

Section 8.2 Review of Determination



DA 2018/0995

5 Skyline Place, Frenchs Forest

Prepared for Platino Properties

submitted to Northern Beaches Council

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1. Introduction

This report has been prepared by KEYLAN Consulting Pty Ltd on behalf of Platino Properties 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 statement supports a request to review the determination of Development Application (DA) 2018/0995 for seniors living and mixed use development at 5 Skyline Place, Frenchs Forest.

On 18 December 2018, the Sydney North Planning Panel (the Panel) determined the DA by refusing consent. The Notice of Determination lists 4 reasons for refusal, which are comprehensively addressed in this statement.

Platino Properties has carefully considered the 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 involves a revised built form arrangement, reduced height and scale, and the removal of ground level residential uses to address issues raised in the assessment and determination. The amendments include:

- reduced building height to a maximum of 6 storeys
- introduction of a stepped and articulated building form, with the development now delineated as two distinct and separate building forms sited above a single base
- increased setback from Frenchs Forest Road (western position of building)
- removal of seniors living units from the ground level
- additional landscaped areas, particularly adjacent to the northern side of the 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

- is not inconsistent with State level strategic planning objectives relating to the retention of industrial and urban services land, as the subject land is not industrial and urban services land
- entails significant design improvements which reduce the height, bulk and scale of the proposal and improves its relationship to the existing and emerging built form character of the locality
- is entirely consistent with the aims and other relevant provisions of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* (Seniors SEPP), which prevail over the B7 zone objectives of *Warringah Local Environmental 2011* (WLEP)
- is entirely consistent with the aims and other relevant provisions of *State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development* (SEPP 65) and the Apartment Design Guide (ADG)
- is consistent with the provisions of *State Environmental Planning Policy No. 55 - Remediation of Land* (SEPP 55)

We also note the following key points which we contend should be carefully considered by Council in its assessment of this review request and the Panel in its determination of the review request:

- **Status of the Northern Beaches Hospital Structure Plan**

The assessment report prepared by Northern Beaches Council dated 18 December 2018 makes multiple references to the proposed development being inconsistent with the Northern Beaches Hospital Precinct Structure Plan (NBHPSP) and this is a key reason for Council's recommendation of refusal.

We have previously obtained legal advice (Appendix 1), which was provided to the Panel, which confirms that the NBHPSP is not a statutory document, cannot operate to set aside the provisions of the Seniors SEPP and can be given no more weight than a publicly exhibited intention to continue the current zoning of the site and surrounding area.

We also draw the Panel's attention to the recent findings in *ACN 603 361 940 Pty Ltd v Northern Beaches Council [2019] NSWLEC 1012*, which relates to a DA for a boarding

house in Frenchs Forest (Appendix 2). In this judgement, the Commissioner found that the NBHPSP should not be given significant weight because the finalisation of the plan, and the controls that would give it effect to it, is not imminent or certain.

This judgement is of direct relevance to and should be a key consideration in this section 8.2 Review, as it is consistent with our legal advice and highlights the incorrect emphasis given to the NBHPSP both in Council's assessment and the Panel's determination of the DA. The NBSHP does not have any statutory force and cannot operate to set aside the provisions of the Seniors SEPP.

- **B7 Zone Objectives**

Council's assessment report and the Panel's reasons for refusal also make reference to the proposal being inconsistent with the objectives of the B7 zone under the *Warringah Local Environment Plan 2011* (WLEP 2011).

On this matter, our legal advice (Appendix 1) also confirms that this is an incorrect interpretation of the relevant statutory planning controls. The DA was lodged under the Seniors SEPP and the SEPP prevails over the LEP to the extent of any inconsistency. Clearly, the B7 zone objectives do not contemplate seniors housing because it is prohibited in that zone – but made permissible through the Seniors SEPP.

Therefore, whilst the consent authority must have regard to the B7 zone objectives, it must also recognise that the aims of the SEPP – which relate to the supply of seniors housing and which set aside local planning controls - prevail over the zone objectives. In this regard, the proposed development is entirely consistent with the aims and objectives of the Seniors SEPP.

This report concludes 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 addressed, 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

- several of the reasons for refusal demonstrate a fundamental misunderstanding of the applicable legislation, specifically that the zone objectives in WLEP 2011 are given primacy over the Seniors SEPP and the interpretation of the non-refusable development standards in the Seniors SEPP
- 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 relevant provisions of the Seniors SEPP, Seniors Living Policy Urban Design Guidelines for Infill Development, SEPP 65, the ADG, SEPP 55, WLEP 2011 (as relevant) and Warringah Development Control Plan (WDCP (Appendix 3)
- 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 made and in accordance with section 8.2 of the EP&A Act. We consider that the amended development scheme appropriately address the issues raised by the panel and is now worthy of approval.

2. Background

2.1 Proposed development

The subject DA relates to Lot 1 to 5 in SP 49558 and Lot CP SP 49558 known as 5 Skyline Place, Frenchs Forest. The proposed development, as amended for the purposes of this section 8.2 Review, comprises the following works (refer to plans at Appendix 4):

- **Subdivision** to create 2 lots:
 - Proposed Lot 1: area of 7,842m² and site of the proposed development and current review of determination (see Section 2.3 below)
 - Proposed Lot 2: area of 4,726m² and would contain the existing buildings and carp parking south of the site.
- **Demolition** of existing building (Building E) located in the northwest corner of the site
- **Construction** of a 6 storey mixed use development comprising seniors living and a mix of office/business uses and café with associated basement car parking
- **Reconfiguration** of the existing on-grade car parking on proposed Lot 1
- **Landscaping**
- **Civil and roadworks**

The proposed scheme incorporates a number of key design changes to address issues identified in the Council's assessment report and the Panel's determination, including

- reduced building height from 9 storeys (max RL 182.52) to 6 storeys (max RL 174.8)
- substantial setback in excess of 8m of the western portion of the building stronger building articulation, with the building delineated as two distinct and separate building forms sited above a united building base
- removal of seniors living units from the ground level
- additional landscaped areas, particularly adjacent to the northern side of the building.

