

JOINT REGIONAL PLANNING PANEL (Hunter and Central Coast)

Council Assessment Report

Panel Reference	Panel Reference No. 2017HCCO33
DA Number	52814/2017
Local Government Area	Central Coast Council
Proposed Development	INTEGRATED Construction of Seventy Five (75) Assisted Care Apartments under <i>State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004</i>
Street Address	LOT: 600 DP: 1099102, 1001 The Entrance Road FORRESTERS BEACH
Applicant	Retire Australia Pty Ltd
Owner	Errol Investments Pty Ltd & Tarragal Glen Retirement Village 11 L
Date of DA Lodgement	06/09/2017
Number of Submissions	One hundred and forty - two (142)
Recommendation	Approval - subject to conditions
Regional Development Criteria - Schedule 7 of the State Environment Planning Policy (State and Regional Development) 2011	Capital Investment Value > \$20M and lodged before 1 March 2018
List of all relevant 4.15(1)(a) matters	<ul style="list-style-type: none"> • <i>Environmental Planning & Assessment Act 1979</i> (EP& A Act) • <i>Environmental Planning and Assessment Regulation 2000</i> (EP & A Regulation) • <i>Local Government Act 1993</i> (LGA 1993) • <i>Water Management Act 2000</i> (Water Management Act) • <i>Rural Fires Act 1997</i> (RF Act 1997) • <i>State Environmental Planning Policy No 55 - Remediation of Land</i> (SEPP 55) • <i>State Environmental Planning Policy (Infrastructure) 2007</i> (SEPP Infrastructure)

	<ul style="list-style-type: none"> • <i>State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development</i> (SEPP 65) • <i>State Environmental Planning Policy (Coastal Management) 2018</i> (SEPP Coastal Management) • <i>State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004</i> (SEPP BASIX) • <i>State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004</i> (SEPP HSPD) • <i>State Environmental Planning Policy (State and Regional Development) 2011</i> (SEPP State and Regional Development) • <i>Gosford Local Environmental Plan 2014</i> (GLEP 2014) • <i>Gosford Development Control Plan 2013</i> (GDGP 2013) • <i>Apartment Design Guide. Tools for improving the design of residential apartment development</i> (ADG)
Legislative Clauses Requiring Consent Authority Satisfaction	<ul style="list-style-type: none"> • Section 4.15 of <i>Environmental Planning & Assessment Act 1979</i> - Evaluation. • Section 4.47 of the <i>Environmental Planning and Assessment Act 1979</i> – Development that is integrated development. • Clause 8A (2)(d) of the <i>Local Government Act 1993</i> • Section 91 of the <i>Water Management Act 2000</i>. • Clause 7 of <i>State Environmental Planning Policy No 55 - Remediation of Land</i>. • Clause 28 (Determination of development applications) of <i>State Environmental Planning Policy (SEPP) No 65 - Design Quality of Residential Apartment Development</i>. • Clause 6 (Building to which Policy applies) of <i>State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004</i> • Clause 20 (Declaration of regionally significant development: section 4.5 (b) of <i>State Environmental Planning Policy (State and Regional Development) 2011</i>. • Clause 49 of <i>State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004</i>. • Clause 2.3 (Zone Objectives and Land Use Table); Clause 4.6(4) (Exceptions to development standards of <i>Gosford Local Environmental Plan 2014</i>.
List all documents submitted with this report for the Panel's consideration	<ol style="list-style-type: none"> 1 Proposed Conditions of Consent 2 Development Plans 3 SEPP HSPD Compliance Table 4 ADG Compliance Table 5 GDGP 2014 Compliance Table 6 Clause 4.6 of GLEP 2014 (Variation Requests) 7 Layout of Forresters Beach Retirement Village
Report prepared by	A Stuart
Report date	28 August 2018

Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 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 summarised, in the Executive Summary of the assessment report?

Yes

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 (s7.24)?

No

Conditions

Have draft conditions been provided to the applicant for comment?

Yes



Title: INTEGRATED Construction of Seventy Five (75) Assisted Care Apartments under *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* on LOT: 600 DP: 1099102, 1001 The Entrance Road, FORRESTERS BEACH

Department: Environment and Planning

SUMMARY

The subject development site is located within the Forresters Beach Retirement Village ("the Village") at No. 1001 The Entrance Road, Forresters Beach. A development application has been received for the redevelopment of the north eastern corner of the Village, consisting of 75 assisted care apartments.

The development is relying upon the provisions of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* (SEPP HSPD). The application has been assessed having regard for the matters for consideration detailed in Section 4.15 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) and other statutory requirements.

Delegation Level	Joint Regional Planning Panel
Property Lot & DP	LOT: 600 DP: 1099102
Property Address	1001 The Entrance Road FORRESTERS BEACH
Site Area	217,300m ²
Zoning	Part R2 Low Density Residential / Part E2 Environmental Conservation
Application Type	Development Application – Integrated
Application Lodged	06/09/2017
Applicant	Retire Australia Pty Ltd
Estimated Cost of Works	\$25,535,374.00
Advertised and Notified / Notified Only	Exhibition period closed on 23/10/2017
Submissions	142
Disclosure of Political Donations & Gifts	Nil
Site Inspection	20/09/2017
JRPP Briefing/ Inspection	25/01/2018

RECOMMENDATION

- 1** *Joint Regional Planning Panel grant consent subject to the conditions detailed in the Attachment 1 of this report and having regard to the matters for consideration detailed in section 4.15 of the Environmental Planning and Assessment Act 1979 and other relevant issues.*
- 2** *That the Joint Regional Planning Panel advise those who made written submissions of its decision.*

VARIATIONS TO POLICIES

Policy	Clause / Description	Variation
State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004	Clause 40 (4): Height in zones where residential flat buildings are not permitted: <ul style="list-style-type: none"> • Part (a) the height of all buildings in the proposed development must be 8 metres or less. • Part (b) a building that is adjacent to a boundary of the site must be not more than 2 storeys in height. 	<ul style="list-style-type: none"> • Max. height proposed at 11.7m, resulting in a 3.7m or 46.25% variation. • 50% variation adjacent to the eastern site boundary, where 3 storeys is proposed.
Apartment Design Guide	<ul style="list-style-type: none"> • 4B-3 Natural Ventilation 	<ul style="list-style-type: none"> • No units have dual ventilation, resulting in a 100% variation to this requirement.
	<ul style="list-style-type: none"> • 4D-1 Apartment Size 	<ul style="list-style-type: none"> • 1 bed apartments are to be a min. of 50m². All apartments are approximately 44m² resulting in a 6m² or 12% variation to this requirement.
	<ul style="list-style-type: none"> • 4E-1 Balconies 	<ul style="list-style-type: none"> • 53 of the 75 units proposed, or 70% have balcony dimensions less than that recommended for 1 bedroom units. • Whilst the total size of the podium/ground level private open space minimum exceeds 15m², a depth of 2.5m is provided, resulting in a variation to the minimum 3m depth required by 0.5m or 16.67%.
	<ul style="list-style-type: none"> • 4F-1 Common Circulation 	<ul style="list-style-type: none"> • All Levels: 15 units off a single core resulting in a variation of 3 units or 25% per core area.
Gosford Local Environmental Plan 2014	<ul style="list-style-type: none"> • Clause 4.3(2) (Height of Buildings) 	<ul style="list-style-type: none"> • Max. height proposed at 11.7m, resulting in a 3.2m or 37.65% variation.

THE SITE

The subject development site is located within the Forresters Beach Retirement Village (“the Village”) at Forresters Beach. The Village is located on the western side of The Entrance Road (Central Coast Highway) at Forresters Beach, immediately to the south of its intersection with Bellevue Road. A plan identifying the location of the Village in the context of the surrounding area is provided as Figure 1.

