



northern
beaches
council

26 September 2019

Amanda Harvey
Director, Sydney Region East
NSW Planning & Environment
320 Pitt Street, Sydney NSW 2000

Dear Ms Harvey, *Amanda*

Submission in relation to a Site Compatibility Certificate Application for a Seniors Housing Development at 52 Cabbage Tree Road, Bayview (Bayview Golf Course)

I refer to your letter dated 6 September 2019 seeking comments with respect to the application for a Site Compatibility Certificate (SCC) under State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (HSPD) for the Bayview Golf Club Site.

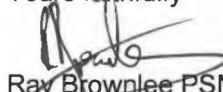
As the Department is aware, the Land and Environment Court refused a Development Application (DA) for seniors housing comprising 85 dwellings and ancillary facilities in March 2019. The plans submitted with the current SCC are identical to the plans that formed part of the appeal and the issue of character, as it relates to form, height, bulk, scale, setbacks and landscaping and the impact of the development on the natural environment (ecological impacts) were unresolved contentions between the parties.

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. In summary, Council maintains that the current site compatibility certificate application is inconsistent with the character of the locality and there is a lack of clarity as to the area of land considered to constitute the site for seniors housing.

Council appreciates the opportunity to make this submission and trusts that the issues raised will be taken into consideration in the decision as to whether a Site Compatibility Certificate is issued by the Department.

Should you wish to discuss the matters raised or require any further clarification, please do not hesitate to contact Louise Kerr, Director Planning and Place on 9942 2949 or email council@northernbeaches.nsw.gov.au

Yours faithfully


Ray Brownlee PSM
Chief Executive Officer
Northern Beaches Council

NORTHERN BEACHES COUNCIL SUBMISSION
SITE COMPATIBILITY CERTIFICATE – Bayview Golf Course

KEY FEATURES OF THE APPLICATION

Council notes that the key features of the application subject of the current SCC are as follows:

- 85 serviced self-care dwellings and ancillary facilities spread across seven (7) separate buildings with a total gross floor area of 18,449sqm,
- Basement parking for 161 cars, loading and servicing,
- Landscaping including creation of communal open space,
- Construction of a road linking the proposed development to Cabbage Tree Road and construction of a roundabout on Cabbage Tree Road, along with an associated pedestrian crossing,
- Construction of a separate pedestrian pathway from the site to the existing footpath on Cabbage Tree Road and along Annam Road to Kiah Close with kerb ramps to provide access to the bus stop opposite Bayview Gardens;
- Establishment and management of bushfire asset protection zones, and
- Signage adjacent to the roadway entrance.

STATE ENVIRONMENTAL PLANNING POLICY (HOUSING FOR SENIORS OR PEOPLE WITH A DISABILITY) 2004**What constitutes the site?**

Bayview Golf Course ('the site') comprises an area of approximately 367,725m² (36.8ha) and consists of 12 individual allotments. The site is split into two portions divided by Cabbage Tree Road, bordered by Cabbage Tree Road, Pittwater Road, Darley Street West, and Parkland Road. A large watercourse is located on the north-eastern corner of the site.

The documents submitted with the SCC application are unclear regarding what constitutes the site for the purposes of the proposed seniors housing development. In this regard the documents provided, and relied upon by the Applicant make reference to the entire Bayview Golf Course site as the site, whilst the planning report (prepared by FPD Pty Ltd, dated 15 August 2019) submitted with the application, states that the seniors housing component of the development will be limited to a 1.8ha portion of the greater golf course site. The planning report nominates the site in Figure 1 and Figure 2, which are included in pages 15 and 16 of that report, comprising land from 3 separate allotments, being Part Lot 1 DP 662920, Part Lot 6 DP 45114, and Part Lot 1 DP 19161.

The planning report (page 16) states that *"some development to support the seniors housing will be located outside the building footprint, such as site access arrangements on Cabbage Tree Road, bushfire asset protection zones, planting of trees and vegetation to enhance the visual screen to existing dwellings, and revegetation works"*.

There is insufficient information submitted with the application to determine compatibility of the site for a Seniors Housing development, particularly as the application is made for the entire golf course land which has different contexts, variable character and differing environmental constraints depending on the area of the golf course the development is situated.

If the SCC was issued for the entire golf course site, the very large site area will also have significant implications for the assessment of any future Development Applications that might follow, particularly with respect to built form controls and certainty as to potential changes to the size, scale and intensity of a seniors development, to point where the application of the relevant controls would have no effect.

Whilst Council maintains that the subject application should be refused solely on the basis there is insufficient information submitted with the application to determine what constitutes the site, 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 location being the indicative building footprint identified within the Applicant's planning report, which is located to the north of Cabbage Tree Road.

