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## **Section 8.2 Review of Determination**

DA2021/0212

5 Skyline Place, Frenchs Forest  
Seniors Living and Mixed Use Development



Prepared for Platino Properties Pty Ltd  
Submitted to Northern Beaches Council

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Cover image: indicative photomontage of proposal viewed from north-western corner of site (Source: PA Studio Architects)

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## Table of Contents

<b>1</b>	<b>Introduction .....</b>	<b>5</b>
<b>2</b>	<b>Background .....</b>	<b>7</b>
2.1.1	DA 2018/0095 .....	7
2.1.2	DA 2021/0212 .....	7
2.1.3	Pre-8.2 lodgement meeting with Council's Design and Sustainability Advisory Panel 7	
<b>3</b>	<b>Amended Scheme .....</b>	<b>10</b>
<b>4</b>	<b>Strategic Planning Context .....</b>	<b>14</b>
4.1.1	Strategic Planning Justification.....	14
4.1.2	Status of the draft Northern Beaches Hospital Precinct Structure Plan .....	16
4.1.3	Economic Benefit.....	16
<b>5</b>	<b>Response to reasons for refusal of DA-2021/0212.....</b>	<b>18</b>
<b>6</b>	<b>Conclusion .....</b>	<b>30</b>

## Figures

Figure 1: Revised blocking scheme showing original scheme outlined in red (Source: PA Studio Architects) .....	10
Figure 2: Proposed scale of proposed scheme compared to original scheme (Source: PA Studio Architects) .....	13
Figure 3: Comparison of building heights within the Frenchs Forest B7 zone with proposed building heights shown green (Source: Norton Survey Partners).....	16
Figure 4: Cross-section of development along Frenchs Forest Road looking south (Source: PA Studio Architects) .....	19
Figure 5: Site context showing existing and approved building heights within the vicinity of the subject site (Source: Norton Survey Partners) .....	20
Figure 6: Indicative photomontage showing previous and current proposal as viewed from residential area to north with approved Stage 1 shown in pink and proposal shown in orange (Source: PA Studio Architects).....	21
Figure 7: Cross section of Skyline Place elevation showing screening provided by canopy trees (Source: Paddock Studio).....	22
Figure 8: Varying setback provided to Skyline Place (Source: PA Studio Architects) .....	25
Figure 9: Indicative photomontage showing interface and landscaped setback between the proposal and Skyline Place (Source: PA Studio Architects).....	27

## Tables

Table 1: Response to Council's DSAP comments .....	9
Table 2: Comparison of original and proposed scheme .....	12
Table 3: Summary of surrounding building heights in the B7 zone .....	15
Table 4: Response to objectives of Section B4 Site Coverage of the Warringah DCP .....	25
Table 5: Response to objectives of Section B7 Front Boundary Setback of the Warringah DCP .....	26
Table 6: Response to objectives of Section D9 Building Bulk of the Warringah DCP .....	28

## Appendices

Appendix 1	Architectural Plans
Appendix 2	Design Report
Appendix 3	Landscape Plans
Appendix 4	Sustainability Report
Appendix 5	Acoustic Report
Appendix 5A	Response to Previous Acoustic Issues

Appendix 6	Bushfire Review
Appendix 7	BCA Report
Appendix 8	BASIX Certificate
Appendix 9	NATHERs
Appendix 10	Access Report
Appendix 11	Economic Report
Appendix 12	Arborist Report
Appendix 13	ADG Peer Review
Appendix 14	Legal Advice
Appendix 15	Seniors Housing Demand Letter



## 1 Introduction

This report has been prepared by *KEYLAN Consulting Pty Ltd* (Keylan) on behalf of *Platino Properties* (the Applicant) and is submitted to Northern Beaches Council (Council) pursuant to Section 8.2 of the *Environmental Planning and Assessment Act 1979* (EP&A Act). The report supports a request to review the determination of Development Application (DA) 2021/0212 for seniors living and mixed use development at 5 Skyline Place, Frenchs Forest.

On 18 August 2021, the Sydney North Planning Panel (the Panel) determined the DA by refusing consent. The Notice of Determination lists 5 reasons for refusal. However, the Panel's Statement of Reasons importantly states:

*"...the Panel notes that as the proposed use is permissible, seniors housing, in some form, can occur on the site, subject to acceptable impacts."*

The Applicant has carefully considered the Panel's report and reasons for refusal and developed an amended scheme (in accordance with section 8.3(3) of the EP&A Act) which is substantially the same development, but which addresses the reasons for refusal through a revised built form arrangement, including reduced height and scale. The proposed development also retains affordable and disabled housing, a high quality landscape setting and the provision of above standard sustainability initiatives for the development.

The proposed amendments to the DA scheme include:

- reduced maximum building height from 12 storeys (max RL 196.70m) to 7/8 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 941m<sup>2</sup> to 973m<sup>2</sup>
- increase in the proportion of common area per unit from 9m<sup>2</sup> to 11m<sup>2</sup>
- numerous minor architectural amendments to refine the facades and reduce the apparent bulk and scale
- 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

In summary, it is considered that the reasons for refusal are adequately addressed as the amended proposal:

- is consistent with State level strategic planning objectives relating to the provision of seniors housing and the growth and evolution of the Frenchs Forest Health and Education Precinct
- entails design amendments which directly respond to the issues raised in the Panel's determination relating to the height, bulk and scale of the proposed development
- is entirely consistent with the aims and requirements of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* (Seniors SEPP), which prevails over the provisions of *Warringah Local Environmental Plan 2011* (WLEP 2011)

- demonstrates an appropriate response to the principles of *State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development* (SEPP 65) and which meets or exceeds all relevant requirements of the Apartment Design Guide
- substantially complies with the relevant provisions of the *Warringah Development Control Plan 2011* (WDCP)
- is in the public interest given the delivery of sustainable, modern, and integrated seniors housing that will address the identified shortfall for this type of housing in the Northern Beaches LGA, improved access to modern disability and affordable housing, new local employment opportunities, industry diversification, and compatibility with the Frenchs Forest Health and Education Precinct

We therefore request that the Panel review its determination in light of the amendments made and in accordance with section 8.2 of the EP&A Act. We consider that the amended development scheme appropriately addresses the issues raised by the panel and warrants approval.

