

**SYDNEY NORTH PLANNING PANEL
COUNCIL ASSESSMENT REPORT**

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| Panel Reference | 2019SNH028 |
| DA Number | REV2019/0014 |
| LGA | Northern Beaches Council |
| Proposed Development | Review of Determination of Development Application No. DA2018/0995 for subdivision of land into 2 allotments, demolition of existing structures and construction of a mixed use development containing Seniors Housing units and commercial space |
| Street Address | Lot CP, SP 49558, No. 5 Skyline Place, Frenchs Forest |
| Applicant | Platino Properties |
| Owner | The owners of Strata Plan 49558 |
| Date of Lodgement | 29 March 2019 |
| Number of submissions | 4 |
| Recommendation | Refusal |
| Regional Development Criteria (Schedule 7 of the SEPP) State and Regional Development 2011 | Clause 8.3 of the EPA Act 1979 requires that the review of determination or decision made by a Sydney district or regional planning panel is also to be conducted by the Panel. |
| List of all relevant s4.15(1)(a) matters | <ul style="list-style-type: none"> • Environmental Planning and Assessment Act 1979 • Environmental Planning and Assessment Regulation 2000 • State Environmental Planning Policy No. 55 - Remediation of Land • State Environmental Planning Policy (Building Sustainability Index: BASIX) • State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 • State Environmental Planning Policy - Infrastructure 2011 • State Environmental Planning Policy No 65 - Design Quality of • Residential Apartment Development (SEPP 65) • Warringah Local Environmental Plan 2011 (WLEP 2011) • Warringah Development Control Plan 2011 (WDCP) |
| List all documents submitted with this report for the Panel's consideration | Attachment 1 – Original Assessment Report by Council Attachment 2 - Architectural Plans (as amended) Attachment 3 – Applicant's Statement of Environmental Effects Attachment 4 - Applicant's Legal advice |
| Report by | Andrew Pigott – Acting Director Planning and Place |
| Responsible Officer | Lashta Haidari – Principal Planner |
| Report Date | 18 June 2018 |

Summary of s4.15 Matters

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report? **Yes**

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed and relevant recommendations summarized, in the Executive Summary of the assessment report? **Yes**

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

Clause 4.6 Exceptions to development standards

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

Special Infrastructure Contributions

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

Conditions

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

Executive Summary

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

On 18 December 2018, the Sydney North Planning Panel (SNPP) refused the development application (DA2018/0995) for the subdivision of land into two (2) allotments, demolition of existing structures, and construction of a mixed-use development containing 78 Seniors Housing units and commercial space.

On 29 March 2019, a Section 8.2 Review of Determination application was lodged with amended plans. The main changes to the proposed development are summarised as follows:

- A reduction in building height from 8-9 storeys to 6 storeys
- A reduction in Floor Space Ratio from 2.2:1 to 1.84:1
- A reduction in the number of seniors units from 78 to 49
- Removal of residential apartments from the ground floor and an increase in the commercial floor space by 871m²
- Revised built form to provide a central recess within building

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

Pursuant to Section 8.2 of the Act, the applicant seeks a review of all aspects of the refusal of DA2018/0995. Clauses 8.3 and 8.10 of the Act requires that the request for the review must be made and determined within 6 months after the date of determination. The application was determined on 18 December 2018 and the Notice of Determination was issued on 21 December 2018. The request for review was lodged on 29 March 2019 and so it must be determined by SNPP on 18 June 2019 to fall within the statutory timeframe.

The assessment of the amended application has concluded that, despite the reduction in the overall height and revisions to the built form, the proposal is still found to be inconsistent with character provisions embodied within SEPP (HSPD) and the core principles of State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development (SEPP 65).

The amendments to the proposed development do not overcome Council's concerns in relation to potential conflict of land uses and loss of employment land, and the fact that the amenity of the future residents of the development will be significantly impacted by the operation of the surrounding businesses and industrial uses.

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

Accordingly, it is recommended that the SNPP, as the determining authority, having considered the application for review of determination, resolve to maintain its refusal of DA2018/0995 for the reasons detailed within the "Recommendation" section of this report.

SITE DESCRIPTION

The subject site consists of one (1) lot, which is legally known as Lot CP, SP 49558, No. 5 Skyline Place, Frenchs Forest. The subject site is located on the south-western corner of the Frenchs Forest Road East and Skyline Place intersection and is known as No.5 Skyline Place. The site has street frontages of 104m in length to Frenchs Forest Road East and 120m in length to Skyline Place and has a site area of 12,627m².

The site is currently occupied by existing warehouse and commercial buildings located on the southern portion of the site. Off-street parking is currently provided for approximately 170 vehicles in a large at-grade car parking area on the northern portion of the site.



Figure 1 – Subject Site and Locality Map

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

The site is adjoined to the south, east, and west by warehouses and commercial/retail buildings ranging from one to five storeys. To the north of the site is the R2- Low Density Residential zone, which comprises of detached single dwellings that are generally 1-2 storeys in landscape settings.

RELEVANT BACKGROUND

The Development Application was lodged with Council on 16 June 2018. The application sought approval for part demolition works, subdivision of the existing lot into two torrens title lots and construction of mixed used development consist of retail and seniors housing with associated car parking and landscaping comprising 78 residential units, 1,348m² of commercial premises and basement car parking.

The application was reported to the SNPP on 18 December 2018 with a recommendation for refusal.

The Panel made the following decision on the application:

The Panel determined to refuse the development application pursuant to section 4.16 of the Environmental Planning and Assessment Act 1979.

The decision was unanimous.

