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Dear Mr Tanner,

Re: Lodgement of a site compatibility certificate application for Bayview Golf Course under the provisions of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004

Thank you for providing Pittwater Council (Council) with the opportunity to comment on the site compatibility certificate application received for Bayview Golf Course (Part Lot 1 DP 662920, Part Lot 6 DP 45114, Part Lot 1 DP 19161), lodged under the provisions of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* (SEPP HSPD).

Whilst Council has prepared a response in relation to the proposed development's consistency with the criteria listed in clause 25(5)(b) of SEPP HSPD, Council maintains that the subject site compatibility certificate application is fundamentally flawed, as the provisions of SEPP HSPD cannot be applied to the subject site. Although there is some confusion as to the area of land considered to constitute the site, which is discussed in further detail later in this response, Council contends that the land is appropriately described as environmentally sensitive land, and in accordance with the provisions of clause 4(6) of SEPP HSPD, the policy is not able to be applied to the subject site.

Environmentally sensitive land is identified by Schedule 1 of SEPP HSPD, as follows;

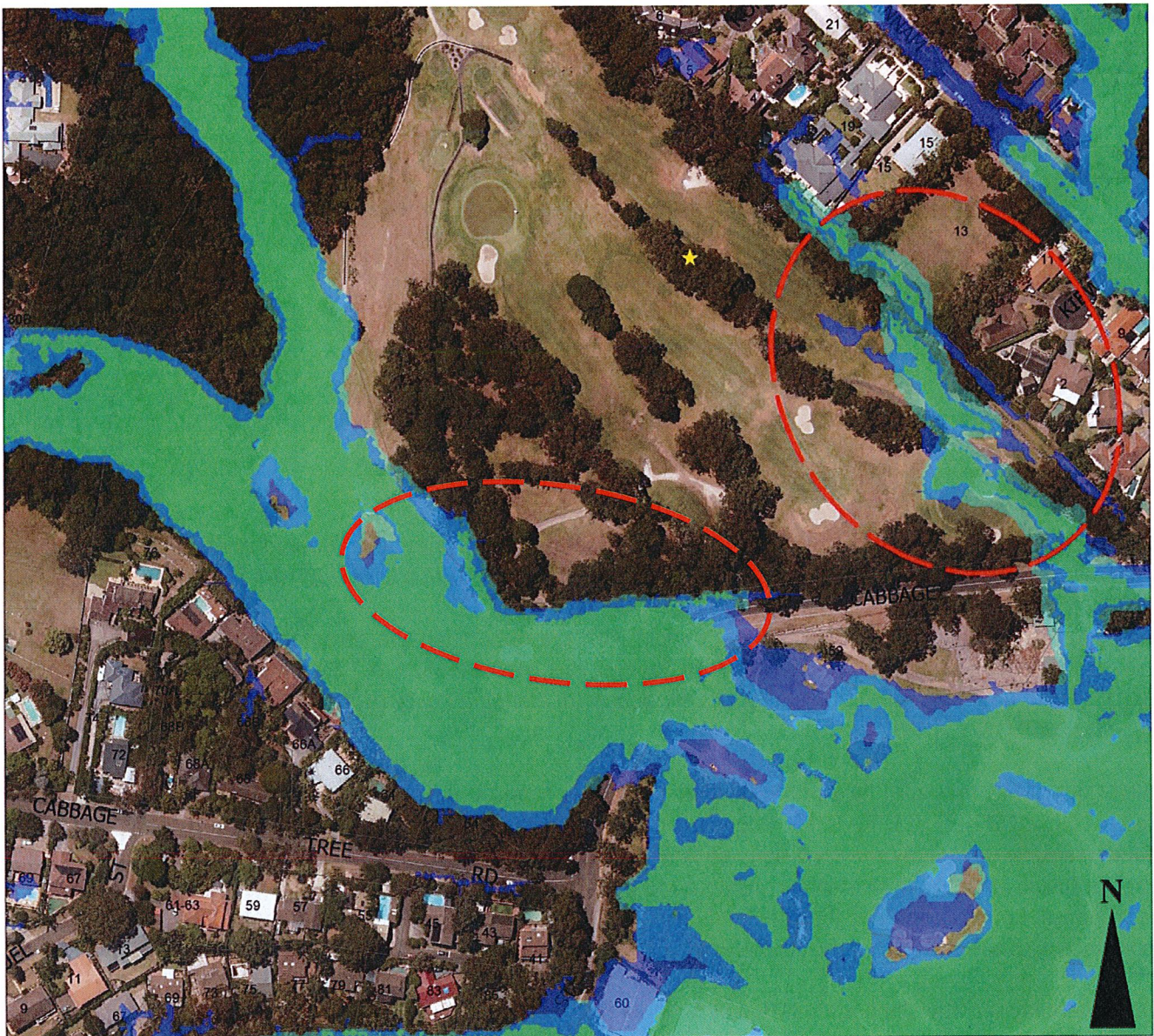
Land identified in another environmental planning instrument by any of the following descriptions or by like descriptions or by descriptions that incorporate any of the following words or expressions:

...

