

**SYDNEY NORTH PLANNING PANEL
COUNCIL ASSESSMENT REPORT**

Panel Reference	PPSSNH-291
DA Number	REV2021/0045
LGA	Northern Beaches Council
Proposed Development	Review of Determination of Application DA2021/0212 for demolition works and construction of a mixed development, comprising seniors housing, commercial uses, carparking, landscaping and stratum subdivision
Street Address	Lot 101 DP 1209504, No. 5 Skyline Place, Frenchs Forest
Applicant	Platino Properties
Owner	The owners of Strata Plan 49558 George Andrew Revay Ross Jon Munro Graeme Watman Jardin Frenchs Forest Pty Ltd
Date of Lodgement	22 December 2021
Number of submissions	11
Recommendation	Refusal
Regional Development Criteria (Schedule 7 of the SEPP) State and Regional Development 2011	Clause 8.3 of the EPA Act 1979 requires that the review of determination or decision made by a Sydney district or regional planning panel is also to be conducted by the Panel.
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> • Environmental Planning and Assessment Act 1979 • Environmental Planning and Assessment Regulation 2000 • State Environmental Planning Policy No. 55 - Remediation of Land • State Environmental Planning Policy (Building Sustainability Index: BASIX) • State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 • State Environmental Planning Policy - Infrastructure 2011 • State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development (SEPP 65) • Warringah Local Environmental Plan 2011 (WLEP 2011) • Warringah Development Control Plan 2011 (WDCP)
List all documents submitted with this report for the Panel's consideration	Attachment 1: Original Assessment Report by Council Attachment 2: Architectural Plans (as amended) Attachment 3: Applicant's Urban Design Study Attachment 4: Design and Sustainability Advisory Panel Report Attachment 5: Draft Conditions of Consent
Report by	Lashta Haidari – Principal Planner
Report Date	26 May 2022

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 summarized, in the Executive Summary of the assessment report? **Yes**

e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report? **Not applicable**

Special Infrastructure Contributions

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

Conditions

Have draft conditions been provided to the applicant for comment? **Yes**
Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report **(prepared with the original DA)**

Executive Summary

This report provides an assessment of a Review of Determination for a mixed-use development on the site known as No.5 Skyline Place, Frenchs Forest ("the site"). The site is located on the south-western corner of Frenchs Forest Road East and Skyline Place.

The application relates to Lot 1 which is located to the rear of Lot 2. Lot 2 was approved under Section 8.2 of the *Environmental Planning and Assessment Act 1979* by the Sydney North Planning Panel (SNPP) on 18 June 2019. This approval was subject to amendments which satisfactorily addressed the concerns raised by the previous decision of the SNPP on the application.

On 18 August 2021, the Sydney North Planning Panel (SNPP) refused the development application (DA2021/0212) for the construction of a seniors housing facility comprising of a mixed-use development on proposed Lot 1, ranging in height from 3-12 storeys, ancillary community facilities, commercial premises, and associated works. The application was made under the provision of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.

On 22 December 2021, a Section 8.2 Review of Determination application was lodged with amended plans. The main changes to the proposed development are summarised as follows:

- reduced maximum building height from 12 storeys (max RL 196.70m) to maximum 8 storeys (max RL 184.30)
- reduction in the FSR from 2.42: 1 to 1.93:1
- reduction in total number of apartments from 133 to 108 (including the retention of 10 apartments for Project Independence and 5 for Affordable Housing)
- Site coverage reduced from 40% to 35.6%
- increase in the commercial floor space from 941m² to 973m²
- increase in the proportion of common area per unit from 9m² to 11m²
- numerous minor architectural amendments to refine the facades
- an increase in the proportion of landscaped area on the site from 33.8% to 36.2%
- addition of a green roof on the central communal building

The subject site is zoned B7 Business Park under the Warringah Local Environmental Plan 2011 (WLEP 2011). Development for the purposes of seniors housing is permitted with consent pursuant to the former State Environmental Planning Policy (Housing for seniors or people with a Disability) 2004 (SEPP HSPD), by virtue of 'hospitals' being a permitted use in the B7 zone.

Pursuant to Section 8.2 of the Act, the applicant seeks a review of all aspects of the refusal of DA2021/0212. Clauses 8.3 and 8.10 of the Act requires that the request for the review must be made and determined within 12 months after the date of determination. The application was determined on 18 August 2021 and the Notice of Determination was issued on 23 August 2021. The request for review was lodged on 22 December 2021, which is within the statutory timeframe.

The assessment of the amended application has concluded that despite the reduction in the overall height and revisions to the built form, the amendments do not overcome the Panel's concerns in relation to potential conflict of land uses and loss of employment land, and the fact that the amenity of the future residents of the development will be significantly impacted by the operation of the surrounding businesses and industrial uses.

Allowing residential development on the subject site will also set a precedent by allowing a loss of employment lands which is inconsistent with the principals of the Sydney North District Plan.

The application was referred to internal departments and external authorities for comment. In the responses received, issues were raised regarding the inconsistency with the desired future character of the Frenchs Forest B7 Business Park precinct, as identified in the adopted Hospital Structure Plan. Council's Design and Sustainability Advisory Panel (**DSAP**) does not support the proposal.

Accordingly, it is recommended that the SNPP, as the determining authority, having considered the application for review of determination, resolve to maintain its refusal of DA2021/0212 for the reasons detailed within the "Recommendation" section of this report.

PROPOSAL IN DETAIL

The proposed development, as revised, comprises the following, as stipulated within the revised Statement of Environmental Effect, prepared by Kelylan Consulting Pty Ltd:

- the height of the building has been reduced by 4 storeys on both the eastern and western buildings
- reduction has been made in GFA and subsequent FSR, as well as a reduced building footprint
- the quantum of residential floor space has been significantly reduced
- the proportion of landscaped area on the site has increased from 33.8% to 36.2%, as well as an increase in deep soil areas and an increase in the number of canopy trees. Amendments to the landscape design directly respond to the comments made by the Panel, DSAP and Council on the previous scheme
- retention of all disability housing for Project Independence and part of the affordable housing component (originally 11 units, now 4)
- increase in the percentage of communal area per unit despite significant reduction of residential GFA

- amendments have been made to the articulation of the building facades to refine the architecture, reference elements of the approved seniors living development to the north and to reduce the apparent bulk and scale of the proposed development

A comparison of the original and amended proposals is outlined in the table below:

	Original Proposal	Amended Proposal
Building Form	12 storey towers	Up to 8 storeys
Building Height	RL 193.6 (39m) Maximum 12 storeys	RL 184.3 (26.8m) Maximum 8 storeys
Total Gross Floor Area (GFA)	19,200m ²	15,048m ²
Site coverage	3,124.4m ² (40%)	2,788m ² (35.6%)
FSR	2.42:1	1.93:1
Residential apartments	<ul style="list-style-type: none"> • 111 seniors living apartments • 12 affordable housing units • 10 disability housing units 	<ul style="list-style-type: none"> • 93 seniors living apartments • 10 disability housing units • 5 affordable housing units
Commercial Use	<ul style="list-style-type: none"> • 941m² of GFA • 6 tenancies 	<ul style="list-style-type: none"> • 973m² of GFA • 6 tenancies
Car parking	<ul style="list-style-type: none"> • 172 spaces for residents • 34 spaces for visitors • 26 spaces for commercial uses 	<ul style="list-style-type: none"> • 137 spaces for residents • 20 spaces for visitors • 25 spaces for commercial uses
Landscaping and Open Space	33.8% of site provided as landscaped	36.2% of site provided as landscaped
Setback to Skyline Place	7.6m – 12.5 m	No change
Amendments to REV2019/0014	<ul style="list-style-type: none"> • Amendment to the approved development on Lot 2 to enable shared access arrangements to the basement car park. <p>Inclusion of three additional at-grade parking spaces (resulting in a total of 5 spaces) adjacent to the two-way access drive and to reconfigure the spaces from parallel to perpendicular.</p> <ul style="list-style-type: none"> • To facilitate these proposed works on approved Lot 2, we request imposition of a condition of consent to modify REV2019/0014 to reflect these works in accordance with section 4.17(1) (c) of the EP&A Act. 	No change

The amended proposal is accompanied by:

- A revised Urban Design Report (UDR) prepared by PA Studio Architects in collaboration with Matthew Pullinger Architect.
- Updated landscaping plans.
- BASIX and NATHERS certification.
- A Peer Reviewed ADG Assessment prepared by PTW Architects.
- An independent Assessment of the current supply and demand relating to the seniors housing stock within the Northern Beaches LGA, prepared by Macroplan



Figure 2 - View of the original development (Source: PA Studio).



Figure 3 - View of the proposed development (as amended) (Source: PA Studio).

SITE DESCRIPTION

The proposed development site is located at 5 Skyline Place, Frenchs Forest. Approval for development, including subdivision of the site, was granted on 18 June 2019 through REV2019/0014. The proposed development the subject of this application is located on proposed Lot 1, which has an area of 7,811m² and is located on the southern part of the site. The site is currently occupied by an existing warehouse and commercial building located on the southern portion of the site. Off-street parking is currently provided for approximately 170 cars in a large at-grade car parking area on the northern portion of the site.

There are a number of large trees that are located along the north and east boundaries of the site. Vehicular access to the site is provided via an existing entry/exit driveway located midway along the Skyline Place site frontage.



Figure 1 – Subject Site and Locality Map

The site immediately to the north is Lot 2 (approved for seniors housing), to the south, east, and west are warehouses and commercial/retail buildings ranging from single to five storeys. To the north of the site (Lot 2), beyond Frenchs Forest Road East, is the R2- Low Density Residential zone, which comprises of residential dwellings that are generally 1-2 storey in landscape settings.

RELEVANT BACKGROUND

The Development Application (DA2021/0212) was lodged with Council on 17 March 2021. The application sought approval for demolition of the existing office/warehouse building and at grade car parking on the site and construction of two separate buildings, ranging in height from 3 to 12 storeys, containing:

- dependent living units, including: - 12 affordable dwellings for seniors and units for disability housing to be operated by Project Independence;

- a mix of 1, 2, 2 bed + study and 3 bedroom dwellings - 10 units are to be operated by Project Independence and made available for disability housing
- 941m² of commercial floor space which will include allied health, restaurant, co-working spaces, dentistry, hospital uses, home care provision and /or day-care respite centres
- stratum subdivision into 3 lots for disability and affordable housing, other seniors housing and commercial uses
- height range approximately 10 to 39 metres
- approximately 2,188m² of communal open space (28% of the site), including a central publicly accessible piazza
- common Facilities including a pool provided within a centrally located position between the mixed use buildings
- central community gardens
- basement car parking for 232 spaces, with access from the access ramp to the approved car park via Lot 2.

The application was reported to the SNPP on 18 August 2021 with a recommendation for refusal.

The Panel made the following decision on the application:

REASONS FOR THE DECISION

The Panel determined to refuse the application for the reasons set out below and in Council's Assessment Report.

The subject site is zoned B7 Business Park under the Warringah Local Environmental Plan 2011 (WLEP 2011). Development for the purposes of seniors housing is permitted with consent pursuant to State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP HSPD) by virtue of 'hospitals' being a permitted land use in the B7 Business Park zone. The Panel notes the application relates to Lot 1, which is located to the rear of Lot 2. A seniors housing development on Lot 2 was approved under Section 8.2 of the EP&A Act in June 2019. That approval was subject to amendments, including a reduction in height and increase in non-residential floor space, which satisfactorily addressed the concerns raised in the previous refusal of the application by the SNPP.

Notwithstanding the approval for Lot 2, Council concerns remain regarding the introduction of residential land uses (in the form of seniors, affordable and disability housing) into the Frenchs Forest B7 Business Park zone, as such a use is inconsistent with the objectives for the zone and the Northern Beaches Hospital Precinct Structure Plan (Structure Plan). However, the Panel notes that as the proposed use is permissible, seniors housing, in some form, can occur on the site, subject to acceptable impacts.

The Panel is of the view that the form and resultant impacts of the proposed seniors housing development are not acceptable. It concurs with Council that the proposed development with a height of 12 storeys, and up to 39m and a floor space ratio of 2.41:1, is excessive in height, bulk and scale and is out of character with the business park and surrounding area. It will be viewed from the nearby R2 Low Density Residential area to the north and from areas within and outside the business park.

The Panel concurs with Council that the proposed development does not satisfy the appropriate controls, in particular relevant provisions of SEPP HSPD. Accordingly, the Panel determined to refuse the proposal for the following reasons:

1. State Environmental Planning Policy (Housing for seniors or People with a Disability) 2004 (SEPP HSPD 2004)

The proposed development is unsatisfactory in respect to Section 4.15 of the EPA Act, as the application is found to be inconsistent with the provisions of SEPP (HSPD) 2004.

- (a) *The proposed development is inconsistent with Aims of Policy (namely Clause 2c) in relation to design and compatibility.*
- (b) *The proposed development is inconsistent with the requirement of Clause 25 (5) (i) & (v) with regards to land use conflict and bulk and scale.*
- (c) *The scale, bulk and height of the proposal is not compatible with the existing and future character of the area and does not contribute to the quality and identity of the area as required by Clause 33 (a) of SEPP (HSPD) 2004.*

2. State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development (SEPP 65) and Associated Apartment Design Guide (ADG)

The proposed development fails the principles of SEPP 65 insofar as they apply to context & neighbourhood character, built form & scale, density, landscaping, and amenity.