The Panel notes that the proposed use is permissible with consent under SEPP (HSPD) 2004. However, the Panel considers that the Infill Self-Care development proposed at 26.52m high and an FSR of 2.2:1 would be inconsistent with the existing and desired future character of the area established by Warringah LEP 2011 and the DCP, which is required to be considered by clause 33 of SEPP (HSPD).

In addition, the Sydney North District Plan establishes the Precautionary Principle in respect of the retention of employment generating zones and uses. The proposal would be inconsistent with this principle, as, other than for a component of "commercial" uses, limited demonstrable employment is generated by the independent living units.

Accordingly, the Panel accepts the advice of the assessment report to refuse the application.

For the reasons given above, SNPP adopted the recommendation of Council's report and refused the application for the following reasons:

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 (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.*
 - 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.*
 - 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.

- d) *The proposed development does not comply with the requirement of Clause 50 of SEPP (HSDP) with regards to building height, density and scale and solar access requirements.*
 - e) *The proposed development is inconsistent with the amenity provisions of Clause 33 of the SEPP (HSPD).*
 - 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.*
- 2.** *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.*
- 3.** *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 SEPP55. Particulars:*
- a) *Insufficient information has been submitted to demonstrate that the land will be suitable in its current state (or will be suitable after remediation) for the purpose for which the development is proposed to be carried out.*
- 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.*

The Notice of Determination was issued to the applicant on 21 December 2018.

On 29 March 2019, the applicant lodged the current application pursuant to Section 8.2 of the Environmental Planning and Assessment Act 1979 (the Act) for the review of SNPP's determination of refusal for DA2018/0995.

PROPOSAL IN DETAIL

The proposed development, as revised, comprises the following:

- Subdivision of one lot into two lots:
 - (a) Proposed Lot 1: 7,842m² (site of the proposed development)
 - (b) Proposed Lot 2: 4,726m² (site of the existing industrial buildings and car parking)
- Demolition of an existing building (Building E) located in the north-west 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

Figure 2 below is provided to assist in the location of the proposed building layout and subdivision line (shown in red) within the subject site.

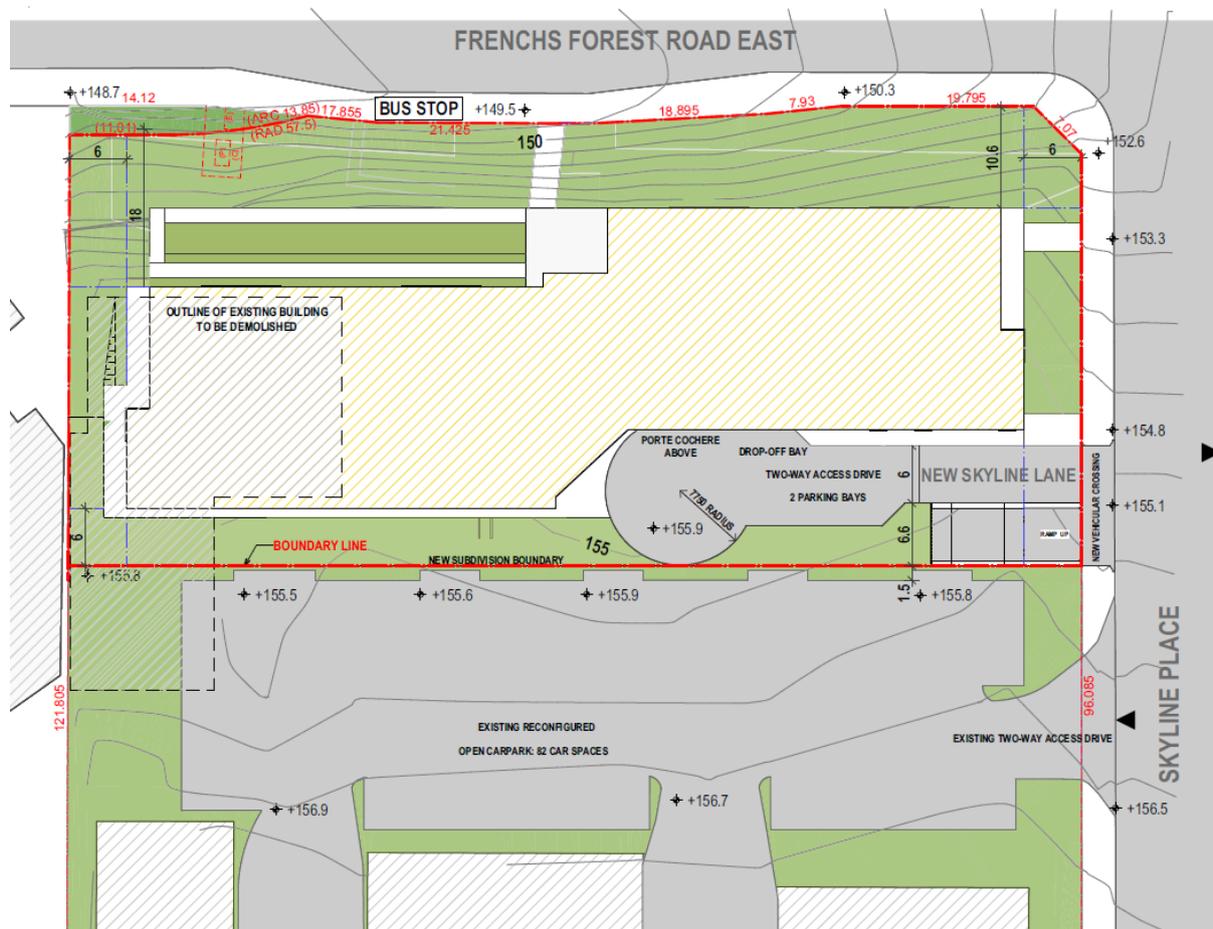


Figure 2 – Proposed/Existing Buildings and Subdivision Layout (Source: PA Studio)