## 2 Background

### 2.1.1 DA 2018/0095

DA-2021/0212 was lodged following approval of DA 2018/0995 for a seniors living and mixed use development on the adjacent site (Lot 2) at 5 Skyline Place. Specifically, on 18 June 2019, the Sydney North Planning approved the DA following a section 8.2 review request (REV 2019/0014) for the following works:

- subdivision of land into 2 allotments;
- demolition of existing structures; and
- construction of a mixed use development containing 55 Seniors Housing units, and commercial space, with a maximum height of RL 176.35/24.6m and an FSR of 1.90:1

This development is currently under construction.

### 2.1.2 DA 2021/0212

DA 2021/0212 was lodged with Northern Beaches Council on 17 March 2021.

The Sydney North Planning Panel determined the DA by way of refusal on 18 August 2021.

### 2.1.3 Pre-8.2 lodgement meeting with Council's Design and Sustainability Advisory Panel

At Council's suggestion, the Applicant met with Council's Design Sustainability and Advisory Panel (DSAP) on 28 October 2021. The purpose of this meeting was to present a draft amended scheme responding to the reasons for refusal, to receive any feedback from DSAP prior to finalisation and lodgement of the application to review the Panel's decision under Section 8.2 of the Act and to address issues raised accordingly. The DSAP considered the revised scheme against the Panel's reasons for refusal and provided comments on each. A number of amendments have been made to the proposed development to address issues raised by the DSAP. A summary of DSAP's comments and how the Applicant has responded is provided in the table below.

DSAP comment	Applicant response
<i>The most significant changes are to the height of the building and a significant improvement in the landscape design.</i>	The removal of the tower forms results in a significant reduction in height. The façade has also been redesigned through additional brick detailing and greater articulation to create a finer grained effect and reduce the building's perceived bulk. In addition, improvements to the landscape design significantly reduces the visual impact of the proposal such that there is negligible impact on the streetscape and broader locality.
<i>...there are also desirable elements that have been removed such as the roof top common area.</i>	The Applicant has reinstated the roof top common areas as shown on the accompanying Architectural Plans at Appendix 1.
<b>1. State Environmental Planning Policy (Housing for seniors or People with a Disability) 2004 (SEPP HSPD 2004)</b> The changes to the design do not outweigh the identified incompatibility with the context.	As demonstrated in Section 4.1.1, the proposal is clearly compatible with its context in terms of height, bulk and scale. Given its permissibility under the SEPP, its immediate proximity to an approved multi-storey seniors living development, and its location within a

DSAP comment	Applicant response
	health and education precinct that is undergoing substantial transition in terms of use and built form, it is considered the revised proposal is demonstrably compatible with its context.
<p><b>2. State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development (SEPP 65) and Associated Apartment Design Guide (ADG)</b></p> <p>The changes to the design do not outweigh the identified incompatibility with the context or adequately meet the ADG requirements as detailed p27 onward. There have been no significant changes to the design of layout of the units.</p>	<p>A revised Urban Design Report, including Design Verification Statement and assessment against the ADG is included at Appendix 2. The assessment against the ADG principles and recommendations demonstrates the proposal performs exceptionally well against all quantitative measures.</p> <p>A Peer Reviewed ADG assessment has also been undertaken by experts in seniors housing design at PTW Architects, demonstrating that the development as proposed meets all relevant requirements under the ADG and exceeds baseline recommendations (Appendix 13).</p>
<p><b>3. Warringah Local Environmental Plan (WLEP 2011)</b></p> <p>The changes to the design do not outweigh the identified incompatibility with the objectives of the zone.</p>	<p>As has been consistently reiterated throughout the assessment of the original DA, the provisions of the Seniors SEPP prevail over the WLEP 2011. This is further detailed in Section 5 of this report.</p>
<p><b>4. Non-compliance with Warringah DCP 2011 (WDCP 2011)</b></p> <p>The changes to the design do not outweigh the identified inconsistency with the identified objectives of DCP, including setbacks, bulk (even with the reduction in height) and site coverage which remains unchanged.</p>	<p>While the proposal results in very minor non-compliances with two DCP provisions, the proposal appropriately addresses the objectives of the relevant provisions. This is further addressed in detail in Section 5 of this report.</p>
<p><b>5. The proposed Land use (Seniors Housing) is inconsistent with Council's Northern Beaches Hospital Precinct Structure Plan</b></p> <p>The changes to the design do not outweigh the identified inconsistency with the Northern Beaches Hospital Precinct Structure Plan.</p>	<p>The draft NBHPSP cannot be used to set aside the provisions of the Seniors SEPP. This has been confirmed by the Land and Environment Court (ACN 603 361 940 Pty Ltd v Northern Beaches Council [2019] NSWLEC 1012).</p> <p>Section 4.1.2 of this report explains the status of the draft Northern Beaches Hospital Precinct Structure Plan (NBHPSP) and why it is consequently an unreasonable reason for refusal.</p>
<p><b>6. Public Interest</b></p> <p>The changes to the design do not outweigh the factors that have determined that the development is not in the public interest.</p>	<p>As noted in Section 5, this reason was largely based on the Panel's view of the visual impact of the original scheme. However, the amendments now made to reduce the height result in the proposal not being at all visible from low density residential areas to the north of the site. Other design refinements made following the meeting with the DSAP include:</p>



DSAP comment	Applicant response
	<ul style="list-style-type: none"> <li>• Facade has been redesigned to create a more fine grained effect to harmonise with the adjacent approved development.</li> <li>• Inclusion of a green roof on the central building which enhances the outlook from adjacent apartment and solar panels to heat the pool.</li> <li>• New awning to provides additional protection for pedestrians and separates residential uses from entry pathway</li> </ul> <p>The proposal is therefore entirely in the public interest given its minimal visual impact, contribution to providing floorspace for local businesses and a large, publicly accessible landscaped courtyard including children’s play equipment, active recreation hubs, shade structure shelters and associated seating.</p> <p>The proposal will also facilitate the delivery of sustainable, modern, and integrated seniors housing that will address the identified shortfall for this type of housing in the Northern Beaches LGA, improve access to modern disability and affordable housing, and provide new local employment opportunities and industry diversification.</p>

Table 1: Response to Council's DSAP comments

### 3 Amended Scheme

The proposed amended scheme responds to the Panel's reasons for refusal and issues raised in Council's assessment. In summary:

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

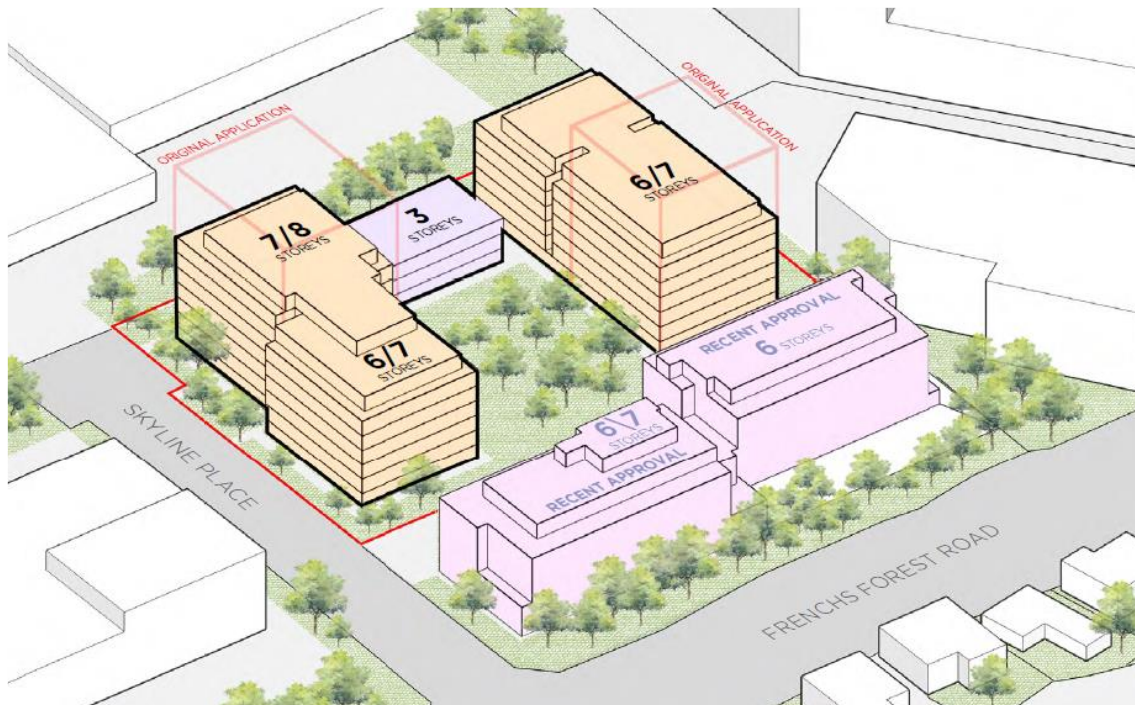


Figure 1: Revised blocking scheme showing original scheme outlined in red (Source: PA Studio Architects)

Revised Architectural Plans are provided at Appendix 1.

A comparison of the original and revised scheme is outlined in the table below.

Aspect	Original Scheme	Amended Scheme
Building form	Part 11/part 12 storey towers located in opposing diagonal corners of the site with a prevailing 6 storey datum across the site	Provision of a generally 6 storey datum across the site, with an additional 1 and 2 storeys above in opposing corners of the site, resulting in a part 7/part 8 storey built form
Height	RL 193.6 (39m) Maximum 12 storeys	RL 184.3 (26.8m) Maximum 8 storeys  Floor to floor height of ground level for the Western Tower is now 4m to assist in reducing height.
Total GFA	19,200m <sup>2</sup>	15,048m <sup>2</sup>
Site coverage	3,124.4m <sup>2</sup> (40%)	2,788m <sup>2</sup> (35.6%)
FSR	2.42:1	1.93:1
Residential use	<ul style="list-style-type: none"> <li>• 111 seniors living apartments</li> <li>• 12 affordable housing units</li> <li>• 10 disability housing units</li> </ul>	<ul style="list-style-type: none"> <li>• 93 seniors living apartments</li> <li>• 10 disability housing units</li> <li>• 5 affordable housing units</li> </ul>
Commercial use	<ul style="list-style-type: none"> <li>• 941m<sup>2</sup> of GFA</li> <li>• 6 tenancies</li> </ul>	<ul style="list-style-type: none"> <li>• 973m<sup>2</sup> of GFA</li> <li>• 6 tenancies</li> </ul>
Car parking	<ul style="list-style-type: none"> <li>• 172 spaces for residents</li> <li>• 34 spaces for visitors</li> <li>• 26 spaces for commercial uses</li> </ul>	<ul style="list-style-type: none"> <li>• 137 spaces for residents</li> <li>• 20 spaces for visitors</li> <li>• 25 spaces for commercial uses</li> </ul>
Landscaping and open space	<ul style="list-style-type: none"> <li>• 33.8% of site provided as landscaped</li> </ul>	<ul style="list-style-type: none"> <li>• 2,830m<sup>2</sup> of landscaped area (excluding community gardens)</li> <li>• 36.2% of site provided as landscaped</li> <li>• Provision of a green roof to the central building</li> </ul>
Setback to Skyline Place	7.6m – 12.5 m	7.6m – 12.5 m
Amendments to REV2019/0014	<ul style="list-style-type: none"> <li>• Minor works to the approved development on Lot 2 to enable shared access arrangements to the basement car park. Inclusion of three additional at-grade parking spaces (resulting in a total of 5 spaces) adjacent to the two-way access drive and to reconfigure the spaces from parallel to perpendicular.</li> <li>• To facilitate these proposed works on</li> </ul>	No change

Aspect	Original Scheme	Amended Scheme
	approved Lot 2, we request imposition of a condition of consent to modify REV2019/0014 to reflect these works in accordance with section 4.17(1)(c) of the EP&A Act.	

Table 2: Comparison of original and proposed scheme

The amended proposal is accompanied by:

- a revised Urban Design Report (UDR) prepared by PA Studio Architects in collaboration with Matthew Pullinger Architect. The revised report provides a detailed comparison of the original and proposed scheme including justification for the amended design. An amended Design Verification Statement (DVS) and assessment against ADG recommendations is also included in the UDR demonstrating full compliance with the ADG and above standard provisions.
- updated landscaping plans demonstrating utilisation of endemic species and provision of a dense vegetation buffer to all setbacks
- BASIX and NATHERS certification demonstrating the significant sustainability initiatives the Applicant is committed to implementing
- a Peer Reviewed ADG Assessment prepared by PTW Architects detailing the proposal's compliance with the relevant recommendations of the ADG and how it performs exceptionally well against a number of these provisions

The revised scheme is substantially the same as that proposed in DA 2021/0212 as:

- the proposal remains for the same proposed uses, i.e., a seniors living housing and mixed use development;
- the siting of the proposed development has not changed;
- the proposed design changes seek to address the issues raised by the Council and the Panel and result in a considerable reduction in the bulk and scale of the building; and
- the amendments do not result in any additional impacts or issues that were not relevant to the DA as originally submitted.