- a) *The proposed building is not compatible with the context of the site that currently contemplates development that is non-residential and of a scale significantly less than that proposed.*
- b) *The development does not provide sufficient landscape, in particular canopy trees, to mitigate the height, bulk and scale of the proposed built form.*

3. Warringah Local Environmental Plan (WLEP 2011)

The development is inconsistent with the provisions of WLEP 2011 as it relates to promoting development that is compatible with neighbouring development in terms of bulk, scale and appearance and use.

4. Non-compliance with Warringah DCP 2011 (WDCP 2011)

The development fails to comply with the Built Controls as it relates to B4 –Site Coverage and B7 – Front Boundary Setbacks and Clause D9 - Building Bulk.

5. Public Interest

The community demand for seniors, affordable and disabled housing in this area does not justify that the site is appropriate for a seniors housing development of this height, bulk and scale. The extent of residential floor space proposed is inconsistent with Draft Northern Beaches Hospital Precinct Structure Plan, which does not change the B7 Business park zone for this area. As well as with the State Government North District Plan, which recognises that business parks "need to be developed, from the outset, as urban places which can transition into higher amenity and vibrant places while maintaining their main role as an employment precinct. Council's retail and employment strategies should provide guidance on the transition of business parks into mixed employment precincts including, where appropriate, ancillary residential developments to support the business park". Consequently, approval of the application would not be in the public interest.

The Notice of Determination was issued to the applicant on 23 August 2021.

On 22 December 2021, the applicant lodged the current application pursuant to Section 8.2 of the Environmental Planning and Assessment Act 1979 (the Act) for the review of SNPP's determination of refusal for DA2021/0212.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>Supported (subject to conditions)</p> <p>The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development.</p>
Environmental Health (Industrial)	<p>Supported (subject to conditions)</p> <p>An assessment of the Review of Determination submission has not highlighted any changes that require further acoustic assessment however an assessment of the original Acoustic Report dated 25/01/2021 prepared by Acoustic Logic associated with DA2021/0212 has highlighted additional conditions that need to be applied relating to construction materials, management controls and an acoustic review.</p> <p>A condition will also be applied for any cooling towers that may be implemented into the development.</p>
Environmental Health (Contaminated Lands)	<p>Supported (subject to conditions)</p> <p>Detailed site investigation report prepared by Foundation Earth Sciences dated February 2021 was submitted to support DA2021/0212. Within the report, historical land uses (commercial/industrial) were identified that may be of concern due to possible imported fill, leakages from vehicles on site and degradation of the building onsite.</p> <p>The report concluded that remediation would be required in some borehole locations to render the site suitable for its intended use. Therefore conditions applied in DA2021/0212 still apply to this review of determination.</p>
Landscape Officer	<p>Supported (subject to conditions)</p> <p>The Landscape Plans prepared by Paddock and Arborist's Letter prepared by Naturally Trees are noted.</p> <p>The Landscape Plans indicate amendments that were raised under the previous application regarding treatment of the frontage to Skyline Place, which is supported.</p> <p>Other amendments indicate retention of trees previously indicated for removal.</p> <p>To this end, it is apparent that there is an alteration to the trees indicated for removal in the Arborist's report dated Jan 2021, which indicates the trees to be removed based on the original application. The Arborist's Letter indicates that no changes have occurred in relation to plans DA000-DA210 Rev D. The plans referred to are not apparent in the Rev package for this site and it is clear that additional trees are now proposed to be retained.</p>

	<p>As such, trees indicated for retention on the Landscape Plans are to be supported by a Tree Protection Plan indicating trees to be retained by species and number and tree protection requirements. This has been addressed in recommended conditions.</p> <p>No objections are raised with regard to landscape issues subject to conditions.</p>
<p>Development Engineering</p>	<p>Not supported</p> <p>The proposed seniors living development is not supported because the proposed stormwater management plan does not comply with Councils water management policy for development for the following reasons:</p> <ol style="list-style-type: none"> 1. The stormwater design engineer has not provided the DRAINS model for Council review and a corresponding design summary report detailing all model input parameters. 2. The detention tank is undersized for the development the designer has not assumed state of nature conditions for the post development discharge control. Please refer to section 9.3.2.6 of Councils water management for development policy: <p><i>For all developments except single residential dwelling developments the PSD is to be calculated on the maximum allowable impervious fraction of 0%. That is, discharge off the site is to be restricted to the “state of nature” condition.</i></p>
<p>NECC (Water Management)</p>	<p>Supported (subject to conditions)</p> <p>The proposal was assessed under the current creek and water management legislation framework, the relevant parts of the Warringah LEP, DCP and Protection of Waterways and Riparian Lands Policy (Policy PL740).</p> <p>The supplied reports and plans were considered. It is noted that the water quality treatment chain includes of a 65 000L tank for reuse (irrigation and communal use), refer page 9 and 25 sustainability report.</p> <p>The community submissions for the review were considered. For the purpose of the development application the supplied documentation is satisfactory.</p> <p>The proposed stormwater treatment chain includes a stormwater reuse and proprietary cartridges system prior to the connection to the local stormwater network system.</p> <p>The proposed treatment chain performance is satisfactory in principles and comply with Council Water Management for Development Policy objectives.</p> <p>Due to the sensitivity of the downstream environment it is imperative that an erosion and sediment management strategy is developed to ensure protection of this area (subject to conditions of consent).</p>