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

| | Original Proposal | Amended Proposal |
|---------------------------------------|--|--|
| Building Form | Single building | Single building with new central recess defining an eastern and western half of the building |
| Building Height | 8-9 storeys Max height: RL 182.52 | <u>Eastern Half of Building:</u> 6 storeys Max height: RL 171.8 (RL to 173.20 including lift overrun) <u>Western Half of Building:</u> 6 storeys Max height: RL 174.8 to (176.20 including lift overrun) |
| Total Gross Floor Area (GFA) | 10,397m ² | 8,991m ² |
| FSR | 2.2:1 | 1.84:1 |
| Residential seniors apartments | 78 units | 49 units |
| Residential GFA | 8,894m ² | 6,211m ² |
| Commercial GFA | 1,348m ² | 2,219m ² |
| Setback from Frenchs Forest Rd | 9.2m | Eastern half of building – 10.3m Western half of building – 17.2m |
| Car parking | Seniors - 100 spaces Commercial uses - 34 spaces Visitors - 15 spaces | Seniors - 62 spaces Commercial uses - 55 spaces Visitors - 10 spaces |
| Subdivision | Subdivision of the site to create two separate torrens title lots: (i) Lot 1- 7,842 m ² (comprising the existing buildings south of the site) (ii) Lot 2 - 4,726 m ² (comprising the proposed development) | Subdivision of the site to create two separate torrens title lots: (i) Lot 1- 7,684 m ² (comprising the existing buildings south of the site) (ii) Lot 2 - 4,886 m ² (comprising the proposed development) |

Figures 3 and 4 below show photomontages of the amended built form when viewed from Skyline Place and Frenchs Forest Road East.



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



Figure 4 - View of the proposed development (as amended) from Frenchs Forest Road East (Source: PA Studio).

REFERRALS

External Referrals

| Referral Body External | Comments |
|--|---|
| Ausgrid | <p>Approval (subject to conditions)</p> <p>The proposal was referred to Ausgrid. Ausgrid by an e-mail dated 4 April 2019 provided the following comments:</p> <p><i>There is an existing Kiosk substation in the proposed development site. The substation ventilation openings, including substation duct openings and louvered panels, must be separated from building air intake and exhaust openings, natural ventilation openings and boundaries of adjacent allotments, by separation distances which meet the requirements of all relevant authorities, building regulations, BCA and Australian Standards including AS 1668.2: The use of ventilation and air-conditioning in buildings - Mechanical ventilation in buildings.</i></p> <p><i>The development must comply with both the Reference Levels and the precautionary requirements of the ICNIRP Guidelines for Limiting Exposure to Time-varying Electric and Magnetic Fields (1 HZ – 100 kHz) (ICNIRP 2010).</i></p> <p><i>Existing Ausgrid easements, leases and/or right of ways must be maintained at all times to ensure 24 hour access. No temporary or permanent alterations to this property tenure can occur without written approval from Ausgrid.</i></p> <p><u>Comment:</u></p> <p>The requirements of Ausgrid can be imposed as conditions of consent, should the application be worthy of approval.</p> |
| Concurrence - NSW Roads and Maritime Services - (SEPP Infra. Traffic generating dev) | <p>Approval (subject to conditions)</p> <p>The Application (as amended) was referred to Roads and Maritime Services (RMS) for comments in accordance with Clause 104 the State Environmental Planning Policy (Infrastructure) 2007.</p> <p>RMS by letter dated 18 April 2019 advised that no further comments, other than the comments provided in the Roads and Maritime's previous response dated 11 July 2018.</p> <p>The RMS comments dated 11 July 2018 raised no objection to the proposed development subject to conditions.</p> <p>The conditions provided by RMS may be included in a consent should this application be approved.</p> |
| NSW Rural Fire Services (NSW RFS) | <p>(Requested Additional Information)</p> <p>The application was referred to the NSW RFS as Integrated Development.</p> <p>Section 100B of the <i>Rural Fires Act 1997</i> enables the Commissioner of the NSW RFS to issue a Bushfire Safety Authority for 'Special Fire Protection Purpose' development. Section 100B (6) of that <i>Rural Fires Act 1997</i> identifies Subdivision of the Land and Seniors Housing (within the meaning of the <i>SEPP (HSPD) 2004</i>) as such development.</p> |

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| | <p>In their response on 15 May 2019, the NSW RFS advised that the application was deficient in that a bushfire report addressing the amended proposal was not submitted with the application.</p> <p>The applicant has since provided the amended bushfire report, which is currently being reviewed by the NSW RFS. At the time of writing this report, the revised comments had not been received.</p> |
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Internal Referrals

| Referral Body Internal | Comments |
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| Building Assessment - Fire and Disability upgrades | <p>Approval (subject to conditions)</p> <p>The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development.</p> |
| Environmental Health (Industrial) | <p>Approval (subject to conditions)</p> <p>No objection to the proposed development.</p> |
| Landscape Officer | <p>Refusal</p> <p>The revised plans indicate an improved setback to French Forest Road East with retention of additional trees and a more suitable buffer is indicated along the rear boundary of the site.</p> <p>The Landscape Plan provided is however conceptual only and does not indicate proposed species or heights of planting to be included.</p> <p>For a development of this size, a resolved landscape plan should be provided to enable proposer assessment of the impacts and compatibility with local character.</p> <p>It is recommended that a Landscape Plan be provided which incorporates dense native tree, shrub and groundcover plants in the landscape areas around the building.</p> <p>In terms of landscape assessment, the proposal is unable to be supported at this stage due to lack of information regarding planting of the site.</p> |
| Development Engineering | <p>Refusal</p> <p>The previous outstanding drainage information including the DRAINS model as requested back on the 27/11/18 has not been provided. The application is not supported.</p> |
| Strategic and Place Planning | <p>Refusal</p> <p>The following comments are provided in addition to those provided by Strategic Planning in relation to DA2018/0995. Strategic Planning continues to bring forward those same comments in relation to REV2019/0014.</p> <p>Strategic Planning acknowledges that REV2019/0014 makes certain changes to the development proposal. However, it continues to raise concerns that the development is not consistent with Council's strategic objective for the site and the wider Frenchs Forest precinct.</p> |

