

**SYDNEY NORTH PLANNING PANEL
COUNCIL ASSESSMENT REPORT**

Panel Reference	PPSSNH-445
DA Number	Mod2023/0617
LGA	Northern Beaches
Proposed Development	Modification of Development Consent DA2021/0212 granted for demolition works and construction of a mixed development, comprising seniors housing, commercial uses, carparking, landscaping and stratum subdivision.
Street Address	Lot 11 DP 1258355, 5 Skyline Place FRENCHS FOREST NSW 2086
Applicant/Owner	Ultraflex Holdings Pty Ltd The Owners Of Strata Plan 49558 George Andrew Revay Ross Jon Munro Graeme Watman
Date of DA lodgement	30/11/2023
Number of Submissions	2
Recommendation	Approval
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011)	Section 4.56 Modification Application to an application originally determined by the SNPP
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 2021 • State Environmental Planning Policy (Resilience and Hazards) 2021 • 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 (Transport and Infrastructure) 2021 • 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 - Economic Assessment Attachment 2 - Addendum Economic Assessment Attachment 3 - Peer Review of Economic Assessment Attachment 4 - Applicant response to Peer Review Attachment 5 - Recommended Conditions
Clause 4.6 requests	N/A
Summary of key submissions	<ul style="list-style-type: none"> • Reduction of employment generating floor space
Report prepared by	Jordan Davies, Principal Planner
Responsible officer	Jordan Davies, Principal Planner
Report date	26 June 2024

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? e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP **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? **N/A**

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)? Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions **N/A**

Conditions

Have draft conditions been provided to the applicant for comment? 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 **YES**

Executive Summary

Northern Beaches Council is in receipt of Modification Application (MOD2023/0617) seeking to modify development consent DA2021/0212 for "Demolition works and construction of a mixed development, comprising seniors housing, commercial uses, car parking, landscaping and stratum subdivision". The development application was originally refused by the Sydney North Planning Panel ("SNPP") and then subsequently approved via the NSW Land and Environment Court (LEC) on 20 April 2023 (Class 1 Proceedings "Platino Properties Pty Ltd v Northern Beaches Council [2023] NSWLEC 1186").

The application is lodged pursuant to Section 4.56 of the EP&A Act 1979 and in accordance with the SEPP Planning Systems, the SNPP is the consent authority for a Section 4.56 modification application.

The application seeks a range of modifications to the approved plans and consequently, the consent conditions. The full scope of changes to the development are summarised below in this report. However, of significance is the proposed reduction of employment generating floor space from the approved total of 2,048m² to 1,079m² (or a 47% reduction). This reduction involves the deletion of the first floor of employment generating floor space in the eastern building facing Skyline Place. The proposal also relocates the communal open space to a more central location within the ground floor plate and places the commercial floor space within the ground floor of the western building.

The application is accompanied by an Economic Assessment prepared by HillPDA, which addresses the justification for the removal of the employment generating floor space. It must be stated at the outset that Council's Strategic Planning Team remain opposed to the reduction in the quantum of employment generating floor space within the development given the location of the site within the Frenchs Forest Business Park, and the potential loss of employment opportunities within the business park. Council has made these concerns known to the applicant throughout the assessment and has engaged with the applicant to seek a resolution to the concerns raised by the Strategic Planning Team.

However, the applicant has maintained the position that reducing the employment generating floor area will not have a fundamental impact upon the business park and argues that the modification put forward is acceptable in its current form based on the economic impact assessment by HillPDA provided with the application. Further to this, it is noted that the proposal will remain consistent with the statutory requirements of the SEPP Housing for Seniors or People with a Disability 2004 (**SEPP HSPD**), as the ground floor plan fronting Skyline Place maintains a commercial presentation (which is the only commercial floor space requirement of the SEPP HSPD for a Seniors Development for development in the zone).

During the course of the assessment, the applicant has also lodged a modification application to the Land and Environment Court (LEC) under Section 4.55(8), commencing proceedings for the same proposal via the LEC.

On balance, whilst the concerns raised by the Strategic Planning Team are noted and acknowledged, it has been concluded that the refusal of the modification application due to the reduction in the employment generating floor area could not be substantiated due to the current state policy that permits Seniors Living developments within the Frenchs Forest Business Park, with no particular requirement for commercial floor area aside from the ground floor fronting the street (which is provided in the modified scheme). This state policy position has also been confirmed by the more recent SEPP Housing 2021, which continues to permit Seniors Housing within the SP4 Zone with the same minimum requirement.

In order to adequately review the substance of the applicant's request and to ensure a full and proper assessment, Council engaged a suitably qualified economic expert to undertake a peer review of the applicant's economic impact assessment prepared by HillPDA. A copy of this peer review report, as well as the applicant's report and reply, are provided as attachments to this report.

The assessment also finds that the proposal maintains consistency with the SEPP (Housing for Seniors or People with a Disability) 2004 (SEPP HSPD) and SEPP 65 - Design Quality of Residential Flat Buildings. The proposal seeks a minor increase to the building height (0.5m), however this is not considered to result in any unreasonable impacts on the surrounding properties or any fundamentally change the visual appearance of the development, with the general footprint, setbacks and scale being maintained.

The application was notified and advertised for a period of 21 days and two submissions were received. The submission issues relate to the location of the driveway access to the basement level parking. In this regard, the vehicular access point is not being changed via this modification application and as such, is not relevant to the current application.

This assessment has found that, on balance the proposed reduction in the commercial floor area will not result in significant economic impacts that would warrant refusal of the application and the proposal meets the intent of the SEPP HSPD and is consistent with the state policy framework for the supply of apartments for Seniors or People with a Disability.

Accordingly, it is recommended that the SNPP approve the application, subject to the modified conditions as outlined at the end of this assessment report.

PROPOSED DEVELOPMENT IN DETAIL

The application seeks to modify development consent No. DA2021/0212 for 'Demolition works and construction of a mixed development, comprising seniors housing, commercial uses, carparking, landscaping and stratum subdivision'. The development was approved by the NSW Land and Environment Court and hence this application is made pursuant to Section 4.56 of the EP&A Act 1979.

Specifically, the modifications consist of the following:

- Relocate the communal area from the Ground Floor of the western building to the Ground Floor of the central building;
- Delete commercial uses at Level 1 of the eastern building and replace with 8 ILUs (resulting in overall increase of 6 ILU's, as apartment reconfiguration is proposed on other levels);
- Revise design of pool and recreation facilities on Level 2;
- Revise landscape design;
- Minor changes to floor levels at each level to ensure floor to floor heights comply with the National Construction Code 2023 (NCC 2023) resulting in an increase in height to the western building of 0.5m;
- Minor changes to layout of Independent Living Units and change to unit mix.
- Minor changes to basement levels, including minor changes to floor levels, location of mechanical plant rooms, the waste collection and storage areas and deletion of garbage lift;
- Relocate lift shaft in the eastern building to improve entrance and circulation; and
- Reallocation of a minor area of communal space at Level 7 to apartment floor area in the eastern tower.
- The application has also included a request for a condition to be imposed which requires the applicant to pay the applicable Section 7.12 Development Contributions levied on the cost of the development. This condition was mistakenly not imposed on the development consent issued by the Land and Environment Court, therefore the error in the original consent is being addressed via this modification application.

The key data associated with the approved development and current modification is as follows:

	Approved	Proposed	Change
Amount of Commercial GFA	2458m ²	1079m ²	-1379m ²
Amount of ILU's	98 (Total includes 4 affordable housing units (2 x Studio + 2 x 1 bed))	104 (Total includes 4 affordable housing units (2 x Studio + 2 x 1 bed))	+6 Units
Car parking spaces	202 spaces	202 spaces	nil

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Environmental Planning and Assessment Act 1979 - Section 4.56 - Environmental Planning and Assessment Act 1979 - Section 4.56 - with S4.15 Assessment
 Warringah Local Environmental Plan 2011 - Zone SP4 Enterprise
 Warringah Development Control Plan - B4 Site Coverage
 Warringah Development Control Plan - D3 Noise

SITE DESCRIPTION

Property Description:	Lot 11 DP 1258355 , 5 Skyline Place FRENCHS FOREST NSW 2086
Detailed Site Description:	<p>The proposed development site is located at 5 Skyline Place, Frenchs Forest. The legal description is Lot 11 DP 1258355.</p> <p>The subject site has an area of 7,811m² and a frontage to Skyline Place.</p> <p>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.</p> <p>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.</p> <p>Adjoining and Surrounding Development</p> <p>The site is bound by the Stage 1 seniors housing and mixed use development to the north, Skyline Place to the east, and existing warehouse developments to the west and south. The site is accessible from its primary street frontage to Skyline Place which permits access to Frenchs Forest Road East.</p> <p>Construction of the Stage 1 seniors housing and mixed use development on the site to the north has reached completion, providing 52 independent living units for seniors and 1,750m² of non-residential uses.</p> <p>To the south, east, and west are warehouses and commercial/retail buildings ranging from single to five storeys. To the north of the site (beyond the existing Stage 1 Seniors Development) beyond is 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.</p>

Map:



SITE HISTORY

DA2021/0212 - Original DA

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 refused by the Sydney North Planning Panel (SNPP) on 18 August 2021.

REV2021/0045 - Review of Refusal of Original DA

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 196.70) 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

On 30 May 2022, the SNPP refused the review application.

Land and Environment Court Appeal - Refusal of Review Application

On 31 August 2022, a Class 1 appeal was made to the New South Wales Land and Environment Court (NSWLEC).

On 20 April 2023, the NSW LEC determined to uphold the appeal and approved the following works:

- Demolition of the existing structures;
- Construction of two buildings ranging in height from 3 storeys to 7 storeys and containing 98 independent living units including 10 units for disability housing to be operated by Project Independence and 4 affordable housing units for seniors;
- Commercial floor space of 2458m², including commercial floor space on Level 1 of the eastern building;

History of Current Modification Application

- On 7 February 2024, Council wrote to the applicant requesting additional information in relation to an acoustic report, economic impacts, an updated cost summary report, impact upon trees, concerns with the parking layout of the basement and concerns with waste collection and servicing.
- On 28 February 2024, a briefing was held with the SNPP to discuss the modification application.
- On 12 March 2024, the applicant submitted additional information comprising of a revised arborist report, updated traffic report, updated cost summary report, a letter from HillPDA in response to the economic impact concerns, an acoustic report and an amended set of plans to address the parking layout and waste issues.
- On 27 March 2024, Council engaged an economic expert to undertake a peer review of the applicant's economic report prepared by HillPDA. A peer review was provided and supported the position taken by Council's strategic planning team.
- On 8 May 2024, Council wrote to the applicant with a second request for information advising of remaining concerns with the waste servicing and the quantum of employment generating floor area. In the RFI letter, Council put forward a suggested option to increase the proposed amount of employment generating space as part of the modification application. It was suggested this be achieved by reducing the amount of common open space and removal of two units, replacing these areas with employment generating space (to result in an approximate total of 1682m²).
- On 20 May 2024, Council met with the applicant's team to discuss the suggested changes to the proposal to introduce further employment generating space.
- On 6 June 2024, the applicant submitted a formal response to Council's request for information to address the residual issues with waste collection and respond further to Council's request about the quantum of employment generating space within the development. The letter also was a response to the Peer Review report obtained by Council.