The proposed scheme is further detailed in Section 4 of this report. As discussed in Section 4, the proposed development is substantially the same as that proposed in the SEE for DA 2018/0995 (Appendix 5).

2.2 DA chronology

Table 1 lists key dates in relation to the lodgement and determination of DA 2018/0995.

Date	Milestone
14 December 2017	Pre-lodgement meeting held with Council staff. Issued raised by staff and revisions made to the DA in response are outlined in Sections 5, 7 of the Statement of Environmental Effects DA 2018/0995
16 June 2018	DA lodged with Council.
13 September 2018	Council wrote to Platino Properties advising that Council's assessment had identified a number of issues that would not allow it to support the DA in its current form and encouraging the applicant to withdraw the application and re-submit an application that addresses these issues.
3 October 2018	Keylan, on behalf of Platino Properties, wrote to Council via email and advised that Platino was not withdrawing the DA.
6 December 2018	Council's assessment report was made publicly available on the Panel's website
14 December 2018	Keylan, on behalf of Platino Properties, submitted further information to the Panel for its consideration in its assessment of the DA 2018/0995
18 December 2018	The Panel meeting was held. The Panel determined the DA by way of refusal of consent.

Table 1: DA chronology

2.3 Strategic planning context

2.3.1 Strategic planning justification

As outlined in the SEE and our submission to the Panel dated 14 December 2018 (Appendix 6), 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.
- **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 in a site that is demonstrably suitable for this form of development given its proximity to the Northern Beaches Hospital, transport and other services.

- 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.
- **Council's assessment report incorrectly characterises the subject site and broader Frenchs Forest Business Park as "industrial and urban services land"**, which is subject to the retain and manage principle outlined in the North District Plan. However, the Frenchs Forest B7 zone is a fundamentally mixed-use zone which permits a wide range of uses (such as child care facilities, respite day care centres, hospitals, and hotel and motel accommodation) and prohibits a range of industrial uses, including the very uses that are cited in the District Plan's definition of industries and urban services, ie:
 - Urban services land is described in the Greater Sydney Region Plan as: *Industries that enable the city to develop and its businesses and residents to operate. Support the activities of local populations and businesses. Include **concrete batching, waste recycling and transfer, printing, motor vehicle repairs, construction depots, and utilities (electricity, water, gas supply)**.*
 - Under the *Warringah Local Environmental Plan 2011 (WLEP 2011)*, the **B7 zone prohibits industries, waste or resource management facilities, vehicle body repair workshops, vehicle repair stations and depots.**
- **Accordingly, the subject site is not industrial and urban services land and the retain and manage principle is not relevant to the subject land nor the subject proposal.**
- Notwithstanding, the revised proposal includes approximately 2,219 m² of office and allied health floor space, an increase of approximately 871 m² above the commercial

floor space originally proposed in the DA. This will generate in the order of 115 total jobs, or a net increase of 100 jobs compared to existing employment on the site.

- **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. These consents include a private hospital with 100 beds and multiple health care services at 11 Tilley Lane, Frenchs Forest, and redevelopment of the Parkway Hotel Site at 39 Frenchs Road East, Frenchs Forest (including demolition works, alterations and additions to a licensed premises (hotel), construction of a 100 bed hotel and retail premises).
- The above factors all clearly demonstrate that it is incorrect, and indeed contrary to State-level legislation (ie, Seniors SEPP) and strategic planning objectives (as outlined in the Greater Sydney Region Plan and the North District Plan), to continue to characterise and seek to reinforce the Frenchs Forest B7 zone as a 1980's style business park with a homogenous and static land use character that bears no physical or functional relationship to the Northern Beaches Hospital and broader Frenchs Forest Health and Education Precinct.

2.3.2 Status of the Northern Beaches Hospital Precinct Structure Plan

We also note the strong emphasis given to the NBHPSP by Council in its assessment report as a key reason in it not supporting the DA and recommendation that the Panel refuse consent. Indeed, the report's first reason for recommending refusal of consent is the proposal's inconsistency with the NBSHP.

On this point, we refer Council and the Panel to our legal advice at Appendix 1 which confirms that that the NBHPSP can be given no more weight than a draft document and which cannot be used to set aside the provisions of the Seniors SEPP.

We also highlight the importance of the judgement in *ACN 603 361 940 Pty Ltd v Northern Beaches Council [2019] NSWLEC 1012*, which was handed down on 18 January 2019, following the Panel's determination of the DA. This judgement specifically considered the issue of the weight to be given to the NBHPSP in the determination of a boarding house DA in relation to the compatibility of the proposed development with the character of the local

area. Relevantly, the judgement considered the status of the NBSHP and found that as it is a draft document, with its finalisation or the statutory controls that will give it effect not imminent or certain, the NBHPSP “should not be afforded significant weight” in the determination of the appeal.

We contend that this judgement is of direct relevance to the subject DA and this section 8.2 Review and that the NBHPSP should not be afforded the weight given in Council’s assessment and the Panel’s determination of the DA (Appendix 2).

2.3.3 Economic Benefits

The revised proposal includes approximately 2,219 m² of commercial and allied health floor space, an increase of approximately 871m² above the commercial floor space originally proposed in the DA. The Economic Impact Assessment prepared by HillPDA submitted under DA 2018/0995 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.