Strategic direction under current planning tools

Council's current planning requirements, as expressed through Warringah LEP 2011 and Warringah DCP 2011, are designed to maintain and enhance a robust employment area in the B7 Business Park zone at Frenchs Forest.

The current planning regime does not contemplate residential uses of any form in the B7 zone. This is a deliberate policy position of Council, which is aimed at encouraging a range of employment generating uses, primarily office and light industrial uses, and preserving the land for further specialisation and innovation in its future employment options.

The current planning regime recognises that many employment uses that are permitted in the zone may not be deemed compatible to co-locate with residential uses; hence residential uses are prohibited by the LEP.

The objectives of the B7 zone do not anticipate or address the inclusion of a residential population co-existing with employment generating uses within the employment precinct. Employment generation uses frequently are associated with generation of noise, out of hours activity and heavy service vehicle activity. In relation to service needs for a residential population, the permitted uses are limited to a low level of retailing that is deemed necessary to serve an employment workforce.

Council's strategic policy recognises that there is ample residentially zoned land immediately adjacent to the B7 zone in which residential accommodation can occur and that infill residential development, including seniors housing, should be afforded the amenity benefits of a residential environment.

It also recognises three existing business zones that lie in close proximity to the B7 zone and the surrounding residential areas, these being the B2 Local Centre zone at Forest Way shops and the B1 Neighbourhood Centre zones at Bantry Bay and Skyline shops. These small centres can offer retailing and service activities more consistent with the day to day needs of a residential population. Also, mixed residential/commercial uses are permitted in the B1 and B2 zones.

Future planning directions

The future strategic planning directions of both Council and the State Government continue to support and build on Council's current planning directions for the B7 zone and the precinct around the new Northern Beaches Hospital.

It is noted that the State Government has declared a Planned Precinct at Frenchs Forest and has partnered with Council in preparing the Council's Northern Beaches Hospital Precinct Structure Plan (HPSP)

The HPSP envisages the continuance and development of a strong mix of employment uses within the B7 zone. In particular, it supports the maintaining of an employment area that does not include a residential population. It is envisaged that the B7 zone will continue to accommodate employment generating uses and will attract an increasing range of health and education related service functions to locations in proximity to the new hospital.

Consistent with the area's role as a planned precinct the HPSP seeks to create a mixed use centre that accommodates a residential function in association with retail, commercial, entertainment and community

functions all within a new B4 Mixed Use zone located immediately to the west of the new hospital.

The HSPS also supports an increased range of residential typologies in residential areas adjacent to the hospital and the B7 zone. These will be accommodated in a new R3 Medium Density Residential zone which will include 'Additional Permitted Uses' being business premises, office premises, medical centres, hotel or motel accommodation and serviced apartments, and lies immediately to the north of the hospital and B4 zone.

An expanded range of residential typologies will also be included (as 'Additional Permitted Uses') in the R2 Low Density Residential zone adjacent to the hospital and on the southern side of Warringah Road.

The future zoning regime will address the State Government's planning directions as expressed in the Greater Sydney Region Plan and the North District Plan. It will provide ample land that is ideally located to provide a range of residential infill accommodation, including seniors housing, in environments that offer residential amenity and a broad range of land uses that will service and enhance the living environment. It will continue to recognise the B7 zone, to the immediate east of the new town centre and hospital, as offering primarily an employment role that will serve both new residents and the wider population.

Currently, the area is in transition. The new hospital is operational and work is continuing to upgrade surrounding infrastructure. Work is well underway to bring the changes to the planning regime on line. The introduction of seniors housing into the B7 zone is in conflict with the strategic intention for this precinct.

Should this development, and any subsequent similar ones, proceed to locate in the B7 zone new business operators will be required to consider the impacts of their operations on a residential population and weigh this against their business requirements.

Longer term, this is most likely to result in potential loss of certain types of employment opportunities from the precinct. Hence, residential development in the B7 zone has the capacity to prejudice the types of employment generating activities and diminish of the employment base in the precinct. This is of particular concern as the strategic objectives for the precinct endeavour to respond to future needs for growth in jobs numbers, changing technologies and market demands.

Proposed amendments to built form and site landscaping

It is noted that proposed amendments include a reduction in building height, increased articulation of the built form and increased site landscaping.

The proposed amendments do not alleviate concerns that the development will be inconsistent with the desired character (and with the desired future character) and objectives of the B7 zone which seek development of a non – residential character and significantly less scale. It does not contribute to the identity of the area as an employment precinct.

Proposed amendments to land use compatibility and amenity

It is noted that under the current and future planning directions there is no objective to include residential accommodation into the employment area defined by the B7 zone.

The development remains primarily a residential one. The amendments whereby residential floor space is reduced and commercial floor space is increased do not overcome concerns in relation to the introduction of a residential population into a business and industrial environment.

The development application relies on SEPP (HSPD) 2004; that is, because hospitals are a permitted use on the site, the development application for seniors housing is legitimised. In this instance, whilst an application for a hospital might be assessed as suitable in the B7 zone, it does not follow that residential development, in the form of infill self-care housing for seniors, is also suitable.