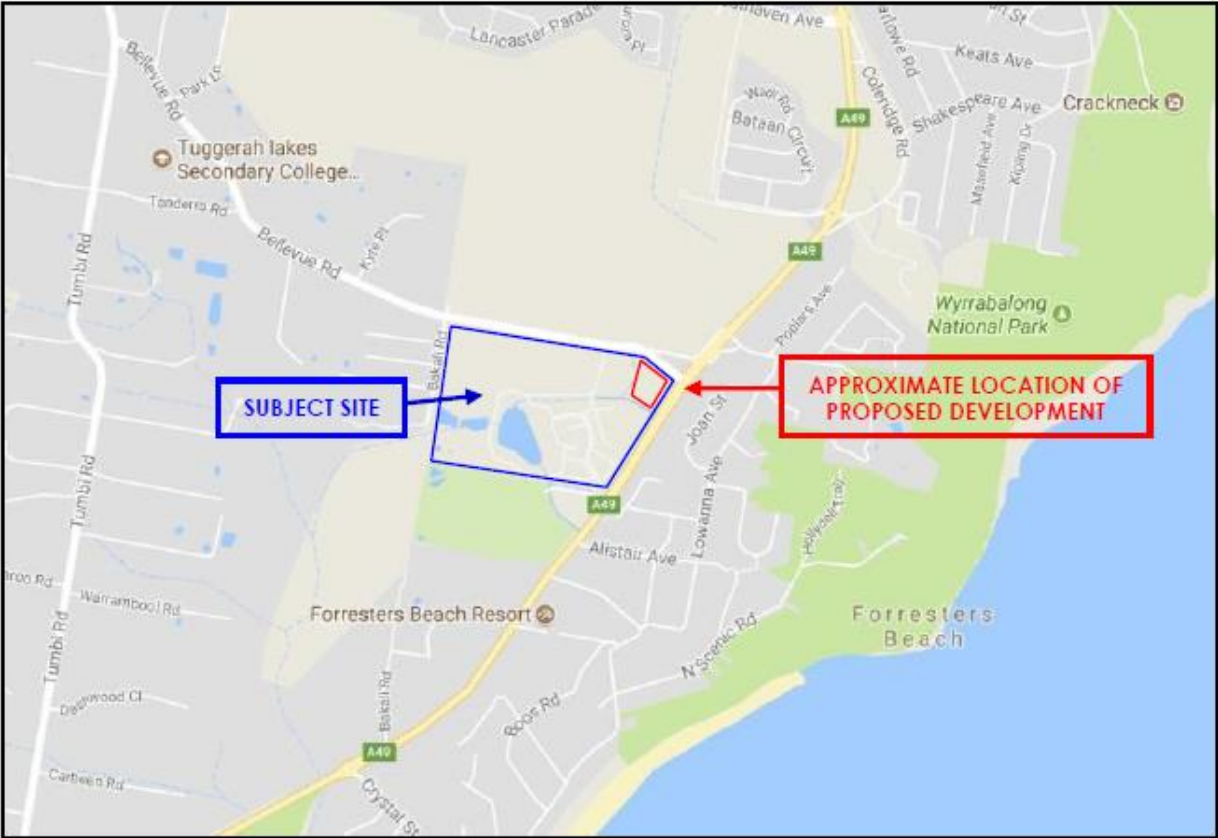


Figure 1: Locality Plan

The site is zoned R2 Low Density Residential under Gosford Local Environmental Plan 2014 (GLEP 2014) and has a total site area of approximately 217,300m², refer to Figure 2.

The building proposed under this development application is to be constructed within the vacant north-eastern portion of the site adjacent to Bellevue Road and The Entrance Road property frontages. Aerial photographs identifying the location of the subject site in the context of the surrounding area and nature of surrounding land uses are provided below. Refer to Figure 3.

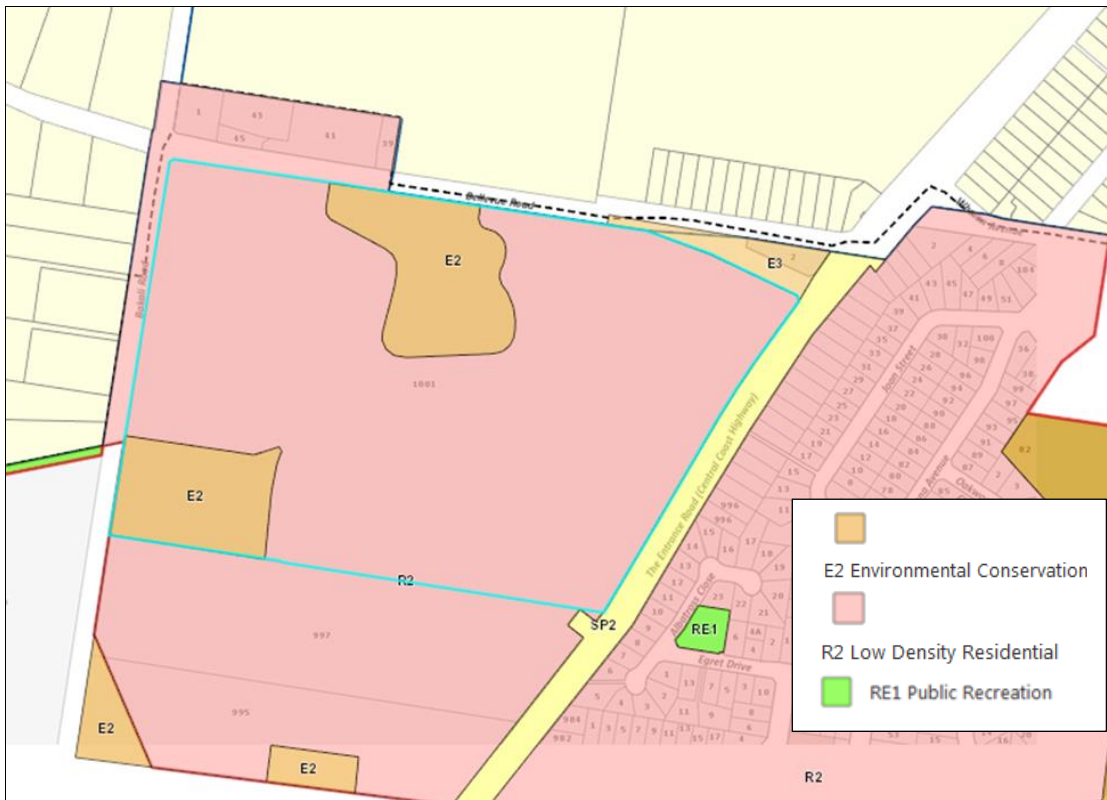


Figure 2: Zoning of the site and adjoining properties (site shown highlighted in blue)



Figure 3: Aerial Photograph

At the time of lodgement of the subject development application, 261 dwellings had been constructed within the Village, with all stages completed other than Stage 7 (13 villas) and Stage 8 (11 villas), both of which have achieved physical commencement as confirmed by Council.

However, only one (1) villa in Stage 8 has been constructed, that being Villa 617. Villa 617 was constructed to allow all dwellings and associated works on the western side of the watercourse to be completed.

As such, the development proposed under this application is to be constructed in lieu of the remaining 23 villas which have not been constructed under Stages 7 and 8.

A plan showing the most recent layout of Forresters Beach Retirement Village, inclusive of stage boundaries and a table identifying the various approvals, is provided in **Attachment 7**.

SURROUNDING DEVELOPMENT

The Village is bound by:

- Bellevue Road and then a service station, a number of rural-residential properties and a child care centre and swim school to the north;
- Bakali Road and then rural-residential properties to the west;
- A residential subdivision for 102 lots currently under construction to the south; and
- The Entrance Road and residential dwellings to the east.



Figure 4: Aerial Photograph

THE PROPOSED DEVELOPMENT

On 6 September 2017, Council received a development application seeking approval for the construction of 75 assisted-care apartments in a multi-storey building within the vacant north-eastern portion of the Forrester's Beach Retirement Village:

- The building comprises 75 one bedroom apartments over three levels, inclusive of 14 car parking spaces for staff and visitors in a partially excavated basement at ground level and resident parking for 18 vehicles in an open, at-grade parking area to the south of the building.
- A kitchen and dining room, ancillary support services (including theatre, wellness centre and hairdresser) and back of house facilities are to be provided as part of the proposed development on the ground floor of the building. Refer to figures 5 and 6.



Figure 5: Photomontage of internal view from retirement village



Figure 6: Photomontage of proposed building's lobby interior

- The exterior material and finishes schedule is shown in figure 7:

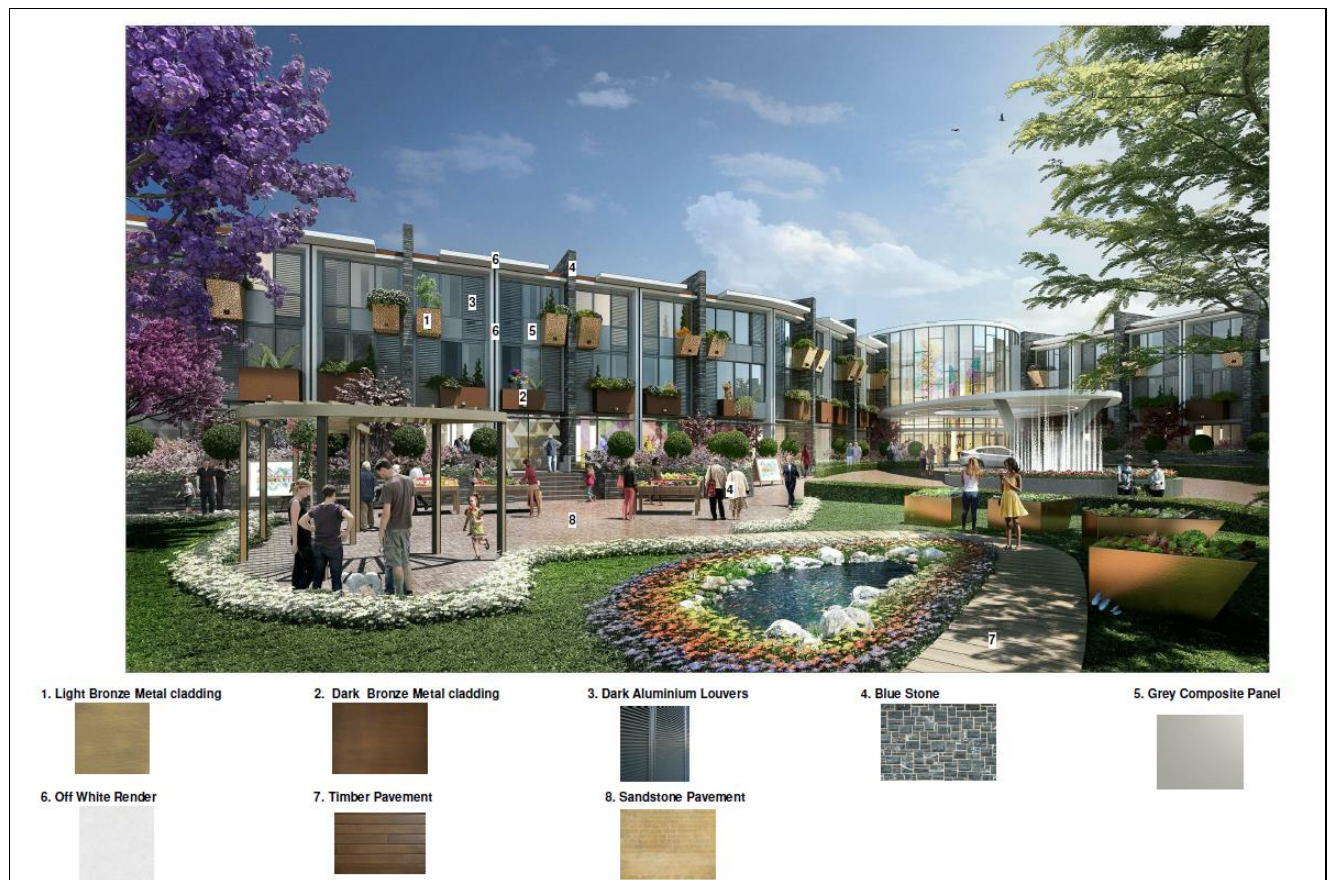


Figure 7: Exterior Materials and Finishes Schedule

- The development would be staffed 24 hours a day in two shifts (day and night). A maximum of up to 18 full time staff would be present during a day shift, including the following:
 - 1 x Facility Manager;
 - 1 x Administration Assistant;
 - 1 x chef and 2 x kitchen hands;
 - 1 x Diversional Therapist;
 - 6 x care staff (this includes the home care team, comprising Nurse Manager, Team Leader, Care Navigator, and at least 2 x Personal Care Attendants (PCA) at any given time);
 - 2 x cleaners and 1 x maintenance person; and
 - 1 x Regional Operations Manager.

- The proposal is classified as integrated development in that seniors housing constitutes a special fire protection purpose under s.100B of the *Rural Fires Act 1997*. Furthermore the proposed development requires a controlled activity approval under the *Water Management Act 2000* from the Department of Primary Industries Water (DPI Water).
- Landscaping for the whole of the site is proposed in accordance with the landscape plan accompanying the development application (refer to Figure 8):



Figure 8: Proposed Landscaping Plan (ground level)

HISTORY

Council's records show that the following applications were previously lodged on this site:

- A number of development consents have been granted on the site between 2000 and 2008 for a retirement village and ancillary facilities. The original development application for Stages 1 to 4 of the Village, comprising 67 self-care villas, was approved on 27 September 2000. Over subsequent years, approvals were granted for a further twenty three (23) stages of the Village, taking the total number of units approved to 279.

Modification applications have been issued for the majority of the above stages since their original approval, which generally comprised adjustments to stage boundaries, amended or substituted floor plans to respond to market demands and minor changes in yield. As a result of the modifications, the total number of units within the Village increased to 284. At the time of lodgement of the subject development application, 261 dwellings had been constructed within the Village.

- Development Application No. 52814/2017 was lodged with Council on 20 September 2017.

The matter was referred to a Regional Planning Panel Briefing on 25 January 2018. The Panel requested the applicant investigate a single access/egress from Bellevue Road so as to minimise the usage impact to existing internal roadways.

In correspondence received at Council on 21 March 2018, the applicant confirmed the following with regard to the allocation of resident parking on site: -

- 18 on-grade vehicular spaces in the south western corner of the development area will be leased to residents of the facility for an additional fee on an annual basis.
- A policy of when and where parking is allocated to future residents will be adopted prior to the facility opening and disclosed to residents prior to purchase of accommodation. Upon a lease being entered into with the resident, a specific space will be allocated.

In correspondence received at Council on 21 March 2018, the applicant advised that in order to address the concerns of existing residents of the Village in relation to excess traffic accessing the development through the internal road network (specifically Beachcomber Drive), approval is sought to allocate 5 vehicular spaces in the basement as visitor spaces. Such an arrangement would result in only the residents of the facility gaining access via Beachcomber Drive, with all staff, service and visitor vehicles using the access of Bellevue Road.

The applicant also provided a statement, prepared by ADW Johnson, dated 23 November 2017, regarding a draft alternative proposal in providing access to the subject development exclusively from Bellevue Road for residents and visitors. The draft alternative option was not supported by Council's Traffic and Transport Planner. The applicant seeks approval for the location of the vehicular accessways as originally proposed and notified.

Whilst additional information was received post lodgement for consideration, and the development application was amended with regard to the allocation of car parking, in accordance with Chapter 7 of Gosford Development Control Plan 2013 (Notification of Proposals Amended Prior to Determination), this amendment/ additional information did not require re-advertisement or re-notification as there was no change to the location, footprint and envelope of the proposal from the original notification.

s. 4.15 (1)(d) of the EP & A Act: Consultation

Public Consultation

The development application was notified in accordance with Chapter 7.3 Notification of Development Proposals of Gosford Development Control Plan 2013 (GDGP 2013) from Thursday, 21 September 2017 until Monday, 23 October 2017 in accordance with Division 7 Public Participation – other advertised development of the *Environmental Planning and Assessment Regulation 2000* (Clauses 86-91).

One hundred and forty – two (142) public submissions were received in relation to the development application. A summary of the submissions is detailed below.

The development application is supported by an inadequate traffic study and use of outdated traffic statistics.

Comment:

A Traffic Assessment Report, prepared by Barry Bradley and Associates, dated 4 September 2017 was submitted with the development application, together with a revised Traffic Assessment Report, also prepared by Barry Bradley and Associates, dated 14 March 2018. These reports conclude that the proposed access arrangements in the location of the existing construction access on Bellevue Road would have no adverse effect on the level of service, capacity or traffic safety of Bellevue Road.

The development application was referred to Council's Traffic and Transport Planner and Development Engineer who reviewed the development application including the Traffic Assessment Reports, prepared by Barry Bradley and Associates. Council's Traffic and Transport Planner and Development Engineer concluded that the transport engineering aspects of the proposed access in the location of the existing construction access is satisfactory for the following reasons:

- The proposed new access on Bellevue Road just east of Longs Road has been designed in accordance with the requirements for the SEPP HSPD, for staff and visitors.
- Existing vehicular accessways on The Entrance Road, Bellevue Road and Bakali Road will enable continued access for residents of the Village, noting all visitors to the proposed development must park in the basement car park.
- With regard to traffic generation, the revised Traffic Assessment Report, prepared by Barry Bradley and Associates, dated 14 March 2018, has assumed the evening peak hour of 0.1 trips per dwelling. The NSW Roads and Maritime Services (RMS) identify evening peak hour

ranges from 0.1 to 0.2 trips per dwelling. If the higher rate of 0.2 trips per dwelling was used then 16 trips in total would be distributed during the evening peak, where it is assumed 50% of these vehicle movements will distribute to the north and 50% to the south. The local internal network is considered to have the capacity to accommodate the higher rate if this eventuates.

It is also noted that RMS has reviewed the information supporting the development application and raises no objection to the development, as it is considered there will be no significant impact on the Entrance Road which is a classified (State) road.

Parking concerns associated with the proposed development.

Comment:

The proposed development is defined under SEPP HSPD as a hostel. Clause 12 of SEPP HSPD defines a hostel as:

'In this Policy, a hostel is residential accommodation for seniors or people with a disability where:

- (a) meals, laundering, cleaning and other facilities are provided on a shared basis, and*
- (b) at least one staff member is available on site 24 hours a day to provide management services.*

Note. A facility may be a hostel (as defined by this Policy) even if it does not provide personal care or nursing care to its residents. A facility that provides such care may be a residential care facility (as defined by this Policy), regardless of how the facility may describe itself.'