	NECC water has no objections to the proposal.
Road Reserve	<p>Supported (subject to conditions)</p> <p>There is limited impact on existing road infrastructure.</p> <p>Whilst there is nearby public transport with bus shelters on both sides of Frenchs Forest Road, the only safe crossing point is at the signals at Romford Road. Given the width of Skyline Place, a pedestrian refuge is recommended to the Traffic Engineering team to facilitate the safety of seniors crossing Skyline Place when walking from Romford Road .or alternatively provide a signalized pedestrian crossing or signalized intersection at Skyline Place</p> <p>It is noted the existing footpath on the western side of Skyline Place terminates at the turning circle.</p> <p>The applicant shall be required to extend the existing pathway around the head of the turning circle.</p> <p>The existing footpath shall be widened to 1.5m minimum width to ensure accessibility and safe passing of those in wheelchairs and mobility scooters.</p> <p>There is currently no street lighting in Skyline Place. Applicant to be required to upgrade street lighting to the required Standard subject to review by Transport Network Team</p> <p>A Road Act Application to be conditioned by Development Engineering Team for any civil works in the public road reserve e.g. 2 drop off bays, footpath works, K&G works, street lighting, etc.</p>
Strategic and Place Planning	<p>Not Supported</p> <p><i>Strategic Planning Referral comments have not changed from those provided on under the original DA.</i></p> <p><i>I note changes to the proposal include a reduction from 133 independent living units to 108; 12 affordable housing units are now proposed to be 5 and 12 disability housing units are proposed to be 10 along with commercial floor space, communal facilities and basement parking.</i></p> <p><i>Fundamental concerns regarding the introduction of residential land uses (in the form of seniors, affordability and disability housing) into the Frenchs Forest B7 Business Park Zone remains. Whilst housing for seniors, affordable housing and those living with a disability is recognised as important within proximity of the new Hospital, the B7 Business Park zone is not the appropriate location as it will further compromise the existing strategic advantage of the business park and the future capacity of surrounding businesses to respond to economic opportunities including automated 24 hour advanced manufacturing and warehousing operations.</i></p> <p><i>The proposal remains inconsistent with:</i></p>

	<ul style="list-style-type: none"> • <i>The Hospital Precinct Structure Plan (HPSP) adopted by Council in 2017.</i> • <i>The Frenchs Forest 2041 Place Strategy which identifies the business park for continued employment activity.</i> • <i>Council's Local Strategic Planning Statement - Towards 2040, particularly priority 28 to safeguard employment lands, priority 22 Jobs that match the skills and needs of the community and Priority 23 Frenchs Forest as a sustainable health and education precinct.</i> • <i>The desired future character established by the objectives of the B7 Business Park Zone under Warringah Local Environment Plan 2011.</i> • <i>The desired future character established by State Government metropolitan Planning, which reinforces the importance of retaining and enhancing employment uses within the Business Park.</i> • <i>The proposed development raises potential for land use conflict with surrounding businesses, particularly given the growing trend towards automated and 24 hour operational activity given the shortfall of industrial floor space in the North District which is projected to be only 1sqm per capita by 2036 compared to a benchmark of 3sqm per capita used by the Greater Sydney Commission.</i> • <i>The subject site is not the right location for seniors housing, affordable housing and disability housing. The Business Park environment supports and encourages a diverse range of commercial and industrial activities with a shortfall of industrial land in the North District seeing increasing demand for industrial floor space in Business Parks on the Northern Beaches. Residential uses are appropriately located within the new Frenchs Forest town centre. Severance issues with the hospital and the business park exist with pedestrian access to the subject site unappealing given the slope of Frenchs Forest Rd East and major arterial roads.</i> • <i>The development will set a precedent for introduction of residential land uses into the B7 business park zoned land within Frenchs Forest.</i>
<p>Traffic Engineer</p>	<p>Supported (subject to Conditions)</p> <p>The application has been reviewed and given the reduction in the scale of the development and the updated plans provided the following comments and conditions have been provided:</p> <p>Parking Provision</p> <p>The proposed development makes provision for a total of 182 off-street car parking spaces, comprising 130 residential spaces, 22 visitor spaces and 25 commercial spaces, thereby satisfying Council's requirements for commercial and visitors and also SEPP requirements for seniors living.</p> <p>Parking Design</p> <p>The 2 levels of basement parking comply with the requirements of AS 2890.1 and AS 2890.6 where required for the adopted use for seniors living. The applicant will be required to demonstrate that all spaces within the development meet the requirements for</p>

	<p>vehicle access through the provision paths prior to the issue of a construction certificate.</p> <p>Access to Public Transport Services</p> <p>The proposed development is serviced by the 166, 193 and 280 bus services, with the 160X and 141 routes in the area as well, however these services are considerably outside the maximum walking distance of 400 metres as both services stop outside the Northern Beaches Hospital on Frenchs Forest Road west of Wakehurst Parkway.</p> <p>Whilst the westbound bus stop is located immediately at the frontage of the overall site (lot 2), the eastbound services require the resident to either cross 4 lanes of traffic or walk from the mid-block bus stop to either the traffic signals and Romford Road or Wakehurst Parkway. The road corridor is currently not wide enough to provide a compliant mid-block pedestrian refuge to service this location. It may be possible to provide a signalised intersection at Skyline Place and Frenchs Forest Road inclusive of a suitable pedestrian leg to allow residents to safely cross back to the development.</p> <p>The provision of Traffic signals have been discussed with TfNSW and are not supported without justification of the need for this development.</p> <p>This will be the subject of a condition to provide a suitable safe pedestrian crossing facility to the satisfaction of the Northern Beaches Council Local Traffic Committee.</p>
Waste Officer	<p>Supported (Subject to Conditions)</p> <p>No objection subject to conditions,</p>

External Referral Body	Comments
NSW Rural Fire Services (NSW RFS)	<p>The application was referred to the NSW RFS as Integrated Development.</p> <p>Section 100B of the <i>Rural Fires Act 1997</i> enables the Commissioner of the NSW RFS to issue a Bushfire Safety Authority for 'Special Fire Protection Purpose' development. Section 100B (6) of that <i>Rural Fires Act 1997</i> identifies Subdivision of the Land and Seniors Housing (within the meaning of the <i>SEPP (HSPD) 2004</i>) as such development.</p> <p>In their response on 21 February 2022, the NSW RFS issued their Bushfire Safety Authority and General Terms of Approval which are to be included in a consent should this application be approved.</p>
Ausgrid: (SEPP Infra.)	<p>The application was referred to Ausgrid under clause 45(2) of State Environmental Planning Policy (Infrastructure) 2007.</p> <p>A response from Ausgrid was received on 4 February 2022, raising no objection to the proposed development.</p>

DESIGN REVIEW PANEL

The Applicant met with Council's Design Sustainability and Advisory Panel (DSAP) on 28 October 2021. The purpose of this meeting was to present a draft amended scheme responding to the reasons for refusal, to receive any feedback from DSAP prior to finalisation

and lodgement of the application to review the Panel's decision under Section 8.2 of the Act and to address issues raised accordingly. The DSAP considered the revised scheme against the Panel's reasons for refusal and provided the following comments:

The Panel notes the very detailed assessment of the previous version of the proposal undertaken as part of the assessment by the Sydney North Planning Panel.

The most significant changes are to the height of the building and a significant improvement in the landscape design.

However, there are also desirable elements that have been removed such as the roof top common area.

The reasons for refusal were wide ranging, refer to page 61- 63 of the SNPP Council Assessment Report. The key question for the DSAP is therefore whether in its view the changes to the design could be the basis for approval.