The B7 zone does not contemplate mixed (residential) use development, particularly development in which self-contained residential dwellings predominate.

The amendments to the development proposal do not change concerns in relation to potential conflict of land uses and loss of employment land. There remains concern that:

- Amenity for residents can be impacted by the operation of nearby businesses due to the different needs and requirements of the respective land uses.
- Operators of certain employment uses will decide not to locate in the B7 zone due to perceived limitations on their operation that will result due to conflict between their different needs and requirements and those of a residential population.
- The development will establish a precedent. The cumulative impact of multiple seniors housing developments will result in a loss of available employment land and diminishing of the land's employment role due to some business operator's perceptions that residential co-location is in conflict with their business needs and requirements.

Economic Development

- The additional information does provide the clarity previously sought on net impact on jobs and business activity, which was missing from the original EIA. This specifically identifies the properties, which will be redeveloped (i.e. ground floor Gym and two levels of vacant office stock and adjoining carpark), and current job yield (15 jobs).

This enables the applicant to demonstrate that redevelopment (ground floor retail uses) would result in a net job increase (55 new jobs). However, this assessment of net job growth is based on current vacant office stock, not if it was occupied which may result in limited net job growth.

The additional analysis on total development capacity of the business park is again valid and highlights the significant remaining capacity of the business park to support new employment (especially office and logistics/manufacturing).

While the supplementary advice provides some valuable arguments for limited impact of this DA on long term economic function of the whole Business Park, previous comments around inconsistency of introducing senior housing, defined as a type of residential accommodation in the WLEP, into the Frenchs Forest Business Park remain the same as follows.

The development is fundamentally inconsistent with objectives of the B7 land use zone and could create potential land use conflicts (including businesses within remaining Skyline Business Park), and may create precedence for further residential accommodation in the Business Park, ahead of finalising the Hospital Precinct Structure Plan.

Arguments previously raised about local traffic impacts also remain.

Conclusion

Strategic Planning does not support the revised application for the following reasons:

1. The proposed amendments do not alleviate concerns that the development will be inconsistent with the desired character (and with the desired future character) and objectives of the B7 zone which seek development of a non – residential character and significantly less scale. It does not contribute to the identity of the area as an employment precinct.
2. The amendments to the development proposal do not change concerns in relation to potential conflict of land uses and loss of employment land. There remains concern that:
 - Amenity for residents can be impacted by the operation of nearby businesses due to due to the different needs and requirement of the respective land uses.
 - Operators of certain employment uses will decide not to locate in the B7 zone due to perceived limitations on their operation due to conflict of competing interests with residential neighbours.
 - The development will establish a precedent. The cumulative impact of multiple seniors housing developments will result in a loss of available employment land and diminishing of the lands employment role.

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| <p>Urban Designer</p> | <p>Refusal</p> <p>The revised scheme is unacceptable in its current form.</p> <p>1. Site Planning and Design</p> <p><u>Communal Open Space</u></p> <p>The revised scheme demonstrates that further setbacks have been applied to the development on the northern boundary frontage. The increased setback to the north-western most sector of the development can be supported, provided a significant planting buffer is applied to the street frontage to alleviate the hostile environment of the street frontages and vehicular proximity.</p> <p>It is noted that this is now the outdoor communal open space. Whilst it can be supported, a further or additional green break in the form of the building with through-site links and a central courtyard would be a preferred additional treatment to mitigate the location and environmental conditions of being located adjacent to several arterial roads.</p> <p><u>Commercial Tenancies</u></p> <p>The revised scheme includes tenancies at the ground level that front Frenchs Forest Road to the north and at the first level are oriented to the south.</p> <p>The elevation of the commercial ground level tenancies to the north lacks any articulation and modulation with the extent of glazed facades measuring approximately 40- 45 metres each (combined length of about 85 metres). Further articulation to address this by way of recessing entry ways into the building to assist to identify individual tenancies and provide interest, modulation and articulation to the bland elevation resulting from full height glazed partition walls to the entire elevation is recommended.</p> <p>The internal spaces and the interface with the external ground plane does not provide for any generosity in the circulation in spatial terms. In fact the doors opening out onto the verandah and pedestrian path to the north-eastern commercial tenancies at ground level provide inadequate space or sufficient clearance for disabled circulation along this path.</p> <p>Further investigation and design detail should investigate the requirements for Disability Access to the commercial tenancies with equal access to the verandah spaces that front the tenancies.</p> <p>2. Height, Mass, Bulk and Scale</p> <p>Previous comments on the DA submission (DA2018/0995) encouraged a reduction in height and further breaking down of the building mass, bulk and scale. Whilst acknowledging the reduction in height goes some way to alleviating the bulk and scale, the break in built form, proposed as two building masses in the revised scheme is in fact only broken down in mass to the extent of the articulation by the slip in the plan form and a break in the mass at the upper level only.</p> <p>The design revisions are insufficient to allow the building to be read as two smaller forms with reduced mass and still reads as a single 85 metre long building with no “substantial” break. A minimum building separation of between 12 - 16 metres with a clear break in built form down to ground level and the provision of a substantial landscaped treatment and internal</p> |
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| | <p>courtyard between the two building masses would provide for increased amenity and a more fine grain urban design response to the character of the local area in the context of the B7 Zoning and adjacent R2 zone.</p> <p>The abovementioned planning arrangement would also provide for a more amenable indoor-outdoor space as an adjunct to the communal and common area spaces at level one with the provision of verandahs and an atrium/indoor oasis for the amenity and use by the residents.</p> <p>3. SEPP 65 Apartment Design Guide</p> <p>As previously noted in the DA comments, provided the main corridor through long-section still represents an unarticulated long corridor that provides for no relief along its length (in both east and west wings of the plan).</p> <p>The applicant is encouraged to address the SEPP 65 Apartment Design Guide principles in detail in any future design applications.</p> <p>In summary, almost all of the previous comments still apply to the revised scheme. Whilst the planning across the floor plate provides a slip in the form to represents a form of articulation the building still reads as an unarticulated form that demonstrates no through site links or connections to the greater neighbourhood and desired future character of the locality.</p> <p>The revised design does not go far enough to address the concerns raised in the Urban Design referral for the original DA2018/0995 and as such cannot be supported.</p> |
| Water Management | No comments had been received at time of writing this report. |
| Traffic Engineer | <p>Approval</p> <p>The proposal is for the revision of the original proposal to decrease the number of Senior Living Units from 78 to 49 and increase the commercial floorspace.</p> <p><u>Traffic</u> There is a net increase of vehicles based on the revised plan. The increase is in the order of sum 15 vehicles. This is deemed negligible on the networks. Further, the senior living component is considered to operate outside the general commuter peak periods.</p> <p><u>Parking</u> Number are complaint with the relevant SEPP and Council DCP requirements. 127 spaces are required with the applicant providing 130.</p> <p><u>Pedestrian</u> The applicant will be required to upgrade the public domain along the whole frontage of the site and provide a safe link to the nearest Bus Stop for access to public transport.</p> <p><u>Access</u> Ramp grades and driveway widths are deemed satisfactory. Aisle widths and clearances are in accordance with AS2890.1:2004. The applicant has provided for two-way traffic flow.</p> |