The proposed development incorporates a commercial kitchen and communal dining room for the preparation and serving of main meals, as opposed to the need for residents to prepare their own meals (the small kitchenette in each apartment allows only for the preparation, serving or heating of small pre-cooked meals or snacks). Cleaning or laundry services are also provided on a communal basis, with no laundries provided in individual apartments. In addition, the Personal Care Attendants (PCA) are only available on call for basic personal care services and to attend to emergencies for residents (not necessarily medical) as opposed to providing around the clock nursing care to infirm, ill or high care patients, as would be the case in a residential care facility.

Clause 49(d) of SEPP HSPD identifies the following parking standards that cannot be used to refuse development consent for hostels:

- (d) parking: if at least the following is provided:*

-
- (i) 1 parking space for each 5 dwellings in the hostel, and
 - (ii) 1 parking space for each 2 persons to be employed in connection with the development and on duty at any one time, and
 - (iii) 1 parking space suitable for an ambulance.

The total development comprises 75 dwellings and a maximum 18 staff. Therefore, the total parking required is 24 spaces as follows:

- 15 spaces for dwellings (residents); and
- 9 spaces for staff.

The subject proposal exceeds these requirements in that 32 on site car parking spaces have been provided, comprising 18 resident spaces in an open car park to the south of the building and 9 staff spaces and 5 resident visitor spaces in the basement. **Conditions 5.29, 6.1 and 6.2** are recommended confirming compliance.

Note 1: The proposed development does not constitute a residential care facility as defined within cl.11 of SEPP HSPD. Residential care facilities must be constructed as a Class 9c building under the Building Code of Australia (BCA) and be accredited and operated under the *Aged Care Act 1997*. The proposed development will be classified as a Class 3 building under the BCA and operated under the *Retirement Village Act 1999*.

Note 2: The term '*assisted care apartments*' is the term used by the applicant to describe the development, as opposed to the definition that it falls under within SEPP HSPD, being a hostel.

The residents in the Village have made a submission to the NSW Civil and Administrative Tribunal (NCAT) regarding the additional traffic that will be using internal roads throughout the Village as a result of the proposed development and associated safety concerns. Furthermore, the existing village has narrow internal roads that are inadequate for emergency vehicles and the proposed development will exacerbate this issue.

Comment:

The submission to NSW Civil and Administrative Tribunal (NCAT) does not restrict the Panel from determining the development application. The submission to NCAT is a civil issue between the residents and Retire Australia.

Council's Traffic and Transport Planner has advised Beachcomber Drive and other internal roads within the Village have mountable kerb and hence provide an enhanced safe environment where pedestrians and vehicles have the opportunity to use the footway areas if oncoming traffic is approaching. The development application is supported by Council's Traffic and Transport Planner on transport engineering grounds.

The central median preventing right hand turns into the Forresters Beach Retirement Village was approved at the Local Traffic Committee held on 14 March 2018 and the provision of this median was not wanted by the residents of the Forresters Beach Retirement Village.

On 14 December 2016, Council granted approval to Development Application No.44867/2016 for a staged residential subdivision to create 102 lots. In addition, approval was granted to the construction of the internal subdivision roads, the upgrade of the existing intersection of Central Coast Highway and the current public access from Lot 2 DP 706892 and Forresters Beach Retirement Village, to support the additional traffic generated by the proposed development.

In consultation with Council during the assessment of Development Application No.44867/2016, the RMS provided concurrence, as the State Road Authority, subject to conditions requiring the following:

- A new intersection design that provides a single lane entry from Central Coast Highway into the new residential estate;
- A central median within the internal public road, so as to prevent right turns into the Forresters Beach Retirement Village; and
- A new roundabout within the future internal local road network to provide access to Forresters Beach Retirement village.

The above-mentioned RMS requirements resulted in no direct ingress vehicle access to the Forresters Beach Retirement Village from the Central Coast Highway. This was reinforced with the imposition of a condition requiring the construction of the median, thereby forcing the Forresters Beach Retirement Village residents to use the internal roundabout within the Ocean Mist Estate subdivision to access their site from Central Coast Highway.

On 14 March 2018, the Local Traffic Committee endorsed the following:

- The line marking and signage plan associated with the construction of Stage 1 and 2 of the Ocean Mist Estate.
- The line marking and signage plan for the off-road shared path along Central Coast Highway being provided as part of the development.

All road works associated with Development Application No. 44867/2016 have since been completed.

The development application will adversely impact endangered species located on the site and surrounding properties.

Comment:

The area on site where the proposed development is to occur is currently vacant. The Bushfire Protection Assessment, prepared by the Australian Bushfire Protection Planners Pty Limited, dated 29 August 2017, identifies the area of the proposed development does not contain any threatened species, population or ecological communities, nor areas of geological interest, land slip or riparian corridors. Furthermore, there are no Aboriginal relics or Aboriginal places within the proposed development area.

The existing Village to the west and southwest of the proposed building contains managed landscaped gardens and lawn areas. The developed land to the southeast of the Village also contains managed landscaped gardens. The land to the north and northwest, beyond Bellevue Road, contains managed vegetation.

Council's Tree Assessment Officer has confirmed that vegetation proposed for removal on site comprises a group of young She Oak near the Bellevue Road boundary and three (3) Spotted Gums (up to 10m in height). No objection is made to this vegetation being removed in that new vegetation proposed on site consists of native trees such as Banksia, Cheese tree, Cabbage Palm and Weeping Lilly Pilly. External street tree planting is not proposed or considered essential on this occasion due to overhead power wires along the adjoining road reserves and the amount of tree planting to occur just within the property boundary, consisting of natives such as Tuckeroo and Water Gum.

The proposed development is incompatible with the desired future character of area.

Comment:

The Forresters Beach Character Statement, Area 5, Medium Density Estate within Gosford Development Control Plan 2013 (GDGP 2013) applies to the subject site. Having regard to the desired character for this area, no objection is made to the proposed development for the following reasons:

- The project comprises a medium density residential development for senior's accommodation. The building is three storeys in height and will be surrounded by landscaping.
- The Tumby wetlands and hills to the south-west will remain a dominant backdrop.
- The proposed building is separated from dwellings on properties external to the Village or surrounding villas within the Village such that it will have no adverse impact on privacy, overshadowing or amenity in general.
- The building is strongly articulated and includes protruding box elements with light weight rendered planter boxes, timber and metal infill panels, and large protruding eaves to accentuate this aspect.

Furthermore, in order to determine whether the proposed development is compatible with the future character of the area, additional consideration is given to the Planning Principles set down by the Land and Environment Court on compatibility of a proposal with surrounding development in *Project Venture Developments v Pittwater Council* [2005] NSWLEC 191.

In this case, Senior Commissioner Roseth commented [at paragraph 22] that *'there are many dictionary definitions of compatible. The most apposite meaning in an urban design context is capable of existing together in harmony. Compatibility is thus different from sameness. It is generally accepted that buildings can exist together in harmony without having the same density, scale or appearance, though as the difference in these attributes increases, harmony is harder to achieve.'*

The case further provides [at paragraph 24] *'where compatibility between a building and its surroundings is desirable, its two major aspects are physical impact and visual impact. In order to test whether a proposal is compatible with its context, two questions should be asked:*

- *Are the proposal's physical impacts on surrounding development acceptable? The physical impacts include constraints on the development potential of surrounding sites.*
- *Is the proposal's appearance in harmony with the buildings around it and the character of the street?'*

For a new development to be visually compatible with its context, a development should contain, or at least respond to, the essential elements that make up the character of the surrounding urban environment. Senior Commissioner Roseth establishes [at paragraph 26] that *'the most important contributor to urban character is the relationship of built form to surrounding space, a relationship that is created by building height, setbacks and landscaping'*. Consideration of each of these elements is provided below:

- Buildings do not have to be the same height to be compatible. Where there are significant differences in height, it is easier to achieve compatibility when the change is gradual rather than abrupt.
- The elevation to The Entrance Road streetscape presents as only two storeys given the ground floor is located below road level behind the existing perimeter wall. This elevation is consistent with the two storey height restriction in the R2 zone applying to the site and surrounding area and the predominantly one and two scale of buildings on the opposite side of The Entrance Road and in the locality generally.
- The land to the north of the site fronting Bellevue Road is occupied by a service station which is a non-habitable land use. Having regard to the change in topography between the subject site, service station and residential dwellings beyond fronting Longs Road, no objection is raised in that a two storey height transition will be maintained. Furthermore, the subject site and residential dwellings fronting Longs Road are separated by approximately 30m – 76m, boundary to boundary at this junction.
- Any potential abruptness in scale has also been minimised by the presence of the perimeter wall along the boundary and the extent and height of landscaping behind this wall, the setback of the building to The Entrance Road (up to 11m at the southern end) and the wide carriageway of The Entrance Road.

The Planning Principles set down by the Land and Environment Court on compatibility of a proposal with surrounding development in *Project Venture Developments v Pittwater Council* [2005] NSWLEC 191 highlights the importance of the design principles of SEPP 65 and any statements of Desired Character for the zone and locality.

In view of the consideration provided above and further assessment undertaken in this report with regard to SEPP 65 and GDCP 2013, it is concluded that the proposal will positively contribute to development in the visual catchment and is compatible with the desired future character identified for the area.