By almost doubling the amount of floorspace provided 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 employment capacity of the site. Specifically, the proposal provides 2,219m² of new commercial and allied health floorspace which will provide for around 115 new jobs on-site (representing 100 additional jobs over those existing on-site).
- The proposal is for seniors housing, which is operated as a business, unlike most other forms of residential accommodation. The proposal will not provide a precedent for general residential development in the Frenchs Forest business park.
- The Frenchs Forest business park has an area of approximately 59 hectares. The subject development (proposed Lot 2) has an area of 4,726 m², equating to 0.8% of the total business park area. There is significant capacity in the Frenchs Forest business park for future employment-related development and the proposed development will not

jeopardise the potential for employment uses to be intensified, should this be appropriate.

- 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.
- 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.

3. Amended Scheme

The proposed scheme responds to issues raised in Council's assessment and the Panel's determination of the DA. In summary:

- the height of the building has been reduced by 2-3 storeys;
- the apparent scale of the building has been reduced through an offset building form such that the building reads as two distinct eastern and western buildings
- the quantum of residential floor space has been reduced, including the deletion of residential uses from the ground level,
- the quantum of commercial floor space increased,
- the quantum of landscaped area has been increased.

Revised architectural plans are contained at Appendix 4.

A comparison of the original and revised schemes is outlined in the table below:

	Original Scheme	Amended Scheme
Building form	Single building with central recess	<ul style="list-style-type: none"> • Western portion of the building set back an additional eight metres (for a total setback of approximately 18 metres) from the northern site boundary. • Development is delineated as two distinct and separate building forms sited above a united building base, ie, from the third floor and above, the amended proposal comprises two separated building forms, which contributes to a significant reduction in the scale and bulk of the proposal.
Height	<ul style="list-style-type: none"> • 8-9 storeys • Max height: RL 182.52 	<ul style="list-style-type: none"> • Eastern building: 6 storeys Max height: RL 171.8 (RL to 173.20 including lift overrun) • Western building: 6 storeys

	Original Scheme	Amended Scheme
		Max height: RL174.8 to (176.20 including lift overrun)
Total GFA	10,397 m ²	8,991 m ²
FSR	2.2:1	1.84:1
Residential use	<ul style="list-style-type: none"> 78 seniors apartments (5 at ground level) 8,894 m² GFA 	<ul style="list-style-type: none"> 49 seniors apartments (0 at ground level) 6,211 m² GFA
Commercial use	1,348 m ²	2,219 m ²
Setback from Frenchs Forest Road	<ul style="list-style-type: none"> 9.2 m 	<ul style="list-style-type: none"> Eastern building - 10.3 m Western building - 17.2 m
Car parking	<ul style="list-style-type: none"> Seniors - 100 spaces Commercial uses - 34 spaces Visitors - 15 spaces 	<ul style="list-style-type: none"> Seniors - 62 spaces Commercial uses - 55 spaces Visitors - 10 spaces <p>Note: amended scheme includes reconfiguration of existing at grade parking on proposed Lot 1 due to reduced size of Lot 1 (refer to Plan DA202)</p>
Landscaping and open space	<ul style="list-style-type: none"> Extensive landscaping and vegetation retention along Frenchs Forest Road 1,417m² deep soil zone within proposed Lot 2 (1,090m² within the front setback and 327m² within the rear setback.) Community garden to south of new building 	<ul style="list-style-type: none"> Extensive landscaping and vegetation retention along Frenchs Forest Road 34.6% landscaped area and 1,234m² (25.3%) deep soil zone within proposed Lot 2 within front and side setbacks Community garden to north of western building along Frenchs Forest Road
Subdivision	<p>Subdivision of the site to create two separate torrens title lots:</p> <ul style="list-style-type: none"> Lot 1 - 7,842 m² (comprising the existing buildings south of the site) Lot 2 - 4,726 m² (comprising the proposed development) 	<p>Subdivision of the site to create two separate torrens title lots:</p> <ul style="list-style-type: none"> Lot 1 - 7,684 m² (comprising the existing buildings south of the site) Lot 2 - 4,886 m² (comprising the proposed development)

Table 2: Original scheme compared to Revised scheme

The amended proposal is accompanied by:

- A peer review of the amended design and Urban Design Statement has been prepared by Matthew Pullinger, Architect (Appendix 7). This Statement notes that the amended scheme provides significant design improvements, including:
 - reduced building height

- strong building articulation
- improved siting, building address and relationship to street level
- A Design Verification Statement, prepared in accordance with clause 50(1A) of the *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation) (Appendix 13)
- Supplementary BASIX advice, prepared by Wood and Grieve Engineers (Appendix 8), confirms that the proposal achieves the required energy efficiency targets.
- Traffic advice prepared by Varga Traffic Planning (Appendix 9), which concludes that the proposal will have an acceptable impact on the road network and the proposed on-site parking is appropriate.
- Supplementary advice on SEPP 55 prepared by Benviron Group (Appendix 10) which advises that a Detailed Site Investigation has been commenced and confirms that the proposal will be compliant with SEPP 55.

The revised scheme is substantially the same as that proposed in DA 2018/0995 as:

- the proposal remains for the same proposed uses, ie, 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 Planning Panel and result in a reduction in the bulk and scale of the building.
- The amendments do not result in any additional impacts or issues that were not relevant to the DA as originally submitted

4. Response to reasons for refusal of DA-2018/0995

The following analysis responds to the Panel's reasons for refusal of DA 2018/0995.