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and Warringah Development Control Plan.

As a result of the public exhibition of the application, Council received four (4) submissions, which includes three submissions opposing the development and one (1) letter in support of the development.

The issues raised in the submissions include the following:

1. Character of the Development

Concerns were raised that the development (as amended) is not consistent with the character of the area with both the B7 zone and the adjoining R2 zone.

Comment

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

2. Reasons for refusal by Council and the SNPP remain valid

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

- *The proposal is inconsistent with the Sydney North District Plan;*
- *The proposal is inconsistent with the objectives of the B7 zone;*
- *The proposal is inconsistent with the requirement of SEPP (HSPD) 2004 and SEPP 65;*
- *The proposal does not comply with Council's strategic intent for the locality; and*
- *The proposal is not suitable for the site.*

Comment

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

Submission in Support

The submission in support of the proposal is the same that was submitted as part of the original application, which is addressed in the original assessment report.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

Section 8.2 – Review of Determination

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

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

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

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

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

Pursuant to Section 8.2 of the Act, the applicant seeks a review of all aspects of the refusal of DA2018/0995.

In accordance with Clauses 8.3 and 8.10 noted above, the request for the review and its consideration must be made within 6 months after the date of determination. The application was determined on 18 December 2018 and the Notice of Determination was issued on the 21 December 2018. The application requesting a review was lodged on 29 March 2019 and so must be considered by the SNPP by 18 June 2019, which is within the 6 months from the date the request for the review was made.

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

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

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

The overall built form of the development has been reduced from the original scheme in the following respects:

- The height of the building has been reduced by 2-3 storeys
- The built form has been amended to provide a central recess within the building
- The total of residential floor space has been reduced, including the deletion of residential uses from the ground level
- The total of commercial floor space increased
- Landscaped area has been increased.

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

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

- The proposal remains for the same proposed uses, i.e. seniors housing and commercial uses within a mixed-use development
- The proposed design changes result in a reduction in the bulk and scale of the building
- The amendments do not result in any additional impacts or issues that were not relevant to the DA as originally submitted.

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

Assessment of the Reason for Refusal by Sydney North Planning Panel

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

The applicant has amended the proposal and has provided additional information. Consequently, the Reasons for Refusal of DA2018/0995 that are stipulated in the Notice of Determination are examined below to determine if they remain applicable or should be overturned:

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 remediation) for the purpose for which development is proposed to be carried out.***

Comment:

A Detailed Site Investigation (DSI) and a Remediation Action Plan (RAP), prepared by Benviron Group, dated April 2019 have been submitted with the application. The DSI confirms that the site can be made suitable for the proposed development, subject to the implementation of remediation and validation works in accordance with this RAP. Consequently, it is recommended this reason for refusal be deleted.

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 SEPP (HSPD) 2004, in particular:*

- a) *The proposed development is inconsistent with the Aims of the Policy (namely Clause 2(1) (c) in relation to design and compatibility.***

Comment:

While substantial amendments have been made, the amended proposal remains not “of good design” for the reasons given by Council’s Urban Designer in the referrals section of this report. Consequently, it is recommended this reason should remain.

- b) *The proposed 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.***

Comment:

The amended proposal removes the residential use from the ground floor. Consequently, it is recommended this reason for refusal be deleted.

- 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 meters (8 meters 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.***

Comment:

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

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

The locality is characterised by low density, 2-storey detached dwelling residential development to the north and 2-3 storey business park development to the east, west and south.

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

The proposed 6-storey development involves a much bulkier building compared to height and scale of development in the immediate locality and is not in keeping with the location's current character. The proposed development does not positively contribute to the quality or identity of the area.

The applicant argues that the recess provided in the centre of the building (as shown in Figure 5 below) makes the building appears as a two district buildings.