The proposed development will result in a loss of views, comprising mountains, from surrounding residential properties.

Comment:

In order to ascertain the potential loss of view as a result of the development, Council's Assessment Officer undertook inspections of several residential dwellings within Longs Road and Bellevue Road, Bateau Bay. For those dwellings further to the east along Longs Road, the service station immediately to the south on Bellevue Road obscures any view of the existing site.

Due to rising topography, the 14 residential properties located north of the site fronting Longs Road and Bellevue Road, are elevated and will continue to look over the site. Whilst views of rooftops and some greenery will be lost in a south/ south easterly direction, the distant ridgeline and mountain escarpment view will remain unaffected by the proposal.

It is considered any loss of outlook from dwellings bordering the eastern side of The Entrance Road will be limited due to the lower level of these properties, the separation provided by roadways and screening provided by the perimeter fence and landscaping along this frontage.

In view of the above considerations, no objection is raised.

There are ongoing concerns associated with erosion and sediment control on the site that must be addressed prior to this development commencing.

Comment:

Council's Environmental Health Unit reviewed the development application and raised no objection, noting the following:

- The Noise Impact Assessment, prepared by Spectrum Acoustic, dated August 2017, determined that east-facing windows of residential apartments in Levels 1 and 2 will require upgrade from standard 4mm glazing to minimum 6.5mm laminated single glazing in order to achieve the internal design traffic noise levels listed in the *Development Near Rail Corridors And Busy Roads – Interim Guidelines*, prepared by the Department of Planning, dated 2008 (refer to **condition 2.22**).
- No significant air quality impacts are expected from the development.
- The Detailed Site Inspection (DSI) for Contamination, prepared by Douglas Partners, dated September 2017 addressed the assessment of historical data and soils, building material fragments, groundwater and/or subsurface gas emissions. Groundwater collected from all

wells exceeded the pH trigger values and had slightly elevated zinc levels and a marginal copper result was reported in one well.

The Detailed Site Inspection for Contamination, prepared by Douglas Partners, dated September 2017, stated that these exceedances were considered representative of local background conditions and do not necessarily indicate the presence of groundwater contamination. Test results indicated that past activities (probably placement of filling) had resulted in very small quantities of asbestos containing material fragments in isolated areas of the site. The report concluded:

'In summary, the DSI indicates that the site is compatible (from a site contamination perspective) with the proposed mixed-use development (including a residential with accessible soil use), subject to the following conditions:

- *The test results indicate that past activities (probably placement of filling) has resulted in very small quantities of ACM fragments in the in situ filling in isolated areas of the site (i.e. locality of Pits 103 and 130). Whilst the ACM fragments will require management as part of the proposed development works (i.e. confirmation that accessible surface soils are free of ACM fragments) no specific remediation of soil would be required from a site contamination perspective based on the results to date; and*
- *Given the historical site development, the presence of other buried waste materials, including asbestos containing materials cannot be entirely ruled out. Therefore an Unexpected Find Protocol (UFP) should be prepared to manage possible asbestos impacts, or other unexpected contamination, encountered at or below the ground surface during the development works at the site.'*

The Detailed Site Inspection for Contamination, by Douglas Partners, dated September 2017 was prepared in accordance with the *NSW EPA Guidelines for Consultants Reporting on Contaminated sites*, dated 2000, and the abovementioned recommendation will be addressed via the imposition of **Conditions 2.13, 2.14 and 2.15**.

- The Water Cycle Management Plan, prepared by ADW Johnson Pty Limited, dated September 2017, concludes that the stormwater management system will *'at a minimum be capable of ensuring no net increase in sediment, faecal coliforms, phosphorous and nitrogen loads for all flows up to the 6 month ARI storm.'*
- The Soil and Water Management Plan, prepared by ADW Johnson Pty Limited, dated 18 January 2018 was prepared in accordance with the *Managing Urban Stormwater Soils and Construction*, prepared by Landcom, dated 2004, concludes:

'The civil contractor will be required to produce their own Soil and Water Management Plan prior to construction that adequately address the measures required to minimise the risk of erosion to disturbed areas and limit the transport of sediments from the construction site to downstream waterways for each stage of construction'; and

'As the estimated duration of construction for the above works is over one (1) year it is recommended that the contractor applies special erosion and sediment control measures prior to rainfall events between the months of November to May during construction. These special measures are required to be approved by Central Coast Council prior to construction occurring on site.'

The development application is supported by Council's Environmental Health Unit, subject to the imposition of conditions demonstrating compliance with the conclusions noted above.

Safety and damage concerns to adjoining properties during construction.

Comment:

Conditions of development consent are **recommended** requiring dilapidation surveys and structural engineer's certification of those properties adjoining the site. These must be submitted and approved by the Principal Certifying Authority prior to the issuing of any Construction Certificate. **Condition 3.11** is also recommended requiring a Construction and Traffic Management Plan (CTMP) including a Vehicle Movement Plan and Traffic Control Plan be prepared to ensure minimal impact on the operation of the road network during the construction phase of the development.

The proposed facility will decrease the value of land in the surrounding area.

Comment:

This concern is speculation and is not a matter for consideration under Section 4.15 of the EP & A Act. In addition, there is no evidence to substantiate this claim.

Public Authority Consultation

Integrated Approval Referral Body	Comments
Rural Fire Service	Supported, subject to conditions
Department of Primary Industries-Water	Supported, subject to conditions
External Referral Body	Comments
Roads and Maritime Services	Supported, without conditions
NSW Police Service	No response received

Internal Consultation

Internal Referral Body	Comments
Development Engineer	Supported, subject to conditions
Traffic and Transport Planner	Supported, without conditions. The applicant seeks approval for the location of the vehicular accessways as originally proposed and notified.
Environmental Health	Supported, subject to conditions
Architect	Supported, subject to conditions
Food Officer	Supported, subject to conditions
Waste Services	Supported, subject to conditions
Water and Sewer	Supported, subject to conditions
Building Surveyor	Supported, subject to conditions
Tree Management	Supported, subject to conditions
Liquid Trade Waste	Supported, subject to conditions

ECOLOGICALLY SUSTAINABLE PRINCIPLES

The proposal has been assessed having regard to ecologically sustainable development principles and is considered to be **consistent** with the principles.

The proposed development is considered to incorporate satisfactory stormwater, drainage and erosion control and the retention of vegetation where possible and is unlikely to have any significant adverse impacts on the environment and will not decrease environmental quality for future generations. The proposal does not result in the disturbance of any endangered flora or fauna habitats and is unlikely to significantly affect fluvial environments.

Climate Change

The potential impacts of climate change on the proposed development have been considered by Council as part of its assessment of the development application. This assessment has included consideration of such matters as potential rise in sea level; potential for more intense and/or frequent extreme weather conditions including storm events, bushfires, drought, flood and coastal erosion; as well as how the proposed development may cope, combat, withstand these potential impacts. The proposed development is considered satisfactory in relation to climate change.

ASSESSMENT

Having regard for the matters for consideration detailed in section 4.15 of the Environmental Planning and Assessment Act 1979 and other statutory requirements, Council's policies and section 10.7 certificate details, the assessment has identified the following key issues, which are elaborated upon for the panel's information. Any tables relating to plans or policies are provided as an attachment.

s. 4.15 (1)(a)(i) of the EP & A Act: Provisions of Relevant Instruments/ Plans/ Policies:

State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004

The development application has been submitted under the provisions of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP HSPD)*. The proposed development is permissible by virtue of the provisions of clause 4 (1)(a) of the SEPP which provides the policy applies to land being zoned primarily for residential purposes where dwelling houses are permitted.

Under cl. 10 of SEPP HSPD, the proposed development is considered to comprise seniors housing, being a hostel, which is defined as follows:

'Seniors housing is residential accommodation that is, or is intended to be, used permanently for seniors or people with a disability consisting of:

- (a) a residential care facility, or*
- (b) a hostel, or*
- (c) a group of self-contained dwellings, or*
- (d) a combination of these*

but does not include a hospital.'

Under SEPP HSPD, the proposed development is required to comply with a range of locational, siting and design requirements applicable to all types of accommodation under Parts 2 and 3, in addition to more detailed development standards pertaining specifically to 'hostels' under Clause 40, which cross references Schedule 3. The extent to which the proposed development complies with each of the relevant criteria is summarised in the Compliance Table in **Attachment 3**. Having regard to the statutory requirements within SEPP HSPD, Council staff support the proposal in its current form.

Council has received a written request seeking to justify the contravention of cl. 40(4) of SEPP HSPD in accordance with cl. 4.6(4)(Exceptions to Development Standards) of GLEP 2014, the merits of which are discussed elsewhere in this report.

State Environmental Planning Policy (Coastal Management) 2018

The provisions of State Environmental Planning Policy (Coastal Management) 2018 require Council consider the aims and objectives of the SEPP when determining an application within the Coastal Management Area. The Coastal Management Area is an area defined on maps issued by the NSW Department of Planning & Environment and the subject property falls outside of this zone.