- (g) floodway,
- (h) high flooding hazard,
- (i) natural hazard,

...

Clause 7.3 (Flood planning) of *Pittwater Local Environmental Plan 2014* (PLEP 2014) applies to all land at or below the flood planning level. As shown by Figure 1, the site is affected by mainstream flooding and overland flow flooding in the 1% AEP flood event, with portions of the site at or below the flood planning level. In this respect, Council contends that the site is appropriately described as environmentally sensitive land, forming part of a floodway and subject to high flooding hazard, as defined by PLEP 2014, the relevant environmental planning instrument.



Not to Scale
 Printed April 2016

Notes:
 1. * extent represents the 1% annual Exceedance Probability (AEP) flood event
 2. Flood Planning Level includes the 0.5m freeboard on the
 1% AEP extent for planning purposes
 3. Cadastre Lines, flood extents, aerials locations are indicative only
 4. Hydrologic and hydraulic modelling is reliant on data from many sources

Figure 1 - Flood affectation of Site and surrounding area

Furthermore, clause 7.7 (Geotechnical hazards) of PLEP 2014 applies to land identified as "Geotechnical Hazard H1" on the Geotechnical Hazard Map of PLEP 2014. As demonstrated by Figure 2, the southern frontage of the proposed site is subject to Geotechnical Hazard H1 (shown in solid pink). Council has received legal advice to confirm that the geotechnical hazard is appropriately described as a natural hazard, and as geotechnical hazards are mapped by an environmental planning instrument, the provisions of SEPP HSPD cannot be applied.



Figure 2 - Aerial photo with geotechnical hazard mapping (pink) and indicative site boundary (yellow dashed line)

As mentioned earlier, there is some confusion regarding the extent of the subject site, and the land to which the application relates. The Applicant has nominated that the site is limited to a 2Ha portion of the greater golf course site, indicated by the yellow dashed line in Figure 2, comprising land from 3 separate allotments, being Part Lot 1 DP 662920, Part Lot 6 DP 45114, and Part Lot 1 DP 19161. However, a number of documents provided and relied upon by the Applicant make reference to the entirety of the greater golf course site, with recommendations applying to the golf course site as a whole, beyond the 2Ha portion of the land identified by the Applicant. Furthermore, Council notes that the application includes the Torrens Title subdivision Lot 1 DP 662920, Lot 6 DP 45114, and Lot 1 DP 19161, and at the very least, the whole of these lots should be considered in the assessment of the subject application.

Irrespective of the area or extent of the site, both the limited 2Ha portion of land nominated by the Applicant and the greater golf course site are appropriately described as environmentally sensitive land, and the provisions of SEPP HSPD cannot be applied. Whilst Council maintains that the subject application should be refused solely on this basis, the following comments are made in consideration of the proposed development's consistency with the criteria listed in clause 25(5)(b) of SEPP HSPD and having regard for the proposal's compatibility with surrounding land uses;

- ***the natural environment (including known significant environmental values, resources or hazards) and the existing uses and approved uses of land in the vicinity of the proposed development,***

Flora and Fauna

The subject application is supported by an Environmental Assessment Report (Anne Clements and Associates Pty Ltd 11 February 2016) which assesses the site's flora and fauna environment, considers the likely impact of the proposal, and provides an offset strategy with recommendations to enhance the

environmental values of the larger golf course site. The report also addresses issues raised by Council in regards to the previous SCC application, which was ultimately refused by the Department. The Environmental Assessment Report has built upon findings from the previous Arboricultural Impact Assessment (Footprint Green Pty Ltd dated 30th June 2014) and Flora and Fauna Assessment (Footprint Green Pty Ltd dated 2nd July 2014), and now includes refined vegetation mapping and identification of remnant vegetation types and their current condition.

The proposal requires the removal of approximately 117 established canopy trees, with potential impact upon a further 42 canopy trees located in close proximity of the proposed works. This is a significant proportion of the 255 existing canopy trees, including a possible 100 of the 125 canopy trees identified as being remnant species.

The Applicant attempts to justify the loss of canopy trees and under storey vegetation by proposing restorative and enhancement works across the greater golf course site as a whole. However, the works are to be the subject of a separate application that may not be lodged, approved or acted upon. As such, the impact of the proposed development is considered unacceptable, as there is no assurance that the recommended compensatory restoration and enhancement works will be ever be undertaken.