Original application



Amended proposal (S8.2 review)

Figure 2: Proposed scale of proposed scheme compared to original scheme (Source: PA Studio Architects)



## 4 Strategic Planning Context

### 4.1.1 Strategic Planning Justification

As outlined in the SEE, there is a strong strategic planning justification for the proposal. In summary, this entails:

- **The proposal is consistent with long-standing State level strategic planning objectives**, as contained in the Seniors SEPP, to facilitate the provision of seniors housing given the inflexibility of local planning controls in accommodating this form of development. In this regard, we specifically note that the aims of the Seniors SEPP include:
  - to increase the supply and diversity of residences that meet the needs of seniors or people with a disability; and
  - to set aside local planning controls that would prevent the development of housing for seniors or people with a disability that meets the development criteria and standards specified in this Policy.

Importantly, we note that in refusing consent to the DA, the Panel's Statement of Reasons specifically states that:

*"...the Panel notes that as the proposed use is permissible, seniors housing, in some form, can occur on the site, subject to acceptable impacts."*

- **The proposal will increase housing supply and diversity and provide opportunities for older people to continue living in their community**, close to family, friends, services and established health and support networks. On this point we note that the North District Plan identifies Northern Beaches as 1 of 4 LGAs in the District with the largest projected increase in the over 65 population. In this regard, the North District Plan states:

*"More diverse housing types and medium density housing, as well as the design of walkable neighbourhoods, will create opportunities for older people to continue living in their community, where being close to family, friends and established health and support networks improves people's wellbeing."*

The proposal provides for additional seniors housing on a site that is demonstrably suitable for this form of development given its proximity to the Northern Beaches Hospital, transport and other services. The Seniors Housing Demand Letter prepared by Macroplan and included at Appendix 15 addresses these matters in detail and, in summary, demonstrates that:

- *Frenchs Forest/Northern Beaches immediately requires a development that addresses the needs of the rapidly ageing population.*
- *Frenchs Forest/Northern Beach immediately requires an increase in modern senior housing product that is designed for local senior residents seeking high quality housing proximate to friends and families.*
- *The recent COVID impact is influencing housing product demand towards 'independent' living environments. COVID has also raised awareness and differentiated modern ILU product (which is bigger and more spacious) from more crowded care homes or existing old ILUs (or serviced apartment offerings).*
- *The proposed development can allow for more synchronicities and integration of services.*

- There is a shortfall of disability housing and in particular intellectual disability housing in the Northern Beaches.

- **The site is within an identified Health and Education Precinct which is undergoing significant transition.** Frenchs Forest is identified as a Health and Education Precinct in the Greater Sydney Region Plan and North District Plan. Both plans recognise the growth and evolution of Health and Education Precincts into mixed use innovation precincts, with the clustering of compatible uses which both capitalise on and strengthen the specialist health and employment functions of these precincts. This includes the transition of business parks into higher amenity and vibrant mixed-use precincts, including opportunities for residential development which supports the function of the business park.

The subject proposal is clearly consistent with this provision which recognises that business zones should not be stagnant but should be dynamic places which should evolve to cater for a greater diversity of compatible land uses. We note that the SNPP specifically recognised this transition in its determination of REV 2019/0014, as stated in its Statement of Reasons:

*“The panel notes also that the precinct is under transition, and includes the recently completed 8 storey (40.7m in Height) Northern Beaches Hospital.”*

- **Recent development consents in the Frenchs Forest B7 zone reinforce the fact that the character of the zone is continuing to evolve,** in line with market forces reflecting the recent opening of the Northern Beaches Hospital and the locality’s status as a Health and Education Precinct. A summary of the heights of surrounding developments in the Frenchs Forest B7 zone is provided in the table and figure below.

Site	Approved height	DA (if recent)
5 Skyline Place (Stage 1)	RL 176.35/24.6m	REV2019/0014
5 Frenchs Forest Road East (Parkway Hotel)	RL 187.2/26.4m	DA2015/0901
357-373 Warringah Road (Bunnings Warehouse)	RL 186.3/25m	DA2020/0717
11 Tilley Lane (Health services facility)	RL 172.76/25.6m	DA2017/0711
18 Aquatic Drive	RL 159.7/22.9m	N/A
431 Warringah Road, Part 2	RL 168.8/25.55m	N/A
431 Warringah Road, Part 1	RL 173.0/19.2m	N/A
49 Frenchs Forest Road East (Genesis Care Oncology Centre)	RL 181.7/21.95m	DA2019/1419
12 Rodborough Road	RL 178.41/23.2m	N/A

Table 3: Summary of surrounding building heights in the B7 zone

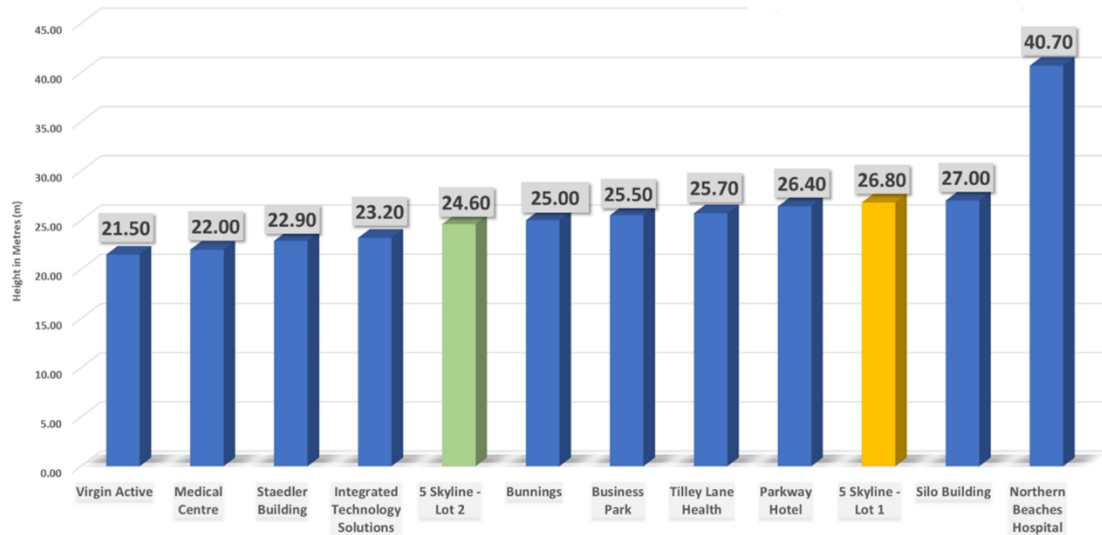


Figure 3: Comparison of building heights within the Frenchs Forest B7 zone with proposed building heights shown green (Source: Norton Survey Partners)

#### 4.1.2 Status of the draft Northern Beaches Hospital Precinct Structure Plan

We note that the Panel’s Statement of Reasons cites inconsistency with the draft Northern Beaches Hospital Precinct Structure Plan (draft Structure Plan) in its reasons for refusal.