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

The application is supported by a BASIX certificate which confirms the proposal will meet the NSW government's requirements for sustainability, if built in accordance with the commitments in the certificate. The proposal is considered to be consistent with the requirements of *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*.

State Environmental Planning Policy No 55 – Remediation of Land

Clause 7 of *State Environmental Planning Policy No 55 – Remediation of Land* (SEPP 55) specifically relates to the consideration of contamination and remediation prior to a consent authority granting consent to the carrying out of any development.

A Geotechnical Investigations and Waste Classification Assessment, prepared by Douglas Partners, dated December 2015 accompanies the development application. The investigation found that there were no major site conditions or geotechnical constraints to prevent the undertaking of a residential development, subject to the implementation of a range of recommendations in relation to site preparation, management of fill and stockpiles, construction techniques for retaining walls, footing requirements for future buildings and road pavement criteria.

The investigation also found that there is an elevated potential for contamination at the site due to the widespread nature of the filling, the presence of building rubble encountered in some of the test pits and observations of fibrous cement. With regard to contaminants identified on site in the location of the proposed development, the applicant submitted a Detailed Site Investigation for Contamination, prepared by Douglas Partners, dated September 2017 so to determine the extent of potential contamination and the required measures to remediate the site such that it can be safely developed as residential accommodation as proposed.

Council's Environmental Health Unit reviewed the considerations of this report and advised the report was prepared generally in accordance with the NSW EPA *Guidelines for Consultants Reporting on Contaminated Sites*, dated 2011, and raised no further objection subject to the imposition of appropriate conditions.

State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development

Circular 17-001, dated 29 July 2017, identifies the different types of developments *State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development* (SEPP 65) and the Apartment Design Guide (ADG) apply to and how the standards and design criteria in the two policies are to be applied. Circular 17-001, dated 29 July 2017 states:

'SEPP 65 and the ADG applies to residential flat buildings, shop top housing and the residential component of mixed use developments.'

SEPP 65 is silent as to its applicability specifically to hostels. However, cl. 4(4) of SEPP 65 states that *'this Policy does not apply to a boarding house or a serviced apartment'*. The applicant contends that as a hostel falls under the same classification under the BCA, the exclusion from SEPP 65 could also logically be applied to a hostel.

A serviced apartment is not otherwise defined in the SEPP HSPD, however, is defined in the standard template (and GLEP 2014) as:

'serviced apartment

means a building (or part of a building) providing self-contained accommodation to tourists or visitors on a commercial basis and that is regularly serviced or cleaned by the owner or manager of the building or part of the building or the owner's or manager's agents.

Note. Serviced apartments are a type of tourist and visitor accommodation—see the definition of that term in this Dictionary.'

The proposed development cannot be defined as either a serviced apartment or boarding house having regard to the definitions contained within GLEP 2014 nor SEPP HSPD. Whilst the proposed development is classified as a Class 3 building under the Building Code of Australia this does not preclude the applicability of SEPP No. 65.

Given the degree of uncertainty in the applicability of SEPP 65 and the ADG, a SEPP 65 Design Verification Statement has been completed by Marchese Architects to allow this issue to be resolved.

Subclause 30(2)(b) of SEPP 65 provides that the consent authority should take into consideration the design quality of the proposed development. Council's Architect provided advice in relation to the SEPP 65 Design Quality Principles. Council's Architect supports the development application for the following reasons:

- The proposed building has boundary setbacks of approximately 11m to 12m including deep soil landscaped areas approximately 5m wide.
- The height and envelope of the development is considered acceptable in this instance as the total building separation between the proposed building and the residences opposite on The Entrance Road is approximately 45m. This provides adequate physical and visual separation with any impacts further disguised by proposed landscaping.
- The application is generally acceptable in scale. The impact of non-complying height is disguised by variation in the projecting columns and balconies and the use of vegetation within street setbacks.
- Units are well designed with the majority of units having acceptable solar access. All units open on to or overlooking landscaped areas.
- Balconies and windows overlook the street and common areas to provide surveillance.

- The aesthetics are acceptable. The building steps, is articulated and uses variation in materials and small scale details to assist in disguising the scale and providing visual interest.

In view of the above considerations, the application is supported in its current form.

In addition to SEPP 65, the ADG provides objectives, design criteria and design guidance on how residential development proposals can meet the Design Quality Principles contained within Schedule 1 of SEPP 65, through good design and planning practice. An assessment of all relevant provisions of the ADG has been carried out and is provided in **Attachment 4**. Having regard to the design guidelines within the ADG, the variations are supported and no further objection is raised.

Gosford Local Environmental Plan 2014 (GLEP 2014)

Development Standard	Required	Proposed	Compliance with Controls	Variation	Compliance with Objectives
4.3 Height of Building	8.5m	9.24m-11.7m	No	8.71% (0.74m) – 37.65% (3.2m)	Yes
4.4 Floor Space Ratio	0.5:1	0.286:1	Yes	N/A	Yes

Figure 9: GLEP 2014 Compliance Table

Zoning and Permissibility

The subject site is zoned R2 Low Density Residential and E2 Environmental Conservation under *Gosford Local Environmental Plan 2014* (GLEP 2014). The proposed development is defined as seniors housing which is permissible in the R2 zone with the consent of Council, but is prohibited in the E2 zone. The proposed development occurs outside of the E2 zoned area on site, and is therefore permissible.

In any instance, seniors housing is permitted with consent on R2 zoned land under *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*.

It is considered that the development application is consistent with the stated objectives of the R2 Low Density Residential zone.

Height of Buildings

The proposed development results in a maximum building height of 11.7m which is a 37.65% variation to cl. 4.3(2) of GLEP 2014.

In relation to the height limit contained within GLEP 2014, the applicant has contended that a cl.4.6 submission is not required to support the variation, as the development application has been lodged under the provisions of SEPP HSPD as opposed to GLEP 2014. In this regard and in accordance with Clause 5(3) of the SEPP HSPD and Section 3.28 of the *Environmental Planning and Assessment Act 1979*, where there is an inconsistency between the standard of SEPP HSPD and that identified under GLEP 2014, the provisions of SEPP HSPD prevail. Therefore, the 8.5m height restriction under the GLEP 2014 does not apply to the proposed development. On this basis, it is arguable that there is any need to seek a variation to the GLEP 2014 height limit under the provisions of cl.4.6 of the GLEP 2014.

Notwithstanding the above considerations, a cl.4.6 variation to cl.4.3(2) of GLEP 2014 has been prepared to provide Council and the JRPP with added surety from an environmental planning point of view as to its procedural approach to this issue and in turn, its ability to grant consent to the development application. This document is provided at **Attachment 6**.

However, for the purposes of the assessment undertaken in this report, it is agreed, where there is an inconsistency between the standard of SEPP HSPD and that identified under GLEP 2014, the provisions of SEPP HSPD prevail. In this regard, the written request seeking to justify the contravention of cl.4.3(2) of GLEP 2014 in accordance with cl.4.6(4) of GLEP 2014 is not a **statutory requirement**.

Exceptions to Development Standards

If an applicant wishes to vary a development standard in an environmental planning instrument, they can formally lodge a written request justifying the variation. In accordance with cl. 4.6(4) of GLEP 2014, development consent must not be granted for a development that contravenes a development standard unless the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated in subclause (3). Subclause (3) provides:

'Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.'

Council has received a written request seeking to justify the contravention of cl.40(4) of SEPP HSPD in accordance with cl.4.6(4) of GLEP 2014. This document is provided at **Attachment 6**.

Clause 40(4) of SEPP HSPD provides the following: -

'Height in zones where residential flat buildings are not permitted If the development is proposed in a residential zone where residential flat buildings are not permitted:

(a) the height of all buildings in the proposed development must be 8 metres or less, and

Note. Development consent for development for the purposes of seniors housing cannot be refused on the ground of the height of the housing if all of the proposed buildings are 8 metres or less in height. See clauses 48 (a), 49 (a) and 50 (a).

(b) a building that is adjacent to a boundary of the site (being the site, not only of that particular development, but also of any other associated development to which this Policy applies) must be not more than 2 storeys in height, and

Note. The purpose of this paragraph is to avoid an abrupt change in the scale of development in the streetscape.

(c) a building located in the rear 25% area of the site must not exceed 1 storey in height.'

Under SEPP HSPD, "height" is defined as follows:

"height" in relation to a building, means the distance measured vertically from any point on the ceiling of the topmost floor of the building to the ground level immediately below that point."

As the site is zoned R2 Low Density Residential under GLEP 2014, the 8m maximum height restriction applies to the subject land. A number of sections of the building exceed the 8m maximum height allowable under cl. 40(4)(a) of SEPP HSPD, with encroachments ranging in size from 1.24m (15.5% variation) to 3.7m (46.25% variation) (refer to figure 10).