Bushfire Hazard

The indicative site nominated by the Applicant will be classified as bushfire prone land, as it is situated within 100m of Category 1 Vegetation. The application was supported by a Bushfire Risk Assessment Report (Building Code & Bushfire Hazard Solutions dated 23 December 2015), which provides a series of recommendations should the proposed seniors housing development proceed.

The primary recommendations, relating to the need for Asset Protection Zones (APZ), once again fall outside the confines of the proposed site, and will result in further tree removal on the greater golf course site. This is inconsistent with the requirements of *Planning for Bushfire Protection 2006*, which identify that APZ's should be maintained within the site to which the APZs relate.

The Landscape Plans (Taylor Brammer dated 21 January 2016) are inconsistent with the APZ requirements and recommendations of the Bushfire Risk Assessment Report, with proposed enhancement and conservation of dense bushland to the west of the proposed seniors housing development, in an area where a 60m APZ is required. This inconsistency is likely explained by the lack of a north point on the landscape plans presented.

Geotechnical Hazard

As stated in the Geotechnical Risk Assessment Report provided to support the application (Martens dated August 2014), and as demonstrated by Figure 2 in this response, the southern portion of the proposed site is mapped as Geotechnical Hazard H1 on the Geotechnical Hazard Map of PLEP 2014. It is noted that despite the statement in the Geotechnical Risk Assessment Report and the mapping previously provided to the Applicant from Council, the Application was supported by a Planning Report (JBA dated February 2016) which states that the proposed site is not affected by geotechnical hazards.

Once again, Council maintains that the both the greater golf course site and the proposed site are subject to geotechnical hazard, which is reasonably described as a natural hazard, and as such, the provisions of SEPP HSPD cannot be applied.

Flooding Hazard

The application was supported by a Flood Risk Assessment Report (Cardno dated 16 November 2015) which does not consider the latest modelling produced in the *2015 Draft McCarrs Creek, Mona Vale and Bayview Flood Study*. As such, the Flood Risk Assessment Report fails to identify the overland flow path that runs through the proposed site, as shown in Figure 1.

Without consideration of the overland flow path that traverses the proposed site in the 1% AEP flood event, the application has not demonstrated consistency with the provisions of clauses 7.3 (Flood planning) or 7.4 (Floodplain risk management) of PLEP 2014 or the relevant provisions of P21 DCP, with regard to the risk to life provisions.

It is noted that the application makes reference to further works proposed to the greater golf course site, to mitigate flooding in the vicinity of the proposed seniors housing development. Council cannot comment in this regard as insufficient information has been provided to assess the potential impacts and risk of such works on neighbouring properties, based upon the latest flood modelling.

- ***the impact that the proposed development is likely to have on the uses that, in the opinion of the Director-General, are likely to be the future uses of that land,***

The site is zoned RE2 Private Recreation under the provisions of PLEP 2014 and is currently being used as a golf course. Residential development, including seniors housing, are prohibited within this zone. The objectives of the RE2 zoning are to enable land to be used for private open space or recreational purposes, and to protect and enhance the natural environment for recreational purposes.

This portion of the greater golf course where the works are proposed forms part of a key wildlife corridor, linking Bayview Heights with the Pittwater Waterway. The current use of the site as a golf course is consistent with the zoning and zone objectives, and provides for the safe retention of the existing wildlife corridor. Under the provisions of PLEP 2014, and in the absence of the subject application, the community would expect the current use of the site as a golf course to continue into the future.

The proposed seniors housing development is inconsistent with both the permitted land uses and the objectives of the RE2 Private Recreation zoning, and will restrict the ability for the site to continue to function in accordance with the provisions of PLEP 2014.

The Applicant has nominated that the subject application relates to a limited portion of the greater golf course site, as shown by the dashed yellow line in Figure 2. However, the proposed seniors housing development is reliant upon a series of recommendations that relate to the larger golf course site, which have not been adequately addressed and are said to be subject of a separate application to Council. As such, the impact upon the use of the greater golf course site is unable to be determined.

- ***the services and infrastructure that are or will be available to meet the demands arising from the proposed development (particularly, retail, community, medical and transport services having regard to the location and access requirements set out in clause 26) and any proposed financial arrangements for infrastructure provision,***

Vehicular Access

As raised by Council in response to the previous SCC application, the Traffic Report (Transport and Traffic Planning Associated dated 5 December 2015) has been assessed based on the existing vehicular

access point to the golf course, inconsistent with the proposed access point to the subject development site. Whilst the existing driveway entrance has been deemed to achieve safe sight distances, the proposed driveway is located closer to the crest of the hill, and cannot comply with recommended safe sight distances of 65m or the desired safe sight distance of 83m, as identified by the Traffic Report.