It is the view of the Panel that they are not on the following basis:

1. State Environmental Planning Policy (Housing for seniors or People with a Disability) 2004 (SEPP HSPD 2004)

The changes to the design do not outweigh the identified incompatibility with the context.

2. State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development (SEPP 65) and Associated Apartment Design Guide (ADG)

The changes to the design do not outweigh the identified incompatibility with the context or adequately meet the ADG requirements as detailed p27 onward. There have been no significant changes to the design of layout of the units.

3. Warringah Local Environmental Plan (WLEP 2011)

The changes to the design do not outweigh the identified incompatibility with the objectives of the zone.

4. Non-compliance with Warringah DCP 2011 (WDCP 2011)

The changes to the design do not outweigh the identified inconsistency with the identified objectives of DCP, including setbacks, bulk (even with the reduction in height) and site coverage which remains unchanged.

5. The proposed Land use (Seniors Housing) is consistent with Council's Northern Beaches Hospital Precinct Structure Plan

The changes to the design do not outweigh the identified inconsistency with the Northern Beaches Hospital Precinct Structure Plan.

6. Public Interest

The changes to the design do not outweigh the factors that have determined that the development is not in the public interest.

CONCLUSION

The Panel does not consider the design changes outweigh any of the factors that have been the basis for refusal by the SNPP.

A number of amendments have been made to the proposed development to address issues raised by the DSAP, however it is important to note that height, bulk, and scale of the development remains the same as that considered by the Panel.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation and Warringah Development Control Plan.

As a result of the public exhibition of the application, Council received 11 submissions (including 3 petitions), which includes:

- Five (5) Individual submissions plus 1 petition signed by 121 individuals objecting to the proposed development.
- Six (6) Letters of support including 2 individual Petitions signed by 49 individuals supporting the proposal.

The issues raised in the submissions objecting to the development include the following:

Character, Height, Bulk and Scale

Concerns were raised that the development (as amended) is not consistent with the character of the area. The submission notes the following concerns:

- That the height of the new development is totally out of proportion with anything else in the area.
- There is not supposed to be any massive developments on this side of the parkway. The land is not designated for residential use and is not being developed with any consideration of the precinct plan in place for the addition of a further 95 apartments, comprising two large, 7-storey apartment buildings, is unsuitable and out of character for this low-density residential area
- Seniors housing on this site is not consistent with the fantastic precinct plan for Frenchs Forest - the community and the Council has put a lot of time and effort into the future of Frenchs Forest, and this DA is trying to subvert this before the precinct has even come to life!

Comment

This issue has been discussed in detail throughout this report and within the original assessment report and forms a basis for refusal of the review. In summary, it has been found that the proposal, despite being reduced in height and revised in its built form, is still found to be inconsistent with the character of the locality as required under the provisions of SEPP 65 and SEPP (HSPD) 2004.

Traffic and Parking Impact

Concerns were raised in relation to the impact of Traffic and Parking in the area. The submissions states that the Hospital Transport Study completed in November 2016 specifically identified that "No Major growth is suitable for the area south of Warringah Road or East of Wakehurst Parkway " - ear marked as unsuitable for growth - and does not include any major development outside the "central Zone "for 20 years.

Comment

Council's Traffic Engineer and TfNSW (commented on the original DA) have reviewed the development and have found that the nett increase in traffic will not have adverse impact on the surrounding road system and the ingress and egress from the car parking area is sufficient.

This issue does not substantiate a sufficient reason to refuse the application.

Construction related impact

Concern was raised regarding the impacts of dust, noise, damage to adjoining properties, and the impact of continuous development (hospital and road works) on the residence. The submissions questioned what recourse was to be offered to those negatively affected by the construction.

Comment

Some level of disruption to the local area is inevitable during construction (if the application is approved). The application includes a Construction Management Plan (CMP), which provides detailed plans for carrying out the development. Work will remain generally within the site boundaries, and disruption to the local area will be limited as much as possible. If approved, a condition will be recommended requiring the development to be constructed in accordance with the CMP.

If the works are undertaken in accordance with these requirements then impacts in regards to dust and noise should be minimal.

This issue does not substantiate a sufficient reason to refuse the application.

Northern Beaches Hospital Precinct Structure Plan

Concerns have been raised that the proposed seniors housing is inconsistent with the vision of Council's adopted Northern Beaches Hospital Precinct Structure Plan. The submissions asked why such a large development could go ahead without consideration of the future plans for this particular area in regards to land zoning, infrastructure and amenities.

Comment:

This issue is addressed by Council's Strategic and Place Planning referral comments. In summary, the development is not consistent with Council's strategic objective for the B7 Business Park zone, the development has the potential for land use conflict, loss of employment land and is not consistent with the strategic objective for the wider Frenchs Forest precinct.

This issue is included as a reason for refusal.

Reasons for refusal by Council and the SNPP remain valid

The submissions received raised concerns that the original reasons for refusal by Council and the Panel have not been addressed.

Comment

The issues raised have been addressed in this report. In summary, despite the amendments that have been made to the proposal, the assessment of the application concludes that the proposed development cannot be supported in that the proposal is found to be inconsistent with the applicable planning controls for the site and Council's strategic objective and intent for this site.

Submission in Support

The submission in support of the proposal is the same that was submitted as part of the original application, which is addressed in the original assessment report (refer to Attachment 1).

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

Section 8.2 – Review of Determination

Subclause (1) (a) of Clause 8.2 Determination and decisions subject to review of the EP&A Act states the following:

- 1) *The following determinations or decisions of a consent authority under Part 4 are subject to review under this Division:*
 - a) *the determination of an application for development consent by a council, by a local planning panel, by a Sydney district or regional planning panel or by any person acting as delegate of the Minister (other than the Independent Planning Commission or the Planning Secretary).*

Comment: This application is being referred back to SNPP for determination.

Clause 8.3 Application for and conduct of review of the EP&A Act 1979 states:

- 1) *An applicant for development consent may request a consent authority to review a determination or decision made by the consent authority. The consent authority is to review the determination or decision if duly requested to do so under this Division.*
- 2) *A determination or decision cannot be reviewed under this Division:*
 - a) *after the period within which any appeal may be made to the Court has expired if no appeal was made, or*
 - b) *after the Court has disposed of an appeal against the determination or decision.*
- 3) *In requesting a review, the applicant may amend the proposed development the subject of the original application for development consent or for modification of development consent. The consent authority may review the matter having regard to the amended development, but only if it is satisfied that it is substantially the same development.*
- 4) *The review of a determination or decision made by a delegate of a council is to be conducted:*
 - a) *by the council (unless the determination or decision may be made only by a local planning panel or delegate of the council), or*
 - b) *by another delegate of the council who is not subordinate to the delegate who made the determination or decision.*
- 5) *The review of a determination or decision made by a local planning panel is also to be conducted by the panel.*
- 6) *The review of a determination or decision made by a council is to be conducted by the council and not by a delegate of the council.*

- 7) *The review of a determination or decision made by a Sydney district or regional planning panel is also to be conducted by the panel.*

Pursuant to Section 8.2 of the Act, the applicant seeks a review of all aspects of the refusal of DA2021/0212.