The applicant ultimately did not amend the application to include further employment generating floor area and information was provided to justify the current proposal. The application was also amended by the applicant to formally seek the imposition of the Section 7.12 Development Contribution Condition in relation to the total cost of works for the development which was not imposed (due to an administrative error) on the consent issued by the Land and Environment Court.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2021/0212, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.56 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.56 - Other Modifications	Comments
(1) A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	<p>The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2021/0212. In particular, the modified proposal is substantially the same because:</p> <ul style="list-style-type: none"> The overall form, scale and appearance of the development is fundamentally the same. The physical appearance of the building and its presentation to the public domain remains the same in terms of setbacks and landscaping. The parking and access arrangement for the site remain the same as approved. The overall total quantum of floor space is consistent with the approval. The number of residential units increases by 6 units and occurs within the existing footprint of the development, resulting in a 6% increase to the residential dwelling yield. This increase is not considered to fundamentally change the density of the development or character of the development, comprising of a high density vertical seniors living village. The increase of 6% yield is considered to be within the scope of a modification application. In relation to the quantum of employment generating floor space, the development will remain as a mixed use development which was approved with 16% of the floor space comprising of employment generating floor space. The modifications to the proposal result in the mixed use development comprising of 7% employment generating floor area, retaining the employment generating spaces within the ground floor. <p>Whilst the decrease to the employment generating floor space (from 16% to 7% of the development) is notable, the assessment of if the development remains 'substantially the same' should be looked at in a holistic sense, as recently confirmed in <i>Canterbury-Bankstown Council v Realize Architecture [2024] NSWLEC 31</i> where Chief Justice Preston provided in Paragraph 26 of the judgement as follows:</p> <p><i>"Fourthly, this approach, contended by the Council, of summing separate negative and neutral determinations</i></p>

Section 4.56 - Other Modifications	Comments
	<p><i>of the precondition in s 4.55(2)(a) is inconsistent with the test in s 4.55(2)(a) and involves misdirection. The test in s 4.55(2)(a) requires a simple comparison of the two developments, the development as modified and the development as originally approved: Arrage v Inner West Council [2019] NSWLEC 85 at [24]; Feldkirchen Pty Ltd v Development Implementation Pty Ltd (2022) 254 LGERA 114; [2022] NSWCA 227 at [112]. This comparison can involve “an appreciation, qualitative, as well as quantitative, of the developments being compared in their proper context”: Moto Projects (No 2) Pty Ltd v North Sydney Council (1999) 106 LGERA 298; [1999] NSWLEC 280 at [56]. But the comparison required by s 4.55(2)(a) remains a holistic one of the two developments being compared – the modified development and the originally approved development. The opinion of satisfaction that s 4.55(2)(a) requires is that the two developments being compared are substantially the same development, not that either the quantitative features or the qualitative features of the two developments are substantially the same.”</i></p> <p>When looking at the subject modification in a holistic sense, the change in employment generating floor space is only one of many aspects of the development as a whole, with the overall building form, physical appearance, setbacks, land uses, landscaping and parking arrangements for the site fundamentally the same. These aspects form a significant portion of the development that remain unchanged.</p> <p>Consistent with the approach in the recent decision by the Chief Judge, the reduction in employment generating floor space is a qualitative aspect of the development that has changed, however, forms only part of a development that overall is fundamentally the same as approved when looking at the development as a whole. The merits of the reduction of employment generating floor space is addressed elsewhere within this report.</p> <p>Overall, Council is satisfied the development remains substantially the same having regard to the above cited case law.</p>
<p>(b) it has notified the application in accordance with:</p> <p>(i) the regulations, if the regulations so require,</p> <p>or</p> <p>(ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and</p>	<p>The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021, and the Northern Beaches Community Participation Plan.</p>
<p>(c) it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, and</p>	<p>Written notices of this application have been sent to the last address known to Council of the objectors or other persons who made a submission in respect of DA2021/0212.</p>
<p>(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.</p>	<p>See discussion on “Notification & Submissions Received” in this report.</p>
<p>(1A) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.</p>	<p>An assessment under Section 4.15 is carried out below.</p> <p>The development consent was granted via the NSW Land and Environment Court and upon review of the notice of determination, there are no specific reasons for determination that this modification application is inconsistent with.</p>

Section 4.15 Assessment

In accordance with Section 4.56 of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 4.55 the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This was submitted under the original application. Clause 102 of the Regulations 2021 do not require a design verification statement for a Section 4.56 modification.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in to waste, traffic, acoustic report, economic assessment, landscaping and cost summary. This information was subsequently provided and is considered as part of the assessment.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) The proposed development will not have a detrimental economic impact on the locality considering the nature of the proposed land use and minimum requirements of the SEPP Housing 2021.</p> <p>Whilst concerns have been raised by Council's Strategic Planning Team about the removal of a portion of employment generating floor space, the proposal remains consistent with the requirements of the SEPP Housing 2021 which sets the minimum requirements for commercial floor space in the SP4 for a Seniors Living Development.</p> <p>As the proposal meets the minimum requirements as set out by the SEPP, the proposal is consistent with the intent of the State Planning Policy and the removal of the floor space should not be a reason to refuse consent to the application.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	<p>The site is considered suitable for the proposed development and the land use is permitted with consent in the zone pursuant to the SEPP HSPD and the more recent updated SEPP Housing 2021.</p> <p>Whilst the site is located within a business park, the applicant has provided supporting information from an acoustic engineer addressing the internal noise criteria for the additional residential units to be located on the first floor. In determining the original development application, the site was considered suitable for seniors housing which is reinforced via the SEPP.</p> <p>As such, the introduction of 6 further residential units is not considered to render the site unsuitable.</p> <p>In regards to the removal of the employment generating floor space, the proposal remains consistent with the minimum requirements of the SEPP HSPD as it provides ground floor commercial floor area facing the street. The state policy has indicated that the former B7 Zone (and now SP4 zone) are suitable for seniors living with the minimum ground floor commercial floor space.</p>
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (e) – the public interest	<p>This assessment has found the proposal to be within the public interest as it will provide additional seniors living apartments in a location with appropriate distance to public transport and services, including Northern Beaches Hospital and the rezoned area around the hospital which will be developed over time to include a range of services, including medical services.</p> <p>The public interest is served as this development is consistent with the state policy in relation to the location and design of Seniors Living apartments, including meeting the minimum requirement for commercial floor space.</p> <p>Whilst it is recognised that the proposal will result in a reduction in employment generating floor space, the reduction is considered acceptable having regard to the intent of the state policy (both former SEPP HSPD and now SEPP Housing) which aims to deliver further housing stock for Seniors looking to downsize or apartments suitable for people with a disability.</p>

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is classified as bush fire prone land and the proposed development is for a subdivision of bush fire prone land that could lawfully be used for residential or rural residential purposes / a special fire protection purpose under Section 100B of the Rural Fires Act 1997. As such, the proposal is integrated development and requires a bush fire safety authority from the NSW Rural Fire Service.

The application was referred to the NSW RFS as integrated development. The NSW RFS issued a bush fire safety authority, subject to conditions. The recommendations of the Bush Fire Report, along with the conditions from the NSW RFS as part of the bush fire safety authority, have been included as part of the recommended conditions of consent.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 08/12/2023 to 22/01/2024 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 2 submission/s from:

Name:	Address:
Stefano Boccanfuso	405 / 7 Skyline Place FRENCHS FOREST NSW 2086
Mr Peter Melville Jarman	25 Yallumba Close FORESTVILLE NSW 2087

The following issue was raised in the submissions:

- **Safety Concern with Vehicle Entry/Exit Design** - "Having spoken with other like-minded residents of "Jardin", 7 Skyline Place, Frenchs Forest, we wish to lodge our strong objection to the Developer's plan to create an entry/exit for vehicles from Jardin Stage 2 via the Stage 1 carpark. The existing Stage 1 exit/entry is of poor design, a high-risk accident site and is not fit-for purpose, servicing the current completed Stage 1 development."

The above issues are addressed as follows:

- **Safety Concern with Vehicle Entry/Exit Design**

Comment: The above comments are noted, however, this is an existing approved scenario and the design of the vehicular access to the basement level is not changed via this modification application. Minor amendments are made internally of the basement, however, no change is proposed to the shared access arrangement with Stage 1 and 2 of the development. Council's traffic team reviewed the original development application and were satisfied with the access arrangement, this is not changed under this modification.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>Supported without conditions</p> <p>It is noted that an updated BCA Capability Statement has not been provided and the Statement of Modification proposes a new condition 22 that appears to be exactly the same as the current condition 22. Notwithstanding, it is considered that the proposal is able to comply with the NCC BCA and no objections are raised to approval of the application.</p> <p><i>Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.</i></p>

Internal Referral Body	Comments
Environmental Health (Contaminated Lands)	<p>Supported without conditions</p> <p>General Comments</p> <p>This application is seeking consent for modifications to DA2021/0212. As per the Statement of Environmental Effects, the proposed modification seeks to:</p> <ul style="list-style-type: none"> ·relocate the communal area from the Ground Floor of the western building to the ground level of the central building; ·delete commercial uses at Level 1 of the eastern building and replace with 8 ILUs; ·revise design of pool and recreation facilities on Level 2; ·revise landscape design; ·minor changes to floor levels at each level to ensure floor to floor heights comply with the National Construction Code 2023 (NCC 2023) resulting in an increase in height to the western building of 0.5m; ·minor changes to layout of Independent Living Units to improve amenity; ·minor changes to basement levels, including minor changes to floor levels, location of mechanical plant rooms, the waste collection and storage areas and deletion of garbage lift; ·relocate lift shaft in the eastern building to improve entrance and circulation; and ·reallocation of a minor area of communal space at Level 7 to apartment floor area in the eastern tower. <p>A Detailed Site Investigation (DSI) was undertaken by Foundation Earth Sciences dated February 2021 for stage 1 & 2 - 5 Skyline Place, Frenchs Forest.</p> <p>Samples were recovered from 15 boreholes locations across 5 Skyline Place including a sample of groundwater.</p> <p>A number of soils samples exceeded levels relating to guidelines therefore the DSI concluded a Remedial Action Plan was required prior to any commencement. The RAP was required as a condition of DA2021/0212 - Condition No.38</p> <p>A validation report was required prior to Occupation Certification, Condition 77 - Compliance with Remediation Action Plan.</p> <p>Environmental Health recommends approval at this time with the original contaminated land conditions for DA2021/0212 still applicable.</p>
Environmental Health (Industrial)	<p>Supported with conditions</p> <p>General Comments</p> <p>This application is seeking consent for modifications to DA2021/0212. As per the Statement of Environmental Effects, the proposed modification seeks to:</p> <ul style="list-style-type: none"> ·relocate the communal area from the Ground Floor of the western building to the ground level of the central building; ·delete commercial uses at Level 1 of the eastern building and replace with 8 ILUs; ·revise design of pool and recreation facilities on Level 2; ·revise landscape design; ·minor changes to floor levels at each level to ensure floor to floor heights comply with the National Construction Code 2023 (NCC 2023) resulting in an increase in height to the western building of 0.5m; ·minor changes to layout of Independent Living Units to improve amenity; ·minor changes to basement levels, including minor changes to floor levels, location of mechanical plant rooms, the waste collection and storage areas and deletion of garbage lift; ·relocate lift shaft in the eastern building to improve entrance and circulation; and ·reallocation of a minor area of communal space at Level 7 to apartment floor area in the eastern tower. <p>Environmental Health has reviewed the modifications and architectural plans and recommends approval subject to conditions.</p> <p>Environmental health recommends the retention of Condition 32 as per Consent DA2021/0212, Prior to Construction Certificate.</p>
Environmental Health (Food Premises, Skin Pen.)	<p>Supported without conditions</p> <p>General Comments</p> <p>This application is seeking consent for modifications to DA2021/0212. As per the Statement of Environmental Effects, the proposed modification seeks to:</p> <ul style="list-style-type: none"> ·relocate the communal area from the Ground Floor of the western building to the ground level of the central building; ·delete commercial uses at Level 1 of the eastern building and replace with 8 ILUs; ·revise design of pool and recreation facilities on Level 2; ·revise landscape design; ·minor changes to floor levels at each level to ensure floor to floor heights comply with the National

Internal Referral Body	Comments
	<p>Construction Code 2023 (NCC 2023) resulting in an increase in height to the western building of 0.5m;</p> <ul style="list-style-type: none"> • minor changes to layout of Independent Living Units to improve amenity; • minor changes to basement levels, including minor changes to floor levels, location of mechanical plant rooms, the waste collection and storage areas and deletion of garbage lift; • relocate lift shaft in the eastern building to improve entrance and circulation; and • reallocation of a minor area of communal space at Level 7 to apartment floor area in the eastern tower. <p>Environmental Health has reviewed the modifications and recommends approval subject to conditions.</p>
Landscape Officer	<p>Supported with conditions</p> <p>The application is for modification to development consent DA2021/0212.</p> <p><u>Additional Information Comment 20/03/24:</u> The amended reports and plans are noted.</p> <p>The Arborist has identified that tree 70 has been removed. Under development consent DA2021/0212 tree 70 was conditioned for retention (conditions 10 Amended Landscape Plan and 11 Amended Arboricultural Impact Appraisal and Method Statement), and as such these conditions will be amended as part of this modification. As approved and conditioned under DA2021/0212 trees 71, 72, 73, 100, 101, 102, 103, 104, 105, and 106 along the Skyline Place frontage must be retained.</p> <p>The following conditions will also be amended; 34 Project Arborist and 58 Required Tree Planting. All other conditions remain.</p> <p><u>Original Comment:</u> Changes to the pedestrian entry points along Skyline Place may impact existing trees to be retained, and in particular the pedestrian entry adjacent to the northern boundary which appears to have been widened. The widening will likely impact tree 71. Furthermore, it appears tree 70 may have been removed. Please provide an amended Arboricultural Impact Assessment (AIA) that references the current design and identifies any/all impact to trees that are shown to be retained and/or required to be retained under development consent DA2021/0212. The AIA shall also confirm if tree 70 has been removed.</p>
NECC (Development Engineering)	<p>Supported without conditions</p> <p>The modification has been reviewed and as the list of modifications do not affect the previously approved stormwater management plan , there are no objections to the modification of the consent.</p>
NECC (Flooding)	<p>Supported without conditions</p> <p>The property is at the top of the catchment and is not identified as flood affected. There are no applicable flood related development controls.</p>
NECC (Water Management)	<p>Supported without conditions</p> <p>Supported</p> <p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> • Supplied plans and reports; • Northern Beaches Water Management for Development Policy (WMD Policy), and; • Relevant LEP and DCP clauses; <p>The proposal is for various modifications. In relation to water management, the proposed modifications include a change to the setup of the on-site detention and rainwater tank. The BASIX certificate provided indicates that the volume of the rainwater tank remains at 65000L. Water quality treatment performance must be as per original DA approval.</p>
Strategic and Place Planning	<p>Not Supported</p> <p>ADDITIONAL INFO RECEIVED – 6/6/24</p> <p>Strategic Planning note the additional information prepared by Platino Properties, dated 6 June 2024, the meeting between economic experts on 20 May 2024, and a Council commissioned Peer Review prepared by Urbacity, dated April 2024, which provides advice on the Applicant's response to economic impacts. Strategic Planning agree with the specialist economic advice provided by Urbacity.</p> <p>The additional documentation has been considered and Strategic Planning's comments remain unchanged.</p> <p>ORIGINAL COMMENTS</p> <p>This application (Mod2023/0617) has been submitted to modify the consent issued under DA2021/0212. It is noted that Council's Strategic and Place Planning unit was unsupportive of DA2021/0212 for a number of reasons.</p> <p>Notwithstanding this, the application was approved by the Land and Environment Court on 20 April 2023.</p>