As has been outlined by the legal advice we have previously provided to Council and the Panel:

- The draft Structure Plan is not a statutory document and therefore has no legal force and cannot be used to prevail over the provisions of the Seniors SEPP.
- This is confirmed by the judgement in ACN 603 361 940 Pty Ltd v Northern Beaches Council [2019] (NSWLEC 1012) which states that the Structure Plan cannot be used as a basis for planning decisions on current development proposals that are permissible under, and consistent with, a State level planning instrument (i.e. the Seniors SEPP and new Housing SEPP). The NBHPSP cannot be used to set aside the provisions of a SEPP, under which the proposed development is permissible.
- This issue was also considered by the SNPP in their determination of the Forest Way Shopping Centre (DA2018/924). The Panel stated in its Determination Report that “as the Structure Plan is not a planning instrument, there is no certainty that the strategies and works outlined under the plan will be enforced.”

#### 4.1.3 Economic Benefit

The revised proposal includes approximately 973m<sup>2</sup> of commercial and allied health floor space, increasing the commercial floor space originally proposed in the DA despite a large reduction in the residential floor space. The Economic Impact Assessment prepared by HillPDA submitted with DA 2021/0212 remains relevant to the proposal and outlines the economic justification and benefits of the development proposal. It demonstrates that the proposed development is appropriate, will support jobs growth and make a positive contribution to the evolution of the Frenchs Forest innovation precinct.

HillPDA have updated their previous report to reflect the changes that have now been made to the development proposal and conclude that by increasing the GFA for employment uses, the revised proposal reinforces and strengthens the economic benefits of the original development proposal, which include:

- The proposal retains the existing B7 Business Park zoning of the site and will increase the existing employment capacity of the site.
- The proposal is located in a fringe location of the business park, within the Health and Education Precinct, with an interface to existing residential areas, and will not impede the continued operation or future intensification of employment-generating uses in the broader business park.
- An increase of job opportunities on the site from 79 to 86, compared to the existing 44 employment opportunities on the site
- The space being provided on the site for commercial and health related uses is likely to attract allied health care workers and other health professionals, leading to employment growth across a range of industries including health professionals, which is entirely in line with the strategic positioning of the area as a Health and Education Precinct.
- The proposal is consistent with the evolution of Frenchs Forest to a mixed use innovation precinct, and it is also consistent with the relevant objectives of the Greater Sydney Region Plan and the North District Plan as it will broaden the range of employment opportunities within a range of land uses.

## 5 Response to reasons for refusal of DA-2021/0212

The following analysis responds to the Panel's reasons for refusal of DA 2021/0212.

### Reason for refusal:

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

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

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

### Response:

The amendments proposed to the development continue to be based on a series of detailed design principles, developed in collaboration with Matthew Pullinger Architect and outlined in the submitted Urban Design Report (UDR).

The design principles provide a clear rationale for, and have directly influenced, the proposed building forms across the site. The proposal adopts a prevailing 6 storey datum across the site, clearly relating to the scale of the Stage 1 approval on Frenchs Forest Road. Additional building height is set back from all adjoining receivers in two diagonally opposed corners of the site.

A number of design amendments have been made to the building's design to provide greater articulation and reduce any perceived bulk, including:

- provision of awnings to commercial areas to assist in additional privacy for apartments above
- provision of sunhoods to a number of apartment windows to reference the architectural language of the approved seniors housing buildings on Lot 2
- extension of balconies to provide variation in the building façade
- additional articulation to the southern elevation of the western building through the addition of balconies and windows
- clerestory windows provided to both buildings, maximising natural light and assisting in improving cross ventilation

To further assist in reducing height, bulk and scale, the floor to floor height of the ground level within the western building has reduced to 4m. This is fully compliant with the ADG and will not impede on the amenity of future residents or tenants.

The accompanying UDR demonstrates that the proposed reduction in height in comparison to the original proposal further reduces the impact of the proposed development on the



streetscape and surrounding area, as it is now not visible from the residential area to the north.

The UDR notes that the following siting strategies are maintained by the amended proposal to ensure cohesion with the streetscape and surrounding neighbourhood:

- increased setbacks to the south and west, retaining all significant mature vegetation
- integration with the approved development on Lot 2
- creation of a publicly accessible, centralised courtyard provided with a comprehensive landscaping scheme, easily sighted from Skyline Place
- primarily commercial and non-residential uses at ground level to activate the central courtyard and encourage visitors
- provision of two main built form elements, an eastern and western block form, with maximum heights of 7 and 8 storeys respectively, sited to maximise building separation, views and vistas, and minimise off-site impacts

