Proposal did not attempt to address this direction in the original application, and has only now, during the Rezoning Review, provided information via the Estuarine Risk Management Report to address the matter, which means it cannot be considered by the Panel. Nevertheless the Proposal is inconsistent. The relevant section of the direction states:

(4) A planning proposal must not rezone land which would enable increased development or more intensive land-use on land:

(b) identified as land affected by a coastal hazard as per (1)(b) above

Provision (1) (b) states that the 117 direction applies to land identified by a current or future coastal hazard in a study or assessment undertaken by or on behalf of the relevant planning authority. The site has been identified as being affected by a coastal hazard, namely coastal inundation. As such the Proposal to rezone the land to allow for increased development and a more intensive land use is inconsistent. The site does not demonstrate merit worthy of a rezoning due to coastal hazard. The Proposal has provided insufficient justification to vary the direction.

h. S117 Direction – 2.1 Environmental Protection Zones

The Proposal is inconsistent with S117 Direction 2.1 Environmental Protection Zones. The Proposal seeks to amend the Pittwater Local Environmental Plan 2014 by increasing the density allowable on the site. The Proposal is clearly inconsistent with 2.1 (5) by which '*A planning proposal that applies to land within an environmental protection zone or otherwise identified for environmental protection purposes in a LEP must not reduce the environmental standards that apply to the land (including modifying development standards that apply to the land)*'.

Under Direction 2.1(6) a planning proposal may be inconsistent if the relevant planning authority can justify an inconsistency through a strategy or study. However no such strategy or study has been included with the Proposal and it does not explain how it can possibly warrant such a justification. The proposed seniors living development is more akin to a medium density development outcome which is not consistent. Such a development is better suited to a R3 Medium Density Residential zone.

3. Other Matters

It is noted that under Part 2 – Explanation of the Provisions, the applicant has incorrectly identified the Warringah Local Environmental Plan 2011 (WLEP2011) as the instrument to be amended. That is incorrect as the subject site is located within the suburb of Newport which is within the former Pittwater Council area. The correct instrument is the Pittwater Local Environmental Plan 2014. Finalising the amendment as requested in the Request for Rezoning Review is unachievable as it seeks to amend the wrong instrument.