Internal Referral Body	Comments
	<p>The modification application is supported by a Modification Report, dated November 2023, prepared by Keylan Consulting, which outlines the following changes:</p> <ul style="list-style-type: none"> • relocate the communal area from the Ground Floor of the western building to the ground level of the central building; • delete commercial uses at Level 1 of the eastern building and replace with 8 Independent Living Units; • revise design of pool and recreation facilities on Level 2; • revise landscape design; • minor changes to floor levels at each level to ensure floor to floor heights comply with the National Construction Code 2023 (NCC 2023) resulting in an increase in height to the western building of 0.5m; • minor changes to layout of Independent Living Units to improve amenity; • minor changes to basement levels, including minor changes to floor levels, location of mechanical plant rooms, the waste collection and storage areas and deletion of garbage lift; • relocate lift shaft in the eastern building to improve entrance and circulation; and • reallocation of a minor area of communal space at Level 7 to apartment floor area in the eastern tower. <p>In terms of Council's Strategic Planning, the deletion of the employment generating uses is of concern, as this will reduce the amount of employment generating floor space that was agreed as the appropriate balance between residential and non-residential uses and therefore, critical to the Land and Environment Court's approval of DA2021/0212.</p> <p>The proposed reduction of employment floor space from two levels (2,048sqm) to one level (1,079sqm) results in a loss of 969sqm of employment floor space, equating to an approximate 47% reduction in employment floor space. The employment floor space is proposed to be replaced by 8 independent living units and communal purposes associated with the seniors housing development.</p> <p>Justification for the reduction in non-residential floorspace, prepared by Platino Properties, accompanies the modification application. The justification outlines leasing difficulties associated with the non-residential floor space and supporting references are provided from two real estate agents.</p> <p>It is noted that a variety of uses are permitted in the SP4 Enterprise zone, which do not appear to have been explored:</p> <p>3 Permitted with consent</p> <p><i>Boat building and repair facilities; Building identification signs; Business identification signs; Community facilities; Early education and care facilities; Educational establishments; Electricity generating works; Environmental protection works; Flood mitigation works; Garden centres; Goods repair and reuse premises; Hardware and building supplies; Health services facilities; Industrial retail outlets; Industrial training facilities; Kiosks; Light industries; Mortuaries; Neighbourhood shops; Office premises; Passenger transport facilities; Public administration buildings; Recreation areas; Recreation facilities (indoor); Recreation facilities (outdoor); Respite day care centres; Roads; Self-storage units; Service stations; Sewerage systems; Signage; Take away food and drink premises; Truck depots; Vehicle body repair workshops; Vehicle repair stations; Vehicle sales or hire premises; Warehouse or distribution centres; Water supply systems</i></p> <p>Further, it is noted that the site benefits from large floorplates zoned SP4 Enterprise, the scale of which is not common in the Northern Beaches region and broader North District, offering an opportunity to consider a range of more niche and larger format/larger scale businesses which struggle to find appropriate floorspace.</p> <p>It is recommended that specialist economic advice is sought to assess the proposed reduction in employment floor space, with consideration of the permitted land uses, broader strategic planning context applicable to the Frenchs Forest Precinct and employment lands in the Northern Beaches region.</p>

Internal Referral Body	Comments
	<p>The comments raised previously as part of DA2021/0212 remain. The proposal remains inconsistent with:</p> <ul style="list-style-type: none"> • The Hospital Precinct Structure Plan (HPSP) adopted by Council in 2017. • The Frenchs Forest 2041 Place Strategy which identifies the business park for continued employment activity. • 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. • The desired future character established by the objectives of the SP4 Enterprise (B7 Business Park Zone) under Warringah Local Environment Plan 2011. • The desired future character established by State Government metropolitan Planning, which reinforces the importance of retaining and enhancing employment uses within the Business Park.
<p>Strategic and Place Planning (Urban Design)</p>	<p>Supported without conditions</p> <p>This advice is provided as an internal referral from the Urban Design Unit to the Development Assessment Officer for consideration and coordination with the overall assessment.</p> <p>The application seeks consent to modify DA2021/0212, which was approved by the NSW Land and Environment Court on 20 April 2023. The proposal includes the following modifications:</p> <ul style="list-style-type: none"> • Relocation of the common area from the Ground Floor of the western building to the Ground Floor of the central building; • Remove commercial uses at Level 1 of the eastern building and replace with 8 Independent Living Units; • Revise design of pool and recreation facilities on Level 2; • Revise landscape design; • Minor changes to floor levels at each level to ensure floor to floor heights comply with the National Construction Code 2023 (NCC 2023) resulting in an increase in height to the western building of 0.5m; • Minor changes to layout of Independent Living Units; • Minor changes to basement levels, including minor changes to floor levels, location of mechanical plant rooms, the waste collection and storage areas and deletion of garbage lift; • Relocation lift shaft in the eastern building; and • Reallocation of a minor area of communal space at Level 7 to apartment floor area in the eastern tower. <p>Urban Design raise no objection to the proposed development.</p> <p>Please note: Regarding any view impacts and any impacts on solar amenity and overshadowing these matters will be dealt with under the evaluation of Councils Planning Officer. Any impacts of non-compliances regarding heritage will be dealt with under the evaluation of Councils Heritage Officers, and any Landscape non-compliances will be dealt with under the evaluation of Councils Landscape Officers.</p>
<p>Strategic and Place Planning (Development Contributions)</p>	<p>Supported with conditions</p> <p>Updated response 1 July Support with conditions</p> <p>SPP3 provided an updated referral response on 7 June 2024. This response calculated the applicable 7.12 contribution and included draft conditions of consent. In accordance with the Contributions Plan (and as requested by the applicant), the calculation excluded the costs associated with 14 dwellings to be managed as affordable housing. A condition was also provided to ensure that these 14 dwellings are managed as affordable housing in perpetuity.</p> <p>On 28 June 2024, the applicant wrote to the Assessing Officer advising that these 14 dwellings would not be managed as affordable housing in perpetuity. The applicant requested that the contribution be calculated based on the total cost of works with no exclusion for affordable housing.</p> <p>The applicant's request is supported. An amended condition has been provided. The contribution calculation is based on a total cost of works of \$67,110,789 as identified in the updated Cost Summary Report prepared by Construction Consultants and dated 7 March 2024.</p>

Internal Referral Body	Comments								
	<p>Updated Referral Response – provided 7 June 2024 – Support with conditions</p> <p>On 22 April 2024, a new referral request was provided to SPP3 however the assessment was still underway. The final response with a contribution calculation was held until such time as the assessment was close to determination stage.</p> <p>The updated referral response is now provided, based on the following additional information that has now been submitted by the applicant:</p> <ul style="list-style-type: none"> • Updated Cost Summary Report prepared by Construction Consultants and dated 7 March 2024. • Letter confirming that the application includes 14 dwellings to be managed by a community housing provider, dated 5 June 2024. • Letter requesting the imposition of a condition requiring the payment of a monetary contribution to Council, dated 6 June 2024. <p>This referral request follows from the original referral response provided by SPP3 on 13 December 2024.</p>								
	<p>Updated Referral Response - provided 7 June 2024</p> <p>The Northern Beaches Section 7.12 Contributions Plan 2022 (the Contributions Plan) applies to the land. The Contributions Plan was in force at the time of consent to DA2021/0212 and also applies to Mod2023/0617.</p> <p>An updated Cost Summary Report has been prepared by Construction Consultants. The author of the report is a registered member of the Australian Institute of Quantity Surveyors. The updated report identifies that the proposal will cost a total \$67,110,789 (incl GST). The cost estimate report itemises the cost associated with 14 dwellings approved for community housing under consent DA2021/0212, as being \$2,597,100 (incl GST).</p> <p>Chapter 2.5 of the Contributions Plan provides an exemption for “Social housing and community housing provided by an organisation registered as a social housing provider with the NSW Government. Applicants must demonstrate they meet these criteria within the application.”</p> <p>The applicant’s letter dated 5 June 2024, confirms that 14 dwellings approved under DA2021/0212 will be managed as community housing by Project Independence Ltd. Project Independence are a registered community housing provider listed in the National Regulatory System for Community Housing (NRSCH) with registration number - R4265140722, thereby meet the criteria in Chapter 2.5 of the Contributions Plan.</p> <p>Keylan Consulting’s submitted Statement of Modification (November 2023) states that the costs for the approved 14 dwellings are exempt from a monetary contribution in accordance with Clause 2.5 of the Contributions Plan. It is agreed the costs associated with the 14 dwellings are exempt from a monetary contribution however, consent DA2021/0212 does not impose a condition requiring the management of the 14 dwellings by a community housing provider in perpetuity. To ensure that the exemption for these dwellings is consistent with Clause 2.5 of the Contributions Plan, a new condition must be imposed as follows:</p> <p><i>The following units are to be managed by a community housing provider that is registered with the National Regulatory System for Community Housing, in perpetuity:</i></p> <ul style="list-style-type: none"> • Ground floor – Units 1-10 inclusive • First floor – Units C105, C106, C109 and C110. <p>The applicant’s letter dated 6 June 2024 requests the imposition of a development contribution condition in accordance with the Contributions Plan. A new condition will be imposed and has been provided below. The monetary contribution is calculated as follows:</p> <table border="0" data-bbox="523 1487 1439 1626"> <tr> <td>Total Development Cost</td> <td style="text-align: right;">\$67,110,789</td> </tr> <tr> <td>Less - Cost for 14 Community Housing Dwellings</td> <td style="text-align: right;">\$2,597,100</td> </tr> <tr> <td>Updated Development Cost for the purpose of calculating the development contribution</td> <td style="text-align: right;">\$64,513,689</td> </tr> <tr> <td>Required Monetary Contribution (1%)</td> <td style="text-align: right;">\$645,136.90</td> </tr> </table> <p>The monetary contribution has been calculated in accordance with TechOne business rules and includes rounding to one decimal place.</p> <p>RECOMMENDATION</p> <ol style="list-style-type: none"> 1. The application is supported as Project Independence Ltd, a registered community housing provider, has confirmed that Units 1-10 inclusive and C105, C106, C109 and C110 will be managed by them as community housing. 2. The application is supported subject to the imposition of two new conditions being imposed as provided. 	Total Development Cost	\$67,110,789	Less - Cost for 14 Community Housing Dwellings	\$2,597,100	Updated Development Cost for the purpose of calculating the development contribution	\$64,513,689	Required Monetary Contribution (1%)	\$645,136.90
Total Development Cost	\$67,110,789								
Less - Cost for 14 Community Housing Dwellings	\$2,597,100								
Updated Development Cost for the purpose of calculating the development contribution	\$64,513,689								
Required Monetary Contribution (1%)	\$645,136.90								