Reason for Refusal:

- 1. The proposed development is unsatisfactory in respect to Section 4.15 of the EPA Act, as the application is found to be inconsistent with the provisions of SEPP 55.***

Particulars:

- a) Insufficient information has been submitted to demonstrate that the land will be suitable in its current state (or will be suitable after mediation) for the purpose for which development is proposed to be carried out.***

Response:

The supplementary SEPP 55 advice confirms at Appendix 10 confirms that:

- the preliminary site investigation undertaken for the original DA confirmed that the land can be made suitable for the proposed development, subject to more detailed investigation
- clause 7(3) of SEPP 55 does not preclude consent being granted subject to a condition that more detailed site investigations be undertaken
- notwithstanding, in response to this reason for refusal, Benviron has commenced a detailed site investigation (to be provided to Council by 15 April 2019)
- Benviron anticipates that the detailed site investigation will confirm its previous advice that the site can be suitable for the proposed development

Reason for Refusal:

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

- a) The proposed development is inconsistent with the Aims of the Policy (namely Clause 2c) in relation to design and compatibility.***

Response:

We note that there is no clause 2(c) in the Seniors SEPP, however we assume this reference relates to clause 2(1)(c) which reads:

...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...*

We note the assessment report states:

...The last aim of the development must be considered in context with other provisions of the SEPP (HSPD). The aim of the policy is to encourage seniors housing to be of a good design outcome which maintains and minimises the impacts on amenity and character of the area. The proposed built form and the location of the site does not minimise the impact on the character of the area as detailed later in this report. Accordingly, the proposed development has been found to be inconsistent with the aims of this policy and this issue has been included as a reason for refusal...

As outlined in Section 3, the design of the proposed development has been amended to respond to issues raised in Council's assessment report.

The peer review and Urban Design Statement prepared by Matthew Pullinger Architect (Appendix 7) notes that the current proposal includes significant design improvements, as described below:

Reduced building height

...The amended proposal has been reduced in height (from nine) to a maximum of six storeys. Within the eastern portion of the building, this height includes a lower ground floor, which 'sleeves' the basement structure with proposed commercial uses when viewed from Frenchs Forest Road.

No blank basement structures protrude above the resultant ground level.

Rooftop access is no longer proposed, and the upper-most floor is set back from the building perimeter to further reduce its apparent scale within the Frenchs Forest Road streetscape.

The reduced building heights result in an amended proposal which is better scaled relative to the heights of existing and approved buildings in the immediate vicinity, noting in particular a recent approval for a six storey redevelopment of the Parkway Hotel east of the subject site...

Strong building articulation

...Additionally, the built form has been strongly articulated along its Frenchs Forest Road frontage, with the western portion of the proposal set back an additional eight metres (for a total setback of approximately 18 metres) from the northern site boundary.

The effect of this adjustment is to clearly interrupt the original building length of approximately 90 metres, creating two distinct and more appropriately scaled forms, each approximately 40 metres in length.

To further address concerns with the original proposal and to clearly articulate the proposed built form, the amended design is delineated as two distinct and separate building forms sited above a united building base.

From the third floor and above, the amended proposal comprises two separated building forms, which contributes to a significant reduction in the apparent scale and bulk of the proposal. This design strategy also gives clear distinction between the seniors living and non-residential uses contained within the amended design proposal.

Additionally this building break, coupled with a multiple core design, results in a significant reduction to the extent of internal corridors and a corresponding reduction in the number of seniors living units served from any one corridor...

Improved siting, building address and relationship to street level

...The set back western portion of the amended design creates additional open space for a north-facing communal garden. This communal garden space offers amenity to both the commercial tenants and seniors living residents, and also enhances the proposed landscape and building presentation to Frenchs Forest Road.

In the area of this additional set back, the amended building siting permits the retention of three existing mature eucalypts in addition to those already retained elsewhere within the site along Frenchs Forest Road. This further sets the amended building design within a strong urban landscape character.

The stepped building line increases the building separations across the main road to the lower scaled residential dwellings on Bimbadeen Crescent to the north...

...The key design metrics for solar access and natural cross ventilation established in the Apartment Design Guide have each been improved upon in the amended design and significantly exceed the minimum recommended targets in each case...

Furthermore, as outlined in the Design Verification Statement at Appendix 13, the proposal satisfies the principles of SEPP 65. In particular, the proposal:

- has an overall building height of a maximum of 6 storeys (a reduction in height by 2-3 storeys)
- has been reduced in density
- is consistent with the height of recently approved buildings in the vicinity, namely on the site of the Parkway Hotel and at 11 Tilley Lane
- includes significant articulation through the offsetting of the floorplate at the lower levels and the separation of the built form into two separate building at the upper levels
- retains significant landscaping along the northern edge of the site as a result of the increased setback to Frenchs Forest Road
- achieves energy and water saving targets required by BASIX
- exceeds the solar access requirements of the ADG

These design amendments provide a significantly improved design outcome and strengthen the proposal's consistency with clause 2(1)(c) of the Seniors SEPP. Please also refer to the response to Reasons of Refusal discussed below.

Reason for Refusal:

- b) The proposal development has not satisfied the requirement of Clause 19 of SEPP (HSPD) and therefore consent cannot be granted to the development in its current form.*

Response:

The amended scheme does not include seniors living units on the ground level. Commercial uses (other than the entrance lobby for the apartments above) are proposed on the ground floor as demonstrated in the architectural package in Appendix 4. Accordingly, the proposal fully satisfies the requirements of clause 19.

Reason for Refusal:

- c) The scale, bulk and height of proposal is not compatible with the existing and desired future character of the area and does not contribute to the quality and identity of the area as required by Clause 33 of SEPP (HSPD). Whilst there is no FSR or height standard under the SEPP (HSPD), a FSR of 2.2:1 (0.5:1 being a non-refusable provision) and a height of 26.52 metres (8 metres to the underside of the top most ceiling being the non-refusable provision) is significantly greater than that anticipated by the SEPP (HSPD) for such uses and greater than the likely form of development anticipated in the B7 zone where residential flat buildings are not permitted.*

Response:

As outlined in the SEE and the supplementary information provided to the Panel on 14 December 2018 (Appendix 6), the site is demonstrably suitable for seniors housing given its location on the edge of the B7 Business Park and in close proximity to a range of amenities and services including the new Northern Beaches Hospital. The site's location provides for an appropriate transition between low density residential uses to the north and the larger-scale, mixed use development in the B7 zone.