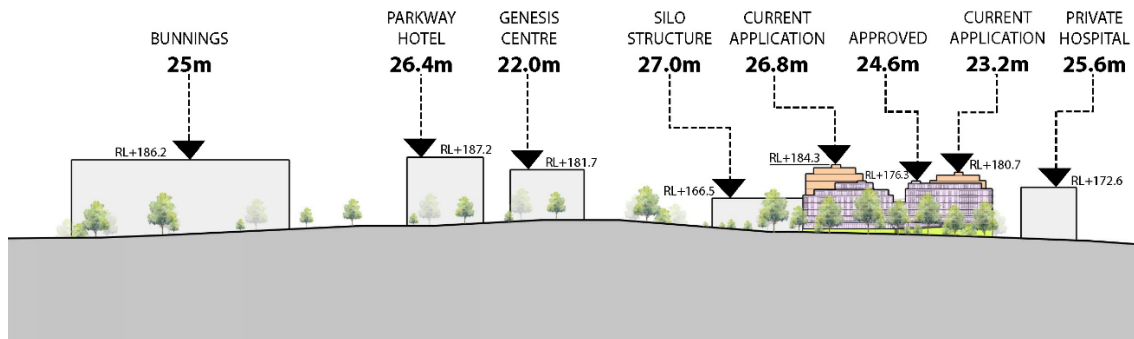
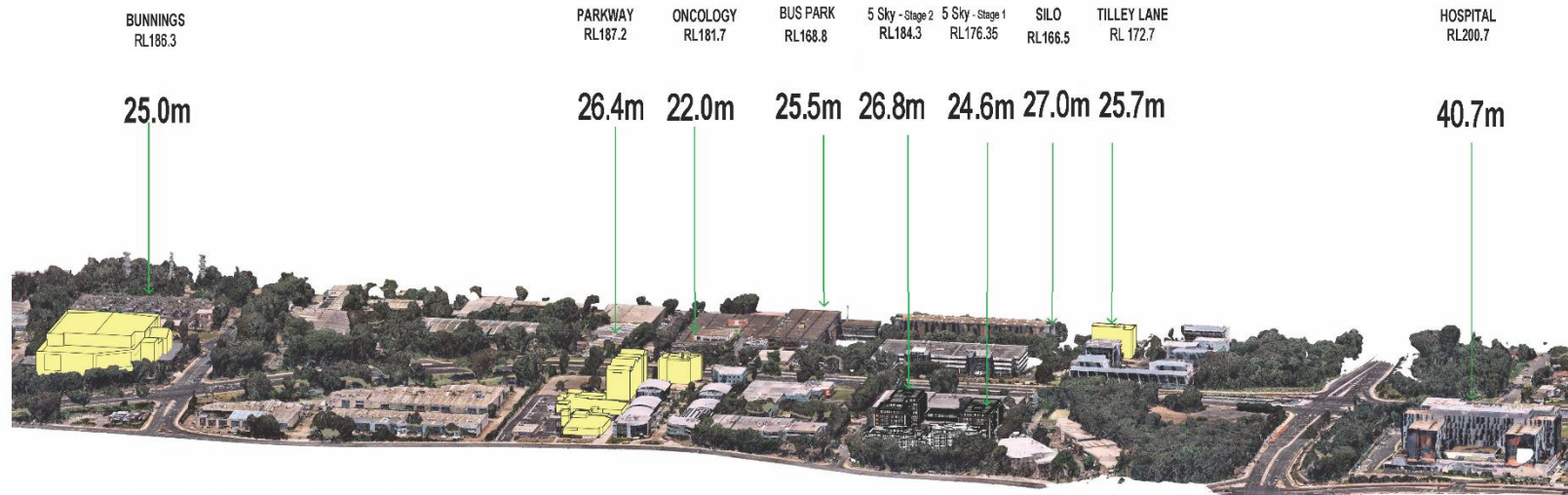


Figure 4: Cross-section of development along Frenchs Forest Road looking south (Source: PA Studio Architects)

Figure 4 shows a cross-section of development along Frenchs Forest Road facing south. It demonstrates that the revised proposal results in a building that is compatible in height, bulk and scale with multiple existing and approved buildings in the locality. Furthermore, it will have minimal visual impact to surrounding areas to the north given it is primarily screened by the adjacent approved seniors living and mixed use development. This point is also demonstrated in the analysis of surrounding heights in Table 5 and in Figure 5 below which clearly demonstrates the proposal's height and scale is not out of context with the prevailing built form character of the locality.



**3D - SITE LOCATION PLAN**

Figure 5: Site context showing existing and approved building heights within the vicinity of the subject site (Source: Norton Survey Partners)

The proposed development will be bordered by the approved seniors living and mixed use development to the immediate north (Stage 1) and will provide for a high level of amenity for all future residents. The proposal has also been designed to minimise potential land use conflicts to the south, east and west through measures such as the east-west orientation of apartments and substantial boundary setbacks (also noting that there is no immediately adjacent development to the west and east given Skyline Place and the transmission line easement respectively) and extensive perimeter landscaping.

The revised design of the proposal also removes any visual impact on surrounding receivers and the streetscape. As demonstrated in the figure below, the revised scale of the proposal is appropriate in its context and will not be visible from residential areas to the north of Frenchs Forest Road East, which addresses a principle concern of the Panel.



Original application



Amended proposal (S8.2 review)

Figure 6: Indicative photomontage showing previous and current proposal as viewed from residential area to north with approved Stage 1 shown in pink and proposal shown in orange (Source: PA Studio Architects)

The landscape scheme also assists in reducing the bulk and scale of the proposal by retaining 6 existing trees along the Skyline Place frontage along with the planting of an additional 4 endemic trees. As shown in the figure below, these trees effectively screen the building and new plantings will grow to a height similar to that of the proposed building height.





Figure 7: Cross section of Skyline Place elevation showing screening provided by canopy trees (Source: Paddock Studio)

### Reason for refusal:

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

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

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

### Response:

The proposed development is permissible with consent on the site in accordance with the Seniors SEPP (and new Housing SEPP) and will be adjacent to an approved seniors living development of a similar height.

The context of the site is defined by an urban character in transition, including recent approvals for taller buildings, and which has been recognised by the SNPP in its approval of REV 2019/0014.

The proposed reduction in height significantly reduces the scale of the development, improves its compatibility with the scale of surrounding development (particularly with regard to the built form of recent approvals within the B7 zone) and minimises any visual impact.

The proposal also includes a substantial landscaped area of 2,830m<sup>2</sup> (36.2%) which exceeds the relevant minimum requirements of all applicable EPIs including the Seniors SEPP, the ADG and the Warringah DCP.

Furthermore, the amended landscape scheme includes an additional 9 native trees and palms within the courtyard area and the retention of 12 significant native canopy trees within the site. Overall, the proposal includes 142 native and exotic trees and palms, of which 74% are native. The proposed species mix includes large canopy trees that will achieve mature heights of up to 27m and the retention of existing native canopy trees that ranges in height up to 26m.

Given these factors, and having regard to the Panel's statement that it "...notes that as the proposed use is permissible, seniors housing, in some form, can occur on the site, subject to acceptable impacts," the revised scheme will clearly have acceptable impacts and therefore warrants approval.

Reason for refusal:

**3. Warringah Local Environmental Plan (WLEP 2011)**

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

Response:

We reiterate that the original DA was lodged under the provisions of the Seniors SEPP which prevails over WLEP 2011.

As has been covered in the legal advice previously provided to Council and the Panel (refer Appendix 14), the provisions of the Seniors SEPP prevail over WLEP 2011.