Section 8.2 of the Environmental Planning and Assessment Act, 1979 allows an applicant to request a review of determination of a decision of a consent authority under Part 4. Section 8.3 requires that any determination or decision cannot be reviewed after the period within which any appeal may be made to the Court has expired if no appeal was made. As amended by the COVID-19 Legislation Amendment (Emergency Measures – Miscellaneous) Act 2020, the review period is 12 months after the determination notification date during the 6 month period immediately before the prescribed period commencing on 25 March 2020 and ending on 25 March 2022.

The Development Application was refused by SNPP on 18 August 2021. In this regard, the review period ends on 18 August 2022 and the decision must be finalised before this date.

The review of determination made by a Sydney district or regional planning panel is also to be conducted by the panel. In this instance, as the original determination was made by the Sydney North Planning Panel, therefore the Section 8.2 review is referred to the Sydney North Planning Panel for consideration and determination.

Section 8.2 (3) provides that the Consent authority may review a determination, if in the event that the applicant has made amendments to the development described in the original application, the consent authority is satisfied that the development, as amended, is substantially the same as the development described in the original application.

The amendments to the proposal are outlined in the 'Proposal in Detail' section of this report. In relation to the issue of substantially the same, in Michael Standley and Associates Pty Ltd v North Sydney Council [1997] NSW LEC 190 (5 December 1997) Justice Stein noted;

'There are, of course, differences between the building as sought to be modified and the approved development. The question is, however, whether these differences result in a building, which could no longer be described as "substantially the same development". The mere fact that there are differences does not mean that the proposal is necessarily one which is not substantially the same as the approved development.'

As permitted under Section 8.3 (3) of the Act, the applicant has amended the proposed development from the original application. The key changes include a reduction in height, reduction in dwelling numbers, reduction in FSR and increase in commercial floor area.

The built form is found to be substantially the same, therefore a consideration of whether the development is substantially the same should focus on whether there are sufficient similarities to reasonably conclude the development is substantially the same.

A review of the original and amended plans has found the following similarities between the two schemes:

- The proposal remains for the same proposed uses, being a mixed-use development

- The proposed design changes result in a reduction in the bulk and scale of the building.
- The amendments do not result in any additional impacts or issues that were not relevant to the DA as originally submitted.

Therefore, the proposed development (as amended) is found to be substantially the same and can be assessed under the provisions of Section 8.2 “Review of Determination”.

Assessment of the Reason for Refusal by Sydney North Planning Panel

How has the 8.2 Application Responded to the Reasons for Refusal?

The applicant has amended the proposal and has provided additional information. Consequently, the Reasons for Refusal of DA2021/0212 that are stipulated in the Notice of Determination are examined below to determine if they remain applicable or should be overturned:

1. State Environmental Planning Policy (Housing for seniors or People with a Disability) 2004 (SEPP HSPD 2004)

The proposed development is unsatisfactory in respect to Section 4.15 of the EPA Act, as the application is found to be inconsistent with the provisions of SEPP (HSPD) 2004.

- a) The proposed development is inconsistent with Aims of Policy (namely Clause 2c) in relation to design and compatibility.*
- b) The proposed development is inconsistent with the requirement of Clause 25 (5) (i) & (v) with regards to land use conflict and bulk and scale.*
- c) The scale, bulk and height of the proposal is not compatible with the existing and future character of the area and does not contribute to the quality and identity of the area as required by Clause 33 (a) of SEPP (HSPD) 2004.*

Comment:

The amended proposal has been reviewed in relation to the requirements of the former SEPP (HSPD) 2004. The amended plans do not alter Council’s original assessment in relation to the SEPP (HSPD) 2004.

The amended proposal remains inconsistent with Aims of the policy (Clause 2C) in that the design of the proposed development (as amended) is not found to be compatible and the proposed built form does not minimise the impact on the character of the area as detailed later in this report.

The development remains inconsistent with the requirement of Clause 25 (5) (i) & (v) in that the site’s location in a business park and the land uses permitted on neighbouring land include, but are not limited to childcare centres, hardware and building supplies, light industry self-storage units and warehouses and distribution centres. These land uses are frequently granted consent to operate 24/7 given their isolation from residential land. These land uses can also be readily expected to generate significant more noise than a residential development.

In this regard, the acoustic impacts of existing and future businesses upon the amenity of occupants would be both detrimental to their living conditions and could jeopardise the ability for the business park to flourish in accordance with the permitted land uses. Therefore, given the conflict of land uses remains as an issue.

Clause 33 of SEPP (HSPD) 2004 requires that development should recognise the desirable elements of the locations character so that new buildings contribute to the quality and identity of the area, retain the distinct character, and complement the locality.

Desirable elements of the character of this Locality are best described within the relevant zonings objectives within the B7 zoning of WLEP 2011. The proposal represents a significant change to this character.

The site is located within the Frenchs Forest Business Park to the east of Wakehurst Parkway, north of Warringah Road and South of Frenchs Forest Road East. The business park generally comprises of warehouses and commercial/retail buildings ranging from large-format single storey warehouses to five storey buildings.

Surrounding recent development approvals comprise of the 40m high Northern Beaches Hospital some 240m away and across Wakehurst Parkway; Court approved and currently under construction is Parkway Hotel at a height of 26.4m, and the immediately adjoining on Lot 2 is Jardin development approved by the SNPP at a height of 24.6m.

While an overall reductions in the height of the proposal have been made, the amended proposal remains inconsistent with the design principle in clause 33(a) of the SEPP HSPD in that the proposal does not recognise the desirable elements of the location's current character or contribute to the quality and identity of the area.

The proposal will introduce (in addition to the unbuilt Jardin development on Lot 2) a high-density residential development into a business park area in buildings that are significantly larger than the surrounding environment, as viewed in figure 4 below.



Figure 4 - View of the proposed development (as amended) in comparison to the recent approval on Lot 2 (Source: PA Studio).

The scale of the proposal, by virtue of its height and overall built form within the site, is uncharacteristically proportionate to surrounding developments. The scale of the Northern Beaches Hospital is not comparable to that of the development given both the land use (a hospital vs. housing) and the fact that the two buildings are not near each other – separated by a major road and dense bushland.