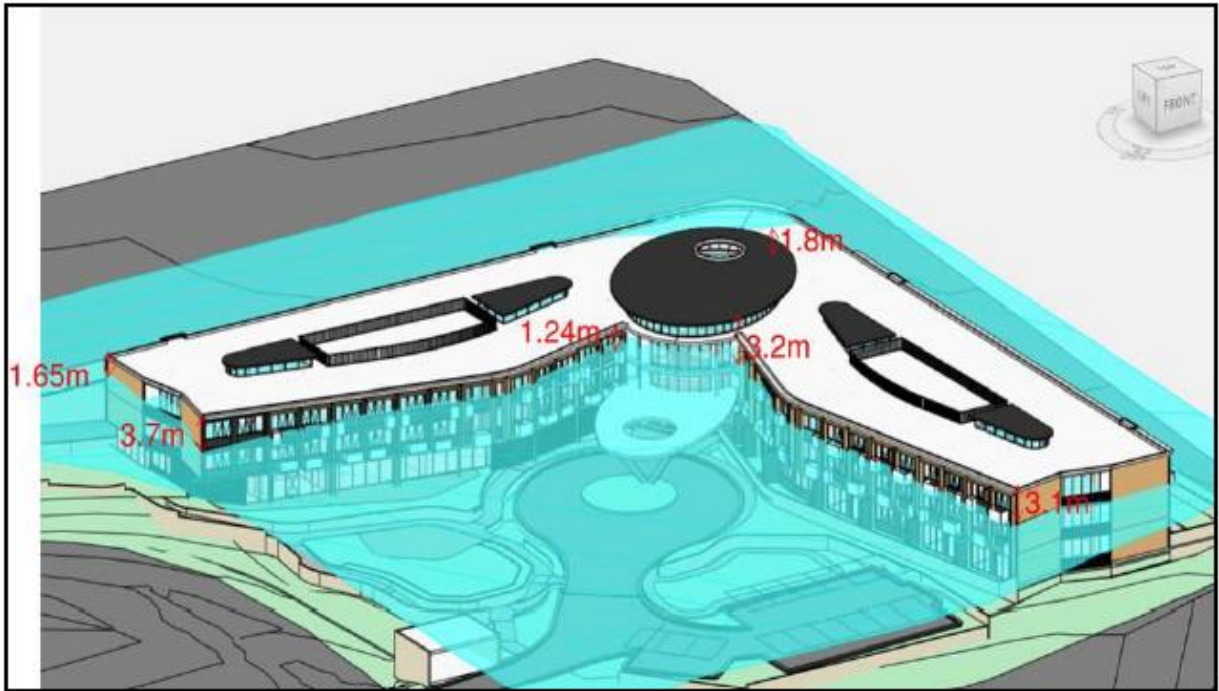


Figure 10: Variations to 8m Height Control (SEPP HSPD)

The eastern wing of the proposed building located adjacent to The Entrance Road boundary of the site is three (3) storeys in height contrary to cl. 40(4)(b) of SEPP HSPD, resulting in a 50% variation. However, the northern wing of the building directly adjacent to the Bellevue Road site boundary contains an undercroft car park on the lower floor which does not extend more than 1 metre above ground level. As per Clause 3(2) of SEPP HSPD, a car park that does not extend above ground level by more than 1m is not to be counted as a storey in calculating the number of storeys in a development. In view of the above considerations, the northern wing of the proposed building, located south of Bellevue Road, is only two storeys and therefore not in breach of the requirements of Clause 40(4)(b) of SEPP HSPD.

The proposed development does not result in a variation to cl.40 (4)(c) of SEPP HSPD. Clause 40(4)(c) requires that "a building located in the rear 25% area of the site must not exceed 1 storey in height", whereas the proposed development is not located in the rear 25% of the site. The proposed development is located in the section of the site considered to be the front given it abuts the main property frontage to The Entrance Road, as well as the secondary street frontage to Bellevue Road. The rear portion of the site would be that section facing Bakali Road. If referring to the site of the proposed development in isolation, the rear 25% would be the south-west quarter where neither section of the site (or the building) fronts the above-mention roads.

The written request seeking to justify the contravention of cl.40(4)(a) and (b) of SEPP HSPD in accordance with cl.4.6(4)(a)(i) of GLEP 2014 submitted by the applicant (refer to attachment 6) states how strict compliance with the development standards is unreasonable or unnecessary

(having regard to the decision in *Wehbe v Pittwater Council* [2007] NSW 827). The applicant contends there are sufficient environmental planning grounds to justify the contravention, as summarised below:

- *With respect to the 8m height restriction under Clause 40(4)(a), the proposed variation is consistent with the underlying intent of Chapter 3 of SEPP HSPD as it is specifically aimed, or will facilitate, the development of housing that is located and designed in manner suited to seniors who are mobile and independent and also those that are less so. In addition, the development meets the objectives of SEPP HSPD as it will increase the supply and diversity of seniors housing, make use of existing infrastructure already available to the site and is of good design.*
- *With respect to the two storey height restriction under Clause 40(4)(b), the proposed variation is consistent with the specific intent of the clause 'to avoid an abrupt change in the scale of development in the streetscape'. In this regard, the elevation to The Entrance Road streetscape presents as only two storeys given the ground floor is located below road level behind the existing perimeter wall. This elevation is consistent with the two storey height restriction in the R2 zone applying to the site and surrounding area and the predominantly one and two scale of buildings on the opposite of The Entrance Road and in the locality generally. Any potential abruptness in scale has also been minimised by the presence of the perimeter wall along the boundary and the extent and height of landscaping behind this wall, the setback of the building to The Entrance Road (up to 11m at the southern end) and the wide carriageway of The Entrance Road.*
- *The location and height of the building as currently proposed (i.e. inclusive of the proposed variations) better facilitates natural light and hence energy efficiency of the development such that it is better able to meet the requirements of the Apartment Design Guide and the principles of SEPP 65, Section J of the BCA, as well as the requirements of SEPP HSPD. This is verified by the SEPP 65 Design Verification Statement accompanying the development application.*
- *By consolidating the footprint and increasing the height of the building as proposed, the development provides greater areas of open space and increased landscaping around the site as encouraged by SEPP HSPD which would not have been achieved via a lower building built in strict accordance with the requirements of SEPP HSPD.*

Council is satisfied that the matters required to be demonstrated in subclause (3) have been adequately addressed for the variation to the building height development standard.

In accordance with cl.4.6(4)(2)(ii) development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that 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.

In order to demonstrate if the proposal has merit, consideration of the proposed variations to cl.40(4)(a) and (b) of SEPP HSPD has been provided with regard to the aims of SEPP HSPD contained within cl. 2 (1) (a), (b), and (c):

(a) increase the supply and diversity of residences that meet the needs of seniors or people with a disability, and

The proposed development provides a residential estate that accommodates older people or people with a disability, where improved standards of amenity and urban design quality are achieved by new low-rise multi-unit buildings.

(b) make efficient use of existing infrastructure and services, and

The proposed development will increase the supply and diversity of seniors housing and utilise existing infrastructure already available to the site.

(c) be of good design

It is considered that the additional building height proposed does not detract from the attainment of providing quality urban form in accordance with the character of the zone. The design incorporates various design elements, which activate the design as viewed from the public domain.

Furthermore, consideration of the proposed variations to cl.40(4)(a) and (b) of SEPP HSPD has been provided with regard to the objectives for development within R2 Low Density Residential zone in which the development is proposed to be carried out in accordance with cl.2.3 (2) of GLEP 2014:

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

The proposed development provides a residential estate that accommodates older people or people with a disability, where improved standards of amenity and urban design quality are achieved by new low-rise multi-unit buildings.

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

The proposed development provides a residential estate that accommodates older people or people with a disability, where other facilities are provided to meet the day to day needs of residents.

- *To ensure that development is compatible with the desired future character of the zone.*

The subject site is located within the Forresters Beach Character Statement, the Area 5, Medium Density Estate under *Gosford Development Control Plan 2013* (GDGP 2013). It is considered the proposed development is compatible with the desired future character of the area for the following reasons:

- The proposed development provides a residential estate that accommodates older people or people with a disability where new low-rise multi-unit buildings are surrounded by leafy gardens to provide distinctive backdrops for major roads.
- The proposed development maintains adequate sunlight, privacy and amenity currently enjoyed by neighbouring dwellings and their private open spaces.

Shadow diagrams for midwinter (21st June) have been submitted which illustrate the overshadowing generated by the proposal. Given the orientation of the site and the proposed developments setback to adjoining residential properties, no adjoining residential property, located within the Village or otherwise, will be impacted by a loss of solar access between 9am and 3pm during midwinter (21st June). In view of the above considerations, no objection has been made with regard to the additional shadows cast by height non-complying elements.

The land to the north of the site fronting Bellevue Road is occupied by a service station which is a non-habitable land use. Having regard to the change in topography between the subject site, service station and residential dwellings beyond fronting Longs Road, no objection is raised in that a two storey height transition will be maintained (refer to figure 11). Furthermore, the subject site and residential dwellings fronting Longs Road are separated by approximately 30m – 76m, boundary to boundary at this junction.