Internal Referral Body	Comments
	<p>Original referral Response Provided 13 December 2023</p> <p>On 30 November 2023, Strategic and Place Planning received a referral request for Mod2023/0617. The application proposes to amend DA2021/0212 for demolition works and construction of a mixed development, comprising seniors housing, commercial uses, carparking, landscaping and stratum subdivision.</p> <p>DA2021/0212 was approved by the Land and Environment Court on 20 April 2023. The development comprises 98 independent living units including 10 units for disability housing to be operated by Project Independence Limited and 4 affordable units for seniors.</p> <p>The subject site is 5 Skyline Place, Frenchs Forest. The land is zoned SP4 Enterprise under the Warringah LEP 2011. The site has a frontage to Skyline Place and a battle-axe handle to Frenchs Forest Road East. The Northern Beaches 7.12 Contributions Plan applies to the land and a development contribution is applicable for the approved development. It is noted that the contribution condition was inadvertently missed in the consent issued by the Land and Environment Court.</p> <p>Mod2023/0617 seeks significant changes to the approved development including an increase in total dwelling numbers. The submitted Statement of Modification, prepared by Keylan Consulting and dated November 2023, identifies the following changes to DA2021/0212:</p> <ul style="list-style-type: none"> • relocate the communal area from the Ground Floor of the western building to the ground level of the central building; • delete commercial uses at Level 1 of the eastern building and replace with 8 Independent Living Units; • revise design of pool and recreation facilities on Level 2; • revise landscape design; • minor changes to floor levels at each level to ensure floor to floor heights comply with the National Construction Code 2023 (NCC 2023) resulting in an increase in height to the western building of 0.5m; • minor changes to layout of Independent Living Units to improve amenity; • minor changes to basement levels, including minor changes to floor levels, location of mechanical plant rooms, the waste collection and storage areas and deletion of garbage lift; • relocate lift shaft in the eastern building to improve entrance and circulation; and • reallocation of a minor area of communal space at Level 7 to apartment floor area in the eastern tower. <p>The Statement of Modification advises: <i>There are no proposed changes to the affordable or disability housing aspect of the approved development, currently proposed to be operated and run by Project Independence (PI). PI ... is a registered Community Housing Provider (CHP) as well as a registered NDIS provider...</i> <i>It is noted that as PI is a CHP, this aspect of the development is exempt from contributions as per the Northern Beaches Section 7.12 Contributions Plan 2022.</i></p> <p>The Northern Beaches 7.12 Contributions Plan applies to the land and a development contribution is applicable to this application. The contribution is calculated based on 1% of the cost of works.</p> <p>A cost summary report, prepared by Building Logic and dated 6 November 2023, has been submitted with the application. The cost summary report identifies a total construction cost of \$49,090,800 excluding GST. This calculation also excludes costs associated with 784m² of floorspace purported to be managed by a community housing provider.</p> <p>Chapter 4.3 of the Northern Beaches 7.12 Contributions Plan stipulates that where the proposed cost of carrying out the development exceeds \$1,000,000, the cost summary report must be prepared by a quantity surveyor who is a registered member of the Australian Institute of Quantity Surveyors.</p> <p>The applicant must provide a cost summary report prepared by a quantity surveyor who is a registered member of the Australian Institute of Quantity Surveyors. This report must clearly separate the costs associated with any dwellings to be managed by a community housing provider.</p> <p>Chapter 2.5 of the Contributions Plan provides an exemption for <i>“Social housing and community housing provided by an organisation registered as a social housing provider with the NSW Government. Applicants must demonstrate they meet these criteria within the application”</i>.</p> <p>The application states that 14 dwellings will be managed by Project Independence Limited who are a community housing provider registered with the National Regulatory System for Community Housing (NRSCH). The NSW Registrar of Community Housing requires that community housing providers are registered under the NRSCH. A search of the NRSCH database identifies that Project Independence meet these requirements. However, it is noted that there are no conditions on DA2021/0212 requiring the management of the 14 dwellings by a community housing provider in perpetuity. To support an exemption for contributions associated with these 14 dwellings, a condition will be imposed requiring the management of the identified units by a registered community housing provider in perpetuity.</p>

Internal Referral Body	Comments
	<p>RECOMMENDATION</p> <ol style="list-style-type: none"> 1. There is insufficient information to determine the applicable development contribution. The applicant should submit an itemised cost estimate report prepared by a quantity surveyor who is a registered member of the Australian Institute of Quantity Surveyors. The report should separately identify the cost associated with the 14 dwellings to be managed by a community housing provider. 2. Upon receipt of the additional information above, the application should be referred to Strategic and Place Planning 3 for consideration.
Traffic Engineer	<p>Additional comments - 13/6/24</p> <p>It is noted that the amended arrangements outlined in documentation provided by Platino Properties dated 6 June are satisfactory to Council's waste services team. The amended arrangements incorporate a 1.8m wide bin transfer ramp which is separate from the 3.0m wide egress only carpark ramp.</p> <p>These arrangements are also acceptable to the traffic team and the modification is now supportable with no additional traffic engineering conditions to impose.</p> <p>Additional comments - 3/5/24</p> <p>The applicant has provided additional information that clarifies that the consent for DA2021/0212 was granted on the basis that there was not adequate overhead clearance (3.5m) to allow for small rigid vehicle access to and from the basement loading bays. As such all deliveries to the commercial components of the development will need to be completed by vehicles with a clearance height less than 2.2m such as light commercial vehicles such as vans, utilities, wagons and the like. As this aspect of the development is unchanged the matter will not be further pressed.</p> <p>the applicant's traffic consultant has also provided information to clarify the waste collection process to address concerns raised by Council's Waste Services team. It is noted that the Waste Services team remain opposed to amended arrangements proposed and the waste team's comments recommending that the bin lift be reinstated are supported. The option outlined in the traffic consultant's report to permit the bin tug to travel down the exit ramp under traffic light control inconveniencing hundreds of residents is considered inappropriate and inconvenient with the use of the bin lift as approved under DA2021/0212 which requires no interference to residents free access to the exit ramp considered a superior option that should be retained.</p> <p>Given the above concerns relating to the waste management issue the Mod remains unsupported.</p> <p>Original comments - 18/1/24</p> <p>The proposed modification includes the following changes which have traffic and/or parking implications:</p> <ul style="list-style-type: none"> - increasing the number of units from 98 to 104 - retaining the number of basement parking spaces at 202 spaces but amending the layout of the parking areas - retaining the 2 basement loading/serving bays which appear to be sized for access by small rigid vehicles - retaining a servicing bay at street level off the cul-de-sac of Skyline Place but amending its dimensions. - adjusting floor levels including in parts of the basement <p>There are no concerns raised regarding the parking spaces quantum or allocation with it noted that the employment generating space requirement has been determined from the office rate 1 space per 40m² which yields a parking requirement of 24 spaces however 40 "employment generating" spaces have been provided to account for tenancies which may have a higher parking requirement such as gyms or take away for uses. No objection to the oversupply of employment generating parking spaces is raised.</p> <p>It is noted that the layout of the basement parking areas have been amended including near the delivery bays. No swept path plots have been provided to confirm that ingress/egress to and from these bays by small rigid vehicles is achievable. This is required.</p> <p>Similarly, confirmation that there is adequate floor to ceiling clearance throughout the parts of the basement that must be traversed by small rigid vehicles has not been provided. Overhead clearance of at least 3.5m will be required and must be demonstrated.</p> <p>It is noted that Council's waste services team have raised concerns about the changes made to the access arrangements to the street level bin storage areas. It is noted that the dimensions of the dock area have also been reduced with access to the bay now more constrained. Swept path plots must be provided to demonstrate that ingress and egress for Council's 10.5m long Waste Services truck can be achieved</p>

Internal Referral Body	Comments
Waste Officer	<p>Supported with conditions</p> <p>Waste Management Assessment - Correspondence from Platino Properties 6/6/24 - waste servicing. Supported - subject to conditions</p> <p>Waste Management Assessment Unsupported - the proposal is unacceptable. For the reasons previously listed (response below) this proposal remains unsupported.</p> <p>This is a large proposal with 104 dwellings and 3 commercial spaces. Closing the exit ramp from the basement carpark for substantial periods of time on two days per week for the purpose of transferring bins out of, and then back into, the basement is unacceptable. Also, on one day every five weeks the ramp will need to be periodically closed for the presentation of bulky goods for collection.</p> <p>Additionally, the transfer of commercial bins from and to the basement will need to be undertaken on at least one day per week. A return to the earlier proposals for a waste bin lift or waste bin ramp/s will be required.</p> <p>Waste Management Assessment Unsupported - the proposal is unacceptable.</p> <p>Specifically: The current proposal has now removed both the waste bin lift and the waste ramp access to/from the basement.</p> <p>The vehicular driveways are not to be used for the process of transferring bins between the basement rooms and street level bin servicing area. The potential conflict between vehicles exiting the basement and the operation of a bin tug on the driveway ramp is unacceptable. For the bin tug the access the waste servicing area it would be required to perform a 180 degree turn on the public footpath/road outside the property. This is also unacceptable. As the driveway ramp adjacent to the waste servicing area is shown as "exit only" please advise how the bins will be returned to the basement rooms. It is Councils' expectation that the public road and footpath not be used for this purpose. All bin movements are to be contained within the property. As garbage and recycling bins are serviced twice per week considerable time will be required to transfer all the bins on two days per week. Bulky goods are collected on 5 week schedule. Therefore a third day per week will be required for transferring bulky goods waste to the servicing area every five weeks.</p>

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<p>Supported with conditions</p> <p>The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.</p>
Integrated Development - Rural Fire Service - Rural Fires Act, s100B - Subdivisions and Special Fire Protection Purposes	<p>Supported Subject to Conditions</p> <p>The application has been referred to the NSW Rural Fire Service for a Bushfire Safety Authority under section 100B of the Rural Fires Act 1997. The RFS have issued GTA's which will be included in the event an modified consent is granted.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

All, Environmental Planning Instruments (SEPPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)

SEPP 65 - Design Quality of Residential Apartment Development

State Environmental Planning Policy No. 65 – Design Quality for Residential Apartment Development (SEPP 65) is now a repealed instrument and has been replaced with SEPP (Housing) 2021 - Chapter 4.

However, the provisions of SEPP 65 continue to apply to this modification application given the savings provisions contained within Schedule 7A SEPP Housing. As such, this modification application is considered against the provisions of SEPP 65.

Clause 4 of State Environmental Planning Policy No. 65 – Design Quality for Residential Apartment Development (SEPP 65) stipulates that:

(1) *This Policy applies to development for the purpose of a residential flat building, shop top housing or mixed use development with a residential*

accommodation component if:

- (a) the development consists of any of the following:
- (i) the erection of a new building,
 - (ii) the substantial redevelopment or the substantial refurbishment of an existing building,
 - (iii) the conversion of an existing building, and
- (b) the building concerned is at least 3 or more storeys (not including levels below ground level (existing) or levels that are less than 1.2 metres above ground level (existing) that provide for car parking), and
- (c) the building concerned contains at least 4 or more dwellings.

As previously outlined, the proposed development is for the construction of an up to 7 storey residential flat 'housing' development plus basement car parking for the provisions of 104 self-contained dwellings. As such, the principles and standards of the ADG have been considered as follows.

As per the provisions of Clause 4 outlining the application of the policy, the provisions of SEPP 65 are applicable to the assessment of this application.

As previously outlined within this report, Clause 29 of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This was submitted under the original application. Clause 102 of the Regulations 2021 do not require a design verification statement for a Section 4.56 modification.

Clause 28 of SEPP 65 requires:

- (2) In determining a development application for consent to carry out development to which this Policy applies, a consent authority is to take into consideration (in addition to any other matters that are required to be, or may be, taken into consideration):

- (a) the advice (if any) obtained from the design review panel, and
- (b) the design quality of the development when evaluated in accordance with the design quality principles, and
- (c) the Apartment Design Guide

Comment: The original application and review application were both considered by the Design Panel. Given the overall form, setbacks and visual appearance of the development is maintained, Council is of the opinion that referral back to the DSAP is not necessary. Furthermore, the EP&A Regulations 2021 do not mandate a referral back to the Design Panel for 4.56 Modification Applications.

DESIGN QUALITY PRINCIPLES

Principle 1: Context and Neighbourhood Character

Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions. Responding to context involves identifying the desirable elements of an area's existing or future character. Well designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood. Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.

Comment: The current context consists of commercial/industrial buildings which have two stories fronting Skyline Place, which also includes the recently constructed Seniors development on the corner of Skyline Place and Frenchs Forest Road East. To the east of the site there is a commercial building which is three stories in presentation to Skyline Place. The existing building on the site is two stories fronting Skyline Place. The building to the south (4 Skyline) is a two storey commercial building fronting Skyline Place.

The modifications to the development do not fundamentally change the built form and visual appearance of the development. The proposal retains the commercial ground floor facing Skyline Place which is the minimum requirement of the SEPP Housing 2021. The proposal maintains canopy trees at the site frontage to retain the landscape character of the area. The change from the first floor commercial tenancy to residential is not considered to fundamentally change the character of the development, given the upper floor levels are already residential in character.

Principle 2: Built Form and Scale

Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings. Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements. Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.

Comment: The increase of 0.5m to the western building is minor and does not change fundamentally the visual appearance and scale of the building.

Principle 3: Density

Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context. Appropriate densities are consistent with the area's existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.

Comment: The proposal provides for an additional 6 residential units, a total of 104 apartments (98 were approved). This overall change in density is not considered a fundamental change to the proposal and the overall density is considered to be generally consistent with the approval.

Principle 4: Sustainability

Good design combines positive environmental, social and economic outcomes. Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials, and deep soil zones for groundwater recharge and vegetation.

Comment: The overall scheme, in relation to sustainability, remains unchanged. An updated BASIX Certificate has been provided for the proposal.

Principle 5: Landscape

Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.

Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values, and preserving green networks. Good landscape design optimises usability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity, provides for practical establishment and long term management.

Comment: The landscape outcome of the development remains generally consistent with the approval.

Principle 6: Amenity

Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well being.

Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas, and ease of access for all age groups and degrees of mobility.