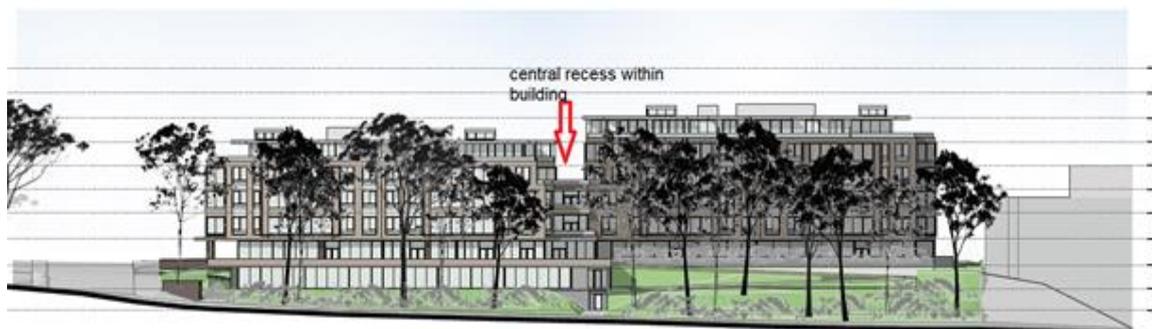


Figure 5 – North Elevation of the proposed development (as amended) (Source: PA Studio).

The amendment to the built form is considered minimal and somewhat tokenistic in its width and vertical depth as shown above. The building will still appear as one large building that resembles a large shop top housing development that provides little variation to the built form despite the reduction in height and increase in front setback. The proposed built form is significantly greater in height than surrounding developments within the B7 zone. The visual appearance is at odds with the prevailing detached style housing in the adjoining R2 - Low Density Residential zone.

Consequently, the development does not demonstrate that adequate regard has been given to the principles set out in Division 2.

It is recommended that this reason for refusal should remain.

- d) *The proposed development does not comply with the requirement of Clause 50 of SEPP (HSPD) with regards to building height, density and scale and solar access requirements.***

Comment:

Clause 50 prescribes that consent to development for the purpose of self-contained dwellings must not be refused on the grounds of building height, density and scale, landscaped area, deep soil zones, solar access and parking, if certain numerical standards are met. If any one of these standards are not met, the proposed development can be refused for those reasons.

In this regard, the amended proposal contains significant departures from the standards in Clause 50, as demonstrated in the following table.

| Standard | Details | Original DA | Review Proposal | Can be used to refuse? |
|-------------------|---|-------------|-----------------|------------------------|
| Building Height | 8m or less (measured vertically from ceiling of topmost floor to ground level immediately below). | 21.8m | 18.8m | Yes |
| Density and scale | 0.5:1 or less | 2.2:1 | 1.84:1 | Yes |

Building Height

In relation to building height, the proposed development (as amended) does not satisfy the numerical part of the clause, hence it remains as a standard that can be used to refuse the application. Moreover, the proposal will introduce a high-density primarily residential development into a business park precinct that is characterised by buildings which are significantly lower in scale (maximum 3 storey) than the proposed building (which is 6 storeys).

The proposed development is also not consistent with the low-density residential development on the opposite side of Frenchs Forest Road East in terms of building height, amounting to what would be a “jarring effect” on the streetscape and character of the area.

Density and Scale

The proposed development also exceeds the density and scale provisions of Clause 50 of SEPP (HSPD). As the proposed development (as amended) does not satisfy the numerical part of the clause, hence it remains as a standard that can be used to refuse the application. Moreover, the proposal is considered to be an overdevelopment of the site, particularly if it's found to be incompatible with the character of the area, as established by the LEC in *Salanitro-Chafei v Ashfield Council [2005] NSWLEC 366*. The case establishes a threshold of density at paragraph 27, which states:

27 The above [reference to SEPP Seniors and SEPP 53] suggests that there is a general acceptance by the planning profession that an open suburban character is most easily maintained when the FSR of buildings does not exceed 0.5:1. The question raised above may therefore be answered thus:

The upper level of density that is compatible with the character of typical single-dwelling areas is around 0.5:1. Higher densities tend to produce urban rather than suburban character. This is not to say that a building with a higher FSR than 0.5:1 is necessarily inappropriate in a suburban area; only that once 0.5:1 is exceeded, it requires high levels of design skill to make a building fit into its surroundings.

As detailed in this report, the proposed development in terms of built form is found not to be sympathetic to the character of the location and its interface with low-density residential development adjoining the site. In this regard, the proposal is considered to be an overdevelopment and an inappropriate development of the site in terms of density and scale. It is recommended that this reason for refusal should remain.

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

Comment:

The issue in relation to the amenity provisions of Clause 33 has not been addressed by the proposed development given the subject site's location is within a business park that has the potential to have a significant impact the amenity of future residents of the development. Acoustic concerns, hours of operation and truck movements for nearby businesses which can occur at various hours during the night have not been adequately considered by the applicant. It is recommended that this reason for refusal should remain.

- 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.***

Comment:

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

It is noted that the Seniors Living Policy is geared towards low scale development located on traditional in-fill sites in residential zones. The key principles of the policy have been reviewed and the proposed development, as amended, does not enhance internal site amenity and does not respond appropriately to its context for the reasons stipulated within the original assessment report.

It is recommended that this reason for refusal should remain.

- 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.***

Comment:

The amended proposal has been reviewed in relation to the requirements of SEPP 65, which has been addressed by Council's Urban Designers comments in the referrals section.

In summary, the amended plans do not alter Council's original assessment in relation to the SEPP 65. The proposed development has been conceived on the basis that the B7 Business Park zone does not have a height limit and the site is in close proximity to the new Northern Beaches Hospital. The applicant argues that the height of the development is transitioning from the 40m height limit for the hospital building site and the adjoining future Town Centre. The applicant also argues that the height of the proposed development is consistent with the new private hospital in Tilly Lane and the approved hotel/motel accommodation at the Parkway Hotel site to the east at 39 Frenchs Forest Road East.