Figure 11: View of the service station opposite the site on the northern side of Bellevue Road, cornering The Entrance Road, with dwellings fronting Longs Road beyond.

The subject site has not been identified as being located within a protected view corridor. However, in order to ascertain the potential loss of view, Council's Assessment Officer undertook inspections of several residential dwellings within Longs Road and Bellevue Road, Bateau Bay.

For those dwellings further to the east along Longs Road, the service station immediately to the south on Bellevue Road obscures any view of the existing site (refer to figure 12).



Figure 12: Southern outlook from No. 6 Longs Road, Bateau Bay

Due to rising topography, the 14 residential properties located north of the site fronting Longs Road and Bellevue Road, are elevated and will continue to look over the site. Whilst views of rooftops and some greenery will be lost in a south/ south easterly direction, the distant ridgeline and mountain escarpment view will remain unaffected by the proposal (refer to figure 13).



Figure 13: South easterly outlook from No. 1 Longs Road, Bateau Bay

The impact of the height encroachments would also be negligible with respect to the dwellings bordering the eastern side of The Entrance Road due to the lower level of these properties, the separation provided by roadways and screening provided by the perimeter fence and landscaping along this frontage.

- The height and scale of the proposed development is minimised by using strongly-articulated forms and facades that vary in shape and height. The proposed height encroachments will be imperceptible from outside of the site due to the higher levels of the land surrounding the site (particularly to the north). In addition, the site of the proposed development is screened by a perimeter fence, 2m in height, as well as landscaping and signage. This is demonstrated by the following renders of the development viewed from the intersection of The Entrance Road and Bellevue Road (refer to figures 14-16).



Figure 14: *Photomontage of the proposal, viewed from the intersection of The Entrance Road and Bellevue Road.*



Figure 15: *Photomontage of the proposal, viewed from the intersection of The Entrance Road (northern end of the site)*



Figure 16: Photomontage of the proposal, viewed from the intersection of The Entrance Road (southern end of the site)

- *To encourage best practice in the design of low-density residential development.*

It is considered that the additional building height proposed does not detract from the attainment of providing quality urban form in accordance with the character of the zone.

- *To promote ecologically, socially and economically sustainable development and the need for, and value of, biodiversity in Gosford.*

The variations identified under cl.40(4) (a) and (b) of SEPP HSPD have been assessed having regard to ecologically sustainable development principles and are considered to be consistent with these principles.

- *To ensure that non-residential land uses do not adversely affect residential amenity or place demands on services beyond the level reasonably required for low-density housing.*

Hostels are a form of residential accommodation. However, it is noted that the impact of the additional height will not adversely impact any surrounding properties due to the size and self-contained nature of the site and the limited extent of development either directly adjoining or in close proximity to the site.

The cl.4.6 of GLEP 2014 variation request submitted by the applicant also provides assessment of the proposal against the relevant development standard and zone objectives, and Council is satisfied that the applicant has demonstrated consistency with these objectives such that the proposal is in the public interest.

In accordance with cl. 4.6(4)(b) development consent must not be granted for development that contravenes a development standard unless the concurrence of the Secretary has been obtained. Planning Circular PS 18-003 issued 21 February 2018 states the concurrence of the Director-General may be assumed when Joint Regional Planning Panels consider exceptions to development standards under cl.4.6 of GLEP (Exceptions to Development Standards) 2014 for regionally significant development.

This assessment has been carried out having regard to the relevant principles identified in the following case law:

- *Wehbe v Pittwater Council [2007] NSWLEC 827*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248*

The cl. 4.6 (Exceptions to Development Standards) of GLEP 2014 request submitted by the applicant appropriately addresses the relevant principles and exhibits consistency with the relevant zone objectives under GLEP 2014 and cl.2 (1) of SEPP HSPD.

This assessment concludes that the cl. 4.6 (Exceptions to Development Standards) of GLEP 2014 variation provided having regard to cl. 40(4) (a) and (b) of SEPP HSPD is well founded and is worthy of support.

s. 4.15(1)(a)(ii) of the EP& A Act: Draft Environmental Planning Instruments:

No draft Environmental Planning Instruments apply to this development application.

s. 4.15(1)(a)(iii) of the EP& A Act: Provisions of any development control plan:

Gosford Development Control Plan 2013 (GDCP 2013)

GDCP 2013 provides objectives, design criteria and design guidance on how development proposals can achieve good design and planning practice. The proposal is considered acceptable having regard to the requirements of GDCP 2013. For a detailed consideration, refer to the GDCP 2013 Compliance Table contained within **Attachment 5**. Having regard to the relevant criteria with GDCP, no objection is raised.

s. 4.15(b) of the EP & A Act: The Likely Impacts of the Development:

a) Built Environment

A thorough assessment of the proposed development's impact on the built environment has been undertaken in terms of SEPP HSPD, SEPP 65, the ADG, GLEP 2014 and GDCP 2013 and in terms of submissions received. Council staff raises no objection with regard to the likely impacts of the development to the built environment for the following reasons:

- The potential for adverse impacts to neighbouring properties in terms of light spillage and noise generation from the facility are considered negligible.
- The size, location and design of communal open space is adequate having regard to the context and the scale of development.
- Units are well designed with the majority of units having acceptable solar access. All units open onto or **looking at** landscaped areas.
- Balconies and windows overlook the street and common areas to provide surveillance.
- The proposed development is articulated and uses variation in materials and small scale details to assist in disguising the scale and providing visual interest.

b) Natural Environment

The subject site does not contain any threatened species or habitat and will have no impact on the conservation of fish and marine vegetation. The proposal will not affect any identified wildlife corridor. The proposal is considered satisfactory in relation to impacts on the natural environment as identified throughout this report.

c) Economic Impacts

The proposed development will contribute to the supply of seniors housing needs in the locality and is considered to be satisfactory from an economic perspective.

d) Social Impacts

A range of health and personal support services will be provided as part of the proposed development, whilst future residents will also be able to access the recreational, social, and community facilities already available within the existing village. Additional facilities in Bateau Bay Square shopping centre can also be accessed via the existing village bus and public bus services on Bellevue and The Entrance Roads.

The additional traffic generated by the proposed development will be similar to that generated by the 24 villas previously approved in Stages 7 and 8 and hence easily accommodated by the surrounding road network, whilst the new entry off Bellevue Road will provide separate access for visitors, staff and service traffic into the site to minimise conflicts and improve operational aspects of the facility.

s. 4.15 (1)(c) of the EP & A Act: Suitability of the Site for the Development:

A review of Councils records has identified the following constraints:

- Integrated Development:
 - DPI Water has provided General Terms of Approval in accordance with s.4.46 of the *Environmental Planning and Assessment Act 1979*, in that the proposed activity invokes s. 91E (1) of the *Water Management Act 2000*.
 - NSW Rural Fire Service has provided general terms of approval for the above Integrated Development in accordance with s.4.46 of the *Environmental Planning and Assessment Act 1979* by way of a bush fire safety authority as required under s.100B of the *Rural Fires Act 1997*.
- The subject site is zoned R2 Low Density Residential and E2 Environmental Conservation under GLEP 2014. The proposed development occurs outside of the E2 zoned area on site.

It is considered the above-mentioned constraints do not render the site unsuitable for the proposed development.

s. 4.15 (1)(e) of the EP & A Act: The Public Interest:

Approval of the development application is considered to be in the public interest. It is considered the site is compatible for the construction of 75 assisted care apartments under *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* and the built form of the development will not result in unacceptable visual and amenity issues for surrounding properties.

The applicant has satisfied Council Officers and the Department of Primary Industries (Water) that concerns raised in submissions regarding erosion and sediment control will be adequately addressed by legislative requirements, enabling the development to proceed in a manner which is sensitive to the environmental characteristics of the site and its environs.

Other Matters for Consideration

Development Contribution Plan

The site is not subject to the provisions of any s7.11 development contribution plan. Therefore, no contributions are applicable.

Water and Sewer Contributions

The proposed development is subject to Water and Sewer Contributions.

CONCLUSION

This development application has been assessed under the heads of consideration of s.4.15 of the *Environmental Planning and Assessment Act 1979* and all relevant instruments and policies.

The potential constraints of the site have been assessed and it is considered that the site is suitable for the proposed development. Subject to the imposition of appropriate conditions, the proposed development is not expected to have any adverse social or economic impact.

It is considered that the proposed development will complement the locality and meet the desired future character of the area. Accordingly, the development application is recommended for approval in accordance with section 4.16 of the *Environmental Planning and Assessment Act*.

Attachments

- 1** Proposed Conditions of Consent
- 2** Development Plans
- 3** SEPP HSPD Compliance Table
- 4** ADG Compliance Table
- 5** GDCP 2014 Compliance Table
- 6** Clause 4.6 of GLEP 2014 (Variation Requests)
- 7** Layout of Forresters Beach Retirement Village