In this regard, we again reiterate that there is no applicable height or FSR control for the B7 zone, indicating that the planning controls for the site envisage a larger-scale built form character for the zone, including sites in close proximity to existing residential areas.

The prevailing built form character of the B7 zone is of large-scale, large-footprint multi-level buildings. Furthermore, there are evolving, increased building heights in the locality, exemplified by:

- the constructed Northern Beaches Hospital (40 metres) and identified higher density residential sites to the east of the new hospital (with heights in the NBHPSP of 27.5 metres and 34 metres).
- recent development approvals in the B7 zone, including:
 - the private hospital at 11 Tilley Lane (which has a maximum RL of 172.675 -or 25.8 metres)
 - the Parkway Hotel site on Frenchs Forest Road, which has an approved maximum height of RL 187.2 or 26.4 metres. In particular, we note that the approved Parkway Hotel development is located in very close proximity to the subject site, approximately 175 m to the east, and is taller than the proposed development, reinforcing our position that the proposed height of the development is not out of context or character for the locality.

Figures 1 and 2 below show the relationship in building height between the site, the private hospital and the Parkway Hotel site and clearly demonstrate that the height proposal cannot be considered out of scale with the locality.

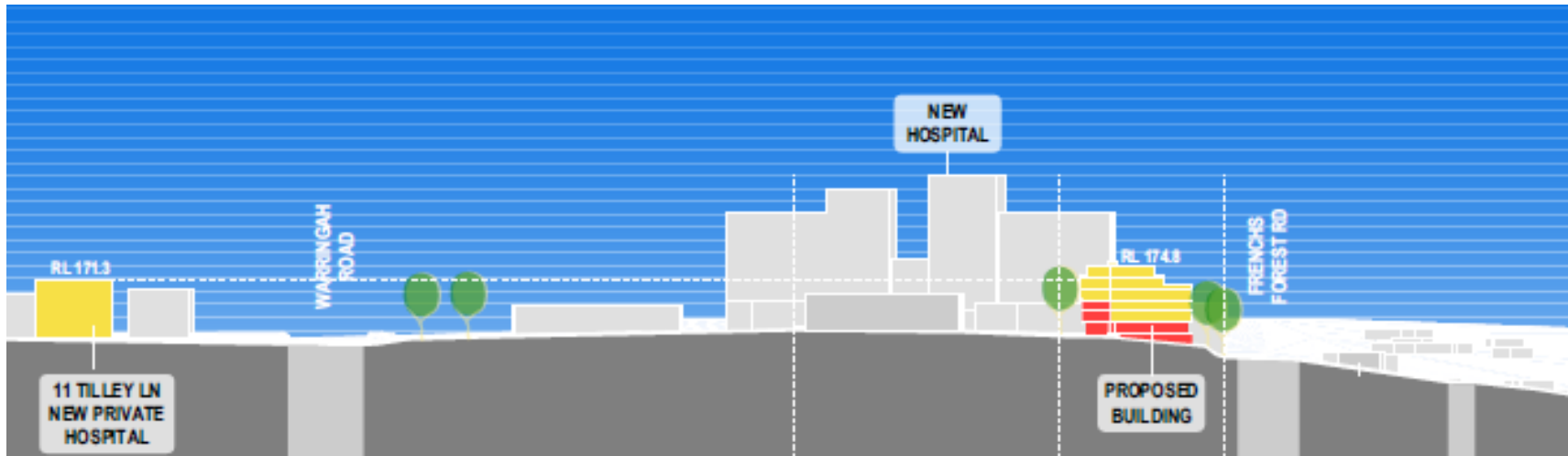


Figure 1: Section B looking west (Source: PA Studio)

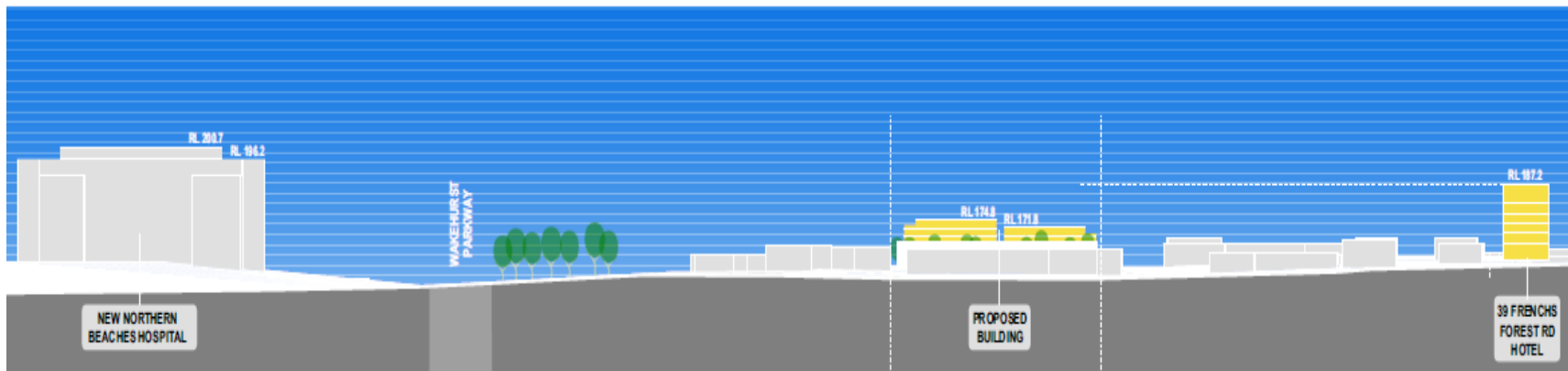


Figure 2: Section A looking north (Source: PA Studio)

Notwithstanding this transition to increased building heights, the revised scheme involves a substantial increased setback to Frenchs Forest Road, a considerable reduction in building height and scale which improves its relationship to low density residential development to the north.