It is recommended that this reason for refusal should remain.

2. State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development (SEPP 65) and Associated Apartment Design Guide (ADG)

The proposed development fails the principles of SEPP 65 insofar as they apply to context & neighbourhood character, built form & scale, density, landscaping, and amenity.

- a) The proposed building is not compatible with the context of the site that currently contemplates development that is non-residential and of a scale significantly less than that proposed.
- b) The development does not provide sufficient landscape, in particular canopy trees, to mitigate the height, bulk and scale of the proposed built form.

Comment:

The amended proposal has been reviewed in relation to the requirements of SEPP 65. In relation to reason for refusal (a), the amended plans do not alter Council's original assessment in relation to the SEPP 65. The proposed development has been conceived on the basis that the B7 Business Park zone does not have a height limit and the site is in close proximity to

the new Northern Beaches Hospital. The applicant argues that the height of the development is transitioning from the 40m height limit for the hospital building site and the adjoining future Town Centre. The applicant also argues that the height of the proposed development will not be visible and is consistent with other developments within the vicinity of the site.

However, as detailed previously the subject site is located approximately 240m from the Hospital site and due to the topography of the land, there is no apparent relationship between the subject site and the Hospital building. Similarly, the Land and Environment Court approved the motel under Existing Rights and that development should not be seen as setting the height of future development within the B7 zone.

The proposed development in terms of its bulk and scale, is significantly different to other developments within this portion of the Business Park and is a significant departure from the low-density residential development on the northern side of Frenchs Forest Road East.

The amended development has been assessed against the various amenity requirements of the ADG, where it has been found that the internal amenity of the units is unsatisfactory and the original shortcomings have not been overcome. This includes acoustic impact, safety concerns due to the subject site's location in a business park environment and the hours of operation of surrounding commercial and industrial uses.

In relation to reason for refusal (b), the amended proposal does include an overall increase in the Landscape open space and amended Landscape Plan has been submitted with the current application. The amended Landscape plans have been reviewed by Council's Landscape officer, whom has supported the amended proposal in relation to landscaping and tree removals.

Although an attempt has been made to address the panel's concerns in relation to providing additional Landscaping on site and reducing the overall height of the development, the design of the development at the ground level has not been altered to significant degree (including the front setback to Skyline Road) to allow for mature landscaping to be provided within the site to commensurate with the bulk and scale of the proposed built form, as demonstrated in Figure 5 below.



Original application



Amended proposal (S8.2 review)

Figure 5 - View of the proposed development (as amended) in comparison to the original Development in terms of Landscaping (Source: PA Studio).

It is recommended that this reason for refusal should remain.

3. Warringah Local Environmental Plan (WLEP 2011)

The development is inconsistent with the provisions of WLEP 2011 as it relates to promoting development that is compatible with neighbouring development in terms of bulk, scale and appearance and use.

Comment:

The applicant states that Council demonstrates a fundamental misunderstanding of the statutory relationship between the Seniors SEPP and WLEP 2011, in that provisions of the Seniors SEPP prevail over the WLEP 2011.

It is acknowledged that the application has been made pursuant to SEPP (HSDP) 2004 and that the SEPP prevails but only to the extent of any inconsistency. The reason for refusal relates to the aims of the WLEP 2011, so there is no inconsistency.

It is also important to acknowledge that Clause 33 (a) of SEPP (HSPD) 2004 requires that new development should:

“recognise the desirable elements of the location’s current character so that new buildings contribute to the quality and identity of the area”.

The location’s current character is embodied within the zone objectives and aims of the WLEP 2011, as there is no character statement within the WLEP 2011 or WDCP 2011 for this locality. Therefore, the aims particularly that one requiring development to be compatible with neighbouring development in terms of bulk, scale and appearance is an important consideration in the assessment of the application against Clause 33(a) of SEPP (HSPD) and cannot be ignored.

In this regard, the aims of the WLEP 2011 have not been used to determine the permissibility of the development, but have been correctly applied to determine the suitability and appropriateness of the development.

For the above reasons, the inconsistency of the development with the character of the locality (as detailed in the original assessment report, which remains unchanged) is a valid planning consideration and should remain as a reason for refusal.

4. Non-compliance with Warringah DCP 2011 (WDCP 2011)

The development fails to comply with the Built Controls as it relates to B4 –Site Coverage and B7 – Front Boundary Setbacks and Clause D9 - Building Bulk.

Comment:

B7 Front Boundary Setback

Clause B7 of WDCP 2011 prescribe a 10m setback to Skyline Place. The proposed development provides a 7.6m setback to Skyline Place, which remains consistent with the original proposal and therefore the assessment of the original report relating to the front boundary setback remains unchanged and this reason for refusal should remain.

Clause D9 - Building Bulk

Clause D9 seeks to minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.

The amended proposal has been considered against the requirement of Clause D9 and is considered to be unsatisfactory in relation to the requirement of the control for the following reasons:

- The design of the building continues to include extensive wall planes now reduce to 8 storey high along the side elevations, which translates into excessive building bulk that is incompatible and inconsistent with the surrounding predominant pattern and scale of other development within the area; and
- The development has insufficient building articulation and modulation along the side walls and a distinct absence of significant stepped-in side walls as height increases. The resultant built form does not appropriately respond to the character of the surrounding residential area.

For the above reasons, the inconsistency of the development with the built form controls under WLEP 2011 should remain as a reason for refusal

5. Public Interest

The community demand for seniors, affordable and disabled housing in this area does not justify that the site is appropriate for a seniors housing development of this height, bulk and scale. The extent of residential floor space proposed is inconsistent with Draft Northern Beaches Hospital Precinct Structure Plan, which does not change the B7 Business park zone for this area. As well as with the State Government North District Plan, which recognises that business parks "need to be developed, from the outset, as urban places which can transition into higher amenity and vibrant places while maintaining their main role as an employment precinct. Council's retail and employment strategies should provide guidance on the transition of business parks into mixed employment precincts including, where appropriate, ancillary residential developments to support the business park". Consequently, approval of the application would not be in the public interest.

Comment

There are three (3) separate components to this reason for refusal, and each is addressed as follows:

Public Interest

As indicated in the original assessment report, Council's concern in relation to the site suitability for the proposed development remains as fundamental concern in that the site is not suitable for the development given its location within an area which renders the development, as proposed, to be inconsistent with its desired character.

Accordingly, the amended development continues to be inconsistent with the scale, intensity, and use of development that the community can reasonably expect to be provided on this site and within the B7 Business Park zone.

Northern Beaches Hospital Precinct Structure Plan

The issue relating to the inconsistency with the Northern Beaches Hospital Precinct Structure Plan has been addressed in detail in the referrals section of this report under Council's Strategic comments and within the original assessment report.