This issue was considered and resolved by the SNPP in its determination (approval) of the review of determination for the adjacent seniors living and mixed use development (REV 2019/0014). In its Statement of the Reasons for this approval, the Panel specifically noted that:

*The review Panel considers that such inconsistency is to be expected given that the Warringah LEP prohibits residential development in the B7 zone yet the overriding SEPP (HPSD) permits it and, in the interests of its overall aim of encouraging seniors housing, specifies that its aims will be achieved by "setting aside local planning controls that would prevent the development of" seniors housing "that meets the development criteria and standards specified in this Policy (SEPP cl 2(2))*

On this basis, inconsistency with the LEP is not a valid reason for refusal.

It is also noted that the new Housing SEPP, which was finalised on 26 November 2021 but is yet to commence, specifically permits seniors housing in the B7 zone. It must be assumed that the SEPP was prepared with full consideration of broader strategic planning documents – indicating the State Government's intention to reinforce its policy of permitting seniors



housing in B7 zones – and which is a matter which must be considered in the assessment of the DA.

As also noted above, there is no applicable maximum building height or FSR control for the B7 Business Park zone, inclusive of the subject site, indicating the capacity of the site and surrounding area to accommodate larger-scale building forms. As shown in Figure 4 and 6, the B7 zone and broader locality is characterised by a range of larger-scale buildings and the amended scheme, entailing substantial reductions in height, is entirely consistent with this prevailing built form character.

The accompanying Urban Design Report details the proposed key amendments which relate to a significant reduction in the proposed height, and subsequent bulk and scale of the proposal. Whilst the proposed development remains substantially the same as the original application, the maximum height of the proposal has been substantially reduced from 12 stories and RL 196.70m to a maximum of 8 stories and RL 184.30m.

Reason for refusal:

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

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

Response:

B4 Site Coverage:

The building footprint has been reduced, resulting in 35.6% site coverage, a decrease from the originally proposed 40%. This results in only a marginal departure from the relevant control of 33.3%. This minor non-compliance will make no discernible difference to the landscaped character of the site.

Despite the minor exceedance of the site coverage control, the proposal continues to meet the objectives of the DCP provision, as detailed in Table 4 below.

DCP Objective	Response
<i>To provide opportunities for the provision of landscaping and the enhancement of existing native vegetation.</i>	<p>The proposal provides for a high quality landscape scheme, exceeding all provisions within the Seniors SEPP, ADG and DCP.</p> <p>It includes a landscaped area of 2,830m<sup>2</sup> (36.2%) which meets and exceeds the relevant minimum requirements of all applicable EPIs including the Seniors SEPP, the ADG and the Warringah DCP.</p> <p>It also retains existing native vegetation where possible and proposes to plant a further 68 native trees throughout the site.</p>
<i>To minimise the bulk and scale of development.</i>	<p>The bulk and scale of the development has been substantially reduced and has been determined to suit its context, reflected in surrounding examples of departures to the</p>

DCP Objective	Response
<i>To reduce the stormwater runoff, preventing soil erosion and siltation of the natural drainage network.</i>	DCP standard.  The proposed 2.3% departure to the standard will not compromise the site's drainage capabilities, demonstrated in the Civil and Stormwater Plans which accompanied the original application. It is considered that the reduction in site coverage will also improve site drainage.
<i>To limit impervious areas and encourage natural drainage into the sub-surface.</i>	As demonstrated by the landscaping scheme, the proposal provides for adequate pervious areas whilst ensuring a legible and connected pedestrian pathway network throughout the development. This is reflected in the provision of landscaped area, exceeding requirements of all legislation.

Table 4: Response to objectives of Section B4 Site Coverage of the Warringah DCP

#### B7 Front Boundary Setback:

While there is a minor non-compliance of the 10 m setback of the proposed building to Skyline Place, this is theoretical and numerical only. The proposed development provides a setback of between 7.6m and 12.5 m along this street frontage, with an 8.8m setback adjacent to the cul-de-sac. The intention is to provide for a consistent streetscape character along Skyline Place, from Frenchs Forest Road to the end of the cul-de-sac. To achieve this, the size of the setback transitions from the 6m approved on Lot 2, gradually increasing to 12.5m to the south, achieving an average setback of 9.6 metres. This varying setback to the front boundary is shown in the figure below.



Figure 8: Varying setback provided to Skyline Place (Source: PA Studio Architects)

The proposal continues to meet the objectives of the DCP provision, as detailed below. In particular, the proposed setbacks to Skyline Place are consistent with the objective, 'To maintain the visual continuity and pattern of buildings and landscape elements'.

DCP Objective	Response
<i>To create a sense of openness.</i>	As demonstrated in Figure 9, the proposed setbacks allow for an openness through dense landscaping and wide pedestrian pathways.
<i>To maintain the visual continuity and pattern of buildings and landscape elements.</i>	The adjoining seniors housing development to the north was approved with a setback of 6m to Skyline Place. The increased setback

DCP Objective	Response
	provided by Stage 2 will therefore maintain this visual continuity and landscape setting, albeit with a larger setback ranging from 7.6m to 12.5m.
<i>To protect and enhance the visual quality of streetscapes and public spaces.</i>	The dense landscaping provided to the front boundary setback will significantly enhance the streetscape compared to the current visual quality of the streetscape.
<i>To achieve reasonable view sharing.</i>	The proposed setbacks will not hinder any existing views given its siting behind the approved seniors housing to the north. It also provides an increased average setback compared to the existing development on the site.

Table 5: Response to objectives of Section B7 Front Boundary Setback of the Warringah DCP

It is also noted that Part 2, 2G Street Setbacks of the Apartment Design Guide (ADG) states the following:

*Determine street setback controls relative to the desired streetscape and building forms, for example:*

- *define a future streetscape with the front building line*
- *match existing development*
- *step back from special buildings*
- *retain significant trees*
- *in centres the street setback may need to be consistent to reinforce the street edge*
- *consider articulation zones accommodating balconies, landscaping etc. within the street setback*
- *use a setback range where the desired character is for variation within overall consistency, or where subdivision is at an angle to the street*
- *manage corner sites and secondary road frontages*

and;

*Align street setbacks with building use. For example in mixed use buildings a zero street setback is appropriate*

It is considered that the proposal directly responds to these considerations and recommendations in the ADG as it provides a consistent setback with the approved seniors housing development on the adjoining lot to the north. This results in a cohesive streetscape which provides adequate street setbacks which are densely vegetated.

The proposed setback continues to facilitate a high quality landscaped streetscape to Skyline Place, with dense landscaped setbacks utilising endemic species and ensures the provision of a large central piazza with a variety of communal uses, as shown in the figure below.