Comment: The amenity outcome for the development and adjoining sites remains generally consistent with the approval.

Principle 7: Safety

Good design optimises safety and security, within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety.

A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.

Comment: The amended proposal does not decrease the safety or security outcomes for the development and public. The relationship between public/private space is maintained.

Principle 8: Housing Diversity and Social Interaction

Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.

Well designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix. Good design involves practical and flexible features, including different types of communal spaces for a broad range of people, providing opportunities for social interaction amongst residents.

Comment: The amended proposal maintains a diverse mix of housing and maintains the communal open space arrangements, with minor amendments.

Principle 9: Aesthetics

Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures.

The visual appearance of well designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.

Comment: The overall visual appearance of the building is largely unchanged in regards to the landscape outcomes, setbacks and height (minor 0.5m increase to the western building).

APARTMENT DESIGN GUIDE

The following table is an assessment against the criteria of the 'Apartment Design Guide' as required by SEPP 65.

Development Control	Criteria / Guideline	Comments												
Part 3 Siting the Development														
Site Analysis	Does the development relate well to its context and is it sited appropriately?	Consistent The visual appearance of the building remains fundamentally unchanged and is an appropriate response to the locality.												
Orientation	Does the development respond to the streetscape and site and optimise solar access within the development and to neighbouring properties?	Consistent												
Public Domain Interface	Does the development transition well between the private and public domain without compromising safety and security? Is the amenity of the public domain retained and enhanced?	Consistent												
Communal and Public Open Space	Appropriate communal open space is to be provided as follows: 1. Communal open space has a minimum area equal to 25% of the site 2. Developments achieve a minimum of 50% direct sunlight to the principal usable parts of the communal open space for a minimum of 2 hours between 9 am and 3pm on 21 June (mid winter)	Consistent												
Deep Soil Zones	Deep soil zones are to meet the following minimum requirements: <table border="1" data-bbox="475 846 1038 1140"> <thead> <tr> <th>Site area</th> <th>Minimum dimensions</th> <th>Deep soil zone (% of site area)</th> </tr> </thead> <tbody> <tr> <td>Less than 650m²</td> <td>-</td> <td rowspan="4">7%</td> </tr> <tr> <td>650m² – 1,500m²</td> <td>3m</td> </tr> <tr> <td>Greater than 1,500m²</td> <td>6m</td> </tr> <tr> <td>Greater than 1,500m² with significant existing tree cover</td> <td>6m</td> </tr> </tbody> </table>	Site area	Minimum dimensions	Deep soil zone (% of site area)	Less than 650m ²	-	7%	650m ² – 1,500m ²	3m	Greater than 1,500m ²	6m	Greater than 1,500m ² with significant existing tree cover	6m	Consistent
Site area	Minimum dimensions	Deep soil zone (% of site area)												
Less than 650m ²	-	7%												
650m ² – 1,500m ²	3m													
Greater than 1,500m ²	6m													
Greater than 1,500m ² with significant existing tree cover	6m													

<p>Visual Privacy</p>	<p>Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <table border="1" data-bbox="478 336 1038 551"> <thead> <tr> <th>Building height</th> <th>Habitable rooms and balconies</th> <th>Non-habitable rooms</th> </tr> </thead> <tbody> <tr> <td>Up to 12m (4 storeys)</td> <td>6m</td> <td>3m</td> </tr> <tr> <td>Up to 25m (5-8 storeys)</td> <td>9m</td> <td>4.5m</td> </tr> <tr> <td>Over 25m (9+ storeys)</td> <td>12m</td> <td>6m</td> </tr> </tbody> </table> <p>Note: Separation distances between buildings on the same site should combine required building separations depending on the type of rooms.</p> <p>Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.</p>	Building height	Habitable rooms and balconies	Non-habitable rooms	Up to 12m (4 storeys)	6m	3m	Up to 25m (5-8 storeys)	9m	4.5m	Over 25m (9+ storeys)	12m	6m	<p>Consistent</p>
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Up to 25m (5-8 storeys)	9m	4.5m												
Over 25m (9+ storeys)	12m	6m												
<p>Pedestrian Access and entries</p>	<p>Do the building entries and pedestrian access connect to and addresses the public domain and are they accessible and easy to identify?</p> <p>Large sites are to provide pedestrian links for access to streets and connection to destinations.</p>	<p>Consistent</p>												
<p>Vehicle Access</p>	<p>Are the vehicle access points designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes?</p>	<p>Consistent</p>												
<p>Bicycle and Car Parking</p>	<p>For development in the following locations:</p> <ul style="list-style-type: none"> On sites that are within 80m of a railway station or light rail stop in the Sydney Metropolitan Area; or On land zoned, and sites within 400m of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre <p>The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less.</p> <p>The car parking needs for a development must be provided off street.</p> <p>Parking and facilities are provided for other modes of transport.</p> <p>Visual and environmental impacts are minimised.</p>	<p>Consistent</p>												
<p>Part 4 Designing the Building</p>														
<p>Amenity</p>														
<p>Solar and Daylight Access</p>	<p>To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space:</p> <ul style="list-style-type: none"> Living rooms and private open spaces of at least 70% of apartments in a building are to receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter. A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter. 	<p>Consistent</p> <p>92% of apartments receive at least two hours of direct sunlight between 0900 and 1500 in mid-winter. The new apartments replicate the layout of the units above on Level 3, which was deemed acceptable by the original application.</p> <p>Consistent</p> <p>None of the new apartments are south facing only.</p>												
<p>Natural Ventilation</p>	<p>The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents by:</p> <ul style="list-style-type: none"> At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed. 	<p>Consistent</p> <p>The new apartments replicate the layout of the units above on Level 3, which was deemed acceptable by the original application.</p>												

	<ul style="list-style-type: none"> Overall depth of a cross-over or cross-through apartment must not exceed 18m, measured glass line to glass line. 	Consistent															
Ceiling Heights	<p>Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p> <table border="1"> <thead> <tr> <th colspan="2">Minimum ceiling height</th> </tr> </thead> <tbody> <tr> <td>Habitable rooms</td> <td>2.7m</td> </tr> <tr> <td>Non-habitable</td> <td>2.4m</td> </tr> <tr> <td>For 2 storey apartments</td> <td>2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area</td> </tr> <tr> <td>Attic spaces</td> <td>1.8m at edge of room with a 30 degree minimum ceiling slope</td> </tr> <tr> <td>If located in mixed used areas</td> <td>3.3m for ground and first floor to promote future flexibility of use</td> </tr> </tbody> </table>	Minimum ceiling height		Habitable rooms	2.7m	Non-habitable	2.4m	For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area	Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope	If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use	Consistent Ceiling heights within the apartments exceed 2.7m with a 3.1m FFL to FF.			
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Apartment Size and Layout	<p>Apartments are required to have the following minimum internal areas:</p> <table border="1"> <thead> <tr> <th>Apartment type</th> <th>Minimum internal area</th> </tr> </thead> <tbody> <tr> <td>Studio</td> <td>35m²</td> </tr> <tr> <td>1 bedroom</td> <td>50m²</td> </tr> <tr> <td>2 bedroom</td> <td>70m²</td> </tr> <tr> <td>3 bedroom</td> <td>90m²</td> </tr> </tbody> </table> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each.</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m² each.</p>	Apartment type	Minimum internal area	Studio	35m ²	1 bedroom	50m ²	2 bedroom	70m ²	3 bedroom	90m ²	Consistent The minimum size of all bedrooms are consistent with the requirement of this Clause.					
Apartment type	Minimum internal area																
Studio	35m ²																
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	Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.	Consistent															
	Habitable room depths are limited to a maximum of 2.5 x the ceiling height.	Consistent															
	In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.	Consistent															
	Master bedrooms have a minimum area of 10m ² and other bedrooms 9m ² (excluding wardrobe space).	Consistent															
	Bedrooms have a minimum dimension of 3.0m and must include built in wardrobes or have space for freestanding wardrobes, in addition to the 3.0m minimum dimension.	Consistent															
	Living rooms or combined living/dining rooms have a minimum width of: <ul style="list-style-type: none"> 3.6m for studio and 1 bedroom apartments 4m for 2 and 3 bedroom apartments 	Consistent															
	The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts	Consistent															
Private Open Space and Balconies	<p>All apartments are required to have primary balconies as follows:</p> <table border="1"> <thead> <tr> <th>Dwelling Type</th> <th>Minimum Area</th> <th>Minimum Depth</th> </tr> </thead> <tbody> <tr> <td>Studio apartments</td> <td>4m²</td> <td>-</td> </tr> <tr> <td>1 bedroom apartments</td> <td>8m²</td> <td>2m</td> </tr> <tr> <td>2 bedroom apartments</td> <td>10m²</td> <td>2m</td> </tr> <tr> <td>3+ bedroom apartments</td> <td>12m²</td> <td>2.4m</td> </tr> </tbody> </table> <p>The minimum balcony depth to be counted as contributing to the balcony area is 1m</p>	Dwelling Type	Minimum Area	Minimum Depth	Studio apartments	4m ²	-	1 bedroom apartments	8m ²	2m	2 bedroom apartments	10m ²	2m	3+ bedroom apartments	12m ²	2.4m	
Dwelling Type	Minimum Area	Minimum Depth															
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	For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m ² and a minimum depth of 3m.	Not Applicable The private open space requirement is stipulated under SEPP (HSPD) 2004															

Common Circulation and Spaces	The maximum number of apartments off a circulation core on a single level is eight.	Consistent The maximum number of apartments off a circulation core on a single level is less than 8. There are 7 new units on Level 2 of the eastern building.																																	
	For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.	Consistent																																	
Storage	In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:	Consistent The proposed building includes resident storage areas for all units within the building and as well as within the basement levels.																																	
	<table border="1"> <thead> <tr> <th>Dwelling Type</th> <th>Storage size volume</th> </tr> </thead> <tbody> <tr> <td>Studio apartments</td> <td>4m²</td> </tr> <tr> <td>1 bedroom apartments</td> <td>6m²</td> </tr> <tr> <td>2 bedroom apartments</td> <td>8m²</td> </tr> <tr> <td>3+ bedroom apartments</td> <td>10m²</td> </tr> </tbody> </table> <p>At least 50% of the required storage is to be located within the apartment.</p>		Dwelling Type	Storage size volume	Studio apartments	4m ²	1 bedroom apartments	6m ²	2 bedroom apartments	8m ²	3+ bedroom apartments	10m ²																							
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Acoustic Privacy	Noise sources such as garage doors, driveways, service areas, plant rooms, building services, mechanical equipment, active communal open spaces and circulation areas should be located at least 3m away from bedrooms.	Consistent																																	
Noise and Pollution	Siting, layout and design of the building is to minimise the impacts of external noise and pollution and mitigate noise transmission.	Consistent																																	
Configuration																																			
Apartment Mix	Ensure the development provides a range of apartment types and sizes that is appropriate in supporting the needs of the community now and into the future and in the suitable locations within the building.	Consistent A reasonable mix is maintained via the modified development.																																	
Ground Floor Apartments	Do the ground floor apartments deliver amenity and safety for their residents?	Consistent The arrangements for the ground floor units are maintained.																																	
Facades	Ensure that building facades provide visual interest along the street and neighbouring buildings while respecting the character of the local area.	Consistent Level of facade articulation maintained.																																	
Roof Design	Ensure the roof design responds to the street and adjacent buildings and also incorporates sustainability features. Can the roof top be used for common open space? This is not suitable where there will be any unreasonable amenity impacts caused by the use of the roof top.	Consistent																																	
Landscape Design	Was a landscape plan submitted and does it respond well to the existing site conditions and context.	Consistent																																	
Planting on Structures	When planting on structures the following are recommended as minimum standards for a range of plant sizes:	Consistent																																	
	<table border="1"> <thead> <tr> <th>Plant type</th> <th>Definition</th> <th>Soil Volume</th> <th>Soil Depth</th> <th>Soil Area</th> </tr> </thead> <tbody> <tr> <td>Large Trees</td> <td>12-18m high, up to 16m crown spread at maturity</td> <td>150m³</td> <td>1,200mm</td> <td>10m x 10m or equivalent</td> </tr> <tr> <td>Medium Trees</td> <td>8-12m high, up to 8m crown spread at maturity</td> <td>35m³</td> <td>1,000mm</td> <td>6m x 6m or equivalent</td> </tr> <tr> <td>Small trees</td> <td>6-8m high, up to 4m crown spread at maturity</td> <td>9m³</td> <td>800mm</td> <td>3.5m x 3.5m or equivalent</td> </tr> <tr> <td>Shrubs</td> <td></td> <td></td> <td>500-600mm</td> <td></td> </tr> <tr> <td>Ground Cover</td> <td></td> <td></td> <td>300-450mm</td> <td></td> </tr> <tr> <td>Turf</td> <td></td> <td></td> <td>200mm</td> <td></td> </tr> </tbody> </table>		Plant type	Definition	Soil Volume	Soil Depth	Soil Area	Large Trees	12-18m high, up to 16m crown spread at maturity	150m ³	1,200mm	10m x 10m or equivalent	Medium Trees	8-12m high, up to 8m crown spread at maturity	35m ³	1,000mm	6m x 6m or equivalent	Small trees	6-8m high, up to 4m crown spread at maturity	9m ³	800mm	3.5m x 3.5m or equivalent	Shrubs			500-600mm		Ground Cover			300-450mm		Turf		
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Turf			200mm																																
Universal Design	Do at least 20% of the apartments in the development incorporate the Livable Housing Guideline's silver level universal design features	Consistent																																	