However, the subject site is located approximately 240m from the Hospital site and due to the topography of the land, there is no apparent relationship between the subject site and the Hospital building. Similarly, due to distance and intervening development, there is no relationship with the approved private hospital in Tilly Lane. In relation to the Parkway Hotel development, the Land and Environment Court approved the motel under Existing Rights and that development should not be seen as setting the height of future development within the B7 zone.

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

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

It is recommended that this reason for refusal should remain.

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.

Comment:

The applicant states that Council and the Panel demonstrates a fundamental misunderstanding of the statutory relationship between the Seniors SEPP and WLEP 2011.

This reason for refusal has two main components and each component is addressed as follows:

Objectives of B7 Business Park Zone

The applicant argues that the objectives of the zone should not be considered, because Clause (2) (2) (a) of the SEPP 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, the applicant also references clause 5(3) of the SEPP, which 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 applicant has also submitted legal advice with the current application, which is summarised as follows:

“For the foregoing reasons, I am of the opinion that the correct legal approach to having 'regard' to the B7 zone objectives when determining the DA is:

- a) That the consent authority must have 'regard' to the B7 zone objectives;*
- b) 'Regard' is had by recognising that the objectives of the B7 zone inform the nominate and innominate uses in the Land Use Table;*
- c) The zone objectives do not contemplate seniors housing because it is a form of development that is prohibited in the B7 zone;*
- d) To 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; and*
- e) In those circumstances, the consent authority would give primacy to the aims of the SEPP over irrelevant zone objectives.*

The consent authority must give primacy to the aims of the SEPP over the zone objectives.”

Comment:

Zone objectives are an important consideration because they set out the purpose of the zone and reflect the intended strategic land use direction for the lands within that zone. Clause 2.3 of WLEP 2011 states, “*The consent authority must have regard to the objectives for*

development in a zone when determining a development application in respect of land within the zone”.

It is acknowledged that the application has been made pursuant to SEPP (HSDP) 2004 and that the SEPP prevails but only to the extent of any inconsistency. There is no reference to the zone objectives within SEPP (HSDP) 2004, so there is no inconsistency.

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

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

The location’s current character is embodied within the zone objectives, as there is no character statement within the WLEP 2011 or WDCP 2011 for this locality. Therefore, the zone objectives are an important consideration in the assessment of the application against Clause 33(a) of SEPP (HSDP) and cannot be ignored.

Finally, reference is made to the Land and Environment Court decision in *Abret Pty Ltd v Winerarribee Shire Council* (2011) NSWCA 107, where the Court considered the role of objectives in LEP’s. In this case, the Court found that the objectives of a zone cannot influence whether or not a development is permissible but are relevant when determining the proper construction of provisions in the LEP because they reveal the intended operation and effect of the LEP as a whole.

In this regard, the objectives of the B7 zone have not been used to determine the permissibility of the development, but have been correctly applied to determine the suitability and appropriateness of the development.

For the above reasons, the inconsistency of the development with the zone objectives is a valid planning consideration and should remain as a reason for refusal.

Sydney North District Plan

In relation to the Sydney North District Plan, the applicant disagrees with Council and the Panel and argues that they have incorrectly applied the retain and manage principle. In summary the applicant states:

- ***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.*

Comment:

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

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

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

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

CONCLUSION

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

The amendments to the proposal and new documentation have attempted to resolve the built form, character and site suitability issues forming the basis of the reasons for refusal of the Development Application. The applicant has satisfactorily addressed the requirements of SEPP 55 (Remediation) and SEPP (HSPD) 2004 in relation to the removal of the ground floor units.

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

Four (4) submissions were received in response to the notification of the current application. The issues raised in the submissions have been addressed in the "Public Notification Section" of this report and echo the concerns raised by Council and the Panel in the refusal of the

original DA and the remaining concerns raised by Council in relation to the review. In this regard, the proposal is contrary to protecting and maintaining the public interest.

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

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

RECOMMENDATION (REFUSAL)

That the SNPP, as the consent authority pursuant to Clause 4.16(1) (a) of the EP&A Act 1979 (as amended), confirm its decision to refuse to grant consent to the Review of Determination Application No REV2019/0014 for subdivision of land into 2 allotments, demolition of existing structures and construction of a mixed use development containing 49 Seniors Housing units and commercial space on land at Lot CP SP 49558, No. 5 Skyline Place, Frenchs Forest, subject to the following changes to the reasons refusal (deletions shown as ~~strikethrough~~ and additions shown **bold**):

A. Delete Reason for Refusal No. 1

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 remediation) for the purpose for which development is proposed to be carried out.~~

B. Amended Reason for Refusal No. 2

2. The proposed development is unsatisfactory in respect to Section 4.15 of the Environmental Planning and Assessment Act, 1979 as the application is found to be inconsistent with the provisions of SEPP (Housing for Seniors and People with a Disability) 2004, in particular:
 - a) The proposed development is inconsistent with the Aims of the Policy (namely Clause 2**(1) (c)** in relation to design and compatibility.
 - b) ~~The proposed 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.~~
 - 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 meters (8 meters 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 97 zone where residential flat buildings are not permitted.

- d) The proposed development does not comply with the requirement of Clause 50 of SEPP (HSPD) with regards to building height, density and scale and solar access requirements.
- e) The proposed development does not recognise the desirable elements of the location's current character nor does it contribute to the quality and identity of the area. It is therefore inconsistent with the amenity provisions of Clause 33 of the SEPP (HSPD).
- 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.

C. Retain Reason for Refusal No. 3

- 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. The proposed development should not be approved in its current form as it fails the principles of SEPP 65.

D. Retain Reason for Refusal No. 4

- 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.