Figure 9: Indicative photomontage showing interface and landscaped setback between the proposal and Skyline Place (Source: PA Studio Architects)

#### D9 – Building Bulk:

The proposal responds to the provision of Part D9 – Building Bulk through variation in setbacks, responding to topography, utilisation of appropriate materials and finishes, dense landscaped setbacks and building orientation. The proposal has been designed to meet the objectives of Part B9 of the DCP as outlined in the table below.

DCP Objective	Response
<p><i>To encourage good design and innovative architecture to improve the urban environment.</i></p>	<p>The revised scheme demonstrates good design and innovation in architecture which has been developed based on four main design principles:</p> <ul style="list-style-type: none"> <li>• acknowledging and responding to the existing approval on the adjoining lot, creating enhanced and shared amenity;</li> <li>• retaining the existing vegetation boundary;</li> <li>• providing a perimeter block form with a generous expansive central courtyard area; and</li> <li>• providing generous setbacks and building separation.</li> </ul> <p>This has resulted in a high quality design which responds directly to the context of the site, improving the existing urban environment.</p>
<p><i>To minimise the visual impact of development</i></p>	<p>The revised design of the proposal has</p>



DCP Objective	Response
<p>when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.</p>	<p>reduced its' visual impact on surrounding receivers and the streetscape. As demonstrated in Figure 6, the revised scale of the proposal is appropriate in its context and will not be visible from residential areas to the north of Frenchs Forest Road East.</p>

Table 6: Response to objectives of Section D9 Building Bulk of the Warringah DCP

Reason for refusal:

**5. Public Interest**

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

Response:

The proposal has consistently demonstrated that it is in the public interest for the following reasons:

- provision of additional housing choice within the LGA to enable people to continue to live in their community and support networks, consistent with the objectives of the Seniors SEPP
- co-locating seniors housing with major health facilities, transport and other services
- provision of affordable housing for women over 55
- disability housing is provided in collaboration with Project Independence. This ensures the provision of high quality seniors housing is accessible to a range of people, resulting in a diverse and cohesive development.
- additional employment opportunities on the site
- improved surveillance of the private and public domain
- extensive landscaped area in the proposed development and approved development to ensure the delivery of high quality open space and amenity to residents

The proposed seniors housing is permissible with consent on the subject site pursuant to the provisions of the Seniors SEPP and the new Housing SEPP. To address the Panel’s comment in this regard, the proposed scheme has been considerably reduced in height, bulk and scale to ensure it is appropriate for the context in which it is located.

In addition, the Social Impact Assessment (SIA) submitted with the original DA confirmed the innovation proposed by the project and the numerous social benefits including:



- integrating social housing, affordable housing and seniors housing represents world-leading best practice adding to the range of housing options required to meet the changing needs of the Northern Beaches community
- potential employment, health and well-being opportunities among residents and local businesses
- the innovative design and modern technology enables aging in place and social connectedness
- the strata-title purchase model provides financial freedom and flexibility not found in the traditional retirement home model
- addressing the scarcity of sites for seniors housing within established areas in close proximity to services

Furthermore, a Seniors Housing Demand Letter prepared by Macroplan accompanies this report at Appendix 15. The letter details how the proposed development directly responds to the rapidly emerging senior demographic of the Northern Beaches. In relation to public interest, Macroplan notes the following:

- *Frenchs Forest/Northern Beaches immediately requires a development that addresses the needs of the rapidly ageing population.*
- *Frenchs Forest/Northern Beach immediately requires an increase in modern senior housing product that is designed for local senior residents seeking high quality housing proximate to friends and families.*
- *The recent COVID impact is influencing housing product demand towards 'independent' living environments. COVID has also raised awareness and differentiated modern ILU product (which is bigger and more spacious) from more crowded care homes or existing old ILUs (or serviced apartment offerings).*
- *The proposed development can allow for more synchronicities and integration of services.*
- *There is a shortfall of disability housing and in particular intellectual disability housing in the Northern Beaches.*

As detailed in Section 4.1.2, inconsistency with the draft Northern Beaches Hospital Precinct Structure Plan (NBHPSP) is not a valid reason for refusal given it is not a statutory document. Consequently, the provisions of the Seniors SEPP prevail over the draft NBHPSP.

The Panel's reference to the vision for Business Parks under the North District Plan supports the proposed development as it provides ancillary residential development to support the surrounding uses within the B7 zone. Additionally, the site is located within an identified health and education precinct, located approximately 400m from Northern Beaches Hospital.

## 6 Conclusion

This Section 8.2 Review of Determination report outlines the methodology in which the original DA scheme has been amended to address issues raised and provides a comprehensive response to the reasons for refusal of DA 2021/0212. In summary, the amended proposal:

- dramatically reduces the height, bulk and scale of the development to be consistent with the approved development on Lot 2 and other buildings within the precinct
- is consistent with State level strategic planning objectives relating to the provision of seniors housing and the growth and evolution of the Frenchs Forest Health and Education Precinct
- entails significant design amendments which directly respond to the issues raised in the Panel's determination relating to the height, bulk and scale of the proposed development
- is entirely consistent with the aims and requirements of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* (Seniors SEPP), which prevails over the provisions of *Warringah Local Environmental Plan 2011* (WLEP 2011);
- demonstrates an appropriate response to the principles of *State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development* (SEPP 65) given the site's context;
- substantially complies with the relevant provisions and the objectives of the *Warringah Development Control Plan 2011* (WDCP); and
- is in the public interest given the revisions undertaken to the design of the scheme to ensure compatibility with the surrounding locality.

On the basis of the information presented in this report, it is concluded that:

- the development subject to this section 8.2 Review is substantially the same as that previously proposed and assessed
- the issues raised by Council during the assessment of the DA and the Panel's reasons for refusal have been comprehensively addressed and resolved, including through an amended proposal which directly responds to concerns about the scale of the development and its relationship to the character of the locality
- the proposal is suitable for the site and locality after consideration of section 4.15 of the EP&A Act
- the proposal is consistent with the provisions of the Seniors SEPP, Seniors Living Policy Urban Design Guidelines for Infill Development, new Housing SEPP, SEPP 65, the ADG, WLEP 2011 (as relevant) and Warringah Development Control Plan
- the proposal does not result in any significant adverse environmental or amenity impacts

We therefore request that the Panel review its determination in light of the amendments and the information contained in this report, and in accordance with section 8.2 of the EP&A Act, change its determination by way of approval of the DA.