Adaptable Reuse	New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.	Consistent
Mixed Use	Can the development be accessed through public transport and does it positively contribute to the public domain? Non-residential uses should be located on lower levels of buildings in areas where residential use may not be appropriate or desirable.	Consistent
Awnings and Signage	Locate awnings along streets with high pedestrian activity, active frontages and over building entries. Awnings are to complement the building design and contribute to the identity of the development. Signage must respond to the existing streetscape character and context.	Consistent
Performance		
Energy Efficiency	Have the requirements in the BASIX certificate been shown in the submitted plans?	Consistent Updated BASIX submitted.
Water Management and Conservation	Has water management taken into account all the water measures including water infiltration, potable water, rainwater, wastewater, stormwater and groundwater?	Consistent
Waste Management	Has a waste management plan been submitted as part of the development application demonstrating safe and convenient collection and storage of waste and recycling?	Consistent
Building Maintenance	Does the development incorporate a design and material selection that ensures the longevity and sustainability of the building?	Consistent

STANDARDS THAT CANNOT BE USED TO REFUSE DEVELOPMENT CONSENT

Clause 30 of SEPP 65 Standards that cannot be used as grounds to refuse development consent or modification of development consent states that:

(1) If an application for the modification of a development consent or a development application for the carrying out of development to which this Policy applies satisfies the following design criteria, the consent authority must not refuse the application because of those matters:

- (a) if the car parking for the building will be equal to, or greater than, the recommended minimum amount of car parking specified in Part 3J of the Apartment Design Guide,
- (b) if the internal area for each apartment will be equal to, or greater than, the recommended minimum internal area for the relevant apartment type specified in Part 4D of the Apartment Design Guide,
- (c) if the ceiling heights for the building will be equal to, or greater than, the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide.

Note. The Building Code of Australia specifies minimum ceiling heights for residential flat buildings.

Comment: The application is not recommended for refusal for any of the above reasons.

(2) Development consent must not be granted if, in the opinion of the consent authority, the development or modification does not demonstrate that adequate regard has been given to:

- (a) the design quality principles, and
- (b) the objectives specified in the Apartment Design Guide for the relevant design criteria.

(3) To remove doubt:

- (a) subclause (1) does not prevent a consent authority from refusing an application in relation to a matter not specified in subclause (1), including on the basis of subclause (2), and
- (b) the design criteria specified in subclause (1) are standards to which clause 79C (2) of the Act applies.

Note. The provisions of this clause do not impose any limitations on the grounds on which a consent authority may grant or modify development consent.

Comment: The above matters are considered in detail above.

SEPP (Building Sustainability Index: BASIX) 2004

SEPP BASIX was still in force at the time of lodging the original development application and as such, remains applicable to the modification application.

An updated BASIX certificate has been submitted with the application (see Certificate No. 117769M_09 dated 7 December 2023).

In the event consent is granted it is recommended a condition be included requiring compliance with the commitments indicated in the BASIX Certificate.

SEPP (Housing for Seniors or People with a Disability) 2004

The original development application was lodged pursuant to State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004

(SEPP (HSPD)) as the development involved in-fill, self care housing (or independent living units (ILU's)). Whilst this policy has now been repealed by SEPP (Housing) 2021, the provisions of SEPP HSPD continue to apply to this modification application given the savings provisions contained within Schedule 7A SEPP Housing.

Chapter 1 – Preliminary

The aims of the Policy are set out in Clause 2 and are as follows;

This Policy aims to encourage the provision of housing (including residential care facilities) that will:

- (a) increase the supply and diversity of residences that meet the needs of seniors or people with a disability, and
- (b) make efficient use of existing infrastructure and services, and
- (c) be of good design.

Comment: The proposal provide for additional ILU's and is consistent with aim (a) of the policy. However, for the reasons discussed below, the removal of the first floor commercial floor space fronting Skyline Place will result in a development that is less compatible with the surrounding business park and as such, is not of good design.

Chapter 2 – Key Concepts

Comment: The proposal consists of housing defined as 'Seniors Housing' and consists of in-fill self care housing, or ILU's as they are known.

Chapter 3 – Development for seniors housing

Chapter 3 of SEPP HSPD contains a number of development standards applicable to development applications made pursuant to SEPP HSPD. Clause 18 of SEPP HSPD outlines the restrictions on the occupation of seniors housing and requires a condition to be included in the consent if the application is approved to restrict the kinds of people which can occupy the development. This condition was included on the consent issued.

Clause 19 relates to the Use of seniors housing in commercial zones. Clause 19 states that:

"Development allowed by this Chapter for the purposes of seniors housing does not include the use for residential purposes of any part of the ground floor of a building that fronts a street if the building is located on land that is zoned primarily for commercial purposes unless another environmental planning instrument permits the use of all of the building for residential purpose".

The development is consistent with Clause 19 insofar that the ground floor level fronting Skyline Place does not consist of residential accommodation. The proposal maintains compliance with the minimum requirements of the SEPP HSPD in relation to the location and design of the commercial floor area within the zone.

Clause 26 site related requirements - The following is an assessment of the proposal against the requirements of Chapter 3 of SEPP (HSPD).

Development Criteria			
Clause	Requirement	Proposal	Complies
PART 2 - Site Related Requirements			
26(1)	Satisfactory access to: (a) shops, banks and other retail and commercial services that residents may reasonably require, and (b) community services and recreation facilities, and (c) the practice of a general medical practitioner	Consistent with original	Yes
26(2)	Access complies with this clause if: (a) the facilities and services referred are located at a distance of not more than 400 metres from the site or (b) there is a public transport service available to the residents not more than 400metres away.	Consistent with original	Yes
27	If located on bush fire prone land, consideration has been given to the relevant bushfire guidelines.	Updated comments provided by RFS	Yes
28	Consideration is given to the suitability of the site with regard to the availability of reticulated water and sewerage infrastructure.	Consistent with original	Yes
29	Consideration must be given to whether the proposal is compatible with the surrounding land uses having regard to the following criteria specified in Clauses 25(5)(b)(i), 25(5)(b)(iii), and 25(5)(b)(v): i) the natural environment and the existing uses and approved uses of land in the vicinity of the proposed development iii) the services and infrastructure that are or will be available to meet the demands arising from the proposed development and any proposed financial arrangements for infrastructure provision, v) the impact that the bulk, scale, built form and character of the proposed development is likely to have on the existing uses, approved uses and future uses of land in the vicinity of the development.	Consistent with original	Yes
PART 3 - Design Requirements – Division 1			
30	A site analysis is provided.	Consistent with original	Yes

Clause 31 Design of in-fill self-care housing

Pursuant to Cause 31 in determining a development application to carry out development for the purpose of in-fill self-care housing, a consent authority must take into consideration the provisions of the *Seniors Living Policy: Urban Design Guidelines for Infill Development* published by the former NSW Department of Infrastructure, Planning and Natural Resources dated March 2004.

It is noted that the Seniors Living Policy is geared towards low scale development located in residential zones. The key principles of the policy have been

reviewed and the proposed development is not considered to respond appropriately to its context for the reasons outlined within following sections of this report.

The provisions of the *Seniors Living Policy: Urban Design Guidelines for Infill Development* have been taken into consideration in the assessment of the application against the design principles set out in Division 2, Part 3 of SEPP HSPD. A detailed assessment of the proposals inconsistencies with regards to the requirements of SLP is undertaken hereunder.

Section	Requirements	Comment
1. Responding to context	Built Environment – New development is to follow the patterns of the existing residential neighbourhood in terms of built form. Policy environment – Consideration must be given to Councils own LEP and/or DCPs where they may describe the character and key elements of an area that contribute to its unique character.	Consistent The modifications to the development do not fundamentally change the built form and visual appearance of the development. The proposal retains the commercial ground floor facing Skyline Place which is the minimum requirement of the SEPP. The proposal maintains canopy trees at the site frontage to retain the landscape character of the area. The change from the first floor commercial tenancy to residential is not considered to fundamentally change the character of the development, given the upper floor levels are already residential in character.
2. Site Planning and design	Objectives of this section are to: -Minimise the impact of new development on neighbourhood character -Minimise the physical and visual dominance of car parking, garaging and vehicular circulation.	Consistent As described above, the visual appearance and setbacks of the proposal is maintained. Carparking access is unchanged from a visual perspective.
3. Impacts on streetscape	Objectives of this section are to: -Minimise impacts on the existing streetscape and enhance its desirable characteristics -Minimise dominance of driveways and car park entries in streetscape.	Consistent As described in Point 1 above, the height and spatial proportions of the development is maintained. The landscape treatment within the front setback is maintained and canopy trees are retained.
4. Impacts on neighbours	The proposal is generally in accordance with the requirements of this section.	Unchanged via proposal The amenity outcomes for the neighbouring properties is maintained.
5. Internal site amenity	Objectives of this section are to: -Provide safe and distinct pedestrian routes to all dwellings and communal facilities.	Unchanged via proposal The internal site layout maintains clear pedestrian routes and links. The location of the communal facilities is changed on the ground floor, however, this is not considered to be a negative outcome.

Clause 32 Design of residential development

In accordance with Clause 32 of SEPP HSPD a consent authority must not consent to a development application made pursuant to this Chapter unless the consent authority is satisfied that the proposed development demonstrates that adequate regard has been given to the principles set out in Division 2 of Part 2.

The following table outlines compliance with the principles set out in Division 2, Part 3 of SEPP HSPD.

Control	Requirement	Proposed	Compliance
CL33 Neighbourhood amenity and streetscape	a. Recognise the desirable elements of the location's current character so that new buildings contribute to the quality and identity of the area.	The tree canopy is a desirable element of the site. The landscaped front setback is maintained and the overall scale of the building is maintained.	Yes
	b. Retain, complement and sensitively harmonise with any heritage conservation area in the vicinity and any relevant heritage items that re identified in a local environmental plan.	Not within a heritage conservation zone.	Yes
	c. Maintain reasonable neighbour amenity and appropriate residential character by; (i) providing building setbacks to reduce bulk and overshadowing (ii) using building form and siting that relates to the site's land form, and (iii) adopting building heights at the street frontage that are compatible in scale with adjacent development, (iv) and considering, where buildings are located on the boundary, the impact of the boundary walls on neighbors.	The amenity outcomes for the neighbouring properties are maintained, noting the land uses are varied and predominantly consist of commercial and industrial uses.	Yes

Control	Requirement	Proposed	Compliance
	<p>d. Be designed so that the front building of the development is set back in sympathy with, but not necessarily the same as, the existing building line,</p> <p>e. embody planting that is in sympathy with, but not necessarily the same as, other planting in the streetscape.</p> <p>f. retain , wherever reasonable, major existing trees, and</p> <p>g. be designed so that no building is constructed in a riparian zone.</p>	<p>The front setback is not changed via the amended proposal.</p> <p>The landscape scheme remains appropriate.</p> <p>No additional trees removed.</p> <p>Not within a riparian zone.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>
CL 34 Visual and acoustic privacy	The proposed development should consider the visual and acoustic privacy of neighbours in the vicinity and residents by: (a) Appropriate site planning, the location and design of windows and balconies, the use of screening devices and landscaping, and (b) Ensuring acceptable noise levels in bedrooms of new dwellings by locating them away from driveways, parking areas and paths.	The spatial proportions and setbacks of the building is unchanged and therefore, the privacy outcomes are maintained as per the original consent.	Yes
CL35 Solar access and design for climate	The proposed development should: (a) ensure adequate daylight to the main living areas of neighbours in the vicinity and residents and adequate sunlight to substantial areas of private open space, and (b) involve site planning, dwelling design and landscaping that reduces energy use and makes the best practicable use of natural ventilation solar heating and lighting by locating the windows of living and dining areas in a northerly direction.	The spatial proportions and setbacks of the building is unchanged and therefore, the privacy outcomes are maintained as per the original consent. The additional ILU's have the same orientation of the units on levels 2 to 7 above, which were considered to receive adequate solar access.	Yes
CL 36 Stormwater	Control and minimise the disturbance and impacts of stormwater runoff and where practical include on-site detention and water re-use.	The stormwater outcomes of the original consent are maintained.	Yes
CL 37 Crime prevention	The proposed development should provide personal property security for residents and visitors and encourage crime prevention by: (a) site planning that allows observation of the approaches to a dwelling entry from inside each dwelling and general observation of public areas, driveways and streets from a dwelling that adjoins any such area, driveway or street, and (b) where shared entries are required, providing shared entries that serve a small number of dwellings that are able to be locked, and (c) providing dwellings designed to allow residents to see who approaches their dwellings without the need to open the front door.	The proposal maintains passive surveillance of the street and public domain.	Yes
CL 38 Accessibility	The proposed development should: (a) have obvious and safe pedestrian links from the site that provide access to public transport services or local facilities, and (b) provide attractive, yet safe environments for pedestrians and motorists with convenient access and parking for residents and visitors.	The proposal maintains the access outcomes of the original consent and the new ILU's are of a dimension suitable to achieve the accessibility requirements of the SEPP.	Yes
CL 39 Waste management	The proposed development should be provided with waste facilities	See waste management comments earlier in this report under the 'Referral's section'. Waste	Yes

Control	Requirement	Proposed	Compliance
	that maximise recycling by the provision of appropriate facilities.	management is resolved to Council's satisfaction.	