SITE COMPATIBILITY CRITERIA

The criteria under Clause 25(5) (b) of the Seniors Living SEPP have been used to provide a detailed review of the application. Council's comments with respect to the criteria are provided as follows:

Criteria 1 – The natural environment and the existing and approved uses of land in the vicinity of the proposed development.

Comment:

The portion of the greater golf course where the development for seniors housing is proposed forms part of a mapped high priority wildlife corridor (Pittwater 21 DCP) linking Bayview Heights with the Pittwater Waterway. Use of the site as a golf course is consistent with the current zone objectives and provides for the retention of the existing wildlife corridor. The proposal which involves substantial built infrastructure and residential use, will diminish the values of the wildlife corridor. For fauna species to continue to use the site as a corridor, they will be pushed into the periphery of the golf course, nearer adjacent residential development. This will impact on certain species that use the corridor.

The proposed seniors living development will have direct and indirect impacts on the mapped corridor and will significantly reduce connectivity that is afforded by native vegetation, tree canopy and open space. Such impacts will have a negative impact on the sensitive biodiversity values of the site including:

- Five (5) endangered ecological communities;
- Two (2) threatened species of plants;

- Two (2) threatened species of birds;
- Seven (7) threatened species of mammals;
- The potential for the presence of an additional 17 threatened species; and

Consistency with Local Planning Controls

Pittwater 21 DCP Control B4.6 Flora and Fauna Enhancement Category 2 and Wildlife Corridor

As discussed above, due to the bulk and scale of the proposed development, approximately 50% of the width (measured from north-east to south-west) of the mapped high priority wildlife corridor will be blocked by built infrastructure, diminishing connectivity within the local landscape and significantly reducing the functioning of the mapped corridor. On this basis, the proposal is inconsistent with Clause B4.6 of the Pittwater 21 DCP.

The proposal is inconsistent with the relevant Biodiversity related planning controls under the Pittwater Local Environment Plan 2014 (LEP) and Pittwater 21 Development Control Plan (DCP).

Pittwater Local Environment Plan 2014, Part 7.6 Biodiversity Protection

Relevant Pittwater 2014 LEP controls include Part 7.6 Biodiversity Protection – where:

(1) The objective of this clause is to maintain terrestrial, riparian and aquatic biodiversity by:

- a) protecting native fauna and flora, and*
- b) protecting the ecological processes necessary for their continued existence, and*
- c) encouraging the conservation and recovery of native fauna and flora and their habitats.”*

The substantial loss of significant large canopy trees (including some with tree hollows) is inconsistent with Part 7.6 Biodiversity Protection of the Pittwater LEP 2014. The proposed replacement plantings to compensate for the loss of these large trees will take a considerable period of time (~70-100 years) to mature and contribute to the tree canopy.

Criteria 2 – The impact that the proposed development is likely to have on the future uses of the land.

Comment:

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, is 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.

As stated above, the portion of the greater golf course where the seniors housing is proposed, forms part of a key wildlife corridor, linking Bayview Heights with the Pittwater Waterway. The residential use within the central portion of the site will impact upon the broader golf course environment and open space setting. In this regard, the clearing of a significant section of the bushland of the golf course to accommodate Asset Protection Zones and the inability to require replacement plantings in the Asset Protection Zones' is inconsistent with the zone objective that aims to protect and enhance the natural environment for recreation purposes.

Criteria 3 – The services and infrastructure that are or will be available to meet the demands arising from the 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.

Comment:

The site is located within 400m of a bus stop, which would provide access to Mona Vale and other commercial centres. To demonstrate compliance with Clause 26, further details on access to services and path gradients should be provided at the end of trip, once passengers alight from the bus.

The previous SCC issued for this site was granted for the purposes of "*In-fill self-care housing comprising 95 dwellings and ancillary facilities*". The applicant is now seeking a SCC for "*Service Self-Care Housing*". This involves a fundamental change in the type of seniors housing proposed and the applicant has not provided sufficient documents that are required under SEPP (HSPD) 2004 to meet the specific requirements for "*serviced self-care housing*" (as defined).

In this regard, the traffic report submitted with the application does not address the nature of the traffic generated by serviced self-care housing, including the number, type and frequency of service vehicle movements required to facilitate the particular requirements of this specific type of seniors housing.

The proposed change in the type of seniors housing is considered to be a significant change, which will alter the nature of the development in terms of its intensity and operational characteristics.

Criteria 4 – In relation to land that is zoned open space or special uses – the impact that the proposed development is likely to have on the provision of land for open space or special uses in the vicinity of the development.

Comment:

The site is not zoned special uses, however, the site is an open golf course, surrounded by open space and dense tree coverage. The portion of the site proposed for seniors housing adjoins a public reserve on its eastern boundary.

As indicated previously, the residential use within the central portion of the site will impact upon the broader golf course environment and open space setting.

Criteria 5 – The impacts that the bulk and 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.