We also note that the Panel's reference to the non-refusable height and FSR provisions in the Seniors SEPP (8 metres and 0.5:1 respectively) and its conclusion that *"the proposal's exceedance of these standards is significantly greater than that anticipated by the SEPP for such uses and greater than the likely form of development anticipated in the B7 zone where residential flat buildings are not permitted."*

In response we note the following:

- The FSR and building height referred to in Clause 50 of the Seniors SEPP are not prescribed standards with which a development application must comply, yet have been used as a reason for refusal. The proposed height and scale of the development has been informed by a detailed consideration of the prevailing and emerging built form character of the locality, as well as the market trend towards multi-level and vertical seniors living typologies. Advice from One Fell Swoop (Appendix 6), indicates that *according to the 2018 PwC/Property Council Retirement Census, 13% of retirement villages in Australia are vertical and almost 30% of new developments are vertical or combination. We expect the percentages of vertical village forms to rise significantly in the next 5-10 years.*
- Furthermore, the seniors living market is changing and there are numerous examples of recently approved higher scale seniors living developments. **This includes a seniors living development at 26-30 Norbrik Drive, Bella Vista in the B7 Business Park zone under *The Hills LEP 2012* (which has similar zone objectives to the B7 zone in WLEP 2011). This development, which was approved by the Sydney West Joint Regional Planning Panel on 18 August 2016, has a height of 10 storeys (41.5 m) and a FSR of 1.05:1, which are both well above the non-refusable development standards in the Seniors SEPP.**
- Accordingly, on the basis of this trend towards multi-level seniors living typologies and the above determination of the Sydney West Joint Regional Planning Panel, we strongly refute the conclusion that the non-refusable development standards in clause 50 of the

Seniors SEPP indicate that the SEPP envisages only lower-scale, villa type seniors living development in the B7 zone. Such a conclusion would clearly be inconsistent with the Sydney West Joint Regional Planning Panel's decision to approve the abovementioned DA in a B7 zone.

- Furthermore, the peer review undertaken by Matthew Pullinger confirms:

...the reduced building heights result in an amended proposal which is better scaled relative to the heights of existing and approved buildings in the immediate vicinity, noting in particular a recent approval for a six storey redevelopment of the Parkway Hotel east of the subject site...

Reason for refusal:

- d) The proposed development does no(not) comply with the requirement of Clause 50 of SEPP (HSDP) with regards to building height, density and scale and solar access requirements.***

Response:

We have addressed the provisions of clause 50 relating to building height, density and scale above.

In addition, we note that the amended scheme provides a significantly more articulated built form along its Frenchs Forest Road frontage, with the western portion of the proposal set back an additional 8 metres (for a total setback of approximately 18 metres) from the northern site boundary. As identified in the Urban Design Statement (Appendix 7):

The effect of this adjustment is to clearly interrupt the original building length of approximately 90 metres, creating two distinct and more appropriately scaled forms, each approximately 40 metres in length.

Consequently, noting that there are multiple existing buildings within the immediate locality with substantial lengths, including the building to the east at 125 Frenchs Forest Road which

has direct frontage to the road and a length of approximately 120 metres, the length of the amended scheme is not out of context with the scale of surrounding development.

In relation to solar access, the non-refusable development standard is *if 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.*

Under the revised scheme, 94% of dwellings receive a minimum of 2 hours of direct sunlight between 9 am and 3 pm in mid-winter as required by the ADG and 92% of dwellings receive a minimum of 3 hours direct solar access between 9am and 3pm in mid-winter under the Seniors SEPP. Accordingly, the proposal is vastly in excess of the requirements and this standard (clause 50 of the Seniors SEPP) cannot be used as a reason for refusal of consent.

A detailed assessment of the proposal against the relevant provisions of the Seniors SEPP is contained at Appendix 11.

Reason for refusal:

- e) *The proposed development is inconsistent with the amenity provisions of Clause 33 of the SEPP (HSPD).*

Response:

A detailed consideration of the revised scheme against clause 33 is contained in the Table below:

Clause 33 Seniors SEPP	Consideration
<p><i>The proposed development should:</i> (a) <i>recognise the desirable elements of the location's current character (or, in the case of precincts undergoing a transition, where described in local planning controls, the desired future character) so that new buildings contribute to the quality and identity of the area, and</i></p>	<p>Consistent:</p> <ul style="list-style-type: none"> • The proposed development provides for an appropriate transition between low density residential uses to the north and the larger-scale, mixed use development in the B7 zone. • The area is undergoing significant transformation in terms of use and built form character, including increased building heights and scale • The proposal has been reduced in height and scale to improve its relationship to nearby low density residential development