Part 4 - Development standards to be complied with

Clause 40 – Development standards – minimum sizes and building height

Pursuant to Clause 40(1) of SEPP HSPD a consent authority must not consent to a development application made pursuant to Chapter 3 unless the proposed development complies with the standards specified in the Clause.

The following table outlines compliance with standards specified in Clause 40 of SEPP HSPD:

Control	Required	Proposed	Compliance
Site Size	1000 sqm	7,811m ²	Yes
Site frontage	20 metres	96.085 to Skyline Place	Yes

The requirement of Clause 40 (4) which relates to Building Height is not applicable to the subject site, as the subject is not zoned for residential development.

Clause 41 Standards for hostels and self contained dwellings

Clause 41 prescribes various standards concerning accessibility and useability having regard to relevant Australian Standards. The applicant submitted a report and checklist with the original application prepared by an accredited access consultant verifying that the proposal will comply with the relevant standards. These standards were reinforced via suitable conditions of consent.

Part 5 Development on land adjoining land zoned primarily for urban purposes

This part is not applicable to the subject site.

Part 6 Development for vertical villages

This part is not applicable to the proposed development.

Part 7 Development standards that cannot be used as grounds to refuse consent

Clause 46 Inter relationship of Part with design principles in Part 3

Clause 46 states that nothing in Part 7 permits the granting of consent pursuant to the Chapter if the consent authority is satisfied that the proposed development does not demonstrate that adequate regard has been given to the principles set out in Division 2 of Part 3.

Clause 50 Standards that cannot be used to refuse development consent for self-contained dwellings

Clause 50 prescribes that consent to development for the purpose of self-contained dwellings must not be refused on the grounds of building height, density and scale, landscaped area, deep soil zones, solar access and parking, if certain numerical standards are met. It is noted that these standards do not impose any limitations on the grounds on which a consent authority may grant development consent.

The following table outlines compliance with standards specified in Clause 50 of SEPP HSPD:

Control	Required	Proposed	Compliance
Building height	8m or less (Measured vertically from ceiling of topmost floor to ground level immediately below)	Increase in height of the western building by 0.5m over original approval.	0.5m increase to the western building. This remains generally consistent with the original consent granted and is not recommended for refusal based on the 0.5m height increase under this modification.
Density and scale	0.5:1	1.94:1 - Existing approval. 1.94:1 - Modified proposal	Unchanged from original
Landscaped area	30% of the site area is to be landscaped	42% of the site area is proposed Landscape area	Yes
Deep soil zone	15% of the site area Two thirds of the deep soil zone should be located at the rear of the site. Each area forming part of the zone should have a minimum dimension of 3 metres.	The site provides 2,711m ² (or a ratio of 34.7% of the site area) as a deep soil zone	Yes
Solar access	Living rooms and private open spaces for a minimum of 70% of the dwellings of the development receive a minimum of 3 hours direct sunlight between 9am and 3pm in mid winter	92% of apartments receive at least three hours of direct sunlight	Yes
Private open space	(i) in the case of a single storey dwelling or a dwelling that is located, wholly or in part, on the ground floor of a multi-storey building, not less than 15 square metres of private open space per dwelling is provided and, of this open space, one area is not less than 3 metres wide and 3 metres long and is	The new ILU's have POS that meet the minimum requirement.	Yes

Control	Required	Proposed	Compliance
	<p>accessible from a living area located on the ground floor, and</p> <p>(ii) in the case of any other dwelling, there is a balcony with an area of not less than 10 square metres (or 6 square metres for a 1 bedroom dwelling), that is not less than 2 metres in either length or depth and that is accessible from a living area</p>		
Parking	(10 bedrooms proposed – 5 carparking spaces required)	Current consent provides 202 spaces. Not altered via this proposal	Yes
Visitor parking	None required if less than 8 dwellings	14 Visitor provided	Yes

SEPP (Transport and Infrastructure) 2021

Ausgrid

Section 2.48 of Chapter 2 requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

The proposal was referred to Ausgrid who raised no objections, subject to conditions which have been included in the recommendation of this report.

Transport for NSW (TfNSW)

Section 2.122 and Schedule 3 of this Policy requires that the following development are referred to TfNSW as Traffic Generating Development:

The original development application was referred to TfNSW as 'traffic generating development' as the proposal contained 133 units.

Purpose of Development	Size or Capacity (Site with access to any road)	Size of Capacity (Site with access to classified road or to a road that connects to classified road if access is within 90m of connection, measured along alignment of connecting road)
Apartment or residential flat building	300 or more dwellings	75 or more dwellings

The original development consisted of 133 residential apartments and proposed a new crossover onto Skyline Place which is within 90m of Warringah Road, a classified road (Arterial Road).

Under the original DA, TfNSW provided a response raising no objection to the proposed development subject to conditions.

The development was ultimately approved with 98 units through the LEC.

The modification application was referred back to TfNSW as the number of apartments increased from the approved situation, from 98 to 104.

TfNSW provided the following comment:

"TfNSW have reviewed the proposed modification and note that the proposed modifications are minor in nature and will not impact the surrounding classified road network."

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated.

In response to the requirement of the SEPP, as part of the original application the applicant submitted a site investigation report, which concludes the site can be made suitable for the proposed development subject to the implementation of a Remediation Action Plan.

The application was also referred to Council's Environmental Health Officer who raised no objection to the proposal subject to conditions. Accordingly, based on the information submitted with the original DA, the requirements of SEPP have been satisfied and the land can be made suitable for the purpose

for which the development is proposed to be carried out and the recommendations have been included as conditions of the original consent.

Warringah Local Environmental Plan 2011

Is the development permissible?	No
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	
zone objectives of the LEP?	No

Principal Development Standards

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings	No maximum building height under WLEP	<u>East Building</u> 28m RL 184.80 <u>West Building</u> 24m RL 181.20	<u>East Building</u> 28m RL 184.80 <u>West Building</u> 24.5m 181.70	N/A	Yes (Increase 500mm)

Compliance Assessment

Clause	Compliance with Requirements
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

Zone SP4 Enterprise

At the time of lodgement of the original development application, the land was zoned B7 Business Park under the WLEP 2011. Under the SEPP HSPD, the land use 'Seniors Housing' was permitted with consent within the B7 Zone given that a 'hospital' was a permitted use within the zone.

In granting consent, the Land and Environment Court was satisfied that the proposal met the minimum requirements of the SEPP HSPD and would have had regard to the zone objectives (as is required under Clause 2.3(2) WLEP 2011).

The B7 Zone objectives were as follows:

B7 Business Park

To provide a range of office and light industrial uses.

To encourage employment opportunities.

To enable other land uses that provide facilities or services to meet the day to day needs of workers in the area.

To create business park employment environments of high visual quality that relate favourably in architectural and landscape treatment to neighbouring land uses and to the natural environment.

To minimise conflict between land uses in the zone and adjoining zones and ensure the amenity of adjoining or nearby residential land uses.

Since the granting of the original consent, the land use zone has now changed to SP4 Enterprise under WLEP 2011.

The zone objectives of the SP4 Zone are as follows:

SP4 Enterprise

To provide for development and land uses that support enterprise and productivity.

To provide healthy, attractive, functional and safe business areas.

To minimise conflict between land uses in the zone and adjoining zones and ensure the amenity of adjoining or nearby residential land uses.

To create business environments of high visual quality that relate favourably in architectural and landscape treatment to neighbouring land uses and to the natural environment.

To provide a range of facilities and services, light industries, warehouses and offices.

To provide opportunities for new and emerging light industries.

To restrict retail uses to ensure sufficient land is available for industrial and light industrial uses to meet future demands.

The zone objectives are similar to the former B7 Business Park zone, in that the focus is on the range of development that would be permitted with consent under the WLEP 2011 that is primarily business or industry related. The important difference in the objectives between the former and the current zoning is the apparent deletion of the objective "*To encourage employment opportunities*". Whilst there is employment inherent in "Enterprise and Productivity", the specific role of the zone when it comes to employment generation was somewhat diminished by the updated objectives.

SEPP Housing 2021

Since the granting of the original consent, the SEPP HSPD has been repealed and replaced with the SEPP Housing 2021. Clause 79 of the SEPP Housing specifies that Seniors Housing is permitted with consent in the SP4 Zone under the Warringah LEP 2011. Similar to the SEPP HSPD, Clause 89 of SEPP Housing 2021 requires that "*the part of the ground floor of the building that fronts a street will not be used for residential purposes*".

Therefore, despite the change to the SP4 Zone, the development remains permissible with consent under SEPP Housing 2021 and maintains the minimum requirement for the ground level facing the street to not consist of residential uses (i.e. to be employment generating).

Whilst it is acknowledged that there is a reduction in the overall quantum of employment generating uses by removal of the first floor commercial space fronting Skyline Place, the modified proposal remains consistent with the requirements of the SEPP and it is considered that the refusal of the application would be inconsistent with the requirements of the former SEPP HSPD and the new SEPP Housing 2021.

Warringah Development Control Plan

Built Form Controls

Standard	Requirement	Approved	Proposed	Complies
B4 Site Coverage	Max 33.3% (2,601m ²)	35.6% 2780m ²	35.6% 2780m ²	No, but no change under Mod
B5 Side Boundary Setbacks	Nil	North - 5.6m - 9m South 5.3m - 9m	North - 5.6m - 9m South 5.3m - 9m	Yes
B7 Front Boundary Setbacks	10m	9m - 12.5m	9m - 12.5m	No, but no change under Mod
B10 Merit Assessment of Rear Setback	Merit	9m	9m	Yes
D1 Landscaped Open Space and Bushland Setting	Min 33.3% (2601m ²)	40% / 3200m ² (Approx)	40% / 3200m ² (Approx)	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
B4 Site Coverage	No	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
B10 Merit assessment of rear boundary setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B4 Site Coverage

The amount of site coverage is not changed under this modification application and the original footprint is maintained.

D3 Noise

An acoustic assessment has been provided with the modification application which deals with the acoustic amenity of the units upon the Level 1 Eastern Building. The report concludes that acceptable internal noise levels can be achieved for the Level 1 apartments facing Skyline Road, subject double glazing and acoustic seals being used on bedroom and living room windows.

Should the application be approved, the recommendations of this acoustic report will form part of the conditions.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

Section 7.12 contributions were not levied on the original development consent in error. As such, the modification application seeks to update the consent to include the development contributions applicable to the cost of works, as modified under this consent. A condition has been included requiring a monetary contribution of \$645,136.90 in accordance with the Contributions Plan.

CONCLUSION

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- All relevant and draft Environmental Planning Instruments;
- Warringah Local Environment Plan;
- Warringah Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

PLANNING CONCLUSION

This proposal seeks to modify Development Consent No. DA2021/0212 for "*Demolition works and construction of a mixed development, comprising seniors housing, commercial uses, car parking, landscaping and stratum subdivision*" and is referred to the Sydney North Planning Panel as it is a Section 4.56 Modification Application.

The concerns raised in the two (2) submissions relate to the location of the vehicular access, which is not being changed under this modification application.

The critical assessment issue in this application is the reduction in the quantum of employment generating floor space within the development by 47%. Whilst there remains a substantive concern from Council's Strategic Planning Team in relation to the loss of employment generation associated with this reduction, the proposal maintains compliance with the SEPP HSPD, which sets the policy direction for the delivery of Seniors Housing and permits this form of development in the former B7 Business Park zone (now an SP4 Zone). The minimum requirement in the SEPP is that the ground floor only consist of commercial floor area where it adjoins the street, and this requirement is complied with.

Whilst a reduction in the amount of residential floorspace proposed under this application was sought during the assessment, which was in response to the concerns raised in the peer review of the economic impact assessment and in the Strategic Planning referral comments, on balance, the overriding consideration was the fact that the development is retaining the commercial floorspace at the ground floor level, which is entirely consistent with the requirements of the prevailing SEPP Housing. Thus, if the development application were to be lodged today, the proposal is compliant with the current planning controls.

The overall form, setbacks and appearance of the development remain unchanged via this modification application, and the minor 0.5m height increase is not considered to result in any unreasonable impacts on surrounding properties or fundamentally change the character of the development.