Comment:

The portion of the land which is the subject of the proposal is immediately bordered by Cabbage Tree Road to the east and low-density residential development, which comprises predominantly 1 and 2 storey dwelling houses that are located to the north east of the site.

The development of seven (7) apartment buildings, which are 3 storeys in height, would be incongruous in its context and setting and resembles residential flat buildings in the middle of Golf Course, albeit the development fronts Cabbage Tree Road. The buildings, as proposed, are appropriate for the purposes of providing residential accommodation on a site within a medium density area and not a site zoned for private recreation that is surrounded by low-density area consisting of generous setbacks, which are characterised by substantial building separation that promotes open spaces between buildings.

From Council's perspective, the issuing of a SCC for the proposed building typology and scale in this particular location presents inconsistencies with the urban character permitted under the Pittwater LEP and Pittwater 21 DCP.

Therefore, the overall built form of the proposed development is unacceptable and unsuitable for this location.

Criteria 6 – If the development may involve the clearing of native vegetation that is subject to the requirements of section 12 of the Native Vegetation Act 2003 – the impact that the proposed development is likely to have on the conservation and management of native vegetation.

Comment:

This criteria is not applicable to the proposal. The *Native Vegetation Act 2003* has been repealed and replaced with a new framework for Land Management and Biodiversity Conservation.

Criteria 7 – The impacts identified in any cumulative impact study provided in connection with the application for the certificate

Comment:

Amendments to the Seniors Living SEPP made in October 2018 include a requirement for a cumulative impact study to be provided when an application is lodged within a one-kilometre radius of a site of two or more SCC applications.

The site is not within the one-kilometre radius of any other SCC applications. However, as the proposal is reliant upon the presence of existing aged care facilities Retirement Village in the general locality to justify the scale of the proposal, Council considers that a cumulative impact study should be provided for any SCC application to address the impacts on existing developments, infrastructure capacity and adjoining land uses.

CONCLUSION

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 represents a significant and adverse change in the character of the locality. The proposal involves excessive bulk and scale, excessive excavation to accommodate the proposal in the sloping topography of the site and involves the removal of an excessive number of existing canopy trees (which also goes to the compatibility of the proposal in its environment).

The proposal involves the placement of 7 buildings with large footprints into the middle of a wildlife corridor that is essential to fauna movement and used by a significant number of species. The proposal will result in the removal of an excessive number of existing canopy trees and habitats.

Council strongly urges the Department to refuse the subject site compatibility certificate application. It is suggested that, if the Applicant wishes to pursue a seniors housing development on the site, an alternative location on the Bayview Golf Course land should be investigated which addresses the shortcomings of this proposal, including a more suitable and appropriate location and better resolution of the built form, character, accessibility and environmental impact issues raised in this submission.



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3 October 2019

Ms Amanda Harvey
Director, Sydney Region East
NSW Planning & Environment
320 Pitt Street, Sydney NSW 2000

Our Ref: 2019/557787

Dear Ms Harvey

Addendum to Northern Beaches Council submission in relation to a Site Compatibility Certificate Application for a Seniors Housing Development at 52 Cabbage Tree Road, Bayview (Bayview Golf Course)

I refer to your letter dated 6 September 2019 seeking comments with respect to the application for a Site Compatibility Certificate (SCC) under State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP (HSPD)) for the Bayview Golf Club Site.

Council responded to this application by letter dated 26 September 2019. Council in that letter raised significant concerns regarding the proposed development. Council's previous comments regarding compatibility of the proposed development with the character of the locality and its impact on natural environment are still relevant and should be read as an integral part of this addendum submission.

This letter serves to raise an additional issue regarding permissibility. It is Council's view that Clause 4(6) of SEPP (HSPD) provides that SEPP (HSPD) does not apply to environmentally sensitive land, as described in Schedule 1 of SEPP (HSPD). Environmentally sensitive land includes land identified in another environmental planning instrument by a description or expression "like" those listed in Schedule 1, which includes the phrase "Open Space".

The site is zoned RE2 being Private Recreation under the provisions of Pittwater Local Environment Plan 2014 (PLEP 2014) and the objectives of the zone includes the word "Open Space". The expression contained in PLEP 2014, being the relevant environmental planning instrument, has to be "like" the phrase "Open Space" to be sufficient for the land to be "environmentally sensitive land" within the meaning of SEPP (HSPD). In this case, the exact phrase "open space" is used in the zone objectives, which apply to the land. This suggests that SEPP (HSPD) was not intended to apply to the subject site so as to allow it to be developed for purposes contrary to the land use table in PLEP 2014. For that reason, it would be inappropriate to extend the SEPPs operation to open space land by way of the issue of a SCC.

Should you wish to discuss the matters raised or require any further clarification, please do not hesitate to contact Louise Kerr, Director Planning and Place on 9942 2949 or email council@northernbeaches.nsw.gov.au

Yours faithfully

Ray Brownlee PSM
Chief Executive Officer