Clause 33 Seniors SEPP	Consideration
<p>(b) retain, complement and sensitively harmonise with any heritage conservation areas in the vicinity and any relevant heritage items that are identified in a local environmental plan, and</p>	<p>N/A:</p> <ul style="list-style-type: none"> There are no heritage items or areas on the site or in the locality
<p>(c) maintain reasonable neighbourhood amenity and appropriate residential character by:</p> <p>(i) providing building setbacks to reduce bulk and overshadowing, and</p> <p>(ii) using building form and siting that relates to the site's land form, and</p> <p>(iii) adopting building heights at the street frontage that are compatible in scale with adjacent development, and</p> <p>(iv) considering, where buildings are located on the boundary, the impact of the boundary walls on neighbours, and</p>	<p>Consistent:</p> <ul style="list-style-type: none"> Setbacks to Frenchs Forest Road have been increased from 9.2m in the original DA to between 10.3 and 17.7m in the revised scheme. This reduces the apparent bulk of the building. There are no overshadowing impacts. The setback western portion of the building creates additional open space for a north-facing communal garden, offering amenity to the commercial and seniors living uses, and improving the presentation of the proposal to Frenchs Forest Road. As noted in the Urban Design Statement, the revised scheme improves siting, building address and relationship to street level. This includes reduced and stepped building heights and reconfiguration of the basement structures to ensure they do not protrude above natural ground level, and are sleeved with commercial uses at ground level to improve activation and passive surveillance to street level. The reduced heights of the proposed scheme result in an improved relationship to existing built form, notwithstanding that that the locality is continuing to evolve towards increased building heights (refer to earlier discussion regarding the Northern Beaches Hospital and surrounding areas and recent approved developments at Tilley Lane and the nearby Parkway Hotel site. As noted in the Urban Design Statement, the reduction in building heights results in development of a scale that more directly to the scale of adjacent mature eucalypts and will generally be sited within and below the prevailing local urban tree canopy. The proposed development is not located on the side boundaries, the proposal is separated by 13.1m from the building to the immediate west (8.5m within the site).
<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, and</p>	<p>Consistent:</p> <ul style="list-style-type: none"> As noted above, the setbacks of the proposal have been increased, providing a number of design benefits including additional open space for a north-facing communal garden and reduced perceived

Clause 33 Seniors SEPP	Consideration
	bulk and scale along the Frenchs Forest Road frontage.
(e) <i>embody planting that is in sympathy with, but not necessarily the same as, other planting in the streetscape, and</i>	Consistent: <ul style="list-style-type: none"> The proposal continues to comprise the retention of existing mature trees on the site, including along Frenchs Forest Road. Refer to Landscape Plan submitted with DA 2018/0995. Additionally, the amended proposal allows for the retention of 3 additional mature trees
(f) <i>retain, wherever reasonable, major existing trees, and</i>	Consistent: <ul style="list-style-type: none"> As above. The amended proposal allows for the retention of 3 additional mature trees
(g) <i>be designed so that no building is constructed in a riparian zone.</i>	N/A: <ul style="list-style-type: none"> The proposal is not located in a riparian zone.

Table 3: Revised Scheme compliance against clause 33

Reason for Refusal:

- f) *The proposed development fails to satisfy the infill self-care provisions under Clause 31 of the SEPP (HSPD), specifically the Seniors Living Policy – Urban Design Guidelines for Infill Development.***

Response:

A detailed assessment of the proposal against *Seniors Living Policy – Urban Design Guidelines for Infill Development* is contained at Appendix 12 and demonstrates that the proposal is consistent with the guidelines. Further, the Urban Design Statement (Appendix 7) confirms:

...The amended design proposal responds to each of the critical sections outlined in Seniors Living Policy - Urban Design Guidelines for Infill Development, specifically - neighbourhood character, site planning, streetscape impacts, and internal and neighbouring amenity...

Reason for Refusal:

- 3. *The proposed development should not be approved in its current form as it fails***

the principles of SEPP 65 insofar as they apply to context and neighbourhood character, built form and scale, density, landscaping, amenity, housing diversity and Social Interaction, and aesthetics.

Particulars:

- a) *The proposed building is not compatible with the context of the site that currently contemplates development that is non-residential and of a scale significantly less than that proposed.*
- b) *The development does not provide sufficient landscape area commensurate with the bulk and scale of the proposed built form.*
- c) *The proposal is inconsistent with several of the requirements as contained in the ADG referenced in SEPP 65.*

Response:

The proposed development has been amended in response to these issues, with a reduced height, greater articulation and increased setbacks as previously described. A revised Design Verification Statement addressing the principles of SEPP 65 is contained at Appendix 13. The Urban Design Statement outlines in detail the design improvements of the amended scheme and concludes:

The amended design is of a scale and built form capable of sitting comfortably within its immediate site and context, with a better relationship to Frenchs Forest Road, a more diminutive relationship to retained mature trees, increased building separation to sensitive northern neighbours, and with a far more strongly articulated architectural form.

We also note the following points in relation to the “particulars” listed in this reason for refusal:

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.

- There is no height or FSR control applicable to development in the B7 zone – rather these are outcomes of the built form which is designed to fit with the surrounding context. We have discussed prevailing and emerging building heights in the locality within Section 4 of this review of determination report.
- The existing built form character of the B7 zone is of large-scale, large footprint commercial and industrial buildings. The proposed building is the same length (approximately 84 metres) as the existing building on the site at 1 Skyline Place.
- As noted above and below, the amended building form has been strongly articulated to reduce the apparent scale.
- As discussed in Section 4 of this report, building heights in the locality are increasing, including the recently approved Parkway Hotel redevelopment which is taller than the amended development and located in close proximity to the subject site.
- The reduced building height of the amended scheme is substantial (up to 9.3 m) and results in an improved built form relationship to surrounding development. Furthermore, the strong articulation along the Frenchs Forest Road frontage, results in substantially increased setback and the creation of two distinct and more appropriately scaled forms, each approximately 40 metres in length.

The development does not provide sufficient landscape area commensurate with the bulk and scale of the proposed built form.