Furthermore, the inclusion of the S7.12 Contributions condition, which was omitted from the original Court consent, is consistent with protecting and maintaining the public interest.

On balance, it is recommended that the SNPP approve the modification application, subject to the new and modified conditions at the end of this report.

REASON FOR DETERMINATION

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Sydney North Planning Panel as the consent authority grant approval to Modification Application No. Mod2023/0617 for Modification of Development Consent DA2021/0212 granted for demolition works and construction of a mixed development, comprising seniors housing, commercial uses, carparking, landscaping and stratum subdivision. on land at Lot 11 DP 1258355,5 Skyline Place, FRENCHS FOREST subject to conditions outlined in Attachment 1.

ATTACHMENT 1

Modification Summary

The development consent is modified as follows:

MODIFICATION SUMMARY TABLE

Application Number	Determination Date	Modification description
PAN #387614 MOD2023/0617	The date of this notice of determination	<ul style="list-style-type: none"> • Relocate the communal area from the Ground Floor of the western building to the Ground Floor of the central building; • Delete commercial uses at Level 1 of the eastern building and replace with 8 ILUs (resulting in overall increase of 6 ILU's, as apartment reconfiguration is proposed on other levels); • Revise design of pool and recreation facilities on Level 2; • Revise landscape design; • Minor changes to floor levels at each level to ensure floor to floor heights comply with the National Construction Code 2023 (NCC 2023) resulting in an increase in height to the western building of 0.5m; • Minor changes to layout of Independent Living Units and change to unit mix. • Minor changes to basement levels, including minor changes to floor levels, location of mechanical plant rooms, the waste collection and storage areas and deletion of garbage lift; • Relocate lift shaft in the eastern building to improve entrance and circulation; and • Reallocation of a minor area of communal space at Level 7 to apartment floor area in the eastern tower. <p>Add Condition No.1A - Modification of Consent - Approved Plans and supporting documentation Amend Condition No 2 Compliance with Other Department, Authority or Service Requirements Amend Condition 6 Employment Generating Uses Add Condition 9A Northern Beaches Section 7.12 Development Contributions Plan 2022 Amend Condition 10 Amended Landscape Plan Amend Condition 11 Amended Arboricultural Impact Appraisal and Method Statement Amend Condition 34 Project Arborist Amend Condition 58 Required Tree Planting Amend Condition 100 Presentation of Waste Bins for Collection Add Condition 105 Deliveries, waste and recycling collection hours</p>

Modified conditions

A. Add Condition No.1A - Modification of Consent - Approved Plans and supporting documentation, to read as follows:

Development must be carried out in accordance with the following approved plans (stamped by Council) and supporting documentation, except where the conditions of this consent expressly require otherwise.

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
DA000	G	Cover Page	PA Studio	31/10/2023
DA201	G	Lower Basement Carpark	PA Studio	31/10/2023
DA202	I	Basement Carpark	PA Studio	31/05/2024
DA203	I	Ground Floor Plan	PA Studio	31/05/2024
DA204	G	Level 1 Floor Plan	PA Studio	31/10/2023
DA205	G	Level 2 Floor Plan	PA Studio	31/10/2023
DA206	G	Level 3 Floor Plan	PA Studio	31/10/2023
DA207	G	Level 4 Floor Plan	PA Studio	31/10/2023
DA208	G	Level 5 Floor Plan	PA Studio	31/10/2023
DA209	G	Level 6 Floor Plan	PA Studio	31/10/2023
DA210	G	Level 7 Floor Plan	PA Studio	31/10/2023

DA2111	G	Roof Plan	PA Studio	31/10/2023
DA301	G	Sections S1 and S2	PA Studio	31/10/2023
DA302	G	Sections S3 and S4	PA Studio	31/10/2023
DA303	G	Sections S5	PA Studio	31/10/2023
DA401	G	East Elevation	PA Studio	31/10/2023
DA402	G	North Elevation	PA Studio	31/10/2023
DA403	G	West Elevation	PA Studio	31/10/2023
DA404	G	South Elevation	PA Studio	31/10/2023
DA218	G	Draft Stratum Subdivision	PA Studio	31/10/2023
2046-01	1	Title sheet: Drawing Register, General Notes & Extent of Works Plan	Paddock Studio	08/11/2023
2046-02	1	Design Statement, Design Principles, Location Plan	Paddock Studio	08/11/2023
2026-04	1	Overall Site Plan	Paddock Studio	08/11/2023
2026-06	1	Landscape S.455 Plan 1 of 2 (Ground floor)	Paddock Studio	08/11/2023
2026-07	1	Landscape S.455 Plan 2 of 2 (Roof terrace & green roof)	Paddock Studio	08/11/2023
2026-08	1	Elevation A, Elevation B	Paddock Studio	08/11/2023
2026-09	1	Sectional Elevation C, NSW RFS Asset Protection Zone Requirements	Paddock Studio	08/11/2023
2026-10	1	Landscape Area Plan, Deep Soil Plan	Paddock Studio	08/11/2023
2026-11	1	Planting S.455 Plan 1 of 2 Ground floor building surrounds	Paddock Studio	08/11/2023
2026-12	1	Planting S.455 Plan 2 of 2 Buffer zones	Paddock Studio	08/11/2023
2026-13	1	Plant Schedule 1 of 2 Ground floor Building Surrounds, Green Roof & Roof Terrace	Paddock Studio	08/11/2023
2026-14	1	Plant Schedule 2 of 2 Buffer zones	Paddock Studio	08/11/2023
2026-15	1	Existing Tree Canopy Cover Diagram Proposed Tree Canopy Cover Diagram	Paddock Studio	08/11/2023

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Bushfire Letter Ref210979C	-	Bushfire Code and Bushfire Hazard Solutions	23/11/2023
BCA Report Ref D2023-054	R00	Technical Inner Sight	5/12/2023
Access Report Ref 21026 - R1.3	R1.3	Code Performance	6/12/2023
BASIX Certificate No 117769M_09	09	Aspire Sustainability Consulting Pty Ltd	7/12/2023
Arboricultural Impact Appraisal and Method Statement	A	Naturally Trees	5/05/2024
Acoustic Addendum Report	0	GHD Pty Ltd	23/02/2024

In the event of any inconsistency between the approved plans, reports and documentation, the approved plans prevail.

In the event of any inconsistency with the approved plans and a condition of this consent, the condition prevails.

Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

B. Amend Condition No 2 Compliance with Other Department, Authority or Service Requirements to read as follows:

The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service	EDMS Reference
Ausgrid	Ausgrid Referral Response
Rural Fire Service	RFS Referral Response
Transport for NSW	Response TfNSW Referral (SYD21/00346/01)

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website www.northernbeaches.nsw.gov.au)

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other departments, authorities or bodies.

C. Amend Condition No 6 Employment Generating Uses to read as follows:

This consent does not authorize the first use of the floor areas marked "Employment Generating Uses" on the Approved Plans. Separate development consent is required for the use of these area.

A minimum gross floor area of 1079m² is to be retained on the site for "Employment Generating Uses". The areas marked "Employment Generating Uses"

must not be used for residential purposes, or communal purposes associated with the seniors housing development.

Reason: To ensure the minimum requirements of the SEPP HSPD are achieved.

D. Add Condition 9A Northern Beaches Section 7.12 Development Contributions Plan 2022 as follows:

A monetary contribution of \$671,107.90 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$671,107.90. This development cost does not include costs for the 14 approved dwellings for community housing being managed by a community housing provider in perpetuity.

The total amount payable will be adjusted at the time the payment is made, in accordance with the provisions of the Northern Beaches Section 7.12 Contributions Plan (as amended).

Details demonstrating compliance, by way of written receipts issued by Council, are to be submitted to the Certifier prior to issue of any Construction Certificate.

A copy of the Contributions Plan is available for inspection at 725 Pittwater Road, Dee Why or on Council's website at Northern Beaches Council - Development Contributions.

Reason: To provide for contributions in accordance with the Contribution Plan to fund the provision of new or augmented local infrastructure and services.

E. Amend Condition 10 Amended Landscape Plan as follows:

An Amended Landscape Plan shall be submitted for the approval of Council's Landscape Officer to include the following details:

i) The retention of Trees 71, 72, 73, 100, 101, 102, 103, 104, 105 and 106 identified in the Arboricultural Impact Appraisal and Method Statement dated 5 March 2024 prepared by Naturally Trees.

Written correspondence from Council's Landscape Officer confirming the suitability of the Amended Landscape Plan is to be provided to the certifying authority prior to the issue of the Construction Certificate.

Reason: To ensure the safe retention of existing canopy trees and for a suitable landscape treatment along the Skyline Place frontage.

F. Amend Condition 11 Amended Arboricultural Impact Appraisal and Method Statement to read as follows:

An amended Arborist Report shall be submitted for approval of Council's Landscape Officer to specifically address:

i) Any necessary design measures to ensure the safe retention of Trees 71, 72, 73, 100, 101, 102, 103, 104, 105 and 106.

Written correspondence from Council's Landscape Officer confirming the suitability of the Amended Arborist Report is to be provided to the certifying authority prior to the issue of the Construction Certificate.

Reason: To ensure the safe retention of existing canopy trees and for a suitable landscape treatment along the Skyline Place frontage.

G. Amend Condition 34 Project Arborist to read as follows:

A Project Arborist, with minimum AQF Level 5 in arboriculture, shall be engaged to provide tree protection measures in accordance with the recommendations of the Arboricultural Impact Appraisal and Method Statement dated 5 March 2024 prepared by Naturally Trees and Australian Standard 4970-2009 Protection of Trees on Development Sites. The Project Arborist is to specify and oversee all tree protection measures such as tree protection fencing, trunk and branch protection and ground protection.

The Project Arborist is to supervise all demolition, excavation and construction works near all trees to be retained including construction methods near the existing trees to protect tree roots, trunks, branches and canopy. Where required, manual excavation is to occur ensuring no tree root at or >25mm (Ø) is damaged by works unless approved by the Project Arborist.

Existing ground levels shall be maintained within the tree protection zone of trees to be retained unless authorised by the Project Arborist.

All tree protection measures specified must:

- a) be in place before work commences on the site, and
- b) be maintained in good condition during the construction period, and
- c) remain in place for the duration of the construction works.

The Project Arborist shall provide certification to the Certifying Authority that all recommendations listed for the protection of the existing tree(s) have been carried out satisfactorily to ensure no impact to the health of the tree(s). Photographic documentation of the condition of all trees to be retained shall be recorded including at commencement, during the works and at completion.

Note:

- i) A separate permit or development consent may be required if the branches or roots of a protected tree on the site or on an adjoining site are required to be pruned or removed.
- ii) Any potential impact to trees as assessed by the Project Arborist will require redesign of any approved component to ensure existing trees upon the subject site and adjoining properties are preserved and shall be the subject of a modification application where applicable.

Reason: Tree protection.

I. Amend Condition 58 Required Tree Planting to read as follows:

Trees shall be planted in accordance with the following:

- i) All trees as indicated on Landscape Plans Dwg No.s 2046-011 Issue 1, 2046-012 Issue 1, 2046-013 Issue 1, and 2046-014 Issue 1 dated 08/11/23 prepared by Paddock Studio, and as amended by the Amended Landscape Plan required by Condition 10 of this consent.
- ii) Where the property is certified Bush Fire Prone Land, any new planting may be managed in accordance with Planning for Bushfire Protection 2019.
- iii) Existing native trees take priority over new tree planting where Asset Protection Zones restrict mature tree canopy cover.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate.

Reason: To maintain environmental amenity.

J. Amend Condition 100 Presentation of Waste Bins for Collection to read as follows:

The storage and collection of waste bins shall be managed in the following way:

- a) Bins are to be available for collection from the street level holding bay between 6.00am and 6.00pm on the scheduled days of collection.
- b) Bins are to be transferred from the basement bin rooms to the street level holding bay no earlier than 4.00pm on the day prior to collection.
- c) Bins are to be transferred from the street level holding bay to the basement bin rooms as soon as possible after collection but no later the evening of the day of collection.
- d) Bins must be stacked in the street level holding bay in a manner that allows collection staff unimpeded access to each material type separately.
- e) The street bin level holding bay is only to be used for the presentation of bins and bulky goods for collection.
- f) The street bin level holding bay is not to be used for the storage of goods and other materials at any time.
- g) The waste loading bay is only to be used for the purpose of presentation and collection of bins and bulky goods.
- h) The waste loading bay is not to be used for the storage of goods and other materials at any time.
- i) The waste loading bay is not to be used for the parking of vehicles at any time.

Reason: To ensure bins are available for collection staff at the appropriate time. To ensure bins do not remain in the street level holding bay for an excessive period of time. To ensure waste bin collection is not obstructed.

K. Add Condition 105 Deliveries, waste and recycling collection hours to read as follows:

Deliveries, waste and recycling collection from the site is to be carried out between 6am and 10pm only to minimise noise.

Reason: To minimise noise to residential receivers.