It's important to note that the statutory controls to implement the Frenchs Forest 2041 Place Strategy was published on 17 December 2021 and will commence on 1 June 2022.

Clause 275F of *Environmental Planning and Assessment Amendment (Frenchs Forest Precinct) Regulation 2021* requires an assessment of consistency with the Frenchs Forest 2041 Place Strategy (Place Strategy) for land within the Frenchs Forest Precinct. Whilst the subject site is not identified in the Frenchs Forest Precinct under Part 8 of *Warringah Local Environmental Plan 2011*, it is located in the wider precinct which has helped inform the objectives and vision contained in the Place Strategy.

Page 11 of the Place Strategy contains an extract of Council's adopted Hospital Precinct Structure Plan which indicates that the subject site is identified within a 'Jobs Growth' area. The role and function of the B7 Business Park has been identified as an employment focused

zoned to complement the residential focus of the Frenchs Forest Town Centre. The proposal to allow residential land uses in the B7 Business Park zone will lead to the further loss of productive employment land and is inconsistent with the NSW Government's Frenchs Forest 2041 Place Strategy and Council's Hospital Precinct Structure Plan.

For the above reasons, the inconsistency of the development with the structure Plan should remain as a reason for refusal.

Sydney North District Plan

The issue in relation to inconsistency with the *Sydney North District Plan* has been addressed in detail in the referrals section under Council's Strategic comments and within the original assessment report. In summary, the proposed development is found to be inconsistent with the Objectives of the Plan, which aims to strengthen Frenchs Forest through a variety of approaches and to reinforce the Frenchs Forest centre as an employment hub for the Northern Beaches.

The Sydney North District Plan contains the lowest concentration of Sydney's total stock of industrial and urban services land (including B7 zoned lands) land and has the highest utilisation rate, indicating the strong demand for this limited resource and importance of protecting and managing it.

The proposal would compromise the capacity of Frenchs Forest to grow as a strategic centre and meet the State Government target of 2,000-3,700 additional jobs by 2036 set in the North District Plan.

For the above reasons, the inconsistency of the development with the Sydney North District Plan should remain as a reason for refusal.

CONCLUSION

This Section 8.2 Review Application has been assessed having regard to the reasons for refusal and the previous assessment in relation to Section 4.15 of the Environmental Planning and Assessment Act 1979, SEPP HSPD, SEPP 65, the WLEP 2011 and the relevant codes and policies of Council. This assessment has taken into consideration the revised plans, Statement of Environmental Effects, other documentation supporting the application and public submissions.

The amendments to the proposal and new documentation have attempted to resolve the built form, character and site suitability issues forming the basis of the reasons for refusal of the Development Application. As permitted under Section 8.3 (3) of the Act, the applicant has amended the proposed development from the original application. The key changes include a reduction in height, reduction in dwelling numbers, reduction in FSR and increase in commercial floor area.

However, the critical concerns relating to use of the site for Seniors Housing and the fact that the proposal, despite the amendments, is not consistent nor compatible with the context of the site and the elements that make up the existing and desired future character of the site (under the relevant zone objectives). This remains as the primary concern with regards to the proposed development on this site and its suitability and appropriateness.

Eleven (11) submissions were received in response to the notification of the current application, both objecting and in support of the development. The issues raised in the submissions objecting to the development have been addressed in the “Public Notification Section” of this report and echo the concerns raised by Council and the Panel in the refusal of the original DA. In this regard, the proposal is contrary to protecting and maintaining the public interest.

Accordingly, the revised proposal cannot be supported upon review as the proposal fails to satisfy the fundamental planning controls applying to this site and this type of development. The site is considered neither suitable nor appropriate for a senior’s housing development, especially one of this character, scale and density.

Accordingly, the recommendation is that SNPP maintain its original reasons for refusal in the determination of this application.

RECOMMENDATION (REFUSAL)

That the SNPP, as the consent authority pursuant to Clause 4.16(1) (a) of the EP&A Act 1979 (as amended), confirm its decision to refuse to grant consent to the Review of Determination Application No DA2021/0212 for demolition works and construction of a mixed development, comprising seniors housing, commercial uses, carparking, landscaping and stratum subdivision at Lot 101 DP 1209504, No. 5 Skyline Place, Frenchs Forest, subject to the following reasons for refusal, which remain the same as the original refusal:

1. State Environmental Planning Policy (Housing for seniors or People with a Disability) 2004 (SEPP HSPD 2004)

The proposed development is unsatisfactory in respect to Section 4.15 of the EPA Act, as the application is found to be inconsistent with the provisions of SEPP (HSPD) 2004.

- (a) The proposed development is inconsistent with Aims of Policy (namely Clause 2c) in relation to design and compatibility.
- (b) The proposed development is inconsistent with the requirement of Clause 25 (5) (i) & (v) with regards to land use conflict and bulk and scale.
- (c) The scale, bulk and height of the proposal is not compatible with the existing and future character of the area and does not contribute to the quality and identity of the area as required by Clause 33 (a) of SEPP (HSPD) 2004.

2. State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development (SEPP 65) and Associated Apartment Design Guide (ADG)

The proposed development fails the principles of SEPP 65 insofar as they apply to context & neighbourhood character, built form & scale, density, landscaping, and amenity.

- (a) The proposed building is not compatible with the context of the site that currently contemplates development that is non-residential and of a scale significantly less than that proposed.

- (b) The development does not provide sufficient landscape, in particular canopy trees, to mitigate the height, bulk and scale of the proposed built form.

3. Warringah Local Environmental Plan (WLEP 2011)

The development is inconsistent with the provisions of WLEP 2011 as it relates to promoting development that is compatible with neighbouring development in terms of bulk, scale and appearance and use.

4. Non-compliance with Warringah DCP 2011 (WDCP 2011)

The development fails to comply with the Built Controls as it relates to B4 –Site Coverage and B7 – Front Boundary Setbacks and Clause D9 - Building Bulk.

5. Public Interest

The community demand for seniors, affordable and disabled housing in this area does not justify that the site is appropriate for a seniors housing development of this height, bulk and scale. The extent of residential floor space proposed is inconsistent with Draft Northern Beaches Hospital Precinct Structure Plan, which does not change the B7 Business park zone for this area. As well as with the State Government North District Plan, which recognises that business parks "need to be developed, from the outset, as urban places which can transition into higher amenity and vibrant places while maintaining their main role as an employment precinct. Council's retail and employment strategies should provide guidance on the transition of business parks into mixed employment precincts including, where appropriate, ancillary residential developments to support the business park". Consequently, approval of the application would not be in the public interest.