Access to services

The discrepancies in the Traffic Report and the location of the entrance driveway are replicated by the Access Report (Accessibility Solutions (NSW) Pty Ltd dated 18 February 2016), with the site entrance incorrectly identified and mistaken to be that of the existing driveway entrance to the golf course. The proposed pedestrian entrance is located further to the west and upslope of the existing driveway, and consistency with the required gradients prescribed by clause 26 of SEPP HSPD has not been confirmed.

Onsite services

The application was supported by a statement, confirming the services available to residents on site. However, Council raises concern in relation to further comments in the Project Viability Statement (Waterbrook [undated]) that the proposed retail facilities, restaurants, services and conference rooms will be open to the general public. Commercial development is prohibited on land RE2 Private Recreation zone under the provisions of PLEP 2014, and whilst the provisions of SEPP HSPD may be used to provide seniors housing on such land where deemed appropriate, the policy cannot be used to bypass local planning instruments to provide for commercial and retail facilities.

Furthermore, the application fails to consider the impacts associated with such development, with no consideration of the additional patronage and capacity of the site with regard to traffic, parking, noise, or safety in the event of a flood or bushfire.

- ***without limiting any other criteria, the impact that the bulk, scale, built form and character of the proposed development is likely to have on the existing uses, approved uses and future uses of land in the vicinity of the development,***

The proposed seniors housing development will comprise 95 dwellings spread across 7 separate buildings, predominately 3-4 storeys in height and stepped up the slope of the site. Based upon the diagrammatic plans provided to support the application (Marchese Partners dated 13 January 2016), the proposed buildings will reach up to 14m above existing ground level, well in excess of the 8m building height development standard prescribed by clause 40(4) of SEPP HSPD, the 8.5m building height development standard prescribed by clause 4.3 (Height of buildings) of PLEP 2014, and greater than any height permitted for development of any kind across the entirety of the Pittwater LGA.

The elevated and sloping nature of the proposed site will emphasise the excessive height of the development, with insufficient landscaping proposed on the nominated development site to break down the scale of the development and limit the visual appearance of the development that has been designed to cascade down the slope. The resultant development would be grossly inconsistent with the existing and desired future character of the locality and the visual catchment of the site, which predominately comprises recreation open space and single residential dwellings, in a landscaped setting.

The design of the development does not appear to have any consideration of the provisions of the *Seniors Living Policy: Urban Design Guideline for Infill Development* produced by the Department for infill self-care seniors housing developments, such as the one proposed, and has no regard for local planning policy as prescribed by PLEP 2014 and P21 DCP.

Noting that the proposal would be reliant upon a request to vary a number of development standards of SEPP HSPD, including that relating to building height, the development must succeed against the criteria of clause 4.6 (Exceptions to development standards) of PLEP 2014, which applies to development standards imposed by PLEP 2014 or any other environmental planning instrument, including SEPP HSPD. However, it is not seen as to how any such request could ever be contemplated with respect to the requirements of clause 4.6(4), as follows;

Development Consent must not be granted for development that contravenes a development standard unless:

(a) the consent authority is satisfied that:

- i. the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3); and*
- ii. the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out; and*

(b) the concurrence of the Secretary has been obtained.

Council contends that the proposal is not in the public's interest, as it is vastly at odds with the RE2 Public Recreation zoning of the site, and compliance with the 8m building height development standard is not unreasonable or unjustified in the circumstances of the proposal. Furthermore, the application is made under a policy that should not be applied to the environmentally sensitive site, and if deemed to be applicable, the proposal blatantly ignores fundamental development standards prescribed by SEPP HSPD that are in place to ensure that the otherwise prohibited development is consistent with the desired future character of the locality.

It appears that the Applicant is reliant upon the presence of existing aged care facilities in the general locality to justify the scale of the proposal. The existing aged care facilities were not approved under the provisions of SEPP HSPD or PLEP 2014, and should not be seen as an example of the desired future character of development in the Pittwater LGA. Furthermore, concern is raised by Council in this regard, as the development will exacerbate an existing issue regarding the clustering of seniors housing developments in an area that is prone to flooding, bushfire and landslip.

As identified in Council's previous response to the largely unchanged application, the proposed development is prohibited by PLEP 2014 and the provisions of SEPP HSPD are unable to be applied to the site. The proposal is inconsistent with the objectives of the RE2 Private Recreation zone, and works against the recently adopted PLEP 2014, which was developed in partnership with the Department and the Pittwater community over a number of years. A number of submissions have been received from the community in this regard, and are attached for your consideration.

Council strongly urges the Department to refuse the subject site compatibility certificate application. If you have any questions in regards to this response, please contact Andrew Pigott, Manager – Planning and Assessment on (02) 9970 1163.

Yours faithfully,



Melinda Hewitt

DEPUTY GENERAL MANAGER – ENVIRONMENTAL PLANNING & COMMUNITY