- The amended scheme provides for increased landscaped setbacks along Frenchs Forest, the relocation of the community garden within the Frenchs Forest Road setback providing additional north facing landscaped space for recreation and an increased landscaped area:

DA 2018/0995	S8.2 Review Proposal
Lot 1 1671m ²	Lot 1 1497m ²
Lot 2 1424m ²	Lot 2 1692m ²

Table 4: Comparison of previous and proposed landscaped areas (Base source: Platino)

This complies with the landscaped area requirements of *Seniors Living Policy – Urban Design Guidelines for Infill Development* and the *WDCP*.

As also noted in the Urban Design Statement:

the amended building siting permits the retention of three existing mature eucalypts in addition to those already retained elsewhere within the site along Frenchs Forest Road. This further sets the amended building design within a strong urban landscape character.

The proposal is inconsistent with several of the requirements as contained in the ADG referenced in SEPP 65.

- We note that this is a curious reason for refusal, as the original scheme demonstrated a high level of consistency with the ADG, with the identified areas for departure accompanied by a detailed justification. Furthermore, the ADG is a guide which does not prescribe mandatory standards, which is confirmed in the Department of Planning and Environment’s Planning Circular 17-001 which states that:

...the ADG is not intended to be and should not be applied as a set of strict development standards...

- Notwithstanding the above, the design amendments to the scheme result in full compliance with the ADG, in particular with regards to solar access, cross ventilation and south facing units, all of which far exceed requirements,, as summarised in the table below (Appendix 14)
- The proposal is also compliant with the design principles of SEPP 65 as detailed in the Design Verification Statement (Appendix 13).

SEPP 65	DA 2018/0995	Section 8.2 review
No seniors living units	78	49
Solar access	79%	94%
South facing units	21%	6%
Cross Ventilation	58%	61%
Seniors living units per corridor	14	5

Table 5: Comparison of DA 2018/0995 and Section 8.2 scheme (Source: Platino Properties)

Reason for Refusal:

4. The proposed development is inconsistent with the desired future character

established by the objectives of the B7 Business Park zone under the Warringah Local Environmental Plan 2011 and the WDCP and the objectives of the Sydney North District Plan in relation to the retention of employment zones and uses.

Response:

We contend that this reason for refusal demonstrates a fundamental misunderstanding of the statutory relationship between the Seniors SEPP and WLEP 2011.

As previously outlined, clause (2)(2)(a) of the SEPP specifically states that the aims of the SEPP will be achieved by:

setting 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

Furthermore, clause 5(3) of the SEPP states:

If this Policy is inconsistent with any other environmental planning instrument, made before or after this Policy, this Policy prevails to the extent of the inconsistency.

The legal advice at Appendix 3 confirms that whilst the consent authority must have 'regard' to the B7 zone objectives, it must also consider the SEPP and recognise that it is a strategy to set aside prohibitions on seniors housing to meet the aims of the SEPP of supplying seniors housing. Accordingly, the legal advice concludes that the consent authority must give primacy to the aims of the SEPP over the zone objectives.

In relation to the North District Plan, we have previously addressed Council's and the Panel's incorrect application of the retain and manage principle. In summary:

- **The proposal does not rezone the site from Business purposes** and is located in an edge location that can suitably accommodate residential uses and which provides an appropriate transition and interface between existing low density residential development to the immediate north and uses within the B7 zone.

- **The retain and manage principle does not apply to the site** – it applies to industrial and urban services land. The B7 zone is not industrial and urban services land – it is a fundamentally mixed-use zone which permits a wide range of uses (such as child care facilities, respite day care centres, hospitals, and hotel and motel accommodation) and prohibits a range of industrial uses, including the very uses that are cited in the District Plan’s definition of industries and urban services.
- The amended scheme includes approximately 2,219m² of commercial and allied health floor space, which provides a range of economic benefits including a net increase of approximately 100 jobs and substantial new commercial floor space to support employment growth across a range of industries including health professionals, which will complement and support the growth and evolution of the Frenchs Forest Health and Education Precinct.

Furthermore, as outlined in the SEE and this report, the proposed development is consistent with a range of other key provisions and actions in the North District Plan relating to matters such as the provision of housing for the ageing population, the co-location of aged care and health facilities, the evolution of health and education precincts and the transition of business parks in higher amenity, mixed employment precincts which include ancillary residential development.

5. Conclusion

This report outlines the way 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 2018/0995. In summary, the amended proposal:

- entails design improvements which reduce the height, bulk and scale of the proposal and improves its relationship to the existing and emerging built form character of the locality
- 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
- is not inconsistent with State level strategic planning objectives relating to the retention of industrial and urban services land, as the subject land is not industrial and urban services land
- is entirely consistent with the aims and other relevant provisions of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* (Seniors SEPP), which prevail over the B7 zone objectives of *Warringah Local Environmental 2011* (WLEP)
- is entirely consistent with the aims and other relevant provisions of *State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development* (SEPP 65) and the Apartment Design Guide (ADG)
- is consistent with the provisions of *State Environmental Planning Policy No. 55 - Remediation of Land* (SEPP 55)

The amended development, as described in this report, includes a number of design improvements, whilst remaining substantially the same development as the original DA as:

- the proposal remains for the same proposed uses, ie, a seniors living and mixed use development
- the siting of the proposed development has not changed
- the proposed design changes result in a reduction in the bulk and scale of the building, lessening the overall impacts and do not result in any additional impacts or issues that were not relevant to the DA as originally submitted

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 addressed, 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
- several of the reasons for refusal demonstrate a fundamental misunderstanding of the applicable legislation, specifically that the zone objectives in WLEP 2011 are given primacy over the Seniors SEPP and the interpretation of the non-refusable development standards in the Seniors SEPP
- 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, SEPP 65, the ADG, SEPP 55, 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.